

IN THE INCOME-TAX APPELLATE TRIBUNAL "I" BENCH MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER  
ITA No. 507/Mum/2018 (Assessment Year 2014-15)

ITO (IT)-3 (1)(1), Room No. 1628, Air India Building, Nariman Point, Mumbai-400021.	Vs.	Sarla Tandon Kumar Flat No. 2, Dalamal Court, Worli Seafact, Mumbai-400018. <b>PAN: CISP4408A</b>
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Appellant

Respondent

Appellant by : Shri Nishant Samaiya (Sr. DR)

Respondent by : Shri Vinay Devi (AR)

Date of Hearing : 09.05.2018

Date of Pronouncement : 09.05.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by revenue under section 253 of the Income-tax Act ('the Act') is directed against the order of Id. CIT(A)-57, Mumbai dated 08.11.2017 for Assessment Year 2014-15. The assessee has raised the following grounds of appeal.

1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the investment in the house at SA would be entitled to exemption u/s 54 of the I. T. Act, 1961."
2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in including the period of holding of the assets by the previous owner for the purpose of computation of long term capital gain, whereas the indexed cost of acquisition has to be computed with reference to the year in which the assessee had become the owner of the property after the death of his previous owner."

2. Brief facts of the case are that the assessee is a 'Non-Resident' filed her return of income on 30.06.2014 for Assessment Year 2014-15 declaring total income of Rs. 16,19,352/-. The return of income was selected for scrutiny. In the return of income, the assessee claimed Long Term Capital Gain (LTCG) earned on sale of immovable property acquired by way of inheritance on the death of her father. The said property was acquired by her father prior to 01.04.1981. The assessee claim exemption under section 54 by investing in LTCG in house property in USA. The assessing officer disallowed the exemption of section 54F holding that new asset is located outside India. And that amendment in section 54(1) wherein the word "in India" was inserted by way of Finance Act 2015, w.e.f. 01.04.2015 is clarificatory in nature. The assessee was also disallowed indexation from the year in which the previous owner first held the asset.
3. On appeal before the Id. CIT(A), the action of Assessing Officer was reversed. The Id. CIT(A) while granting exemption followed the decision of Tribunal in ITO vs. Mr. Nishant Lalit Jadhav in ITA No. 6883/Mum/2014 dated 26.04.2017 and on the second issue regarding allowing indexation cost from the date on which the previous owner held by following the decision of jurisdictional High Court in CIT vs. Manjula J. Shah in ITA No. 3378 of 2010 dated 11.01.2011. Thus, aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

4. We have heard the submission of the parties and have gone through the orders of the authorities below. We have also deliberated on various case laws relied by the lower authorities. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that both the grounds of appeal raised by revenue are covered against the revenue and in favour of assessee. The Id. AR of the assessee further submits that ground no.1 of the appeal is covered in favour of assessee by the decision of Tribunal in ITO vs. Nishant Lalit Jadhav (supra), wherein it was held that the amendment made in Finance Act No. 2 of 2014 is made applicable w.e.f. 01.04.2015 which is applicable subsequent to the amendment, which came into effect from 01.04.2015. Thus, not applicable for the year under consideration.
5. In support of ground no.2, the Id. AR of the assessee relied upon the decision of Hon'ble Bombay High Court in CIT vs. Manjula J. Shah (supra).
6. On the other hand, the Id. Departmental Representative (DR) for the revenue after going through the order of lower authorities and the decision of Tribunal in Nishant Lalit Jadhav (supra) and in CIT vs. Manjula J. Shah (supra) submits that he strongly relied upon the order of Assessing Officer.
7. We have considered the submission of both the parties and have gone through the order of authorities below. Ground No.1 relates to allowing the exemption under section 54F of the Act. We have noted that during the

assessment, the Assessing Officer noted that assessee has sold immovable property and claimed exemption of LTCG under section 54F by investing the sale proceed in acquisition of property in foreign country. The Assessing Officer further noted that while computing the LTCG, the assessee has taken benefit of the original owner, which she acquired by way of inheritance. The Assessing Officer disallowed the exemption under section 54F holding that exemption is not available from the property purchased outside of India. The Id. CIT(A) allowed the exemption under section 54 holding that the amendment was made by Finance Act No.2 of 2014 wherein the word 'In India' has been inserted in section 54(1). The assessee would be entitled to get the benefit of section 54 of the Act by following the decision of Tribunal in Nishant Lalit Jadhav's (supra) case on similar issue has passed the following order:

“5. We have carefully considered the rival submissions. Undoubtedly, prior to the amendment made by Finance (Nos.2) Act, 2014 w.e.f. 01/04/2015, the language of section 54 of the Act required the assessee to invest the capital gain in a residential property. It is only subsequent to the amendment, which has come into effect from 01/04/2015, that such investment is required to be made in a residential property in India. The assessment year before us is prior to 01/04/2015, and, therefore, the amendment would not be applicable. A similar situation, though in the context of section 54F of the Act, has been considered by the Hon'ble Gujarat High Court in the case of Smt. Leena J. Shah (supra); notably, so far as the impugned issue is concerned, the requirement of sections 54F & 54F of the Act is pari-materia, inter-alia, requiring the assessee to make investment in a new residential house in order to avail the exemption on the capital gains earned. As per the Hon'ble High Court, prior to the amendment the only stipulation was to invest in a new

residential property and that there was no scope for importing the requirement of making such investment in a residential property located in India. On similar analogy, in the present case too, we do not find any reason to uphold the stand of the Assessing Officer that the exemption under section 54 of the Act is to be allowed only if the investment is made in residential property in India. Considered in the aforesaid light and in the absence of- any contrary decision, the parity of reasoning laid down by the Hon'ble Gujarat High Court has to prevail and we find no reason to distract from the conclusion arrived at by the CIT(A). Accordingly, the order of the CIT(A) is hereby affirmed and Revenue fails in its appeal.

8. In view of the factual and legal discussion, we do not find any infirmity in the order of Id. CIT(A). Hence, ground no.1 of the appeal is dismissed.
9. Ground No.2 relates to allowing the indexation cost of acquisition of when first owner purchased the property. We have noted that the issue is no more *res-integra* after the decision of Hon'ble jurisdictional High Court in CIT vs. Manjula J. Shah (supra), wherein it was held that indexation cost of acquisition has to be computed from the year in which previous owner first held the asset and not the year in which assessee became owner by way of inheritance. Thus, there is no infirmity in the order passed by Id. CIT(A). Hence, ground no.2 is dismissed.
10. In the result, appeal of revenue is dismissed.

Order pronounced in the open court on 09/05/2019.

**Sd/-**  
**N.K. PRADHAN,**  
**ACCOUNTANT MEMBER**  
Mumbai, Date: 09 .05.2019  
SK

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "I" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**