

**IN THE INCOME TAX APPELLATE TRIBUNAL, “C” BENCH MUMBAI
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 4383/Mum/2017 for Assessment Years: 2007-2008

ACIT- 4(3)(1), Room No. 649, 6 th Floor, Aayakar Bhawan, M.K. Road, Mumbai-400020.	Vs	Shri Pradipkumar R. Shah, 2 nd Floor, Shreeji Bhavan, Mangaldas Road, Mumbai-400002. PAN : AAKPS6292G
(Appellant)		(Respondent)

Appellant by :	Shri Chaudhary Arunkumar Singh (DR)
Respondent by :	Dr. K. Shivram with Shri Sashank Dundu (DR)

**Date of Hearing : 26/08/2019
Date of Pronouncement : 30/08/2019**

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by revenue is directed against the order of Id. Commissioner of Income Tax (Appeals)-8, [CIT(A)], Mumbai dated 24.03.2017 for Assessment Year 2007-08. The revenue has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow deduction u/s. 54 of the I.T. Act of Rs. 61,69,712/- even though assessee has purchased new asset before one year prior to date of purchase of original asset.
2. Brief facts of the case are that the assessee is an individual, filed his return of income for Assessment Year 2009-10 on 31.03.2008 declaring total income of Rs. 44,88,318/-. The assessment was completed on 21.12.2009

under section 143(3) without any variance. Subsequently, the assessment was re-opened under section 147. Notice under section 148 dated 28.03.2014 was served upon the assessee on 31.03.2014. The Assessing Officer while completed the assessment under section 143(3) r.w.s. 147 disallowed exemption under section 54 of Rs. 61,69,712/-, which was allowed in original assessment order dated 21.12.2009. On appeal before the Id. CIT(A), the action of Assessing Officer in re-opening was upheld, however, on merit, the assessee was allowed exemption under section 54 of Rs. 61,69,712/-. Thereby aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

3. We have heard the submission of Id. Departmental Representative (DR) for the revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. DR for the revenue supported the order of Assessing Officer. The Id. DR for the revenue further submits that assessee claimed deduction of Rs. 61,69,712/- under section 54 against the Long Term Capital Gain (LTCG) earned on sale of residential property at Anuj Apartment, Gowalia Tank Road, Mumbai sold on 08.06.2006. The assessee claimed deduction in respect of new asset which was purchased on 11.05.2005. The assessee purchased the new asset beyond one year prior to date of transfer of original asset. The Assessing Officer in paragraph 4.2 of the assessment order has clearly bought out the fact that assessee transferred residential flat on 08.05.2006 and new flat was bought

by assessee within one year prior to date of transfer of original asset. Therefore, the assessee was not entitled for deduction under section 54 of the Act. The Id. DR for the revenue further submits that Id. CIT(A) allowed the relief to assessee by considering the Memorandum of Understanding (MOU) dated 08.05.2006, however, the agreement to sale was registered only on 06.06.2006.

4. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR further submits that he has already filed application under Rule 47 for challenging the re-opening of assessment as re-opening being bad-in-law. The re-opening is beyond the four year from the end of relevant Assessment Year. The re-opening was merely based on audit objection. The copies of reasons recorded were never provided to the assessee.
5. On merit of the case, the Id. AR of the assessee submits that case of assessee throughout the proceeding before the Assessing Officer as well as before the Id. CIT(A) was that new property was purchased within one year from the sale of asset. The assessee purchased new property on 11.05.2005 and one year from such date ended on 10.05.2006. The assessee sold his old asset/property on 08.05.2006 as per MOU and major portion of consideration was received and possession of property was also handed over on 08.05.2006. The Id. CIT(A) after considering the documentary evidence concluded that date of sale of old property was to be taken as 08.05.2006.

And accordingly granted relief to the assessee. The Id. AR of the assessee also invited our attention on the MOU dated 08.05.2006, copy of which is placed at page no. 10 to 22 of Paper Book. Perusal of said MOU shows that out of total sale consideration of Rs. 85,00,000/- the assessee has received Rs. 50,00,000/- of sale consideration on 08.05.2006 through cheques drawn on HDFC Bank and ICICI Bank and remaining consideration of Rs. 35,00,000/- was to be received on or before 10.06.2006. The details of the cheques are duly mentioned in the MOU. The assessing officer has neither disputed the date of payment of substantial amount not made any investigation.

6. We have considered the rival submission of the parties and have gone through the orders of authorities below. In the return of income, the assessee claimed deduction of LTCG on purchase of residential house. The assessee claimed to have sold a residential house on 08.06.2006. The assessee purchased a new house on 11.05.2005. The Assessing Officer treated the sale of residential house as per agreement dated 06.06.2006. The perusal of the MOU dated 08.05.2006 reveals that the assessee received substantial consideration i.e. Rs. 50,00,000/- through cheques drawn on HDFC and ICICI Bank. The details of the cheques are duly mentioned in the MOU. The assessing officer has neither disputed the date of payment of substantial amount not made any investigation from the purchaser of the house. The assessee also parted with the possession of said assets/old house.

7. The date of purchase of new asset on 11.05.2005 is not in dispute. The period of one year prior to sale of new asset for claiming deduction has to be counted from purchase of new asset i.e. from 11.05.2005, which in our view would end on 10.05.2006. The assessee as per MOU received substantial consideration on 08.05.2006. At the cost of repetition, we may mention that the contents of MOU dated 08.05.2006 reveals that the assessee received consideration of Rs. 50,00,000/- by way of cheque no. 467067 dated 08.05.2006 and 054294 dated 08.05.2006 both of Rs. 23,00,000/- each drawn on HDFC Bank and Rs. 4,00,000/- by cheque no. 935963 dated 08.05.2006 drawn on ICICI Bank Ltd. The assessee also handed over the vacant and peaceful possession to the transferee, this fact is duly recorded at page no. 9 of MOU dated 08.05.2006. Though agreement to sale was registered before Sub-Registrar concern on 06.06.2006. Perusal of registered agreement to sale, copy of which is placed at page no. 23 to 46 of Paper Book also contained the recital that assessee has entered into MOU dated 08.05.2006 and received Rs. 50,00,000/- against the sale consideration out of total consideration of Rs. 85,00,000/-. The Assessing Officer treated the date of registration of agreement to sale as transfer of asset.
8. The definition of transfer in relation to capital asset is provided under section 2(47) of the Act, wherein Clause-6 of section 2(47) provide that any transfer involving or allowing the possession of any immovable property to be taken or retain in part performance of a contract of a nature referred to

section 35A of Transfer of Property Act. Therefore, considering the fact that the assessee has parted with the possession of property on 08.05.2006 in part performance of contract and received major portion of consideration. Thus, the transfer of asset was substantially completed on 08.05.2006 itself, which is well within one year prior from the date of transfer of original asset. Therefore, the ld. CIT(A) has rightly allowed the deduction of LTCG to the assessee.

9. In the result, the ground raised by revenue is dismissed.

10. As we have dismissed the ground of appeal raised by revenue, therefore, in our view, the discussion and adjudication on application under Rule 27 of Income Tax Appellate Tribunal Rules filed by assessee have become academic.

11. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 30/08/2019.

Sd/-

Sd/-

(R.C. SHARMA)
ACCOUNTANT MEMBER

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai, Date: 30.08.2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

BY ORDER

Assistant Registrar
ITAT Mumbai