IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER

ITA NO.2051/MUM/2018 (A.Y: 2013-14)

Asst. Commissioner of Income-tax – 25(3) Room No. 601, C-10, 6th Floor Pratyakshkar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai – 400 051	*v.*	Shri Vishal R. Suchak 302, Hareshitchha CHS NS Road – 4, JVPD Scheme Juhu, Vile Parle (W) Mumbai – 400 056 **PAN: ABAPS7655L**
(Appellant)		**(Respondent)**

C.O.No. 104/MUM/2019
[ARISING OUT OF ITA NO.2051/MUM/2018 (A.Y: 2013-14)]

Shri Vishal R. Suchak 302, Hareshitchha CHS NS Road – 4, JVPD Scheme Juhu, Vile Parle (W) Mumbai – 400 056 **PAN: ABAPS7655L**	*v.*	Asst. Commissioner of Income-tax – 25(3) Room No. 601, C-10, 6th Floor Pratyakshkar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai – 400 051
(Appellant)		**(Respondent)**

Assessee by : **Shri Vijay Shah**

Department by : **Shri Harkamal Sohi Sandhu**

Date of Hearing : **16.09.2019**

Date of Pronouncement : **29.10.2019**

O R D E R

PER C.N. PRASAD (JM)

1. This appeal and cross objection are filed by the Revenue and assessee against the order of the Learned Commissioner of Income Tax (Appeals)–37, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.01.2018 for the A.Y. 2013-14.

2. The Revenue in its appeal has raised the following grounds: -

"1. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax(Appeals) has erred in ignoring the fact the assessee had sold land and purchased 3 immovable properties in the same year the capital asset was sold which is contravening to the provisions of 54F and therefore making the assessee ineligible for deduction u/s 54F

2. On the facts and in the circumstances of the case and in law, the Ld Commissioner of Income-tax(Appeals) has erred in deducing the fact that assessee had sold land with residential shed and is eligible for deduction u/s 54. Whereas, the assessee did not bring anything on record that shed on the land was a residential property.

3. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax(Appeals) has erred in allowing the assessee to take benefit of section 54 of the Income-tax Act. Whereas the matter being related to sale of property which was not a residential property therefore making assessee ineligible for deduction u/s 54 of the Income-tax Act.

4. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax(Appeals) has erred in ignoring the fact that assessee had himself in reply to the show cause issued by the AO in respect of disallowance u/s 54F had quoted case laws and drew inference out of them to be eligible for deduction u/s 54F and not 54 of the Income-tax Act."

5. The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

2. At the time of hearing, Ld. Counsel for the assessee submitted that tax effect on the issues in the present appeal of the Revenue is below ₹.50 Lacs and in view of the CBDT Circular No. 17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ (Pt), the appeal of the Revenue is not maintainable.

3. Ld. DR agreed with the above submission of the Ld. Counsel for the assessee.

4. We have heard the submissions and perused the grounds of appeal of the assessee. We find that the tax effect in this appeal is less than ₹.50 Lakhs and therefore the appeal of the Revenue is not maintainable on account of low tax effect in view of the CBDT Circular No. 17/2019 dated 08.08.2019. Hence Revenue's appeal is dismissed.

5. Coming to the cross objection filed by the assessee the following ground has been raised: -

> "*The Learned CIT has erred in law and fact in restricting the deduction under section 54 at ₹.1,05,23,271/- as against ₹.2,00,00,860/- in return of income as appellant has invested the same in residences."*

6. Assessee also raised an additional ground in its cross objection as under: -

> *"The Learned CIT(A) 37 has ought to have treated the consideration received of Rs.3,08,80,000/- towards the sale of Agriculture Land*

and thus appellant is not liable for Capital Gain tax on sale of Agricultural Land."

7. At the outset, Ld. Counsel for the assessee submits that the land along with shed sold on 11.09.2012 by the assessee at Errangal Village, Taluka Borivali, Mumbai for a consideration of ₹.3,08,80,000/- is an agricultural land situated beyond 8 Kms from the municipal limits of Brihan Mumbai Mahanagar Palika limits and therefore the said land is not a "capital asset" within the meaning of clause (a) of section 2(14) of the Act, and in which case the provisions of section 45 of the Act i.e. computation of income from capital gains does not arise. Ld. Counsel for the assessee before us furnished a copy of road map showing the distance of Errangal Village to Brihan Mumbai Mahanagar Palika and submits that the distance is of about 10.6 Km which is more than 8 Kms from Municipal Limits. Ld. Counsel for the assessee also furnished a copy of property card issued by C.T.S. Officer, Goregaon, Mumbai Suburban District indicating the nature of the property possessed by the card holder as agricultural land. Therefore, Ld. Counsel for the assessee submits that since the property has been classified as agricultural land in the property card and situated beyond 8 Km from the municipal limits it is not a "capital asset" liable for capital gains tax. Reliance was placed on the decision of the Hon'ble Bombay High Court in the case of CIT *v.* Debbie Allemao and Others [331 ITR 59]. Ld. Counsel for the assessee further placing reliance on the

decision of the Hon'ble Bombay High Court in the case of Ahmedabad Electricity Co. Ltd *v.* CIT [199 ITR 351] submits that the additional ground raised by the assessee be admitted in view of the said decision wherein the Hon'ble Jurisdictional High Court held that the Tribunal had jurisdiction to permit additional grounds to be raised before it even though these might not have arisen from AAC's Order, so long as these grounds were in respect of subject matter of entire tax proceedings.

8. Ld. DR strongly objected for admission of additional ground.

9. Before going into the additional ground raised by the assessee, we are inclined to decide the regular ground raised by the assessee in his cross objection.

10. Briefly stated the facts are that, the assessee is an individual and engaged in the business of advertising consultancy filed his return of income on 30.09.2013 declaring income of ₹.65,84,746/. The assessment was completed u/s. 143(3) on 30.11.2015 determining the total income at ₹.2,66,50,610/-. While completing the assessment the Assessing Officer noticed that assessee sold land on 11.09.2012 situated at Errangal Village, Taluka Borivali, Mumbai measuring 1088.20 Sq. mtr for a consideration of ₹.3,08,80,000/- and claimed exemption u/s. 54 of the Act at ₹.2,50,09,860/-. Assessee was asked to furnish the details and

evidences in support of computation of capital gains. Assessing Officer noticed that assessee acquired three residential properties, one in Mumbai, two in Pune and claimed exemption u/s. 54 in respect of investment made in all these three residential properties. Since the assessee claimed exemption for investment in more than one residential house assessee was asked to explain as to why exemption should not be disallowed. The assessee on 06.11.2015 filed a revised computation by claiming exemption only on one residential property i.e. Flat No. 607, Versova, Gayatri CHS Ltd., Andheri(W), Mumbai making his claim u/s. 54F of the Act. Assessing Officer required the assessee to explain as to how assessee is entitled to exemption u/s. 54F of the Act. Assessee vide letter dated 23.11.2015 filed his submissions stating that the claim for exemption was based on various case laws wherein the investment in more than one residential flats have been allowed. However, the Assessing Officer denied the claim of the assessee referring to the decision of the Special Bench of the Tribunal, Mumbai in the case of ITO *v.* Ms. Sushila Jhaveri [107 ITD 327] wherein it has been held that exemption u/s. 54 & 54F would be allowable in respect of one residential house only and if the assessee has purchased more than one residential house, then the choice would be with assessee for availing the exemption in respect of either of the houses. The Assessing Officer denied the

exemption even in respect of one residential house as the assessee has purchased more than one residential house within a period of one year after the date of transfer of the original asset. On appeal the Ld.CIT(A) allowed exemption in respect of one residential property as claimed by the assessee in his revised computation of income.

11. Before us the Ld. Counsel for the assessee submits that the investment in all three flats should be allowed as deduction and should not be restricted to one residential house. Ld. Counsel for the assessee submits that prior to the amendment to the provisions of section 54/54F which came into effect from the A.Y. 2015-16 “a residential house” should be treated as plural and should not be restricted to only one residential house. Reliance was placed on the decision of the Hon'ble Madras High Court in the case of Tilokchand & Sons *v.* Income Tax Officer [263 Taxman 713 (2019)]. Referring to the said decision Ld. Counsel for the assessee submits that the Hon'ble High Court held that the word “a residential house” as occurring in section 54(1) can include more than one or plural residential house. Ld. Counsel for the assessee submits that the Hon'ble High Court held that where assessee HUF sold its residential house and invested capital gain in purchasing more than one residential house within the stipulated time limit, assessee would be entitled to the benefit of exemption u/s. 54 of the Act**.** Ld. Counsel for the assessee

further submits that the Hon'ble High Court had also considered amendment to the provisions of section 54(1) whereby the legislature had restricted the deduction only to one residential house w.e.f 01.04.2015. Therefore the Ld. Counsel for the assessee submits that prior to 01.04.2015 “a residential house” includes multiple houses and exemption should not be restricted to only one residential house.. Ld. Counsel for the assessee submits that this decision is squarely applicable to the facts of the assessee’s case.

12. Ld. DR vehemently supported the orders of the authorities below.

13. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied on. In so far as the contention of the Ld. Counsel for the assessee that exemption u/s. 54/54F should be allowed on the investment made on multiple residential houses at different places, we find that this issue has been decided against the assessee by the Special Bench of the Tribunal, Mumbai in the case of ITO *v.* Ms. Sushila Jhaveri (supra). We also find that in the case of K.C. Kaushik *v.* P.B. Rane, Income Tax Officer [185 ITR 499] the Hon'ble Bombay High Court has taken a similar view.

14. We observe that the Ld.CIT(A) restricted the exemption u/s. 54 of the Act to investment made only in one residential house observing as under: -

> *"5.6 The condition under section 54 laid down in the case of purchase of the residential house is that the house must have been purchased one year prior to the sale of the capital asset or two years subsequent thereto. In the case of a residential house, the condition laid down is that the residential house must have been constructed within three years after the sale of the capital asset. The provision of Section 54 is a beneficial provision which promotes for construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it is incorporated in the statute. The intention of the Legislature would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in three years and/or make it habitable. The essence of said provision is to ensure that the assessee who received the consideration would invest same by constructing a residential house. Once it is established that consideration so received on transfer of long-term capital asset has been invested in constructing a residential house, it would satisfy the ingredients of section 54. If the appellant is able to establish that he had invested the entire net consideration in construction of residential house within the stipulated period, it would meet the requirement of section 54 and he would be entitled to get the benefit of section 54. The exemption under section 54 is available on only long term capital gain arise from sale of residential property to acquisition of new residential property. The appellant has sold residential shed erected thereon and invested residential house property. The appellant has invested the sum received on sale for purchase of new house property in three different flats. The claim of exemptions u/s.54 of I.T.Act is applicable for purchase of one residential house property. During the scrutiny proceedings, appellant had filed revised computation vide letter dated 05.11.2015 and and requested to grant claim of exemptions of one residential house property. In view of the above, the appellant is entitled to deduction of one residential house property i.e. flat No.607, Versova Gayathri CHS Ltd. The A.O. is directed to allow the deduction of investment of ₹. 1,05,23,271/- against the purchase of Flat No. 607, Versova Gayathri CHS Ltd only. This ground is partly allowed."*

15. We find that this decision of the Ld.CIT(A) is in confirmity with the above decision of the Special Bench and the Hon'ble Jurisdictional High Court (supra). Thus, we do not see any infirmity in allowing exemption u/s. 54 of the Act on the investment made only in one residential house. Thus, we sustain the order of the Ld.CIT(A) and reject the ground raised by the assessee.

16. Coming to the additional ground filed by the assessee i.e. the land along with residential shed sold by the assessee is an agricultural land and not a “capital asset” within the meaning of provisions of clause (a) of Section 2(14) of the Act and therefore outside the purview of the provisions of computation of capital gains u/s. 45 of the Act as the asset is situated beyond 8 Kms from the municipal limit, we find that adjudication of this aspect shall go to the root of the matter of computation of long term capital gains and very levy of taxes. Since adjudication of this ground leads to the very computation of capital gains and levy of taxes and since this is not before lower authorities, we feel it appropriate to restore this issue to the file of the Assessing Officer for denovo adjudication in accordance with law. If the land and shed sold by the assessee is proved to be an agricultural land and situated beyond 8 KM from the municipal limits the very computation provisions for capital gains fails and there shall not be any tax liability at all. In the circumstances,

since this additional ground is going to the root of the computation of capital gains itself, we restore this issue to the file of the Assessing Officer for denovo adjudication in accordance with law and in the light of the submissions and the evidences furnished before us. We accordingly restore this additional ground to the file of the Assessing Officer for denovo adjudication, after providing adequate opportunity of being heard to the assessee.

17. In the result, appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on the 29th October, 2019

Sd/-	Sd/-
(N.K. PRADHAN)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai / Dated 29/10/2019
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum