



**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.184/ALLD/2017
Assessment Year: 2012-13

Income Tax Officer Ward 1(4) Allahabad	v.	Shri Raghav Wadhawan C-51, 3 rd Floor Friends Colony New Delhi
		TAN/PAN:AAOPW9056A
(Appellant)		(Respondent)

Appellant by:	Shri S. K. Madhuk, CIT (DR)		
Respondent by:	Shri Ashok Kumar, C.A.		
Date of hearing:	20	11	2019
Date of pronouncement:	21	11	2019

ORDER

PER A. D. JAIN, V.P.:

This is Revenue's appeal against the order of the ld. CIT(A), Allahabad, dated 7/6/2017 for assessment year 2012-13, taking the following grounds:

1. That the Ld. CIT(A) has erred on the facts and in the circumstances of the case and in law in allowing the deduction u/s 54 of the I.T. Act, 1961 on the ground that there is no binding decision of the Hon'ble High Court, of Allahabad or Allahabad Bench of ITAT by placing reliance on the decisions of Hon'ble Supreme Court in the cases of Synco Industries (299 ITR 444), CIT vs. Vegetable Products Ltd. (88 ITR 192) and Smt. Tarunlata Shyam vs. CIT(108 ITR 345).
2. That the Ld. CIT(A) has erred in placing reliance over the cases of Synco Industries (299 ITR 444), CIT Vs Vegetable Products Ltd (88 ITR 192) & Smt Tarunlata

Shyam Vs CIT (108 ITR 345) which are not applicable to the-fact of the case.

3. That the Ld. CIT(A) while allowing the deduction u/s 54 of Rs.2,77,46,675/- has not taken cognizance of the propositions of the decision of Hon'ble Ahmedabad Income Tax Appellate Tribunal in the case of Smt. Leena J. Shah Vs ACIT (6 SOT 721) squarely applicable to this case.

2. The Assessing Officer made the addition of Rs.2,77,46,675/- under section 54 of the Act, observing as follows:-

"The property at 10, Kendal Steps St. George Field, London W22YE has been purchased from the fund partly borrowed by the assessee in London since 1995 and is working there in London since 2005.

*2.2 There is only one specific point which needs to be addressed before allowing /disallowing the deduction u/s 54 of the I. T. Act, 1961, which is whether investment made in house property located in London i.e. outside India, will be eligible for such deduction? This issue has been elaborately dealt with by the Hon'ble Ahmedabad ITAT in the case of Smt. Leena J. Shah Vs ACIT(6 SOT 721) where the **Hon'ble Tribunal concurred with the view of the Assessing Officer that residential house purchased/constructed must new in India and not outside India.** In this regard, strong reliance is also placed on the decision of the Hon'ble Apex Court in the case of Oxford University Press Vs. CIT (247 ITR 658). In that case, while interpreting section 10(22) of the I.T. Act, 1961. (wherein also there was no mention the word "India"), the Hon'ble Supreme Court had held "in this view the assessee is not entitled to claim exemption. Any other interpretation would be assured and manifestly unjust. The absence of the word "India" in the*

provision is inconsequential. It has to be read within section 10(22). The literal construction would lead to manifestly unreasonable and absurd consequences....."

2.3 In this view of the matter, I hereby hold that since investment in the new house has been made outside India, the assessee has not fulfilled the basic requirement of availing the benefit under section 54 of the I.T Act, and, therefore, the benefit of deduction u/s 54 is denied."

3. The ld. CIT(A), by virtue of the impugned order, has deleted the addition, by holding as under:

*"The preponderance of judicial view in this regard is in favour of the assessee and there being no binding decision of the Hon'ble Allahabad High Court or the Allahabad Bench of the Hon'ble ITAT, I am of the view that the decision rendered in majority cases, which is in favour of the appellant has to be followed and accordingly relief has to be allowed. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Synco Industries (299 ITR 444)** wherein it was observed that the predominant view of the High Courts should be respected. Further, in its decision, the **Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd. (88 ITR 192)** had held that where two views in regard of any interpretation are possible, one in favour of the appellant has to be adopted. Still further, in the case of **Smt. Tarunlata Shyam vs. CIT (108 ITR 345)**, the Hon'ble Supreme Court had held that there is no scope for importing into statute words what are not there; such importation would be not to construe, but to amend the statute. In this view of the matter, it would not be right for the assessing authorities to include the words "**in India**" in the section when it is not there. Before parting with the issue, I may also state here that it is only w.e.f. 01.04.2014, that the Section 54 of the Act was amended and the purchase/acquisition of a residential property "**in India**" was made a condition precedent for the claim*

of deduction u/s 54 of the I.T. Act. However, the relevant Finance Act did not make this provision retrospective. It is a trite law that no substantive provision of the Act (which restricts the right of a tax payer) can be construed with retrospective effect unless specifically provided by the amending Act itself. In this view of the matter, the appeal of the appellant is hereby allowed and the assessee is allowed the claim of deduction u/s 54 of the I.T. Act."

4. The grievance of the Department is that the Id. CIT(A) has erred in deleting the addition and allowing the deduction under section 54 of the Act to the assessee, holding that there is no binding decision of the Hon'ble jurisdictional High Court or the Allahabad ITAT; that while doing so, the Id. CIT(A) has erroneously followed the decisions in the cases of 'Synco Industries Ltd. vs. Assessing Officer', 299 ITR 444 (SC), 'CIT vs. Vegetable Products Ltd.', 88 ITR 192 (SC) and 'Smt. Tarunlata Shyam vs. CIT', 108 ITR 345 (SC); and that the Id. CIT(A) has erred in not taking into consideration the decision rendered by the Ahmedabad Bench of the Tribunal in the case of 'Smt. Leena J Shah vs. ACIT', 6 SOT 721 (Ahd).

5. Per contra, on behalf of the assessee, it has been submitted that undeniably, there is no decision of the Hon'ble jurisdictional High Court or the Allahabad ITAT against the assessee on the issue of allowance of deduction under section 54 of the Act; and that 'Smt. Leena J Shah vs. ACIT' (supra) rendered by the Ahmedabad Bench of the Tribunal, since stands overruled by the Hon'ble Gujarat High Court in 'Leena Jugalkishor Shah vs. ACIT', 72 taxmann.com 185 (Guj) (copy filed).

6. Heard. The Assessing Officer made disallowance of Rs.2,77,46,675/- under section 54 of the Act, relying on the

decision of the Ahmedabad Bench of the Tribunal in the case of 'Smt. Leena J Shah vs. ACIT' (supra), wherein the Tribunal had agreed with the view of the Assessing Officer, that the residential house purchased/constructed must be in India and not outside India, so as to entitle claim of deduction under section 54 of the Act. This decision has been overruled by the Hon'ble Gujarat High Court in 'Leena Jugalkishor Shah vs. ACIT' (supra), holding that on a plain reading of section 54F of the Income-tax Act before its amendment by the Finance (No. 2) Act leaves no room for any doubt that the assessee should restrict her investment within India or outside India; that the only condition was that the assessee should invest in a residential house; that the Tribunal has wrongly interpreted section 54F of the Income-tax Act by holding that the assessee should purchase the residential house situated in India; that prior to amendment to section 54F of the Act, the only condition stipulated was investment in a residential house; that when section 54F of the Income-tax Act was clear and unambiguous, there is no scope for importing into the statute the words which are not there; that such importation would be not to construe, but to amend the statute; and that if there is any defect in the Act, it can be remedied only by the legislation and not by judicial precedence.

7. The decision of the Hon'ble Gujarat High Court, in the case of 'Leena Jugalkishor Shah vs. ACIT' (supra), is dated 16/6/2016 and was available at the time of passing of the Id. CIT(A)'s order, which was passed on 7/6/2017, though it appears that it was not brought to the knowledge of the Id. CIT(A).

8. In view of the above, finding no force whatsoever in the grievance sought to be raised by the Department, the same is hereby rejected. The order passed by the ld. CIT(A) is confirmed.

9. In the result, the appeal is dismissed.

Order pronounced in the open Court on 21/11/2019.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:21/11/2019

JJ:2011

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar