

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

ITA No. 6986/MUM/2018 (A.Y: 2013-14)

Income Tax Officer (I.T) – 4(2)(1) Room No. 1728, 17 th Floor Air India Building Nariman Point, Mumbai – 400 021	v.	Faisal Ayub Syed 233-B, Jolly Maker Apts., 1-1B, Cuffe Parade, Colaba Mumbai – 400 005 PAN: AZGPS2024M
(Appellant)		(Respondent)

Assessee by : **Shri Kishor Rajeshirke**
Department by : **Shri Harshad Vengurlekar**
Date of hearing : **25.11.2019**
Date of pronouncement : **25.11.2019**

ORDER

PER C.N. PRASAD (JM)

This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-58, Mumbai [hereinafter in short "Ld.CIT(A)"] in Appeal No. CIT(A)-58, Mumbai/10234/2016-17 dated 11.09.2018 for the Assessment Year 2013-14.

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

"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the investment in a new asset

in the USA is entitled for benefit under section 54 of the IT Act in relation to capital gains arising in India to the assessee?

2. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in failing to appreciate that the charging section of the Act in form of section 4 does not contain the words "in India" and neither do the charging sections for different 'Heads of Income' in form of sections 15, 22, 28, 45 and 56 and in case of non-residents, the words "in India" is read into them by way of section 5(2) of the Act?

3. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in failing to appreciate that section 54 is a part of the charging section 45 in case of capital gains and thus qualifies the charge itself and hence cannot imply explicitly the words "in India" as it applies to both residents and non-residents?

4. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in failing to appreciate that benefit under section 54 is not a deduction but a provision qualifying the charge itself whereas all the sections providing for deductions under different Heads of Income are separate from the respective charging sections?

5. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in not appreciating the temporal conditions laid down in section 54(1)(ii) on transfer of the new asset when applied to that asset being situated outside India would lead to section 45 of the Act having taxing jurisdiction over income arising outside India in the case of the non-resident resulting in a contradiction vis-a-vis section 5(2) of the Act?

6. Whether on the facts and in the circumstance of the case and in law, Ld. CIT(A) has erred in not appreciating that the amendment brought in by the Finance Act, 2014 in section 54 of the IT Act, 1961 is only clarificatory in nature in case of residents, as in case of non-residents the words "in India" were already intrinsically operating by way of provisions of section 5(2) of the Act?

7. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. At the time of hearing, Ld. Authorized Representative of the assessee submitted that tax effect on the issues in the present appeal 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.

4. Departmental Representative also agreed with the above submission of the Authorized Representative of the assessee.

5. We have heard the submissions and perused the grounds of appeal in this appeal. 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 this appeal is dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on the 25th November, 2019.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER
Mumbai / Dated 25/11/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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