

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 728/DEL/2017
[A.Y 2013-14]

Shri Harvinder Singh
C/o Bhatia Behl & Associates
26/8, Basement Old Rajinder Nagar
Delhi

Vs.

The A.C.I.T
Circle - 28(1)
New Delhi

PAN: APOPS 6580 A

(Applicant)

(Respondent)

Assessee By : Shri R.S. Singhvi, CA

Department By : Shri S.N. Meena, Sr. DR

Date of Hearing : 03.12.2019

Date of Pronouncement : 04.12.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 10, New Delhi dated 21.03.2016 pertaining to assessment year 2013-14.

2. The solitary of the grievance of the assessee is that the Id. CIT(A) erred in confirming the disallowance of claim of exemption u/s 54/54F of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. Briefly stated, the facts of the case are that during the course of assessment proceedings, the Assessing Officer found working of long term capital gains and deduction u/s 54/54F of the Act as follows:

Residential House No. G - 17,
Lajpat Nagar - III, New Delhi

Rs. 2.40 crore

1/3rd share in factory building at A-72,
Okhla Industrial Area, New Delhi

Rs. 1.28 crores

4. The Assessing Officer noticed that the assessee has purchased a residential house in Auckland, New Zealand for a sum of Rs. 6.87 crores. The Assessing Officer was of the firm belief that any residential house purchased outside India is not eligible for deduction u/s 54 and 54F of the Act. Drawing support from the provisions of section 54 of the Act, the Assessing Officer concluded by denying the claim of exemption.

5. The assessee carried the matter before the ld. CIT(A) but without any success.

6. While dismissing the claim of the assessee, the ld. CIT(A) placed reliance on the decision of the co-ordinate bench in the case of Leena J. Shah order dated 10.11.2005

7. Before us, the ld. counsel for the assessee vehemently stated that the amendment brought in section 54 is w.e.f 01.04.2015 and since the A.Y under consideration is A.Y 2013-14, the said amendment is not applicable for the year under consideration. The ld. counsel for the assessee placed reliance on the decision of Authority for Advance Rulings, New Delhi in the case of Mohan Ghosh 401 ITR 129 [AAR, New Delhi] and also on the decision of the co-ordinate bench in the case of Anurag Pandit ITA No. 4159/DEL/2016 order dated 23.05.2018.

8. Per contra, the ld. DR strongly supported the findings of the ld. CIT(A). It is the say of the ld. DR that the amendment is clear and unambiguous and no deduction can be allowed to the assessee as per the amendment provisions of section 54F.

9. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that by selling the property situated in India, the assessee has purchased a residential property in Auckland, New Zealand. It is equally true that the amendment has been brought in section 54 vide Finance Act, 2014 w.e.f 01.04.2015. We are of the considered opinion that the Legislature, in its wisdom, has given effect to the amended provision from 01.04.2015 and, therefore, there is no ambiguity as the said provisions are effective from A.Y 2015-16.

10. Similar view was taken by the Authority for Advance Rulings, New Delhi in the case of Dipankar Mohan Ghosh [supra]. Moreover, we find that the decision heavily relied upon by the first appellate authority has been reversed by the Hon'ble High Court of Gujarat in 392 ITR 18. We find that the Hon'ble High Court has held "We are of the opinion that benefit of section 54F before its amendment can be extended to a residential house purchased outside India".

11. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we direct the Assessing Officer to allow the claim of deduction.

12. In the result, the appeal of the assessee in ITA No. 728/DEL/2017 is allowed.

The order is pronounced in the open court on 04.12.2019.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 04th December, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	