

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No.186/Mum/2019
(Assessment Year: 2009-10)**

Shri Satish P Malhotra, Flat No. 16, 4 th Floor, Rock House, Worli Hill Road, Worli, Mumbai- 400018.	Vs.	I.T.O. Ward 19(3)(2), R. No. 224, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400007.
PAN/GIR No. AWQPM 6356 H		
(Appellant)	..	(Respondent)

Assessee by	Shri Avinash A Mehta (AR)
Revenue by	Shri Akhtar H Ansari (DR)
Date of Hearing	15/01/2020
Date of Pronouncement	20/01/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This appeal by the assessee is directed against the order dated 09/10/2018 of Id. CIT(A)-30, Mumbai for the A.Y. 2009-10 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act).

2. At the outset, the Id AR of the assessee placed on record the quantum order of the Tribunal dated 29/11/2017 in ITA No. 6877/Mum/2014 wherein addition made by disallowing claim of deduction U/s 54F was allowed in favour of the assessee. The Id AR has

contended that since the quantum addition has already been deleted, therefore, the penalty imposed has no legs to stand.

3. On the other hand, the Id DR has relied on the orders of the authorities below but conceded the fact that the Tribunal have deleted the quantum addition made by the A.O.

4. I have considered the rival contentions and carefully gone through the orders of the authorities below and found that the penalty has been levied by disallowing claim of deduction U/s 54F of the Act. The Tribunal vide order dated 29/11/2017 has deleted the quantum addition by observing as under:

“10. As per our considered view Sec.54 is an incentive provisions and it should be interpreted and applied liberally as held by the honourable Supreme Court in the case of Bajaj Tempo Ltd. Vs. C.I.T. (196 ITR 188). The honourable Supreme Court also held in the case of C.I.T. Vs. Gwalior Rayon Silk Manufacturing Co. Ltd. (196 ITR 149) that the expression used in the taxing statutes would primarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative intention.

11. *Furthermore Hon’ble Supreme Court in case of Sanjeev Lal 365 ITR 389 observed as under:-*

“Income-tax on the long-term Capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income-tax

Act and it is also said that equity and tax are strangers to each other, still this court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of Oxford University Press v. CIT [2001] 3 SCC 3591 this court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. Considering the aforesaid observations and the principles with regard to the interpretation of statute pertaining to the tax laws, one can very well interpret the provisions of section 54 read with section 2(47) of the Act i.e., the definition of "transfer", which would enable the appellants to get the benefit under section 54 of the Act."

12. *Respectfully following the proposition of law laid down by Hon'ble High Court and Supreme Court as stated above, we do not find any merit in the action of AO for declining assessee's claim of exemption u/s.54 of the IT Act.*

5. In view of the above facts and circumstances, since the quantum addition has already been deleted by the Tribunal, therefore, the penalty levied has no legs to stand, therefore, I direct the A.O. to delete the same.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20th January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/01/2020
*Ranjan

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai