

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI
[BEFORE SHRI SHAMIM YAHYA, HON'BLE ACCOUNTANT MEMBER &
SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER]**

I.T.A. No. 4240/Mum/2019
Assessment Year: 2013-14

Suman Agarwal.....Appellant
103, Agarwal Ashram, M.N. Patankar Marg,
Kurla (W), Mumbai - 400 070.
[PAN: AKAPA 0022 A]

Vs.

ITO - 26(3)(3), Mumbai.....Respondent
Mumbai.

Appearances by:

Shri Mandar Vaidya, AR appeared on behalf of the Assessee.
Shri Akhtar H Ansari, DR appeared on behalf of the Revenue.

Date of concluding the hearing : November 19, 2019

Date of pronouncing the order : January 16, 2020

ORDER

PER SHRI SHAMIM YAHYA, AM

This appeal by the assessee is directed against the order of Ld. CIT(A) - 38, Mumbai dated 18.01.2019 and pertains to A.Y. 2013-14.

2. The grounds of appeal read as under:

i. The Ld. CIT(A) erred in not considering the appellant's claim for exemption u/s 54F which runs contrary to the ratio laid down by the Hon'ble Jurisdictional High Court in Pruthvi Stock Brokers 349 ITR 336 (Bom).

ii. The Ld. CIT(A) fell in error of law in holding that gold jewellery was not a 'capital asset' u/s 2(14) of the Act, resulting into the appellant being ineligible for exemption u/s 54F.

iii. The Ld. CIT(A) was not justified in ignoring the CBDT Instruction No. 1916 [F. No. 286/63/93-IT (INV. II)] dtd. 11th May, 94, regarding the quantity of gold jewellery which is to be treated as sufficiently explained.

iv. The Ld. CIT(A) was not justified in confirming the addition towards sale of gold jewellery, u/s 68 of the Act.

v. The Ld. CIT(A) erred in confirming the addition of Rs. 7,23,193/- u/s 68 of the Act towards redemption of Fixed Deposits and mutual funds.”

3. Brief facts of the case are as under:

The assessee is a tutor. During the year under consideration, the assessee has jointly acquired residential property along with her husband Mr. Dinesh Agarwala and her son Mr. Sachin Agarwala at Rs. 1,13,68,525/-. The stamp duty of Rs. 5,70,850/- and registration charges of Rs. 32,300/- was paid separately. Vide order sheet noting dated 06.08.2015, the AO was asked the assessee to file the proof of payment for purchase of property and her share in the property. The AR filed his reply on 21.08.2015 stated that the assessee has contributed an amount of Rs. 37,75,125/- towards purchase of property and payments were made from Canara Bank on 24.05.2012 & 02.09.2012. The assessee has filed copy of bank statement. Vide order sheet noting dated 21.08.2015, the AR was asked to file the supporting documents of source of fund which was utilized for purchase of property. The AR submitted his reply on 28.09.2015 and source of investment in property was filed. The source of investment filed by the AR is as below:

Sale of gold	Rs. 20,65,276/-
Loan from father	Rs. 9,00,000/-
Encashment of fixed deposit	Rs. 5,87,492/-
Amount received from husband	Rs. 1,50,000/-
Redemption of mutual funds	<u>Rs. 72,357/-</u>
Total	Rs. 37,75,125/-

The assessee has filed sale bills in respect of sale of gold. The AR further stated that gold was gifted to the assessee by parents at time of her marriage as per recognised customs prevailing in Hindu Society and he refer the observations of Hon'ble Gujrat High Court in the case of Jai 2011 (339 ITR 351), it can be safely presumed that the source to the extent of limits laid down in department circular 1916 dated 11th May, 1994 stands explained. He further stated that the question of showing gold which is her Streedhan in the balance sheet does not arise. He further stated that the entire sale proceeds was invested in acquisition of residential premises hence no capital gains has accrued to the assessee.”

4. As the assessee has not filed any supporting documents in respect of acquisition of gold, the assessee was requested to submit the purchase bills of gold ornaments and supporting documents that the gold ornaments were acquired during F.Y. 1983-84. Except for quantity details, the assessee could not substantiate the same. The AO proceeded to reject the assessee's claim of deduction u/s 54 on the ground that the assessee has not claimed revised return of income. It was further observed that cheques were issued in the same day and hence they are prima facie colourable device. As against the claim of sale of 717.11 grams, the Assessing Officer accepted 300 grams Streedhan and consequently added the remaining amount. Upon assessee's appeal, the Ld. CIT(A) confirmed the AO's action regarding denial of claim of section 54F on the ground that revised return was not filed on the touch-stone of Supreme Court decision in the case of Goetze (I) Ltd. reported in 284 ITR 323 (Supreme Court). Regarding addition on account of gold jewellery sale, the Ld. CIT(A) confirmed the AO's action. Against this order, the assessee is in appeal before us.

5. We have heard the parties and perused the records. As regards denial of claim of section 54F is concerned, we note that Hon'ble Apex Court in the case of Goetze (I) Ltd. (supra) relied upon by the authorities below has held that the above said decision will not impinge upon the right of ITAT to entertain grounds otherwise than by revised return. Accordingly, we hold that the assessee's claim of deduction u/s 54F needs to be adjudicated. Hence we remit this issue to the file of the Assessing Officer to consider the same and decide as per law. As regards the disallowance on account of gold sale is

concerned, the same will be consequential to the adjudication of the above. The AO may consider the above afresh by giving the assessee an opportunity in this regard.

6. Appeal filed by the assessee stands allowed for statistical purposes.

Order Pronounced in the Open Court on 16th January, 2020.

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 16/01/2020

Biswajit, Sr. PS

Copy of the order forwarded to:

1. *Suman Agarwal, 103, Agarwal Ashram, M.N. Patankar Marg, Kurla (W), Mumbai - 400 070.*

2. *ITO-26(3)(3), Mumbai.*

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Mumbai Benches, Mumbai.

True copy
By order

Assistant Registrar
ITAT, Mumbai Benches