

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
Before Shri Shamim Yahya (A.M.) & Shri Pawan Singh (JM)
ITA No. 737/Mum/2019(Assessment year :2014-15)

ITO(IT)-4(2)(1), Mumbai	vs	Anuradha Shivprakash Seth 14/15, 2 nd Floor, Ashoka Shopping Centre, Lokmanya Tilak Marg Next to G.T. Hospital, Mumbai-400 001 PAN : BMXPS2655D
APPELLANT		RESPONDEDNT

Appellant by	Shri Michael Jerald (DR)
Respondent by	Shri Dinkle Hariya & Shri Divyesh Fotaria (AR)
Date of hearing	06-02-2020
Date of pronouncement	10-02-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal by revenue is directed against the order of CIT(A)-58, Mumbai dated 30-11-2018 for assessment year 2014-15. The revenue has raised the following grounds of appeal:-

"1) "On the facts and circumstances of the case and in law, the Learned CIT(A) erred in holding that while computing the capital gain on the sale of inherited property, the indexed cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset."

2) "On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not adopting a 'literal interpretation' in case of tax statutes whereas the Explanation (iii) to section 48 of the Act clearly mentions that for computing the indexed cost of acquisition,

the base year has to be the first year in which the asset was held by the "assessee" and not the previous owner of the asset and thus going against the decision of the Hon'ble Jurisdictional High Court in the case of M/s. Vodafone India Services Pvt. Ltd. vs. Union of India & Ors. (W.P No. 871 of 2014) (Bom) wherein it has been stated that there is no intendment in tax laws."

3. 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?"

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 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?

5."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?

6. "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 f4rom the respective charging sections?

7. 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?

8. 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?"

2. At the outset of hearing, the Ld. Authorised representative (ld.AR) of the assessee submits that though the revenue has raised as many as 8 grounds of appeal; however, these grounds of appeal could be summarised in two basic issues, viz. Grounds 1 & 2 relating to adoption of indexation of cost of acquisition from the date when the previous owner acquired the asset; and grounds 3 to 8 relating to benefit of exemption u/s 54 in case residential house is purchased outside India. The Ld.AR submits that the grounds No. 1&2 of appeal is covered in favour of assessee in the case of assessee's co-owner's case in ITA No. 2973/Mum/2018 dated 21-05-2019. The Ld.AR of the assessee also furnished the copy of order. the ld AR further submits that second issue (ground No. 3 to 8) are covered by the decision of Gujarat High Court in Leena J Shah 392 ITR 18(Guj).

3. The Ld. Departmental representative (ld DR) for the revenue, after going through the decision of Tribunal in of assessee's co-owner's case, relied upon the order of AO.
4. We have considered the submissions of both the parties and have gone through the orders of lower authorities.
5. Brief facts of the case are that the AO, while passing the assessment order noted that the assessee transferred 33.67% of her share in residential house for a consideration of Rs.26.74 crores on 09-12-2013. The assessee while computing the indexed cost of acquisition had taken indexation benefit on fair market value from 01-04-1981 (indexation cost) as a base year. The AO further noted that the property (asset) was acquired by way of inheriting the after the death of her father and mother on 06-12-2012 and 13-06-1998, respectively. However, the assessee claimed indexation cost from 1981. The assessee was issued show cause notice by AO as to why the indexation cost should not be treated from the date of her acquisition. The AO after considering the submission of assessee, the AO treated the date of acquisition from 2012 and resultantly granted indexation benefit from 2012. The AO further noted that

the assessee purchased residential property outside India. Therefore, the exemption u/s 54 was also denied.

6. On appeal before CIT(A), the assessee was allowed indexation cost from the date from 01-04-1981 by relying on the decision of jurisdictional High Court in CIT vs Manjula J Shah (2012) 204 Taxman 691 (Bom) wherein it was held that where a property is acquired under a will or gift or by inheritance, the asset acquired by earlier owner prior to 01-04-1981, then, indexation in respect of the said property is to be given w.e.f. 01-04-1981. In the present case, admittedly, the assessee inherited the property on the death of her parents. Therefore, the assessee is entitled for the benefit of indexation cost from the date of acquisition of asset or from 01-04-1981. The ld CIT(A) while passing the order followed the ratio of decision of Hon'ble Bombay High Court in CIT vs Manjula J Shah (supra), Hence, we do not find any infirmity in the order passed by Ld. CIT(A). In the result the first issue is decided in favour of assessee.
7. The second issue (grounds 3 o 8) relates to benefit of exemption in case residential house is purchased outside India. The Ld. DR for the revenue supported the order of AO.

8. On the contrary, the Ld.AR submits that this issue is also covered in favour of assessee by the decision of Hon'ble Gujarat High Court in Leena J Shah 392 ITR 18(Guj).
9. We have considered the submission of both the parties and gone through the orders of authorities below. We have noticed that the AO denied the exemption on the ground that the assessee has purchased residential house outside India. The Ld. CIT (A) granted relief to the assessee by following the decision of Hon'ble Gujarat High Court in Leena J Shah(supra). The Ld. CIT(A) also held that amendment in exemption in incorporating the word “ constructed one residential house in India” in section 54F is inserted by Finance Act 2014 and applicable w.e.f . 01-04-2015 and accordingly would apply from 2015-16. The case of the assessee relates to AY 2013-14. Therefore, the amendment brought by Finance Bill (No.2) Act, 2014 is not applicable in the case of assessee. Similar view was taken by Hon'ble Gujarat High Court in Leena J Shah (supra) and by Hon'ble Madras High Court in CIT vs Smt. VK Karapagam 272 CTR 184 (Mad) and Mumbai Tribunal in DCIT vs Shah Rukh Khan 66 ITR (Trib) 168(Mum Trib).

10. In view of the aforesaid discussion, we do not find any merit in the grounds of appeal raised by revenue. In the result the grounds No. 3 to 8 are also dismissed.

11. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 10-02-2020.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 10th February, 2020

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai