

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 1534/Mum/2019
(Assessment Year 2012-13)

Ibrahim Moosa Peringady Bungalow No.B Nagree terrace CHS Ltd., Sonawala Agiary Lane Mahim, Mumbai-400 016 PAN : ACPPM8132J (Appellant)	Vs.	ITO-21(1)(5) Piramal Chambers Lalbaug, Parel Mumbai-400 012 (Respondent)
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Assessee by	None
Department by	Shri Ashish Pophare
Date of Hearing	17.11.2021
Date of Pronouncement	12 .01.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-48 dated 31.01.2019 and pertains to assessment year 2012-13. The issue raised in the appeal is that Ld.CIT(A) erred in disallowing the deduction claimed u/s. 54 of the I.T.Act.

2. Brief facts of the case are as under:-

The assessee had filed return of income for AY 2012-13 on 28.02.2013 declaring total income of Rs 3.97.481/-. The return was processed u/s. 143(1). Since no income under the head Long Term Capital Gain from the sale of property was reported by the assessee in his return, AO issued notice u/s. 148 on 30.03.2015. Assessment u/s. 143(3) r.w.s. 147 was completed by the AO on 28.12.2015 assessing the total income at Rs. 19,85,230/- by making addition of Rs 15.87.746/- on account of Long Term Capital Gain. The assessee is in appeal against this addition. Before the Ld.CIT(A), assessee submitted as under:-

During the year under consideration appellant had sold a residential flat having address at 7, 1st flr, 'B' wing, Kshitij Apartment Co-op. Scty (proposed) for a consideration of Rs. ; 20,00,000/ which was co-owned by your appellant's wife. ...the stamp duty value of the said flat was 42,05,000/- however, the agreement value was Rs. 20,00,000/-... sale consideration of the said flat was utilized to purchase a plot and construction of a residential property at the native place of the appellant, hence the whole long term capital gain is exempted u/s 54 of the t Act. if the long term capital gain is worked out taking both the values agreement as well as stamp duty value.....the AO did not allow the deduction u/s. 54 as your appellant missed out to claim the deduction in the return of income....claim of deduction u/s 54 not claimed by your appellant | should have been allowed by the officer in view of circular no, 14 dated 11.4,1995".

3. However, Ld.CIT(A) confirmed the order of AO in this regard by placing reliance upon the decision of Hon'ble Supreme Court in the case of Goetze (India) Limited Vs CIT (284 ITR 323).

4. I have heard the Ld. DR and perused the records. Upon careful consideration, I note that Hon'ble Supreme Court decision in the case of Goetze (India) Limited (supra) had expounded that their decision in that case will not impinge upon the powers of ITAT to admit grounds otherwise than by revised return. Accordingly, I direct the AO to examine the assessee's claim under section 54 of the I.T.Act and decide as per law.

5. In the result, assessee appeal is allowed for statistical purpose.

Pronounced in the open court on 12.01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 12 .01.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai