

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No. 1006/Mum/2022
(Assessment Year :2012-13)**

Pushpa Kaul Bhole, C/103, Shree Sai Tower, Sodawala Lane, Borivali (West), Mumbai-400 092	Vs.	ITO-Ward 32(2)(1), Kautilya Bhavan, G-Block, Bandra(East), Mumbai-400 051
PAN/GIR No. AJEPB4678E		
(Appellant)	..	(Respondent)

Assessee by	Shri Sumit Mantri, Ld. AR
Revenue by	Shri Ujjawal Chavhan, Ld. DR
Date of Hearing	07/11/2022
Date of Pronouncement	20/12/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No. 1006/Mum/2022 for A.Y. 2012-13 arises out of the order by the Ld. Commissioner of Income Tax (Appeals)- NFAC in appeal No. ITBA/NFAC/S/250/2021-22/1042308700(1) dated 31/03/2022 (ld. CIT(A) in short) against the order of assessment passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27.03.2015 by the ld. Assessing Officer (hereinafter referred to as ld. AO).

2. Ground no. 1 is challenging the denial of exemption u/s 54F of the Act. The inter-connected issue involved therein is whether Ld. CIT(A) was

justified in upholding the additions made in sum of Rs. 8 lakhs being the difference between the amount invested in the new property and sale consideration received by the assessee on sale of land.

3. We have heard the rival submissions and perused the material placed on record. The assessee is an individual, derived her income from profession. The return of income for AY 2012-13 was filed by her on 27.03.2014 declaring total income of Rs. 2,34,820/-. This return was duly processed u/s 143(1) of the Act. The Ld. AO during the course of assessment proceedings, observed from the detail filed by the assessee that assessee had sold a land for Rs. 75 lakhs during the year. The sale consideration of Rs. 75 lakhs was utilized by the assessee by way of reinvestment in another residential property for Rs. 83 lakhs. Accordingly, assessee contented that she would be eligible for exemption u/s 54F of the Act and hence, there would be no liability to capital gains tax on sale of land. The assessee furnished the details before the Ld. AO that she had purchased the land on 24.08.2007 for Rs. 20 lakhs. The Ld. AO observed that assessee had more than one property at the time of sale of the land and hence would not be eligible for exemption u/s 54F of the Act. According to the Ld. AO, assessee owns flat (self occupied property – SOP) and bungalow at Abu Road. Hence, exemption u/s 54F was denied by the Ld. AO and long term capital gain was computed for transfer of land as under:-

Sale consideration	Rs. 75,00,000
Less: Cost of Acquisition 20,00,000	
Index Cost of Acquisition=20,00,000 x 785/551	Rs. 28,49,365
Long Term Capital Gains	Rs. 46,50,635

4. The Ld. AO observed that assessee had purchased a new flat for Rs. 83 lakhs. Since assessee had source from sale of land only to the

extent of 75 lakhs, the Ld. AO concluded that differential sum of Rs. 8 lakhs was met out of undisclosed source of the assessee and accordingly brought to tax Rs. 8 lakhs as undisclosed investment made by the assessee in new house property. While making this observation, the Ld. AO disbelieved the fact stated by the assessee that she had availed term loan from Jammu & Kashmir Bank and also taken loan from friends and relatives during the year.

5. This action of Ld. AO was upheld by Ld. CIT(A) in respect of both the aforesaid additions.

6. At the outset, we find that the main grievance of the revenue for denying the exemption u/s 54F claimed by the assessee is that assessee is owning more than one house property. In this regard, we find that assessee has placed on record the purchase agreement dated 12.08.2002 in respect of self occupied flat in pages 1 to 52 of the paper book, wherein it is seen that assessee is a joint owner with Smt. Rekha Bhole. Similarly, assessee has furnished the purchase agreement dated 10.02.2006 for Abu Road property in pages 53-73 of the paper book, wherein it is seen that assessee is joint owner with Shri Milind Bhole. The Ld. AR claimed before us that assessee is not the absolute owner of any property at the time of sale of land and is only a joint co-owner of the property. It was also contended that joint co-ownership of a property would not tantamount to absolute ownership of the property and in support of this, Ld. AR placed reliance decision of Coordinate Bench of this Tribunal in the case of Ashok G. Chauhan vs. ACIT reported in 176 ITD 717 and other decision of Coordinate Bench of Delhi Tribunal in the case of Smt Savit Bhasin vs. ITO reported in 186 ITD 195.

7. Before going into the applicability of the aforesaid decisions to the facts of the case, we find that the property documents prove the joint co-

ownership of the property and the same are not properly appreciated by the lower authorities. There is absolute no factual finding recorded by the lower authorities in this regard in their respective orders. In our considered opinion, the consideration and appreciation of these two property documents would be crucial for deciding the issue in dispute. Hence, we deem it fit and proper to remand the issue of denial of exemption u/s 54F of the Act to the file of Ld. AO for *de novo* adjudication in accordance with law. Assessee is at liberty to furnish further evidences, if any, in support of her contentions. It is needless to mention that assessee be given reasonable opportunity of being heard. Accordingly, this ground is allowed for statistical purposes.

8. With regard to addition made in the sum of Rs. 8 lakhs (83 lakhs – 75 lakhs) as unexplained investment in new property, we find that Ld. AR had filed additional evidences vide letter dated 17.10.2022, wherein it was submitted that assessee along with her husband Shri Milind Bhole had taken loan against her fixed deposit of Rs. 80 lakhs for purchasing the new property at Flat no. C-601, 6th Floor, Sai Krupa CHS Ltd. Nirmal Nagar, Khar (east), Mumbai-400 051. It was also submitted in the said additional evidences that assessee had indeed taken the said property on rent vide agreement dated 13.07.2010 and the balance payment of Rs. 3 lakhs was adjusted against rental deposit of Rs. 1,50,000 lying with the landlord and the rent of last 6 months. These additional evidences would be crucial for adjudication of the issue in dispute before us. Hence, we deem it fit and proper to admit this additional evidences and restore the issue to the file of Ld. AO for *de novo* adjudication to decide the issue in accordance with law after considering the additional evidences submitted herein. Liberty is also given to the assessee to furnish further evidences, if any, in support of her contentions. Accordingly, this ground is also allowed for statistical purposes.

9. In the result, the appeal file by the assessee is **allowed for statistical purposes.**

Order pronounced on 20/12 /2022 by way of proper mentioning in the notice board.

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 20/12/2022
Dhananjay, sr.ps

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai