

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**  
**BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM**

आयकरअपीलसं/ I.T.A. No.1431/Mum/2022  
(निर्धारणवर्ष / Assessment Year: 2013-14)

Deputy Commissioner of Income Tax, Central Circle 6(4) Room No. 1925, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021	<b>बनाम/</b> Vs.	Shri Sameer Gehlaut 17 <sup>th</sup> floor, Tower 1, Indiabulls Finance Centre, Senapati Bapat Marg, Elphinstone Road, Mumbai-400013
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AFMPG9469E</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri K.Gopal
Revenue by:	Smt Riddhi Mishra (CIT DR)

सुनवाईकीतारीख / Date of Hearing: 16/11/2022  
घोषणाकीतारीख /Date of Pronouncement: 13/01/2023

**आदेश / O R D E R**

**PER ABY T. VARKEY, JM:**

This appeal preferred by the Revenue against order of the Ld.CIT(A)-54, Mumbai dated 21-10-2021 for A.Y. 2013-14.

2. The grounds of appeal raised by the Revenue are as under:-

1. “Whether, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in holding that the additions/disallowances made in the assessment order is not sustainable as they are without reference to any incriminating material found during the search, without appreciating that the department has filed an SLP against the decision of the Hon’ble High Court of Bombay in the case of Continental Warehousing Corporation (Nhava Sheva) Limited reported in 374 ITR 654 (Bom), which has been admitted and directed to be listed by the Hon’ble Supreme Court of India, vide order dated 12.10.2015 reported in (2015) 64 taxmann.com 34 (SC)?”

2. “Whether, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing the long term capital gain of Rs. 14,32,11,726/- without appreciating the fact that the assessee’s claim of deduction u/s 54 of the income tax Act 1961, is not tenable as per the facts stated in the assessment order.”

3. At the outset, the Ld.AR brought to our notice that the issue raised by Revenue before us is no longer res-integra. According to the Ld.AR, this Tribunal has already decided the case of the assessee’s wife Smt. Divya Sameer Gehlaut for the same AY 2013-14. According to the Ld.AR, the aforesaid grounds of appeal raised by the Revenue is also the similar/identical. And for buttressing this contention, he drew our attention to the this Tribunals order in the case of the assessee’s wife dated 31.10.2022 in ITA No. 1428/Mum/2022 (AY 2013-14) wherein this Tribunal has reproduced the grounds of appeal raised by the assessee which we find it to be identical to that of the assessee’s wife. Since, the grounds of appeal and facts are the similar according to the Ld.AR, impugned order of the Ld.CIT(A) need to be confirmed and Revenue appeal dismissed. This assertion of Ld AR could not be contradicted by Ld DR appearing for Revenue. Therefore, after going through the records, we find that the issue are identical in the case assessee’s wife (supra) and there is no change in facts or law except there is difference in figures of the long term capital gain. Since, there is any change any facts or law we are bound follow the decision of the co-ordinate bench in the case of assessee’s wife.

4. Brief facts is that the assessee has filed original return of income on 31.07.2013 declaring total income of Rs. 13,18,49,140/- the same was revised on the 30.03.2015 declaring total income at Rs. 13,18,49,140/-. Later the case of assessee was selected for complete scrutiny and thereafter the AO was pleased to

accept the return income of the assessee by framing the assessment order u/s 143(3) of the Act on 21.03.2016. Thereafter search action was carried out the case of M/s. India Bulls Group on 13<sup>th</sup> July, 2016 and consequently notice u/s 153C dated 30.10.2017 was issued to the assessee; and in response the assessee, reiterated his return of income which was filed earlier on 08.01.2018 declaring total income at Rs. 13,18,49,140/-. Later on the AO has passed the order u/s 153A/143(3) of the Act making addition by disallowing the deduction u/s 54 of the Act amounting to Rs.14,32,11,726/-.The main grievance of the assessee before the Ld.CIT(A) was that since the assessment for AY 2013-14 has been framed after scrutiny u/s 143(3) of the Act on 21.03.2016, and the search has been carried out in the case of M/s. India Bulls Group on 13<sup>th</sup> July, 2016, the assessment pertaining to AY 2013-14 of assessee was not pending before the AO on 13<sup>th</sup> July 2016 and therefore as per the second proviso to section 153A of the Act, the assessment for AY 2013-14 was not pending before AO and therefore it is a non-abated assessment. Therefore, according to the assessee, no addition/disallowance could have been made by the AO without the aid of incriminating materials found during search and cited the decision of the Hon'ble Bombay High Court in the case of M/s. Continental Warehouse Corporation Ltd reported in 374 ITR 64 (Mumbai) as well as the Hon'ble Supreme Court decision in the case of CIT vs Singhad Technical education society (Civil appeal no. 11080 of 2017). The Ld.CIT(A) after hearing the assessee and taking note of the facts of the case of assessee held that relevant assessment year being is AY 2013-14 was not pending before AO on the date of search and so, was a non-abated assessment year; therefore, the contention of the assessee that AO could not have made any addition without aid of incriminating materials was upheld and deleted the addition made by AO. We find that the Ld.CIT(A) has rightly decided the legal issue raised by the assessee

because we find that the assessment of the assessee for AY 2013-14 was not pending before the AO on the date of search. Therefore, as per the second proviso to section 153A of the Act, it is non-abated assessment. Therefore as per the Hon'ble Supreme Court decision in the case of CIT vs Singhad Technical Education society (supra) the Ld.CIT(A) rightly held that the AO could not have made any addition without aid of incriminating materials found during search qua assessee qua AY 2013-14. We further note that AO has not stated anything about any incriminating material found during search qua assessee qua AY 2013-14 while disallowing the claim of the assessee u/s153C of the Act. Therefore we uphold the impugned action of the Ld.CIT(A). We also take note that this Tribunal in the case of assessee's wife (supra) has upheld the similar action of the Ld.CIT(A) in similar facts and circumstance the case as noted supra (Smt. Divya Sameer Gehlaut). Therefore we do not find any mistake in the order of the Ld.CIT(A) and therefore we dismiss the appeal of the Revenue.

5. In the result, appeal of the Revenue is stands dismissed.

Order pronounced in the open court on this 13/01/2023.

Sd/-

**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

Sd/-

**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

मुंबई Mumbai;

दिनांक Dated : 13/01/2023.

*Shubham Lohar,*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार / (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai