

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 3120/Mum/2022
(Assessment Year: 2017-18)

DCIT-27(2) Room No. 419, 9 th Floor, Tower No. 6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703	V s.	Shri Mitesh Balwantrai Kamdar 801, Kalindi Neelkanthvalley, Rajawadi, 7 th Road, Ghatkoper (E), Mumbai-400 077
PAN/GIR No. AADPK 0912 E		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Bhadersh Doshi
Revenue by	:	Smt. Mahita Nair
Date of Hearing	:	08.03.2023
Date of Pronouncement	:	26.04.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The Revenue has challenged the order of the Id. CIT(A) in allowing the deduction u/s. 54 of the Act on the ground that the assessee has not fulfilled the condition of section 54(2) of the Act in not depositing in any notified scheme of the Central Government, the unappropriated capital gain which was not used for the purchase of any new asset.

3. Briefly stated the assessee is an individual and has filed its return of income for the impugned year dated 26.10.2017, declaring total income at Rs.66,85,700/-, pertaining to the income from business, capital gain and interest income. The assessee's case was

selected for limited scrutiny through CASS and the assessment order dated 25.12.2019 was passed u/s. 143(3) of the Act where the A.O. made disallowance of exemption u/s. 54 of the Act against the LTCG thereby making an addition of Rs.3,34,25,633/- to the total income of the assessee.

4. Aggrieved, the assessee is in appeal before the Id. CIT(A) who had partly allowed the appeal filed by the assessee.

5. The Revenue is in appeal before us, challenging the order of the Id. CIT(A).

6. It is observed that the assessee had purchased two adjoining flats with agreement value of Rs.4,98,04,100/- which were under construction as per the registered purchase agreement dated 08.09.2017. It is observed that the assessee has purchased land in Lonavala vide conveyance deed dated 20.09.2007 for Rs.26 lacs and incurred other expenses of Rs.78,000/- as per Index 2 and had constructed a bungalow of 4800 sq. ft. The assessee sold the said property during the impugned year and the sale proceeds were invested in purchase of two adjacent flats having agreement value of Rs.4,98,04,100/- which were under construction as per the registered purchase agreement dated 08.09.2017. The assessee had paid Rs.75,46,628/- on 26.10.2017 before the date of filing of the return and the total payment of Rs.1,28,00,196/- was made by the due date of filing of return of income u/s. 139(1) of the Act for the impugned year. The assessee contends that on a bonafide belief, the assessee had made fixed deposit of Rs.4,50,00,000/- before the due date prescribed u/s.139(1) of the Act without being aware of the provision of section 54(2) of the Act by paying the balance amount of consideration time to time from the said fixed deposit. The assessee further contended that the substantial amount of

Rs.4,07,99,776/- was paid to the builder/developer as on the date of the assessment and had acquired substantial right and domain over the property mentioned above. The assessee also contended that he has satisfied the condition as per the provision of section 54(1) of the Act and that the A.O. has erroneously denied exemption of Rs.3,34,25,633/- u/s. 54 of the Act. The Id. CIT(A) held that the assessee was entitled to exemption u/s. 54 of the Act for one house of higher value purchased by the assessee.

7. The Revenue challenged the order of the Id. CIT(A) partly giving relief u/s. 54 of the Act to the purchase of one house by the assessee.

8. The Id. AR contended that the assessee's case would fall under the monetary limit of Rs.50 lacs prescribed by the CBDT Circular No. 17/2019 dated 08.08.2019 as the tax effect in the present appeal filed by the Revenue was covered by the CBDT Circular on monetary limits.

9. The learned Departmental Representative (Id. DR for short) for the Revenue had not controverted the said fact.

10. We hereby dismiss the appeal of the Revenue on monetary limit prescribed by the CBDT.

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

Order pronounced in the open court on 26.04.2023

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 26.04.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai