IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3528/Mum./2023
(Assessment Year : 2013–14)

Shweta Singh
1406, 'B' Wing, Building no.2
Silver Oak, Raheja Willows, Akurli Road
Lokhandwala, Mumbai 400 101
PAN – AXHPS7021F

……. Appellant

v/s

Income Tax Officer
Ward–33(3)(2), Mumbai

…….. Respondent

Assessee by : Shri Vipul Joshi
Revenue by : Shri Manoj Kumar

Date of Hearing – 14/03/2024	Date of Order – 21/03/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 23/03/2023 passed under section 250 of the Income Tax Act, 1960 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["*learned CIT(A)"*], for the assessment year 2013-14.

2. The present appeal is delayed by 135 days. Along with the appeal, the assessee has filed an application seeking condonation of aforesaid delay which is duly supported by her affidavit. In the affidavit, the assessee submitted that the impugned order was neither received by her on the registered email ID nor

was physically delivered at the registered address. It is further submitted that the notice of hearing dated 29/12/2022 issued by the learned CIT(A) was also neither received by the assessee on her registered email I.D. nor any real-time alert was sent on her registered mobile no. and only upon a random check on the e-filing portal, notice of hearing was found out by her. Pursuant thereto, the assessee filed written submissions before the learned CIT(A). In the affidavit, the assessee submitted that she was completely unaware of the impugned order as no intimation was received via email or SMS, and only upon checking the e-filing portal on 05/09/2023, she came to know about the impugned order. Thereafter, she immediately contacted her chartered accountant for further course of action and the present appeal was filed after compiling all the papers and preparing necessary grounds of appeal. Accordingly, the assessee has prayed for condonation of delay in filing the present appeal. On the other hand, the learned Departmental Representative ("*learned DR*") did not raise any serious objection against the prayer for condonation of delay in filing the present appeal.

3. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeal. In view of the above and having perused the application duly supported by an affidavit, we are of the

considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee.

4. In the present appeal, the assessee has raised the following grounds:-

"1. <u>THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION</u>

1.1 In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, ['Ld. CIT (A)'] be held as bad and illegal, as:

(1) The same is framed in breach of the statutory provisions and the scheme;

(ii) The same is perverse and passed without any application of mind to the facts on record.

2. <u>NATURAL JUSTICE</u>

2.1 In the facts the Ld. CIT (A) erred in not granting a proper, sufficient, and adequate opportunity of being heard to the Appellant while passing the appellate order.

2.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

(1) The same is framed in breach of the principles of natural justice; and

(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

(iii) The same is passed without providing an opportunity of a personal hearing

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

<u>WITHOUT PREJUDICE TO THE ABOVE</u>

3. <u>DISALLOWANCE OF DEDUCTION U/S 54F FOR RS. 61,65,546/- OF THE ACT</u>

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance of Rs. 61,65,546/- u/s. 54F of the Act while computing the income of the Appellant by considering the Appellant as joint co-owner of more than two residential houses at the time of sale of the original capital asset.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.

3.3 Without prejudice to the above, assuming but not admitting that some disallowance was called for, it is submitted that the computation of the

disallowance made by the Ld. CIT (A) is arbitrary, excessive, and not in accordance with the law.

LIBERTY

4. The Appellant craves leave to add, alter, delete, or modify all or any of the above ground at the time of hearing."

5. During the hearing, the learned Authorised Representative ("*learned AR*"), at the outset, proceeded to place the arguments in respect of ground no.3 raised in the present appeal. The issue arising in ground no.3 pertains to the disallowance of deduction claimed by the assessee under section 54F of the Act.

6. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and during the year under consideration derived income from house property and income from other sources. The assessee filed her return of income on 30/07/2013 declaring a total income of Rs.2,97,290. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, upon perusal of the computation of income, it was observed that the assessee sold agricultural land at Bhopal on 03/09/2012 for a total consideration of Rs.64 lakh and earned long-term capital gains of Rs.61,65,546. It was further observed that the assessee deposited the capital gain consideration in the capital gain account scheme and claim deduction under section 54F of the Act in respect of the investment in a new residential flat on 07/07/2015. On perusal of the details filed by the assessee, it was further observed that the assessee has two residential properties, jointly owned with her husband and HUF of her father, on the date of sale of the

original asset being agricultural land at Bhopal. Accordingly, the assessee was asked to show cause as to why her claim of deduction under section 54F of the Act be not disallowed as she owns more than one residential house other than the new asset on the date of transfer of the original asset. In response thereto, the assessee submitted that the residential property, in which she is residing with her husband, is jointly owned with her husband, and a loan was taken from the bank by her husband for purchasing the said property. It was further submitted that the said loan is being repaid by her husband. Accordingly, the assessee submitted that she is not the owner of this residential property. Regarding the second residential property, the assessee submitted that she was a joint holder till the death of her father and after his death, she inherited the said property after relinquishment of the rights by her mother and by her brother on 05/11/2012. Accordingly, the assessee submitted that on the date of sale of the original asset on 03/09/2012, she did not own any residential house and was only a joint holder in both residential properties.

7. The Assessing Officer ("*AO*") vide order dated 18/03/2016 passed under section 143(3) of the Act did not agree with the submissions of the assessee and by placing reliance upon the decision of the Hon'ble Karnataka High Court in CIT v/s M.J. Siwani, [2014] 366 ITR 356 held that the assessee's claim of deduction under section 54F of the Act is not allowable, as she was the owner of more than one residential house at the time of sale of the original capital asset. Accordingly, the deduction claimed by the assessee under section 54F of the Act to the tune of Rs. 61,65,546 was disallowed and added to the total income of the assessee.

8. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the disallowance made by the AO under section 54F of the Act. Being aggrieved, the assessee is in appeal before us.

9. We have considered the submissions of both sides and perused the material available on record. The only issue which arises for our consideration, in the present case, is whether joint ownership of more than one residential house shall disentitle the assessee from claiming deduction under section 54F of the Act. In the present case, on 03/09/2012 the assessee sold agricultural land at Bhopal for a total consideration of Rs.64 lakh and earned long-term capital gains of Rs.61,65,564. Since the assessee deposited the capital gain consideration in the capital gain account scheme, accordingly it claimed deduction under section 54F of the Act in respect of investment in the new residential flat, which was purchased on 07/07/2015. In the present case, it is undisputed that the assessee was the joint owner of two residential properties on the date of the transfer of the original capital asset. This fact is sufficiently evident from the first line of para-8 of the assessment order.

10. As per the Revenue, joint ownership of more than one residential house, at the time of sale of the original asset, disentitles the assessee from claiming the deduction under section 54F of the Act. In this regard, the AO as well as the learned Departmental Representative ("*learned DR*") placed reliance upon the decision of the Hon'ble Karnataka High Court in M.J. Siwani (supra). The learned DR further submitted that the Hon'ble Supreme Court vide order dated 10/11/2014 passed in M.J. Siwani v/s CIT, [2015] 53 taxmann.com 318 (SC)

has dismissed the Special Leave Petition filed by the taxpayer against the aforesaid decision of the Hon'ble Karnataka High Court.

11. On the other hand, the learned Authorised Representative ("*learned AR*") submitted that the Hon'ble Madras High Court in Dr. Smt. P.K.Vasanthi Rangarajan v/s CIT, [2012] 23 taxmann.com 299 (Mad.) held that where the taxpayer jointly owns the property with her husband then it cannot be said that she is the owner of the house property at the time of sale for availing deduction under section 54F of the Act. The learned AR further placed reliance upon various decisions of the coordinate bench of the Tribunal, wherein after considering the aforesaid decision of the Hon'ble Karnataka High Court as well as the Hon'ble Madras High Court, a similar issue has been decided in favour of the taxpayer.

12. We find that the Hon'ble Madras High Court in Dr. Smt. P.K.Vasanthi Rangarajan (supra) held that merely because the assessee jointly owned another property on the date of transfer of the asset, its claim for deduction under section 54F of the Act could not be rejected in respect of capital gains earned from transfer of original asset. The relevant findings of the Hon'ble Madras High Court, in the aforesaid decision, are reproduced as under:-

> *"12. A reading of the provisions contained in Section 54F(1), as it stood at the relevant point of time, shows that exemption from payment of tax on the capital gains arising on the transfer of any long-term capital asset not being a residential house is available to an assessee being a Hindu Undivided Family or an individual, if the long-term capital gain is invested in purchasing a residential house or constructing the residential house within the time stipulated therein. Proviso to sub section (1) states that the exemption contemplated under sub section (1) would not be available where an assessee owns a residential house as on the date of the transfer and that the income from the residential house is chargeable under the head "income from house property". The Finance Act, 2001 amended the proviso with effect from 2001-02 to permit exemption under Section 54F, even if the asessee has owned one*

residential house as on the date of transfer, other than the new asset, or purchase in investments any residential house other than the new asset within a period of one year or three years as the case may be, but after the date of transfer of the original asset and the income from such residential house other than the one owned on the date of transfer of the original asset is chargeable under the head "income from house property"

13. As far as the present case is concerned, contrary to the contention of the assessee, the assessee as well as her husband had offered 50% share each in the clinic in the income tax assessment and had claimed depreciation thereon. So too 50% share in the property in the wealth tax proceedings is offered by the assessee and her husband. The note submitted to the Assistant Commissioner of Income Tax, City Circle 5(1), Madras, by the assessee discloses that the assessee owned 50% of the property in 828, Poonamallee High Road, Chennai, for use as residential property and 50% as clinic; so too for the property at Door No.828A, Poonamallee High Road, Chennai. The facts thus reveal that as joint owners of the property, the assessee and her husband had shown 50% share with reference to the clinic and the residential portion in their respective returns. Thus, it is clear that as on the date of the transfer, the assessee did not own a residential house in her name only, the income from which was chargeable under the head "income from house property", to bring into operation, the proviso to Section 54F. The rejection of the claim for exemption would arise if only the property stands in the name of the assessee, namely, individual or HUF. Given the fact that the assessee had not owned the property in her name only to the exclusion of anybody else including the husband, but in joint name with her husband, we agree with the submission of the learned senior counsel appearing for the assessee herein that unless and until there are materials to show that the assessee is the exclusive owner of the residential property, the harshness of the proviso cannot be applied to the facts herein. Apart from that, 50% ownership is with reference to the clinic situated in the ground floor. As such, the entire property is not an exclusive residential property. Hence, we are inclined to agree with the assessee's contention that the joint ownership of the property would not stand in the way of claiming exemption under Section 54F."

13. We find that while deciding a similar issue in favour of the taxpayer, the coordinate bench of the Tribunal in Mukesh Arvindlal Vakharia v/s ITO, [2023] 153 taxmann.com 55 (Surat-Trib), after considering the aforesaid decision of the Hon'ble Karnataka High Court as well as the Hon'ble Madras High Court, observed as under:-

"17. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that assessee claimed deduction u/s 54F of the Act to the tune of Rs. 48,96,993/- on the ground that assessee owns only one house at the Oberoi Palace Housing Society in this name at the time of the sale. It is the contention of the assessee that the other two properties are owned jointly with others and therefore it is not required to be considered for the purpose of condition of section 54F of the

Act. The assessing officer relied on the order of the Hon'ble Supreme Court in the case of M. J. Siwani v. CIT [2015] 53 taxmann.com 318/232 Taxman 335 where the SLP filed by the taxpayer was dismissed. The Id Counsel stated that by way of the SLP, the Hon'ble Supreme Court did not concur with the finding of the Hon'ble Karnataka High Court in the case of CIT v. M. J. Siwani [2014] 46 taxmann.com 170/226 Taxman 394/366 ITR 356. Mere dismissal of the SLP does not constitute the judgment by the Supreme Court in the favour of the revenue. The Id Counsel placed reliance on the following judgments:

i. Khoday Distilleries Ltd. v. Mahadeshwara Sahakara Sakkare Karkhane Ltd. [2009] 104 taxmann.com 25/262 Taxman 279 (SC) [Civil Appeal No. 2432/2019]

ii. Smt. Tej Kumari v. CIT [2001] 114 Taxman 404/247 ITR 210 (Patna) (FB)

18. The Id Counsel further submitted that Hon'ble Madras High Court in case of Dr. Smt. P. K. Vasanthi Rangarajan v. CIT [2012] 23 taxmann.com 299/209 Taxman 628 wherein it was held that where the assessee held the property jointly with her husband in equal proportion, it cannot be said that she is the owner of the house property at the time of the sale for availing the deduction u/s 54F of the Act. It is to be noted that w.e.f. 1-4-2001, there was the amendment in section 54F to the effect that assessee could be owner of one house at the time of the sale. Here in the case of the assessee he was sole owner of only one house and other houses under the joint ownership are not required to be considered as per the judgment of the Hon'ble Madras High Court in case of Dr: Smt. P. K. Vasanthi Rangarajan (supra).

19. We also note that on the identical facts, the Coordinate Bench of ITAT Mumbai, in the case of Ashok G. Chauhan v. Asstt. CIT [2019] 105 taxmann. com 204/176 ITD 717 held that where Assessing Officer rejected assessee's claim for deduction under section 54F of the Act, on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner of said property, deduction under section 54F could not be denied to him. We note that Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 held that if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. Therefore, respectfully following the judgment of the Hon'ble Madras High Court in case of Dr. Smt. P. K. Vasanthi Rangarajan (supra). we allow ground No. 2 raised by the assessee."

14. Further, we find that in Zainul Abedin Ghaswala v/s CIT, [2023] 152 taxmann.com 662 (Mum-Trib.), the coordinate bench of the Tribunal, after considering the aforesaid decision of the Hon'ble Karnataka High Court as well as the Hon'ble Madras High Court, observed as under:-

"4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute before us is whether the co-ownership of the assessee in more than one residential properties could make assessee liable for non-eligibility of deduction u/s 54F of the Act. The fact of the case as culled out from orders of lower authorities and submissions of the assessee are that the assessee's father late Shri Iqbal Ghaswala along with other five family members had inherited land being 142/148, Ghaswala Estate Jogeshwari (west), on which land, all the six members constructed 6 flats (ie one flat each on their own as per their requirements which were occupied by each owner namely Shri Mohd. Ali Suleman Ghaswalla (flat no. 201), Shri Sikander Suleman Ghaswalla (flat no. 202), Shri Abdul Rahim Ghaswalla (flat no. 301), Shri Munaf & Moinuddin Anwar Ghaswalla (legal heirs of late Shri Anwar Ghaswalla) (flat no. 302), Shri Ilyas & Zainul Ghaswalla (legal heirs of late Shri Iqbal Ghaswalla) (flat no. 401) and Shri Abdul Suttar Suleman Ghaswala (flat no. 402). According to assessee, all the members are owing/occupying one flat each for which they have been paying electricity bills. The assessee claimed to have filed those electricity bills before the Assessing officer coupled with confirmation letters from the owners of the other flats to the effect that none of them had any right/or interest of whatsoever nature in each other's flats. However, the Assessing Officer disregarded the submission of the assessee and held that since the assessee owned six residential house properties though jointly, therefore the conditions mentioned in section 54F of the Act are not fulfilled in this case hence, the assessee is not eligible for exemption u/s 54F of the Act. The Ld. Assessing Officer relied on the decision of the Hon'ble Karnataka High Court in the case of M..J. Siwani (supra). The relevant facts of the case and the finding reproduced by the Assessing Officer is extracted as under:

> *"Further, the above issue is already a settled law in view of decision of Hon'ble Supreme Court of India in the case of M.J. Stwani v. Commissioner of Income-tax [2015] 53 taxmann.com 318 wherein upholding the order of Hon'ble Karnataka High Court, Hon'ble Supreme Court of India held that:*
>
> *"Where assessee on date of sale of long-term capital asset owns more than one residential house even jointly with another person, benefit under section 54F in respect of capital gain arising from sale of asset was to be rejected."*
>
> *Facts of case M.J. Siwani v. Commissioner of Income-tax (2015) were as under:*
>
> *1. During relevant assessment year, assessees sold their undivided interest in land. The assessee claimed deduction under sections 54 and 54F in respect of long-term capital gain arising from sale of land.*
>
> *2 The revenue authorities finding that assessee had sold undivided share in land and not land plus residential house/apartments rejected assessee's claim for deduction under section 54.*
>
> *3. As regards deduction under section 54F, revenue authorities having found that assessees were having two residential houses having one half share each therein on date of sale of land, rejected assessee's claim.*
>
> *4. The Tribunal, however, allowed assessee's claim for deduction under section 54F holding that 'a residential house, on date of sale of long term asset as mentioned in said section meant complete residential house and would not include shared interest in residential house.*

On revenue's appeal to Hon'ble Karnataka High Court it was held as under:

"Section 54F provides that if the assessee has a residential house he cannot seek the benefit of long term capital gain. Under this provision, merely because, the words residential house are preceded by article 'a' would not exclude a house shared with any other person. Even if the residential house is shared by an assessee, his right and ownership in the house, to whatever extent, is exclusive and nobody can take away his right in the house without due process of law. In other words, co-owner is the owner of a house in which he has share and that his right, title and interest is exclusive to the extent of his share and that he is the owner of the entire undivided house till it is partitioned. The andlogy applied by the Tribunal based on the judgment of the Supreme Court in Banarsi Dass Gupta (supra), wherein, the Supreme Court considered the provisions contained in section 32 of the Act, would not apply to the faces of the present case. The right of a person, may be one half, in the residential house cannot be taken away without due process of law or it continues till there is a partition of such residential house. Thus, the view expressed by the Tribunal on this issue cannot be accepted. Thus, the order passed by revenue authorities rejecting assessee's claim was to be restored.

Thus, High Court held that in terms of provisions of section 54F, where assessee on date of sale of long term capital asset owns a residential house even jointly with another person, his claim for deduction of capital gain arising from sale of asset has to be rejected."

5. Before us, the Ld. Counsel of the assessee has relied on the following three decisions of the Tribunal, Mumbai Benches to support that even if the assessee co-owner is more than one house, since the fractional ownership in a property does not amounts to violating the conditions laid down u/s 54 of the Act, the assessee is entitled for deduction u/s 54 of the Act.:

1. Ashok G. Chauhan v. Asstt. CIT [2019] 105 taxmann.com 204/176 ITD 717 (ITAT Mumbai A Bench) [ITA No 1309/Mum/2016]

2. Dy. CIT v. Dawood Abdulhussain Gandhi [IT Appeal No 3788 (Mum) of 2016, dated 31-1-2018] (ITAT "F" Bench Mumbai)

3. ITO v. Rasiklal N Satra [2006] 98 ITD 335 [ITAT 'A' Bench Mumbai]

5.1 Further, the assessee also relied on the decision of the Hon'ble Madras High Court in the case of Dr. Smt. P.K. Vasanthi Rangarajan v. CIT [2012] 23 taxmann.com 299/209 Taxman 628/(2012) 252 CTR 0336. The relevant finding of the Hon'ble Madras High Court is reproduced as under:

"12. A reading of the provisions contained in section 54F(1), as it stood at the relevant point of time, shows that exemption from payment of tax on the capital gains arising on the transfer of any long-term capital asset not being a residential house is available to an assessee being a Hindu Undivided Family or an individual, if the long-term capital gain is invested in purchasing a residential house or constructing the residential house within the time stipulated therein. Proviso to sub-section (1) states that the exemption contemplated under sub-section (1) would not be available where an assessee owns a residential house as on the date of the transfer and that the income from the residential house is chargeable under the head "income from house property". The Finance Act, 2001 amended the proviso with effect from 2001-02 to permit exemption under section 54F, even if the assessee has owned one residential house as on the date of transfer, other than the new asset, or purchase in investments any residential house other than the new asset within a period of one year or three years as the case may be. but after the date of transfer of the original asset and the income from such residential house other than the one owned on the date of

transfer of the original asset is chargeable under the head "income from house property".

13. As far as the present case is concerned, contrary to the contention of the assessee, the assessee as well as her husband had offered 50% share each in the clinic in the income tax assessment and had claimed depreciation thereon. So too 50% share in the property in the wealth tax proceedings is offered by the assessee and her husband. The note submitted to the Assistant Commissioner of Income Tax, City Circle 5(1), Madras, by the assessee discloses that the assessee owned 50% of the property in 828, Poonamallee High Road, Chennai, for use as residential property and 50% as clinic, so too for the property at Door No. 828A, Poonamallee High Road, Chennai. The facts thus reveal that as joint owners of the property. the assessee and her husband had shown 50% share with reference to the clinic and the residential portion in their respective returns. Thus, it is clear that as on the date of the transfer, the assessee did not own a residential house in her name only, the income from which was chargeable under the head "income from house property", to bring into operation, the proviso to section 54F. The rejection of the claim for exemption would arise if only the property stands in the name of the assessee, namely, individual or HUF. Given the fact that the assessee had not owned the property in her name only to the exclusion of anybody else including the husband, but in joint name with her husband, we agree with the submission of the learned senior counsel appearing for the assessee herein that unless and until there are materials to show that the assessee is the exclusive owner of the residential property, the harshness of the proviso cannot be applied to the facts herein. Apart from that, 50% ownership is with reference to the clinic situated in the ground floor. As such, the entire property is not an exclusive residential property. Hence, we are inclined to agree with the assessee's contention that the joint ownership of the property would not stand in the way of claiming exemption under section 54F."

5.2 Before us, the Ld. Counsel of the assessee submitted that where there are different views of non- jurisdictional High Court, then one favourable to the assessee has to be followed. The Ld. Counsel of the assessee relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd. 119731 88 ITR 192. Further, the Tribunal in the case of ITO v. Upkar Retail (P.) Ltd. [2018] 94 taxmann.com 450/171 ITD 626 ITAT 'B' Bench Ahmedabad [ITA No. 2237/Ahd/2014] relying on the decision of the Hon'ble Supreme Court in the case of Vegetable Products Ltd. (supra), which was followed by the Tribunal in the case of Tej International (P) Ltd. v. Dy. CIT [2000] 69 TTJ 650 (Delhi) held that in case of conflict in the decision of the non-jurisdictional High Court, the view which is favourable to the assessee should be followed. The relevant finding of the Tribunal (supra) is reproduced as under:

"4. As to what should be the view to be taken in these circumstances, ie. when there are conflicting decisions of Hon'ble Courts above and when we do not have the benefit of the guidance by Hon'ble jurisdictional High Court, we find guidance from the decision of a co-ordinate bench in the case of Tej International Pvt Ltd. v. DCIT [(2000) 69 TTJ 650 (Del)] wherein the coordinate bench has, inter alia, observed as follows:-

"6. We have considered the rival submissions and perused the records. It is not in dispute that two High Courts, namely, Gauhati High Court and Karnataka High Court, have expressed conflicting views regarding levy of interest under sections 234B and 234C on deemed income under section 115J. Hon'ble Gauhati High Court has opined that when legal fiction is to be created for an obvious purpose, full effect to it should be given. Quoting Lord Asquith who said, "the statute says that you must imagine a certain state of affairs, it does not say that having done so, you must

cause or permit your imagination to boggle when it comes to inevitable corollaries of that state of affairs", Hon'ble Gauhati High Court has held that there is no statutory exception excluding the operations of section 115J of the Act. Hon'ble Karnataka High Court, on the other hand, has held that the words 'for the purposes of this section' in Explanation to section 115J(1A) are relevant and cannot be construed to extend beyond the computation of liability to tax. In the opinion of the Hon'ble Karnataka High Court, when a deeming fiction is brought under the statute, it is to be carried to its logical conclusions but without creating further deeming fiction so as to include other provisions of the Act which are not made specifically applicable. It is thus evident that views of these two High Courts are in direct conflict with each other. Clearly, therefore, there is no meeting ground between these two judgments and we are also usable to accept the suggestion that we can follow earlier decisions of this Tribunal, or such views, whichever seem more reasonable of one of these High Courts.

7. It may be mentioned that some Benches of the Tribunal have either taken independent view on the issue in this appeal or have later on followed Hon'ble Gauhati High Court, referred to above. However, with the latest judgment of Hon'ble Karnataka High Court in Kwality Biscuits Ltd.'s case (supra) the situation is materially different. In the hierarchical judicial system that we have, better wisdom of the this Tribunal has expressed an opinion on that issue, we are no longer at liberty to rely upon earlier decisions of this Tribunal even if we were a party to them. Such a High Court being a non-jurisdictional High Court does not alter the position as laid down by Hon'ble Bombay High Court in the matter of CIT v. Godavari Devi Saraf [1978) 113 ITR 589 (Bom.). Therefore, we do not consider it permissible to rely upon the earlier decisions of this Tribunal even if one of them is by a Special Bench. It will be wholly inappropriate to choose views of one of the High Courts based on our perceptions about reasonableness of the respective viewpoints as such an exercise will de facto amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of hierarchical judicial system. We have to, with our highest respect of both the Hon'ble High Courts, adopt an objective criterion for deciding as to which of the Hon'ble High Court should be followed by us.

8. We find guidance from the judgment of Hon'ble Supreme Court in the matter of CIT v. Vegetable Products Ltd. [1973] CTR (SC) 177: [1972] 88 ITR 192 (SC) Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This principle has been consistently followed by the various authorities as also by the Hon'ble Supreme Court itself. In another Supreme Court judgment, Petron Engg. Construction (P.) Ltd. & Anr. v. CBDT & Ors. [1988] 75 CTR (SC) 20: [1989] 175 ITR 523 (SC). it has been reiterated ITA No. 2237/Ahd/2014 Assessment Year: 2011-12 that the above principle of law is well established and there is no adopt about that. Hon'ble Supreme Court had, however, some occasion to deviate from this general principle of interpretation of taking statute which can be construed as exception to this general rule. It has been held that the rule of resolving ambiguities in favour of tax- payer does not apply to deductions, exemptions and exceptions which are allowable only when plainly authorised. This exception, laid down in Littman v. Barron 1952 (2) AIR 393 and followed by apex Court in Mangalore Chemicals & Fertilizers Lid. v. Dy. Commr. of CCT [1992] Suppl (1) SCC 21 and Novopa India Lad. v. CCE & C 1994 (73) ELT 769 (SC), has been summed up in the words of Lord Lohen, "in case of ambiguity, a taxing statute should be construed in favour of a tax payer does not apply to a provision giving tax payer relied in certain

> *cases from a section clearly imposing liability". This exception, in the present case, has no application. The rule of resolving ambiguity in favour of the assessee does not also apply where the interpretation in favour of assessee will have to treat the provisions unconstitutional, as held in the matter of State of M.P. v. Dadabhoy's New ChirmiryPonri Hill Colliery Co. Ltd. AIR 1972 (SC) 614. Therefore, what follows is that in the peculiar circumstances of the case and looking to the nature of the provisions with which we are presently concerned, the view expressed by the Hon'ble Karnataka High Court in the case of Kwality Biscuits Ltd, case (supra), which is in favour of assessee, deserves to be followed by us. We, therefore, order the deletion of interest under sections 234B and 234C in this case.*
>
> *5. In view of the above discussion, quite clearly, even when the decision of Hon'ble non-jurisdictional High Courts are in conflict with each other, the only objective criteria which followed by us is to take a view favourable to the assessee. Hon'ble Calcutta High Court's decision in the case of Asian Financial Services Ltd. (supra), therefore, is required to be followed by us. Respectfully following the same, we uphold the conclusions arrived at by the learned CIT(A) and reject the grounds raised by the Revenue."*
>
> *5.3 In view of the binding precedents referred above, we find that decision of the Hon'ble Madras High Court is in favour of the assessee and not a single decision of the Jurisdictional High Court, which is adverse to the assessee, has been referred by the Ld. DR and therefore decision of the Madras High Court being favourable to the assessee, the claim of deduction u/s 54F of the Act need to allowed, as there is no material to show that assessee is exclusively owner of the other five residential properties/flats which are occupied by the other family members. The grounds of appeal of the assessee are accordingly allowed."*

15. In the present case also, not even a single decision of the Hon'ble jurisdictional High Court, which is contrary to the claim of the assessee, has been placed on record/referred by the Revenue. Therefore, respectfully following the decision of the Hon'ble Madras High Court and the coordinate bench of the Tribunal cited supra, we are of the considered view that the joint ownership in two residential properties at the time of sale of the original asset does not disentitle the assessee to claim of deduction under section 54F of the Act. As a result, ground no.3 raised in assessee's appeal is allowed.

16. During the hearing, the learned AR submitted that if the relief is granted to the assessee in respect of ground no.3 then other grounds raised in the

appeal may be left open. Accordingly, in view of the submissions of the learned AR, ground no.1 and ground no.2 are left open.

17. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 21/03/2024

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 21/03/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai