

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**ITA NO. 4875/MUM/2023 (A.Y: 2017-18)**

<b>DCIT-CC-5(2)</b> Room No. 1908 Air India Building, Nariman Point Mumbai, Maharashtra - 400021	v.	<b>ASHA VINESH MEHTA</b> A-119, Satyam Shopping Center M.G. Road, Ghatkoper (E) Mumbai-400007  <b>PAN: ACPPM9115R</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	:	<b>None</b>
<b>Department Represented by</b>	:	<b>Shri Mirza Azhar Beig</b>
<b>Date of conclusion of Hearing</b>	:	<b>22.05.2024</b>
<b>Date of Pronouncement</b>	:	<b>22.05.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

**1.** This appeal by the revenue is preferred against order of the Learned Commissioner of Income-Tax (Appeals) – 53, Mumbai

[hereinafter in short "Ld. CIT(A)"] dated 19.10.2023 pertaining to A.Y.2017-18.

**2.** The solitary grievance of the revenue is that the Ld. CIT(A) erred in deleting the addition of ₹.4,25,35,000/- made by the Assessing Officer denying exemption under section 54 of Income-tax Act, 1961 (in short "Act").

**3.** Briefly stated the facts of the case are that the assessee filed her return of income on 30.07.2017 declaring a total income of ₹.1,40,160/-. The return was selected for scrutiny through CASS and accordingly, statutory notices were issued and served upon the assessee.

**4.** During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has shown Long Term Capital Gain from sale of Jointly owned flat with her husband. The said flat was purchased in the year 2004 and sold on 14.09.2016 and the Long Term Capital Gain has been worked out at ₹.8,50,71,000/-. Since the assessee was 50% owner showed her share of Long Term Capital Gain of ₹.4,25,35,500/-. The said Long Term Capital Gain was claimed as exemption as the assessee has purchased / constructed / invested ₹.4,25,35,000/- under section 54 of the Act. The assessee was asked to

justify her claim of exemption. The assessee furnished necessary details with supporting evidences. On perusal of the same the Assessing Officer found that two flats bearing Nos. 1101 and 1201 were purchased by the husband of the assessee and her son. When the assessee was asked to explain, the assessee explained that initially in the year 2016 Flat Nos. 1101 and 1201 were purchased by her husband and her son. However, in the same year Flat Nos. 1102 and 1202 were also booked by the assessee in her name in which she paid ₹.4,29,48,800/-. The assessee claimed the exemption on this purchase. The contention of the assessee was dismissed by the Assessing Officer who was of the firm belief that the assessee had made wrong claim of exemption under section 54 of the Act on the ground that the name of the assessee is not in the purchase deed of the new house / flat.

**5.** Assessee challenged the addition before Ld. CIT(A) and reiterated her claim of exemption. After considering the facts and the submissions, the Ld. CIT(A) was convinced that subsequent to supplemental agreement by which Flat Nos. 1102 and 1202 were acquired by the assessee along with terrace and car parking's. This supplemental agreement was registered on 30.03.2018. The Ld. CIT(A) was also

convinced that this was a purchase of new flat eligible for exemption under section 54 of the Act. The Ld. CIT(A) allowed the exemption.

**6.** Before us, Ld. DR strongly supported the findings of the Assessing Officer and read the operative part. None appeared on behalf of the assessee, in spite of issue of notice. Therefore, we decided to proceed *exparte*.

**7.** The appellant was heard at length. The case records carefully perused. The undisputed fact is that the assessee's husband and son had purchased Flat Nos. 1101 and 1201. It is also an undisputed fact that the assessee purchased the additional space in the form of Flat Nos. 1102 and 1202 along with terrace and three car parking's and together the entire purchase of the family become Triplex flat with assessee's share earmarked. We are of the considered view that all the purchase agreement has to be read together and since the assessee has acquired 25% share, in our considered view by paying the consideration the assessee has acquired 25% share and even if the same has been acquired from other family members the transaction is genuine and the purchase has been legally documented. Therefore, the assessee is very

much entitled for the claim of exemption under section 54 of the Act and has been rightly allowed by the Ld. CIT(A). Accordingly, no interference is called for.

**8.** In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> May, 2024.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Mumbai / Dated 22.05.2024  
Giridhar, Sr.PS

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**