

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4360/MUM/2023  
(Assessment Year: 2012-2013)**

**Purvi Vasantrai Mehta,**

Flat No. 302, B Wing,  
Windsor Court, Raheja Reflections,  
Thakur Village, Kandivali (East),  
Mumbai – 400006  
PAN : [BPYPM2686E]

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**Appellant**

**Income Tax Officer,**

**Ward 3(3)(1), Mumbai,**  
Air India Building, Nariman Point,  
Mumbai - 400021

Vs

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**Respondent**

**Appearance**

For the Appellant/Assessee : Shri Kiran Mehta  
For the Respondent/Department : Shri H.M. Bhatt

**Date**

Conclusion of hearing : 14.05.2024  
Pronouncement of order : 30.05.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 23/01/2017, passed by the Ld. Commissioner of Income Tax (Appeals)-57, Mumbai for the Assessment Year 2012-13, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 21/03/2015, passed under Section 143(3) the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:
  - "1. In the facts and circumstances of the case and in law, the

*learned CIT(A) erred in not allowing deduction claimed under Section 54/54F in relation to investment of Rs. 72,00,000/- made in acquisition of a House abroad in the USA.*

2. *In the facts and circumstances of the case and in law, the Appellant was entitled to the claim under Section 54 in relation to Long Term Capital gains from sale of house property in India which was invested in acquiring a house in the USA.*
3. *The learned AO erred in not holding that Rs. 5,00,000 received by the Appellant from her sister for release of her share in a property would be taxable as long term capital gains."*

3. The present appeal has been filed before the Tribunal after a delay of 2420 days. In the application seeking condonation of delay it has been stated as under:

*"1. The appeal in reference is the quantum appeal against the order of Learned CIT (A) 57 dated 23/01/2017. The said order was received on 23/02/2017.*

*2. The Appeal against the said order ought to have been filed on or before 24/04/2017.*

*3. The appeal in reference is being filed late by about 2420 days.*

*4. The reasons for such a long delay may be explained as under:*

*a. In the quantum appeal before the Hon CIT(A) the issues were:*

*i. Allowability of cost inflation index with reference to the date of acquisition of earlier owner (i.e Appellant's mother).*

*ii. Exemption u/s 54 qua the long term capital gains earned in India from sale of residential property in India which were invested in acquiring residential property in the USA to the extent of Rs. 72,00,000.*

*In the alternative allowability of exemption u/s 54 qua deposit made in the Capital Gains account scheme.*

*b. The learned CIT(A) held that the Appellant was not entitled to claim exemption u/s 54 in respect of the amount of Rs. 72,00,000 being long term capital gains earned in India that was invested in acquiring residential property in the USA.*

*c. The learned CIT(A) had allowed the ground of cost inflation*

*indexing. The learned CIT(A) had set aside the matter of entitlement of exemption u/s 54 qua investment/deposit made in capital gains account scheme.*

*d. If the deduction u/s 54 was allowed qua the deposit in the capital gains account scheme then there would be no income tax payable by the Appellant.*

*e. In view of the above, the Appellant did not file a second appeal before the Hon ITAT in relation to the denial of exemption u/s 54 qua the investment of Rs. 72,00,000 made in the USA.*

*f. The Appellant was also advised that since her claim u/s 54 was bona fide based in various judicial pronouncements in her favor she had a fair case that no penalty would be levied u/s 271 (1) (c) in here case.*

*g. Unfortunately, the learned AO proceeded to levy the penalty u/s 271 (1) (c) even as the set aside matter was pending*

*h. Being aggrieved by the said penalty order, an appeal was filed with the CIT (A).*

*i. Unfortunately, the learned CIT(A) proceeded to dismiss the Appellant's appeal against thee said penalty order.*

*J. The said order of CIT(A) dismissing the Appellant's appeal against the penalty order was received on 9th October, 2023.*

*k. Being aggrieved by the said appeal order a second appeal is being filed against the said appeal order before the Hon. ITAT.*

*l. Out of abundant caution the Quantum appeal in reference is also being filed before Your Honours.*

*m. The quantum appeal before Your Honors has merits and the issue In appeal is decided in favor of the Appellant by various decisions of the Hon. ITAT and the Hon. Courts.*

*5. In view of the above it is Humbly prayed that Your Honours may kindly condone the delay and admit the appeal in reference."*

4. On perusal of above, we find that the Appellant has failed to make out case for condonation of delay in filing the appeal. The fact that the Assessing Officer has levied penalty under Section 271(1)(c) of

the Act vide order, dated 30/03/2018, neither revives limitation nor does it constitute sufficient cause for condoning delay of 2420 days in filing the appeal. Accordingly, the present appeal is dismissed as being barred by limitation.

5. In result, the appeal preferred by the Assessee is dismissed.

Order pronounced on 30.05.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.05.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai