

IN THE INCOME-TAX APPELLATE TRIBUNAL "I" BENCH,  
MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 1739/Mum/2024  
(A.Y. 2013-14)

Smt. Shanti A. Motwane C/o Advocate, Moti B. Totlani (A.R.) Office No. A405 and A406, 4 <sup>th</sup> Floor, Ramji House, 30, J.S.S. road, Jambulwadi, Mumbai-400002	v/s. बनाम	INT Tax Ward 3(2)(1), Air India Building, Nariman Point, Mumbai-400021
स्थायी लेखा सं./जीआइआर C/सं./PAN/GIR No: AJMPM9118L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Moti B. Totlani
Respondent by :	Shri Anil Sant

Date of Hearing	08.07.2024
Date of Pronouncement	12.07.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.]: -**

This appeal is filed by the assessee against the order of the Ld. ITO (Int. Tax.) W. 3(2)(1) Mumbai dated 09.03.2024 passed u/s. 147 r.w.s. 144C(13) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2013-14.

2. The assessee has raised following grounds of appeal:

**“(I) AS REGARDS ASSESSMENT ORDER BEING TIME BARRED**

a) That on the facts and circumstances of the case & in law, the assessment order passed by the Learned Assessing Officer (Ld. AO)



*under Section 147 read with Section 144C (13) of the Income-tax Act, 1961 ('the Act') is invalid, bad in law and liable to be quashed as the same was passed beyond the prescribed time limit specified under the Act.*

*b) That on the facts and circumstances of the case & in law, the assessment order passed by the Ld. A.O. is barred by limitation being in contravention of the provisions of Section 144C (4) of the Act which required Ld. A.O. to mandatorily pass the assessment order within one month from the end of the month in which the statutory period of filing the objections expired.*

*c) Without prejudice to the above, that on facts and circumstances of the case and in law the Ld. A.O. grossly erred in making an addition of Rs.93,65,640/- when the Hon'ble DRP dismissed the objections treating them "as filed beyond time" without giving any direction or guidance to the A.O.*

**WITHOUT PREJUDICE TO THE ABOVE AND IN THE ALTERNATE**

**(II) AS REGARDS DISALLOWANCE OF DEDUCTION u/s.54 OF THE I.T.ACT.**

*a) That the learned A.O. erroneously disallowed deduction/exemption u/s.54 in respect of investment made in purchase of residential house in Ontario in Canada despite complying with all the conditions laid down in section 54 of the Act.*

*b) That the learned A.O. failed to appreciate when it was specifically brought to his notice that Sec.54 (1) was amended by Finance (No.2) Act, 2014 w.e.f.01-04-2015 i.e. from A.Y.2015-16. By this amendment the words "constructed one residential house in India" were substituted, and therefore the amendment was prospective."*

3. Brief facts of the case are that the assessee is a non-resident Indian during the relevant financial year and had filed her return declaring total income of Rs. 3,84,280/- on 31.07.2013. Subsequently, it was noticed by the I.T. department that there were high value transactions in the bank account of the assessee, and therefore, the case was reopened u/s 147 of the Act by issuing a notice u/s 148 of the Act dated 23.06.2021.



4. Following the directions of the Hon'ble Supreme Court in the order dated 04.05.2022 in the lead case of **UOI and others v/s Ashish Agarwal in Civil Appeal No. 3005/2022**, the assessee was provided opportunity of being heard before passing order u/s 148A(d) of the Act. In response to the notice u/s 148 dated 30.06.2022 the assessee e-filed her return of income on 25.07.2022 and also submitted requisite details in response to the notice u/s 142(1) issued by the AO. During the year under consideration the assessee had sold an immovable property for sale consideration of Rs. 1,97,50,000/-. It was noticed that amount to the tune of Rs. 93,65,640/- had been invested for purchase of a new residential property in Ontario, Canada. The AO sought to disallow the claim of exemption on the ground that the property had not been purchased/constructed in India and that the amendment in section 54F introducing the words 'constructed one house in India' w.e.f. AY 2015-16 was clarificatory in nature and hence applicable retrospectively. The assessee, however, insisted that the amendment made by the Finance (No. 2) Act 2014 w.e.f. 01.04.2015 is applicable from AY 2015-16 only being prospective in nature.

5. Ld. AR has submitted various decisions both on the technical ground as well as on the merits. Ld. DR has also relied on a decision of the co-ordinate bench in the case of **Shri Farhad Bottelwalla v/s ACIT in ITA No. 1761/Mum/2012**.



6. We have heard the rival submissions and considered various judicial pronouncement on the issue. There are several decisions including that of the Jurisdictional High Court wherein it has been held that the exemption u/s 54F would be available on property purchased outside India in the period prior to 01.04.2015 as the amendment is prospective in nature and cannot be applied to the transactions prior to 01.04.2015.

7. In the case of **Hemant Dinkar Kandlur v/s CIT(IT)-3/ Union of India** Hon'ble Bombay High Court in **writ petition No. 1644/2022 dated 12.09.2023** has dealt with an identical situation and observed as under:

*7. We have heard the learned counsel for the parties and perused the impugned order. It is an admitted position that Petitioner has sold his house property in India and invested the sale proceeds in a residential house in USA, out of the capital gain on the sale of the property in India, within the specified period. Petitioner has thus satisfied the conditions stipulated in Section 54(F) of the Act as it stood and was applicable to the relevant Assessment Year. The language of Section 54(F) of the Act before its Amendment was that the assessee should invest capital gain in a residential house. It did not mention any boundary. It is only after the amendment to Section 54(F) of the Act, which amendment came into effect from 1st April 2015, that the condition that the assessee should invest the sale proceeds arising out of a sale of capital asset in a residential situated "in India" within the stipulated period was imposed. Thus, a plain reading of the pre-amended Section 54(F) of the Act, leaves no room for doubt that the assessee need not restrict his investment only in India. The only condition was that sale proceeds should be invested in a residential property within the stipulated period of time.*

*8. Reliance upon Section 5(2) of the Act to suggest that the amendment to Section 54(F) of the Act was merely clarificatory in nature does not aid Respondents. Undoubtedly, any legislation or instrument having the force of law which is clarificatory or explanatory in nature and purport and which seeks to clear doubts or correct an obvious omission in the statute, would generally be retrospective in operation. Hence, it is necessary to identify the nature of amendment, to ascertain whether it is clarificatory in nature or a substantive amendment. It is settled position of law that if a*

statute is curative or merely clarificatory of the previous law, a retrospective operation thereof is permitted. In order for an amendment to be considered as clarificatory of the previous provision, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or declaration of the previous law and therefore applied retrospectively. Moreover, an explanation/clarification does not expand or alter the scope of the original provision.

9. It may also be noted that the amendment stated that the amended provision would come into force with effect from 1st April 2015 and therefore, would apply to future periods only and not prior to the date of amendment. It is well settled position of law that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is declaratory and clarificatory provision. If there is no such clear statement, the amendment is not merely a clarification, but a substantive amendment, which shall apply prospectively. In the matter of *Virtual Soft Systems Limited v. CIT*, the Apex Court has gone further and held that 'even if the statute does contain such a statement, the Court will not regard itself as being bound by the statement, but will proceed to analyse the nature of the amendment and then conclude whether it is in reality clarificatory provision or is intended to change the law and apply to future periods.

10. In the context of the above-mentioned position of settled law, we have examined the interplay of Section 5(2) and Section 54(F) of the Act, prior and post-amendment. As reproduced above, Section 5(2) of the Act starts with the words, 'subject to the provisions of this Act..... Thus, even if the words 'in India' appearing in Section 5(2) are read into the unamended Section 54(F) of the Act, yet, the said provisions would always operate subject to the other provisions of the Act including Section 54(F) of the Act. Furthermore, the unamended Section 54(F) of the Act was not at all ambiguous. It expressly and specifically excluded the words 'in India'. The amended provision also does not refer to Section 5(2) of the Act to even remotely suggest it to be a mere clarification. The statute also does not contain any statement that the amendment is merely declaratory or clarificatory or "for removal of doubts". In this perspective the amendment in Section 54(F) can be said to be neither clarificatory nor merely explanatory giving it retrospective operation. We agree with the contention of Mr. Jain that the amendment is prospective in nature and cannot be applied to the transaction prior to 1st April 2015 as it would tantamount to imposing an additional condition retrospectively to an earlier transaction, which was neither the intention nor the object of the



*amendment. Leena Jugalkishore Shah (supra) and Anurag Pandit (supra) support the contention of Petitioner.*

*11. We find that the language of Section 54(F) of the Act prior to the amendment is neither ambiguous nor vague. The intention of the legislature to insert the words 'in India' with effect from 1st April 2015 is not uncertain or confusing and hence the applicability of the amendment cannot but be prospective."*

8. Respectfully following the decision of the Hon'ble Bombay High Court, we hold that for the year under consideration the words 'in India' cannot be read into the provisions of section 54F and hence, the assessee is entitled to claim exemption u/s 54F in respect of the investment made in the residential property in Ontario, Canada.

9. In view of the above, the remaining technical grounds become academic in nature, hence not decided.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 12.07.2024.

**Sd/-**

**KAVITHA RAJAGOPAL**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 12.07.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT



ITA No. 1739/Mum/2024  
A.Y. 2013-14  
SMT. SHANTI A. MOTWANE

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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