

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "G" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA.No.4532/Mum./2023
Assessment Year 2015-2016

Shipra Bhagwan Chandra Shukla, C/o.SS Pradhaan And Co. 301, Dinaco Kiran CSH Ltd., Somnath Lane, Off: Hill Road, Mumbai-400050 Maharashtra. PAN ACLPS2173H	vs.	The Income Tax Officer, Ward-25(1)(2), Mumbai. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Divyesh Shah, C.A.
For Revenue :	Shri Prashant Mahajan, Sr. AR

Date of Hearing :	24.07.2024
Date of Pronouncement :	26.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's appeal for assessment year 2015-2016 arises against the order of the learned CIT(A)-National Faceless Appeal Centre, Delhi's DIN & order no.ITBA/NFAC/S/250/2023-24/1057232584(1), dated 19.10.2023,

in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. We advert to the assessee’s pleadings. It emerges from a perusal thereof that her sole substantive grievance raised herein claiming sec.54 deduction of Rs.1,06,00,000/- involves a narrow compass of facts. She had sold/transferred a house property in India on 12.06.2014 for Rs.1,32,64,000/- resulting in long term capital gains; after indexation, to the tune of Rs.11,27,232/-. She thereafter raised sec.54 deduction claim of re-investment of the said capital gains in a residential house in USA involving the sum of Rs.1,06,00,000/- in question. We wish to clarify that although both the learned lower authorities have held the assessee not to have filed the corresponding purchase documents; the same form part of the records before us, in her paper book running into 114 pages.

3. Now comes the dispute between the parties on the legal question of allowability of sec.54 deduction which

is admissible to an assessee who re-invests the corresponding capital gains arising from sale/transfer of a residential house, in purchase or construction of yet another residential house, as the case may be subject to fulfillment of certain other conditions.

4. The Revenue's case before us places strong reliance on the statutory amendment in sec.54(1) vide Finance (No.2) Act, 2014 w.e.f. 01.04.2015 that such an option of re-investment of capital gains for purchasing a residential house abroad is no more available w.e.f. 01.04.2015. Learned DR has further quoted the Explanatory Memorandum to the Finance Act, 2014 making it clear that the above amendment takes effect from assessment year 2015-2016 and subsequent assessment years. The assessment year before us is 2015-2016 only. We thus see no merit in the assessee's instant sole substantive grievance once the statute itself stands amended by way of the foregoing substitution in sec.54(1) of the Act.

5. Learned authorized representative at this stage quotes CIT vs., Nirmal Textiles [1997] 224 ITR 378 (Guj.) that the position regarding applicability of the tax laws in such an instance has to be seen as on the date of transfer which is 12.06.2014 which is well before the cut-off date herein 01.04.2015 (supra). We note that such an issue of interpretation of a subsequent amendment had never arisen before their lordships' as it is evident from the substantial questions considered in para-3 of the decision. Be that as it may, we are of the considered view that once the statutory provision itself stands amended and the assessee has made her investment which is no more allowable, stricter interpretation in light of Commissioner of Customs (Imports), Mumbai vs. Dilip Kumar And Co. & Ors. [2018] 9 SCC 1 (SC) (FB), would indeed hold the field. We thus conclude that both the learned lower authorities have rightly disallowed the assessee's sec.54 deduction claim for her re-investment of long term capital gains in a residential house abroad going by the relevant statutory provision. Rejected accordingly.

6. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 26.07.2024

Sd/-
[OMKARESHWAR CHIDARA]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumbai, Dated 26th July, 2024

VBP/-

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1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "G" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,
Mumbai.