

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3317/MUM/2024
(Assessment Year: 2013-14)**

Harendra J. Shah

(Legal Heir of Late Smt. Hina Harendra Shah)
302, Raman Panna CHS Ltd.,
Opp. Tilak Vidhyalaya, Subhash Road,
Vile Parle East, Mumbai – 400057
Maharashtra.
[PAN: AAQPS1192K]

..... **Appellant**

Vs

Ward 22(1)(1), Mumbai

7th Floor, Piramal Chambers,
Mumbai – 400012, Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Sanjay R. Parikh
For the Respondent/Department : Shri P. D. Chougule

Date

Conclusion of hearing : 12.08.2024
Pronouncement of order : 29.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 25/05/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 30/12/2015, passed under Section 143(3) of the Act for the Assessment Year 2013-14.
2. The following grounds have been raised in the present appeal:

"1. The CIT(A) erred in law and in facts by confirming disallowance of the cost of tenancy rights of Rs.6,00,000/- claimed against the amount received on surrender of tenancy rights.

2.a. The CIT(A) erred in law and in facts by confirming disallowance of the deduction claimed u/s.54F by the appellant of the amount of Rs.52,46,500/-.

b. During the year under reference, the appellant has received Rs.61,00,000/- on 30.01.2013 from her landlords on her Surrender of Tenancy Rights of residential premises at Shah Baug, 1st Floor, Kapoor Cottage, TPH III, Golibar, Santacruz (East), Mumbai – 400055.

As against the above the appellant has claimed the purchase of Flat No.302, 3rd Floor, Raman Panna CHSL, Vile Parle (East), Mumbai-400057.

3. The CIT(A) erred in law and in facts by confirming the addition of brokerage income Rs.1,54,638/- as appearing in AIR by disregarding the factual submission made before the Assessing Officer."

3. The admitted facts of the case, as emanating from the records, are as follows.

3.1. The Appellant filed return income for the Assessment Year 2014-2015 on 25/09/2013 declaring total income of INR.2,92,550/-. The case of the Appellant was selected for regular scrutiny and assessment under Section 143(3) of the Act was framed vide Assessment Order, dated 30/12/2015 after making the following addition:

(a) Addition of INR.52,46,500/- holding the same to be Long Term Capital Gain arising from surrender of tenancy rights by restricting the deduction claimed under Section 54F of the Act to INR.8,53,500/-

(b) Addition of INR.1,54,638/- on account of mismatch of

brokerage income reflected in Annual Information Report with brokerage income offered to tax during the relevant previous year.

- 3.2. The appeal preferred by the Assessee against the Assessment Order dated 30/12/2015 was dismissed by the CIT(A) vide order dated 25/05/2024.
- 3.3. Being aggrieved by the above order passed by the CIT(A), the Appellant has preferred the present appeal on the grounds reproduced in paragraph 2 above.
- 3.4. We have heard the rival submissions and perused the material on record.

Ground No.1

4. Ground No.1 raised by the Appellant is dismissed as not pressed in view of the statement made by the Authorized Representative for the Appellant under instructions.

Ground No. 2(a) and 2(b)

5. Ground No. 2(a) and 2(b) pertain to deduction claimed by the Appellant under Section 54F of the Act.
 - 5.1. The facts relevant for adjudication of the ground under consideration are that the Appellant had transferred tenancy rights on 31/01/2013 for a consideration of INR.61,00,000/- which resulted in Long Term Capital Gain of INR.55,00,000/- in the hands of the Appellant. Prior to the aforesaid transfer of the tenancy rights (i.e. on 12/04/2012), the Appellant had purchased a Flat jointly with her son for a consideration of INR.1,08,00,000/- and had also incurred stamp duty charges and registration charges of INR.5,22,600 and INR.30,540/- respectively. Thus, the total cost of acquisition of the Flat was

INR.1,13,53,140/- and Appellant's share was INR.56,67,570/- (computed at the 50% of INR.1,13,53,140/-). In the return of income the Appellant claimed exemption under Section 54F of the Act on the Ground that the Appellant had purchased new asset for INR.56,67,570/- which was more than the Long Term Capital Gain of INR.55,00,000/-. The Assessing Officer vide order dated 30/12/2015 restricted the Appellant's claim for deduction under Section 54F of the Act to INR.8,53,500/- on the ground that the Appellant had only utilized own funds to the extent of INR.8,53,500/- for the purchase of new asset. According to the Assessing Officer deduction under Section 54F of the Act could not be granted in case the borrowed funds were utilized for the purchase of new assets. Thus, the Assessing Officer brought to tax on Long Term Capital Gain of INR.52,46,000/- in the hands of the Appellant.

5.2. In appeal, the CIT(A) agreed with the Assessing Officer and decline to accept the Appellant's claim for deduction under Section 54F of the Act.

5.3. During the course of hearing the Learned Authorized Representative for the Appellant submitted that there is no requirement under Section 54F of the Act that proceeds arising from sale consideration of old asset must be utilized for purchase of new asset for claiming benefit under Section 54F of the Act and more so in a case where an Appellant was claiming benefit of Section 54F of the Act on account of new asset having been purchased within a period of 2 years prior to the date of transfer of old asset. Reliance in this regard is placed upon the following judicial proceedings:

(a) ACIT Vs. Dr. P.S. Pasricha [2009:BHC-OS:18153-DB] [Income Tax Appeal No.1825 of 2009 judgment dated 07/10/2009] [confirming the decision of the Tribunal reported in (2008) 20 SOT 468 (Mum)]

- (b) M. George Joseph(2022)440 ITR 589 (Karn).
- (c) CIT Vs. Kapil Kumar Agarwal (2016) 382 ITR 56 (P&H).
- (d) Ms. Moturi Lakshmi (2020) 428 ITR 462 (Mad)
- (e) Smt. Sabita Devi Agarwal (2019) 69 ITR (Trib) 231 (Kol).
- (f) Hansa Shah Vs. ITO (2019) 69 ITR (Trib) 334 (Mum)
- (g) CIT Vs. R.Srinivasan (2010) 235 CTR 588 (Mad).

The Learned Authorized Representative for the Appellant further submitted that the view taken by the Tribunal in the above decisions is in line with the judgment of the Hon'ble Bombay High Court in the case of ACIT Vs. Dr. P.S.Pasricha (supra). Therefore, the decisions of the Tribunal on which reliance has been placed by the Assessing Officer/Revenue would not come to the aid of the Revenue.

- 5.4. Per contra the Learned Departmental Representative placed reliance on the decision of the Tribunal in the case of Milan Sharad Ruparel reported in 5 ITR 570 (2010) and Shri Sanjay Balkrishna Shetty [*Misc Application No.193/Mum/2012 arising out of ITA No.7326/M/2011, dated 20/09/2023*] and submitted that the benefit of Section 54F of the Act was available to the Appellant only in a case where the new asset as acquired out of own funds or the sale proceeds arising from sale of the old asset and not out of borrowed funds.
- 5.5. In rejoinder, the Learned Representative for the Appellant submitted that the Appellant had taken temporary loan from Cosmos Bank and other loans which were repaid using proceedings arising from sale of old asset. Thus, all loans except loans taken for family were repaid by the Appellant before end of the year and therefore, the sale proceeds arising from sale of old assets were duly utilized in the purchase of new assets.

- 5.6. We have given thoughtful consideration to the rival submissions. There is no dispute on facts. The benefit of deduction claimed by the Appellant under Section 54F of the Act has been denied solely on the ground that the borrowed funds were utilized for purchase of new asset. On perusal of Section 54F, we find that for claiming deduction under the said section, the Assessee is required to purchase residential new asset within the specified time. No restriction/condition has been imposed on the Assessee mandating the utilization of capital gains or the sale proceeds arising from the sale of old assets for purchase of new asset for the purpose of claiming deduction under Section 54F of the Act.
- 5.7. On behalf of the Appellant reliance was placed on the judgment of the Hon'ble Bombay High Court in the case of **Dr.P.S. Pasricha [2009: BHC-OS:18153-DB : Income Tax Appeal No.1825 of 2009 judgment dated 07/10/2009]**. In that case while interpreting the provisions contained in Section 54 of the Act, the Hon'ble Mumbai Bench of the Tribunal had held that requirement of Section 54 is that the Assessee should purchase a residential house within the specified period and source of funds is quite irrelevant. Being aggrieved, the Revenue had preferred appeal before the Hon'ble Bombay High Court which was dismissed vide judgment dated 07/10/2009. Thus, the view taken by the Tribunal was confirmed by the Hon'ble Bombay High Court. We note that identical view has been taken by the Hon'ble Karnataka High Court in the case of **M. George Joseph V. DCIT (2022) 440 ITR 589 (Karn)** and Hon'ble Punjab & Haryana High Court in the case of **CIT V. Kapil Kumar Agarwal (2016) 382 ITR 56 (P&H)** while interpreting the provisions contained Section 54F of the Act.
- 5.8. Further, we note that in the present case the Appellant had utilized proceeds arising from sale of the old asset for repayment

of loans taken for purchase of the new asset and therefore, in our view, it cannot be said that the aforesaid sale proceeds were not utilized for purchase of new asset.

- 5.9. In view of the above, we hold that the Appellant is entitled to claim deduction under Section 54F of the Act and therefore, addition in respect of Long Term Capital Gains of INR.52,46,500/- made by the Assessing Officer by denying deduction claimed by the Appellant under Section 54F of the Act is deleted. Thus, Ground No.2(a) & 2(b) raised by the Appellant are allowed.

Ground No.3

6. Ground No.3 pertains to addition of brokerage income of INR.1,54,638/-.
- 6.1. The Assessing Officer had made addition of INR.1,54,638/- holding the same to be brokerage income that had accrued to the Appellant during the relevant previous year but not offered to tax.
- 6.2. As regards brokerage income, the Learned Authorised Representative for Appellant submitted that the Appellant has been offering the brokerage income to tax on receipt basis consistently over the year. The brokerage income under consideration was also offered to tax on receipt basis during the Assessment Year 2014-2015. Without appreciating the aforesaid, the Assessing Officer added brokerage income of INR. 1,54,638/- in the hands of the Appellant in Assessment Year 2013-14 on the grounds that the brokerage income had accrued in that year. This has resulted in double taxation of the same income, and therefore, it was submitted the addition made by the Assessing Officer for the Assessment Year 2013-14 ought to be deleted.

- 6.3. Per contra the Learned Departmental Representative relied upon the Assessment Order and submitted that the brokerage income has been correctly brought to tax in the hands of the Appellant in the year of accrual.
- 6.4. We have considered the rival submissions. It is settled legal position that same income cannot be brought to tax in two assessment years. Therefore, we direct the Assessing Officer to verify the averment made by the Appellant with regard to the brokerage income having been offered to tax consistently over the years on receipt basis. In case the averments made by the Appellant are found to be correct and it is verified that brokerage income of INR. 1,54,638/- has been offered to tax in Assessment Year 2014-15, the Assessing Officer is directed to delete the addition made in respect of the said brokerage income for the Assessment Year 2013-14. Further, since credit of tax deduct at source can be claimed in the year in the income is offered to tax, the Appellant would be at liberty to take such steps as are available under law to claim credit of tax deduct at source in the year in which the brokerage income is brought to tax in the hands of the Appellant pursuant to the aforesaid directions. In terms of the aforesaid, Ground No. 3 raised by the Assessee is allowed for statistical purposes.
7. In result the present appeal preferred by the Appellant is allowed for statistical purposes.

Order pronounced on 29.10.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.10.2024
Milan, LDC

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