

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'C', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA No.2473/Mum/2024
Assessment Year: 2016-17**

Premalata Bansal 401, Dev Plaza, S.V. Road, Opp. Fire Brigade, Andheri West, Mumbai-400058. PAN: AEZPB 7903 E (Appellant)	vs	Jagdish Chander ITO, Mumbai Ward-25(3)(2), (Respondent)
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Present for:

Assessee by : Shri Ashok Bansal
Revenue by : Shri H.M. Bhatt (Sr. DR)

Date of Hearing : 02.09.2024

Date of Pronouncement : 21.11.2024

ORDER

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order of ld. CIT(A), NFAC dated 11.03.2024 for Assessment Year 2016-17. The assessee has raised the following grounds of appeal:

"1. The lower authorities have erred in making addition to the appellant's income / upholding the addition to Rs. 2,58,48,951/- by not allowing exemption u/s 54/54F.

2. The ld. CIT(A) has erred in not deciding the appeal within time as per section 250(6A)."

2. Fact in brief is that return of income declaring total income of Rs. 4,00,940/- was filed on 21.05.2016. The case was subject to scrutiny assessment and assessment u/s 143(3) of the Act was finalized on 28.12.2018 by disallowing the claim of exemption u/s 54F of the Act to the amount of Rs. 2,58,48,951/- on the

ground that investment of Rs. 8,71,91,250/- made by the assessee in the new property was not the net consideration within the meaning of section 54F of the Act. The assessee was the owner of two immovable properties i.e. flat no. 401 and flat no. 402 during the year under consideration however as per one of the condition laid down u/s 54 of the Act the assessee should have not owned more than one residential house on the date of transfer of the asset. The AO also stated that even otherwise the assessee would not be entitled for exemption u/s 54F because the assessee was not the owner of the property but a person holding merely structural ownership rights / tenancy rights in the property and consideration received by the assessee was for transfer of structural ownership rights/tenancy rights in the property, therefore, the question of transfer of building or land does not arise at all in the case of the assessee.

3. The assessee filed appeal before the ld. CIT(A). The assessee submitted that it had wrongly quoted section 54F of the Act instead of section 54. However, the ld. CIT(A) has dismissed the appeal of the assessee holding that fresh claim of the assessee for exemption u/s 54 is not acceptable.

4. Heard both the sides and perused the material on record. The only solitary ground of appeal of the assessee is pertained to the issue of rejection of claim of exemption u/s 54F of the Act amounting to Rs. 2,58,48,951/-. The assessee had sold immovable properties i.e. flat nos. 401 & 402 in Vile Parle (W), Mumbai for a consideration of Rs. 10,63,53,000/-. The capital

gain arose out of sale of the said property amounting to Rs. 2,58,48,951/- was claimed as invested in purchasing new property for a consideration of Rs. 8,71,90,250/-. The assessing officer pointed out that claim of exemption u/s 54F of the Act is not applicable in the case of the assessee since assessee was owning more than one residential property on the date of purchase of new residential property and was merely holding structural ownership rights.

5. The ld. CIT(A) has dismissed the appeal of the assessee without considering on merit the alternative claim made by the assessee for exemption u/s 54 of the Act. Following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. 229 ITR 383 (SC) and Jute Corporation of India Ltd. 187 ITR 688 (SC) we consider that alternative claim of the assessee can be entertained by the ld. CIT(A). Therefore, we consider it appropriate to restore this issue to the file of the ld. CIT(A) for deciding on merit the alternative claim made by the assessee u/s 54 of the Act. Therefore, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.11.2024

Sd/-

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai