

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ई" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**  
**BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपीलसं / I.T.A. No.5736/Mum/2013  
(निर्धारणवर्ष / Assessment Year: 2009-10)

Shyam R. Gupta Flat No-F2/703, Poonam Kunj, Poonam Nagar Mahakali Craves Road, Andheri East Mumbai - 400093	<b>बनाम /</b> Vs.	Income Tax Officer 11(1)(4) Ayakar Bhavan, New Marine Lines, Mumbai.
स्थायी लेखासं. / जीआइआरसं. / PAN/GIR No. ADQPG7610M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue By		Shri Haresh Purushottamdas Shah
Assessee by:		Shri Sambit Mishra

सुनवाई की तारीख / Date of Hearing: 17.02.2017  
घोषणा की तारीख / Date of Pronouncement: 28.02.2017  
आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 22.08.2013 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds:-

- “1. *On the facts and circumstances of the case, the learned CIT(A) erred in confirming the restriction of exemption u/s.54 to Rs.18,91,000/- as against Rs.31,38,860/- claimed by the appellant on account of re-investment of Long Term Capital Gains in the residential house, thereby making an addition of Rs.12,47,860/- under the head capital gains.*
2. *On the facts and circumstances of the case, the learned CIT(A) erred in not allowing the re-investment of Rs.23,91,000/- u/s.54 instead of Rs.18,91,000/- shown by the appellant in his balance sheet. And alternatively claimed before CIT(A) during appellant proceedings.*
3. *The order of the learned CIT(A) is against the weight of equity, natural justice and good conscience.”*

3. The brief facts of the case are that the assessee filed his return of income declaring total income to the tune of Rs.2,00,995/-. Thereafter, the assessee again filed the revised return of income on 29.07.2009 declaring total income to the tune of Rs.2,00,995/-. The return of income was processed u/s.143(1) of the Income Tax Act, 1961 ( in short “the Act”). The case was selected for scrutiny and notice u/s.143(2) of the Act dated 18.08.2010 was issued and duly served upon the assessee. Thereafter, the notice u/s.142(1) of the Act dated 16.06.2011 was issued and also duly served upon the assessee. The assessee was in the profession of production film manager. The assessee during the assessment year has declared the income from business and profession, capital gain and income from other sources. The assessee submitted the computation of long term capital gain on sale of flat at Pune. The assessee showed the sale consideration of Rs.40,00,000/- and after debiting the sale expenses (brokerage paid) of Rs.1,03,118, Rs.38,96,882/- was considered as sale consideration. The

assessee considered the indexed cost of acquisition of said property of Rs.7,58,022/-, long term capital gain has been shown at Rs.31,38,860/-. Since the assessee did not offered the said amount to tax, therefore notice was issued and after receipt of reply, the Assessing Officer was of the view that the flat sold was with joint name of the assessee and his wife and the assessee and his wife had also invested the same for the purchase of new property vide agreement dated 17.01.2008 in total sale consideration of Rs.44,86,000/-. Accordingly, the assessee's contribution was considered to the extent of 12,50,000/- on account of purchase of house and his investment to the tune of Rs.6,41,000/- in the Capital Gains Fixed Deposit Scheme on 19.06.2009 was also considered total to tune of Rs.18,91,000/-. An amount of Rs.12,47,860/- which was in the share of the assessee's wife was not considered for exemption and added to the income of the assessee. Feeling aggrieved the assessee filed an appeal before the CIT(A) who confirmed the order in question, therefore, the assessee filed the present appeal before us.

**ISSUE NO.1 TO 3:-**

4. All the issues leads to the facts and circumstances of the case in which it is require to be ascertain whether the assessee is entitled for the exemption u/s.54 of the Act on account of investment in the purchase of new residential house, after selling the old flat situated at Pune. The factual position is not in dispute in which the assessee had sold the flat situated at Pune in sale consideration of Rs.40,00,000/- and after debiting the selling expenditure of Rs.1,03,118/-. He has shown the sale consideration to the tune of Rs.31,38,860/-. The assessee after considering the indexed cost on

acquisition of the said property to the tune of Rs.7,58,022 has assessed the Long term capital gain to the tune of Rs.31,38,860/-. The assessee claimed the exemption u/s.54 of the Act on account of the purchased of the property by him along with his wife by virtue of agreement dated 17.01.2008. The assessee also made investment to the tune of Rs.6,41,000/- in capital gain Fixed Deposit Scheme on 19.06.2009. The Assessing Officer only considered the share of the husband for the purpose of exemption u/s.54 of the Act. The total exemption was considered to the tune of Rs.12,50,000/- and 6,41,000/- on account of deposits under capital gain fixed deposit scheme to the tune of Rs.18,91,000/-. It is to be seen whether the share of the wife is liable to be considered for the purpose of exemption u/s.54 of the Act. Undisputedly, the investment was to purchase the new property. There are plethora of judgments in which the investment made by husband and wife have been exempted u/s.54 of the Act. In this regard, we are citing few judgements on record i.e. *decided by the Hon'ble Delhi High Court [2012] 342 ITR 38 (Delhi) dated 27.09.2011 in case titled as Commissioner of Income Tax V. Ravinder Kumar Arora and decided by Hon'ble Karnataka High Court [2012] 349 ITR 80 (Karn.) dated 26.09.2011 in case titled as Director of Income Tax (International Taxation) and Another Vs. Mrs.Jennifer Bhide and decided by Hon'ble Madras High Court [2010] 235 CTR (Mad) 588 dated 12.04.2010 in case titled as Commissioner of Income Tax Vs. Srinivasan and Hon'ble Delhi High Court [2010] 235 CTR (Del) dated 16.08.2010 in case titled as Commissioner of Income Tax Vs. Rohit Anand.* Period for sale and purchase of the old and new property is not in dispute as the Assessing Officer has already allowed the husband's property

share as exempt u/s.54 of the Act. In view of the above mentioned law, no doubt the finding of the CIT(A) is wrong against law and facts and is not liable to be sustainable in the eyes of law, the same is hereby ordered to be set aside and the Assessing Officer is hereby directed to allow the share of the husband and wife as exempted in view of the provision contained in section 54 of the Act. Accordingly, these issues are decided in favour of the assessee against the revenue.

5. In the result the appeal filed by the assessee is hereby **Allowed**.

Order pronounced in the open court on 28<sup>th</sup> February, 2017.

Sd/-

(D.KARUNAKARA RAO)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28<sup>th</sup> February, 2017  
*MP*

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (□ पील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

सत्यापितप्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**

(Dy./Asstt.Registrar)

**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**