

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

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4854/MUM/2014
Assessment Year: 2009-10**

The ITO (IT)- 3 (1), Room No. 114, 1 st Floor, Scindia House, Ballard Pier, N.M.Road, Mumbai- 400 038.	Vs.	Mr. Surindersingh D. Kambow, B/4, Indu Park, 4, Bangakow, N. Datta Marg, Andheri (W), Mumbai- 400 053. PAN- AFFPK5876G
(Appellant)		(Respondent)

Appellant by : Shri. Suman Kumar
Respondent by : None

Date of Hearing: 04/10/2016
Date of Pronouncement: 04/10/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 10/01/2014 passed by the Ld CIT(Appeals)-10, Mumbai for the assessment year 2009-10.

2. The revenue has challenged the impugned order on following effective grounds:-

1. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in directing A.O to allow the claim of the assessee u/s 54F without appreciating the fact that;*

- a. *The flats are still under construction and there is no evidence to suggest that two flats constitute one house property. The Ld. CIT(A) failed to appreciate the ratio laid down by Hon'ble Bombay High Court in the case of K C Kaushik vs. PB Rane Fifth ITO 84 CTR 62 wherein it was clearly concluded that if assessee purchases two house properties, he can claim exemption u/s 54 against any one of the properties.*
- b. *The builder cannot alter the BMC's approved plan without getting prior permission.*

3. We notice that the tax effect in this case is below Rs.10,00,000/- and as per the CBDT Circular No. 21 of 2015, dated 10/12/2015, the present appeal is not maintainable. Ld. Departmental Representative fairly admitted that the tax effect in this case is below Rs. 10 lacs.

4. We find that the issue raised in appeal does not fall under any of the exceptions specified in para 8 of the Circular. Since, it has been specifically clarified in the Circular aforesaid that the instruction will apply retrospectively to all the pending appeals; the present appeal filed by the revenue is not maintainable. We, therefore, dismiss the same *in limine*.

Order pronounced in the open court on 04th October, 2016

Sd/-

(B.R.BASKARAN)

ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 04/10/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / 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

Pramila