

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
ITA No.3152/M/2016 (AY 2009-2010)

Mrs. Shibani Gaiind, Flat No.2203, Meridian, Hiranandani Meadows, Pokhran Road No.2, Thane (W).	बनाम/ Vs.	Income Tax Officer, Ward 3(3), Mumbai.
स्थायी लेखा सं./PAN : AOMPG7613M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri B.N. Rao and Ms. Vyoma Rao
प्रत्यर्थी की ओर से/ Respondent by :	Ms. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 20.03.2017

घोषणा की तारीख /Date of Pronouncement : 24.03.2017

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 4.5.2016 is against the order of the CIT (A)-2, Thane dated 26.2.2016 for the assessment year 2009-2010. In this appeal, assessee raised the following ground which reads as under:-

"The Ld CIT (A) erred in upholding the order of the AO by disallowing the claim of long term capital gains under section 54 of the Act."

2. During the proceedings before the Tribunal, assessee raised an additional ground and the same reads as under:-

"The Ld CIT (A) erred in not admitting the appeal on account of short delay in filing of appeal by 16 days. He ought to have brought to the notice of the appellant during the course of hearing which could have been rectified immediately."

3. In connection with the above extracted additional ground, Ld Counsel for the assessee mentioned that the facts regarding the delay was not brought to the notice of the assessee by the CIT (A) before denying the admitting of the appeal. The details for the delay and the request for condoning is furnished before us vide letter dated 20.3.2017. Further, Ld AR submitted that the additional ground may be admitted and the issue may be remanded to the file of the CIT (A). Further also, Ld

AR submitted that the issue raised in the appeal gets covered in favour of the assessee by virtue of the Tribunal's order in the case of General Glass Co. P. Ltd vs. DCIT (2007) 108 TTJ 0854. The said Tribunal's order refers to the situation where the clauses of agreement provides for a condition upon which, on fulfilment of the same only, assessee gets rights on the property. Such legal proposition goes in favour of the assessee so far as the claim u/s 54 of the Act is concerned. CIT (A) while not admitting the appeal, adjudicated the issue on merits against the assessee by not attending to the above said argument of the assessee and the citations mentioned above.

4. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the cited decisions of the Tribunal (supra), I am of the view, the CIT (A) did not attend to the crucial argument of the assessee and merely ignored the said decision of the Tribunal (supra) by mentioning the cases relied upon by the assessee are distinguishable on facts. CIT (A) has not given the reasons as to which of the facts are distinguishable and how the ratio laid down by the said decisions are not applicable to the facts of the present case. Considering the same, I am of the opinion, the CIT (A) should be directed to admit the appeal and adjudicate the issue afresh after applying the said citations on the subject, if any, and after granting a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, regular ground and the additional ground raised by the assessee are allowed statistical purposes.

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

Order pronounced in the open court on 24th March, 2017.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 24.03.2017
व.नि.स./ OKK, Sr. PS

आदेश की 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**