<u>आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ ए , मुंबई ।</u>

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं** राजेन्द्र, लेखा सदस्य, के समक्ष ।

Before Shri Joginder Singh, JM and Shri Rajendra, AM

ITA NO.7876/MUM/2010 (A.Y. 2007-08)

Shri Khemchand Fagwani 51, Violet Villa, West Avenue, Santa Cruz (W) Mumbai-400 058.	<u>बनाम</u>/ Vs.	The ITO 4(1)(3) Room No.637A, Aayakar Bhavan, M.K. Road Mumbai-400 020.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी **की ओर से /Appellant by : Shri Hiro Rai**

प्रत्यर्थी **की ओर से /Respondent by : Shri Jeevanlal Lavadiya**

सुनवाई की तारीख / **Date of Hearing : 10.09.2014**		घोषणा की तारीख / **Date of Pronouncement : 10.09.2014**

<u>आदेश / O R D E R</u>

<u>PER JOGINDER SINGH (JM)/ *जोगिन्दर सिंह, न्यायिक सदस्य*</u>:

The assessee is aggrieved by the impugned order dated 21/09/2010 of the ld. First Appellate authority. Ground nos.1 and 2 pertains to disallowance of exemption u/s. 54 of the Act amounting to Rs.23,77,683/- which as per the assessee was without appreciating the details and submissions filed before the ld. CIT(A) for claiming such exemption.

2. During hearing of this appeal the ld. Counsel for the assessee, Shri Hiro Rai contended that sale proceeds were duly invested in purchasing

a residential flat at Thane, therefore, the assessee is entitled to claim exemption u/s. 54 of the Act. It was further submitted that letter of allotment along with proof of payment were duly submitted at assessment as well as First Appellate Stage. On the other hand Shri Jeevanlal Lavadiya-ld. DR defended the conclusion by submitting that the assessee did not produce any agreement with respect to the investment in the residential flat, therefore, the claimed exemption u/s. 54 of the Act was rightly denied.

2.1 We have considered the rival submissions and perused the material available on record. We note that the claimed exemption u/s. 54 of the Act was denied to the assessee by the ld. AO on the plea that assessee did not produce any purchase agreement with regard to investment in the residential flat at Thane. Still there is no dispute that an allotment letter dated 9/9/10 along with evidence of payment was duly submitted before the authorities. If the allotment letter and proof of payment is produced it cannot be said that the assessee did not invest in the purchase of new property. Section 54 of the Act speaks about investment of capital gains arising from transfer of a long term capital asset within a specified time. As per s/s. 2 to Sec.54 if such proceeds / capital gains, if not invested /utilized for purchase of new asset, within specific time then such proceeds will have to be deposited in a specified bank account and has to be utilized in any scheme which the Central Govt. notifies and proof of such shall be accompanied with the return. There is no requirement in the Act that necessarily the assessee has to produce the agreement more specifically when the letter of allotment along with proof of payment/investment was duly produced before the concerned authorities. The ratio laid down in *Smt. Jyothi K. Mehta (2001) 201 Taxmann 79 (Kar.), Smt. Sashi Verma, 224 ITR 106(M.P.), CIT vs. Smt. Brinda Kumari (2001) (114 Taxmann 266 (Del.), CIT vs. Smt. Bharti C. Kothar,i 244 ITR 352 (Cal.), CIT vs. Dr. Laxmichand Narpal Nagda 211 ITR 804 (Bom.), CIT vs. Shehzada Begum 173 ITR 379 (AP)* supports our view. In the case of Shehzada Begum it was held by the Hon'ble Andhra Pradesh High Court that date of taking over possession of property purchased (in the present case investment in the new property within the specified time) and not the registration of sale in favour of the assessee, is relevant for computing the prescribed time limit. To our mind to attract Sec.54 and Sec.54EC of the Act what is material is the investment of sale consideration in acquiring the new property or investment of the amount in bonds set out in sec.54EC is to be seen and once the sale consideration is invested in any of these manner the assessee would be entitled to the benefit conferred under this provision. In view of the available facts, clear position of provisions of the Act and the ratio laid down in the aforementioned judicial pronouncements the ground raised by the assessee is allowed.

3. The next ground pertains to levy of interest u/s. 234B of the Act for which the liability of the assessee was strongly denied. Since we have decided the claim of exemption u/s. 54 of the Act in favour of the assessee, therefore, levy of interest u/s. 234B of the Act is consequential in nature.

4. Finally the appeal of the assessee is allowed.

Order pronounced in the open court in the presence of ld. Representative from both sides at the conclusion of the hearing on 10th Day of September, 2014 .

आदेश की घोषणा दिनांकः 10.09.2014 को की गई ।

Sd/-	Sd/-
(Rajendra)	**(Joginder Singh)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 10th Sept. 2014.
JV.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)-13, Mumbai
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**