

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
MS. KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER**

ITA NO.7906/MUM/2019 (A.Y: 2014-15)

Farooq Abdulla Merchant A-1401, Poseidon Tower Versova, Yari Road Above Indian Bank, Versova Andheri (W), Mumbai - 400061 PAN: AHUPM7426K (Appellant)	V.	Income Tax Officer- Ward – 23(1)(4) Matru Mandir, Tardev Road Mumbai – 400 007 (Respondent)
---	----	---

Assessee Represented by	:	Shri Vimal Punamiya
Department Represented by	:	Smt. Vranda U. Matkarni
Date of conclusion of Hearing	:	03.02.2023
Date of Pronouncement	:	02.05.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-32, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 06.11.2019 for the A.Y.2014-15.

2. Brief facts of the case are, assessee filed his return of income declaring a total income of ₹.5,85,330/- on 14.07.2015. The case was

selected for scrutiny and notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response AR of the assessee attended and submitted the relevant information as called for.

3. Assessee is an individual and earned income from capital gain and Income from Other Sources. During the assessment proceedings Assessing Officer observed that assessee has sold an immovable property at Bandra (752, Bait Ul Noor, New Kantwadi Road, Bandra West, Mumbai-400050) along with Mrs. Jamila Abdulla Merchant and Mr. Md. Abdulla Merchant for a total sale consideration of ₹.22,00,00,000/-. Out of the total sales proceeds, the assessee has received ₹.13,00,00,000/-, as he is having 59% share in the property as per the submission made by the assessee. When the Assessing Officer asked the assessee to substantiate the capital gain earned on sale of the property and relevant deduction claimed u/s 54 of the Act, the assessee submitted three types of computation of capital gain earned vide email dated 27.09.2016, 11.08.2016 and 07.12.2016. The Assessing Officer considered and taken for computation of capital gain which was filed vide email dated 11.08.2016 for assessing the income of the assessee. The same is reproduced in Page No. 2 of the Assessment Order.

4. After verification of the above computation, Assessing Officer observed that assessee has claimed expenses of ₹.21,01,981/- as commission, ₹.3,00,00,000/- as share to brothers and ₹.5,81,71,050/- as cost of acquisition of asset. After, claiming these expenses, assessee has earned capital gain of ₹.3,97,26,969/-, out of which ₹.3,97,11,025/- was invested in two residential properties at Mumbai and Pune.

5. Further, Assessing Officer observed that assessee also claimed ₹.17,00,000/- as legal fees in his computation of income filed on 07.12.2016. However, the said computation of income is not being considered here and also the assessee has not claimed the said expenses in his return of income. According to him, there is no need to further discussion on this issue.

6. With regard to deduction claimed u/s. 54 of the Act, Assessing Officer observed that as per the section, in order to claim the deduction, one has to invest the amount of capital gain for the purchase of a residential house, within the time limit prescribed, however, in this case the assessee has invested in two residential properties one at Mumbai and other at Pune. Further, he observed that assessee has also claimed ₹.1,62,70,225/- as addition made to the new houses, by observing the

above, assessee was show caused as to why the above said expenses and deductions claimed u/s.54 should not be disallowed.

7. In response, Ld. AR of the assessee vide reply dated 21.12.2016 submitted as under: -

"This is with reference to my aforesaid client's scrutiny assessment for the assessment year 2014-15 and in connection with show cause dated 15.12.2016, under my client's instruction I have to state that:

1. Section 54 of the Income Tax, 1961: Allowability of 2 Houses u/s 54-

Section 54 of the Income tax Act, 1961 states subject to the provision of sub-section(2) where in the case of an assessee the capital gain arises from the transfer of a long term capital asset being building & land appurtenant thereto and being a residential house, the income of which is chargeable under the head income from house property and the assessee has within a period of one year before or two year after the date on which the transfer took place purchased or within a period of three year after that date constructed a residential house, then instead of the capital gain being charged to Income tax as income of the previous year in which the transfer took place.

To reiterate in the aforesaid definition nowhere specified one residential house, definitely we can invest in more than one residential house.

Plain reading of the provision of section 54(1) of the Income Tax Act disclose that when an individual assessee or HUF-assessee sells a residential building or land appurtenant thereto he can invest capital gain for purchase of residential building to get exemption of the capital gain tax, section 13 of the general clause act declares that whenever the singular is used for a word, it is permissible to include the plural.

The Phrase 'a' residential house would mean one residential house does not approve to the correct understanding. The expression 'a' residential house should be understood in a same that building should be a residential in nature and 'a' should not be understood to indicate a singular number.

Considering the purpose of section 54 it appears that the provision should be interpreted liberally in a purpose seeking approval. Strict and literal interpretation may render the section non-workable in many circumstances. In the same context meaning which have emphasized above my client had Invested in 2 house one at versova and another at pune. Both are residential houses which is literally allowed under section 54 of the income Tax Act, 1961.

2. Commission expenses of Rs.2101981/-: *Commission has been paid by my client is Rs.2101981/- for the purpose of sale of Bandra Flat, which has been fully affirmed by the agent which has been incurred by my client, which has been properly claimed by my client, even legal fees paid to Mr. Subhash Pradhan & Mr. Kishore Tambe from my client, which has been defined in letter itself of Bandra property with equally allowable deduction under capital gain.*

3. 30000000 being share of brother Shri Mansoor A. Merchant and Mr. Kassam A. Merchant *claimed deduction under capital gain according to the MOU.*

Mr. Mansoor A. Merchant and Mr. Kassam A. Merchant had legal right in the property which were capable of creating complication, the assessee had to sell the property as per the consent term with the court due to impediment by the assessee's father, if not for MOU was entered which could have been defeated the sale and resulting into complication. Therefore the payment of Rs.3 Crore to the two brothers.

Two brother had legal rights in the property which were capable of creating complication, the assessee had to sell the property and after no objection were given by the 2 brothers and after MOU with the brothers to relinquish right and title.

4. Addition to the flat Rs.15306685: *Addition to the asset the bills which were given were for addition to the assets purchased which were with the norms.*

The words used about the amount spent on purchase of new asset are cost thereto and not price thereto, the cost includes purchase as well. Consequently the words used signify that the amount of purchase will Include other necessary expenditure in this behalf to make a residential house habitable and taken together that will be the cost of the new asset. The residential house which was purchased was inhabitable consequently the necessary expenses carried to make the same habitable would contribute part of the cost of the new house.

5. *As required by you we submit herewith 2 of the property sold."*

8. After considering the submissions of the assessee, Assessing Officer with regard to deduction claim made by the assessee u/s. 54 of the Act, Assessing Officer rejected the submissions made by the assessee by interpreting the word "a" to mean that "2" properties is eligible to claim deduction u/s.54 of the Act by relying on General Clause of the Act and he, accordingly, allowed the claim made by the assessee to the extent of one property in Mumbai and proceeded to restrict the disallowance to the extent of ₹.1,15,82,440/-

9. With regard to claim of commission expenses of ₹.21,01,981/- which is paid to Mr. Pankaj M Asher, Assessing Officer observed that, assessee has submitted the commission was paid for the purpose of sale of Bandra Flat in order to verify the same a show cause notice u/s. 133(6) of the Act was sent to Mr. Pankaj M Asher to verify the genuineness of the transaction. In response, Mr. Pankaj M Asher submitted his reply vide letter dated 13.12.2016 and confirmed the same. After considering the above, Assessing Officer after perusal of the sale deed dated 24.12.2013, he found that, the assessee received 59% of the total sales consideration,

as per his share. Therefore, he allowed the commission expenses claimed by the assessee only to the extent of 59% i.e. 12,40,169/-.

10. With regard to claim of expenses on account of share to brothers of ₹.3,00,00,000/-, assessee has submitted that his brothers Mr. Mansoor A Merchant and Mr. Kassam A. Merchant who were having legal right in the property and for which the assessee has entered into an MOU with the brothers. Assessing Officer observed from the submissions made by the assessee that both Mr. Mansoor A Merchant and Mr. Kassam A. Merchant had legal right in the said property and for which the assessee was entered into MOU with his brothers.

11. In order to verify the claim of the assessee, Assessing Officer perused the sale agreement whether Mr. Mansoor A Merchant and Mr. Kassam A. Merchant had any legal right in the said property or not. On perusal of the sale deed and terms of agreement made between the vendors & purchasers, he observed that there are two vendors and a co-owner only and they are Mr. Farooq A Merchant, Mrs. Jamila A Merchant and Md. Abdulla E Merchant, as a co-owner. There is nothing in the deed which confirms that Mr. Mansoor A Merchant and Mr. Kassam A. Merchant ever had any legal right in the said property. However, Assessing Officer

himself observed that at Page No. 24 (Point No.3) of the sale deed, he observed that it is mentioned as under: -

"it is agreed between the parties that the Vendors will obtain at their own costs Declaration as drafted by the Advocates of the Purchaser from (1) Mansoor Abdulla Merchant (2) Kassam Abdulla Merchant and (3) Miss. Ayesha Downs and all other person or persons as may be found necessary by the Purchaser confirming the sale of the said property by the Vendors and the said Co-owner to the Purchaser."

12. By observing the above, Assessing Officer observed that, it is evident that Mr. Mansoor A Merchant and Mr. Kassam A. Merchant have no legal right in the said property. However, it is mentioned that, if found necessary, the vendors will obtain declaration from them. So he observed that, the claim of the assessee that they had legal right in the said property, is not tenable. When there is no legal right, the assessee cannot claim the payment made to brothers as an expense incurred wholly and exclusively for transfer of the property. Further, he observed that on enquiry whether the payment made to the brothers along with their return of income to be filed, in order verify whether they have offered any capital gain of the sale consideration received. However, the assessee has submitted that he has made payment of ₹.67 lakhs and ₹.10,00,000 to Mr. Mansoor A. Merchant and Mr. Kassam A. Merchant respectively. Accordingly, Assessing Officer disallowed the claim made by the assessee.

13. With regard to claim of addition made to the new house, Assessing Officer observed that from the computation submitted by the assessee that assessee has also claimed ₹.1,62,70,225/- as cost of new assets. Assessing Officer observed that vide order sheet dated 08.12.2016 and 15.12.2016 assessee was asked to submit the details of expenses along with the payment details. In response assessee vide letter dated 14.12.2016 has only submitted from Mr. Laxmanji Mistry, Apte Electrical Work and Md. Idris for Mumbai Property. Assessing Officer observed that out of the total bills, bills to the tune of ₹.1,44,43,250/- are related to Mumbai property and rest of the expenses are related to Pune property.

14. On verification of the above said bills submitted by the assessee, Assessing Officer observed that in one of the bills of Md. Idris, there is no signature and with regard to other bills they are not seems to be genuine and the assessee was show-caused why the above expenses should not be disallowed. In response assessee vide letter dated 21.12.2016 submitted that the words used about the amount expenditure on purchase of new asset are cost thereto and not price there to, the cost includes purchase as well. Further, assessee has stated that the amount of purchase will include other necessary expenditure in this behalf to make a residential house habitable and taken together that will be cost of new

assets. The residential house which was purchased was inhabitable consequently the necessary expenses carried to make the same habitable would contribute part of the cost of the new house.

15. After considering the above submissions, Assessing Officer observed that assessee has incurred ₹.1,44,43,250/- to make the new flat habitable which was purchased at a cost of ₹.1.10 Crores. In order to verify the bills submitted by the assessee, Assessing Officer deputed Inspector to serve a summon u/s. 131 of the Act dated 23.12.2016 to Mr. Laxman Mistry who was given bill of ₹.1,34,17,373, for furnishing his Books of Accounts and to record his statement, as he did major work for the assessee. However, Inspector submitted his report that Mr. Laxman Mistry is not found on the said address.

16. Subsequently, Assessing Officer given an opportunity to assessee to bring on record Mr. Laxman Mistry with his Books of Accounts and to record his statement on 28.12.2016. However, neither the assessee nor Mr. Laxman Mistry has appeared to submit the required details. Accordingly, he found the whole expenditure claimed by the assessee are not genuine. Accordingly, he disallowed the same and he computed the taxable capital gain at ₹.5,90,06,341/-.

17. In the result, Assessing Officer has partly allowed the commission expenditure to the extent of assessee's share, rejected the payment made to assessee's brothers to the extent of ₹.3 crores, allowed the exemption u/s. 54 of the Act only to the extent of one house and rejected the addition made to the new house to the extent of ₹.1,62,70,225/-.

18. Aggrieved assessee, preferred an appeal before the Ld.CIT(A) and filed detailed submissions before him. After considering the submissions of the assessee, Ld.CIT(A) rejected the deduction claimed by the assessee u/s. 54 of the Act and sustained the view taken by the Assessing Officer, in this regard. With regard to legal expenses claimed by the assessee he sustained the additions made by the Assessing Officer. With regard to settlement payment to brothers, Ld.CIT(A) sustained the additions made by the Assessing Officer. With regard to additions made to the new house Ld.CIT(A) has partly allowed the claim made by the assessee with the following observations: -

"9.3 Decision: I have considered the A.O's order, appellant submission and details filed and the remand report.

I find that M/s Vardhan Builders, a partnership firms has entered into an agreement for sale /transfer of Flat no. 1401 A wing (carpet area admeasuring 33.75 sq. meters.) in the building Poseidon at Versova Andheri, with appellant on 4.04.2014 for the price of Rs.110,00,000/- which is inclusive of common areas, and amenities. Payment by cheque no. 27383 dated 14.02.2014 has been received by the said

builder. From the bank account it is noticed that the appellant has made a payment of Rs. 3 crores to the said builder which is legalized on 15.02.2014. From the details filed of computation of income of the appellant's mother Mrs. Jamila A. Merchant, it is noted that she has made an investment in purchase of flat no. 1402, A Wing, Poseidon, Versova, Andheri for an amount of Rs. 1.90 crores and the amount paid by the appellant to the builders thus includes the payment on account of purchase by his mother Mrs. Jamila A. Merchant.

9.3.1 Another agreement for purchase of a flat (1101 in building no. B5 admeasuring 1085.98 sq.ft.(100.89sq.mtrs) at Pune) was made by the appellant for a consideration of Rs.109,34,700/- with Tuscan Real Estate P. Ltd. The appellant has claimed expenses on renovation of this flat at Pune amounting to Rs. 18.27 lacs. The same cannot be allowed as a deduction since it has been held while deciding ground no.3 in para 5.3.4. above, that appellant's claim for deduction u/s. 54 has to be restricted to only one house i.e. investment in the house at Mumbai.

9.3.2 The A.O has denied the claim of expenditure on renovation of the flat at Mumbai on the ground that various bills submitted by the appellant from Laxmanji Mistry, Apte Electricals and Mohammed Idris etc. were not verifiable with supporting evidence. Even in the remand proceedings, the appellant has not been able to substantiate the said so called bills with supporting evidence and has merely filed a list of payments made by way of cash/cheque for a period ranging from 02.05.2013 to 27.08.2015, although the property at Mumbai was purchased vide agreement dated 04.04.2014. The appellant's submission that possession of the flat was taken on 02.05.2013 is not substantiated by any evidence. The provision of section 54(2) provides that the amount of capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date of which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income u/s 139, shall be deposited by him before furnishing such return (such deposits being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of Income under sub section 1 of section 139) in any such bank of institution as specified in the Capital Gains Accounts scheme 1998 and such return shall be accompanied by proof of such deposit, and, for the purposes of sub section 1, the amount if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset. In view of the above provisions, I am of the considered opinion that the expenses which the appellant has

incurred by appropriating the capital gain in the investment of new asset and its renovation in the present facts of the case can be considered for the period 04.04.2014 to 31.07.2014 (ie the due date of filing of return). Expenses subsequent to that date cannot be considered for allowing the benefit u/s. 54 considering that the appellant has not made any deposit in the capital gains account in respect of the capital gain which was not appropriated towards the purchase/construction of new asset.

9.3.3 I find that the bills submitted by the appellant are more in the nature of estimate and appear to be exaggerated in view of the following facts:

i. The appellant has purchased the flat at Versova, Mumbai whose carpet area as per the agreement is 33.75 sq.mts which in terms of sq.ft is 363,28 sq. ft. The appellant has claimed renovation expenses of Rs. 18.27 lacs for the Pune fat having area of 1085.98 sq.mts whereas it has claimed such renovation expenses for the Mumbai flat having an area of 363 sq.ft. of Rs. 144,43,250/-

On perusal of the bills, it is observed as under:

a. Bill of Laxmanji Mistry dated 5th June, 2014 for Rs.134,17,379.92 in which at the bottom it is noted that payments of above bill have been made by cash/cheque and bank transfer by Farooqbhai or Laxmanji. The bills enclosed give a description of various works, unit, rate and amount which include breaking work Rs. 707,470/-, balcony area breaking work Rs. 97,000/-, new civil work -Rs. 59,31,00/-, balcony slab work- Rs. 992,700/- polymer and plaster work- Rs. 11,85,000/-, false ceiling - Rs. 450,440/-, painting work Ra. 471,160/-, aluminum window work Rs. 225,050/-, Plumbing with labour and raw material-Rs. 171,000/-, Bathroom material Rs. 743,157/-. Further remark is given that total amount due for the work completed-Rs. 11,003,937/-. These description are not supported by actual bills and vouchers or payment made for the purchase of these items and work although appellant has submitted that some of the payments have been made by cash/cheque withdrawal from his bank account with ICICI Dank. From the description of the detailed items of work, the work stated to have been done in sq.ft appear to be excessive compared to the dimension of the total flats which is 363.28 sq.ft. For instance painting work, full that ceiling paint with beam drop is stated to be for 1800 sq.ft., flooring covering POP with plastic and then cleaning and washing

whole flat is stated to be for 200 sq ft. Similarly, the other dimensions mentioned in square feet do not appear to be in line with the dimensions of the flat purchased and these bills cannot be relied upon.

b. Bill of Apte Electrical Work is dated 02.04.2014 for electrical works at Versova House amounting to Rs. 592,570/-with the note that switches, sockets, light fittings, ELCB circuit breaker, DB to be provided by the owner. Some of the items showing quantity and description are as under:

Light point 146 nos

Fan Hook providing and fixing 15 nos

Light and fan fixing 121 nos (these numbers appear to be excessive if considered for only one flat of 363.28 sq.ft.

c. Bill of Mohammed Idris dated 13.04.2014 which is unsigned as noted by the A.O. The appellant's submission that he has not signed the bill since he is any illiterate person is not acceptable since in such cases the signature is replaced by thumb impression. Further, the said bill gives the description for work of Gypsum Board Ceiling as under:

Hall-515.7 sq.ft.

Kitchen - 143.55 sq.ft.

Bathroom 216.29 sq.ft. -

Bedroom 1-314.39 sq.ft

Bathroom ceiling-51,37 sq.ft.

Bedroom 2174.70 sq.ft.

Bedroom master-252.71 sq.ft

Total 1668.716 sq.ft.

These bill/estimate for the work is clearly excessive considering that the appellant's flat has carpet area of 363.28 sq.ft.

9.3.4 As noted in para 9.3, the appellant has paid the purchase price of Rs.1.9 crores, on behalf of his mother to M/s Vardhan Builders by a single cheque dated 14.02.2014 for purchase of flat by her. The

appellant held the Power of Attorney from his mother to act on her behalf. No expense has been claimed by his mother in respect of the renovation expense of her flat, as per the computation of income for the income tax return in her case for A.Y 2014-15. Considering these facts, it is inferred that the appellant has incurred the renovation expense in respect of his flat as well as that of his mother, at the same building in Versova, Andheri and therefore, it would be reasonable to allow 50% of the expenses for which payment has been made during the period of 04.04.2014 to 31.07.2014. From the list of payment made from the appellant's bank account by way of cheque/cash, I find that an aggregate amount of Rs. 19,69,733/- has been claimed to have been paid for the renovation expense for hardware, marble/granite, electrical works, ceramics etc. during the period of 04.04.2014 to 31.07.2014. Accordingly, I am of the considered opinion that benefit of deduction of Rs.9,84,866/-, on account of expenditure on renovation to the house purchase should be allowed (50% of Rs. 19,69,733/-) to the appellant while computing the deduction u/s. 54 of the Act. The A.O is directed to allow deduction of Rs. 984,866/- on account of investment in the said house property and recompute the taxable long term capital gains. This ground is partly allowed."

19. Aggrieved assessee is in appeal before us raising following grounds

in its appeal: -

"DISALLOWANCE OF EXEMPTION CLAIMED U/S. 54 OF THE INCOME TAX ACT, 1961"

1.1 On the facts and in the circumstances of the case, and in law, the Commissioner of Income tax (Appeals) -32, Mumbai (hereinafter referred to as "the CIT(A)") erred in confirming the disallowance of exemption claimed by the Appellant under section 54 of the Income tax Act, 1961 (hereinafter referred to as "the Act") in of long term capital gains being invested in the second residential property at Pune.

1.2 On the facts and in the circumstances of the case, and in law, the erred in holding that the Appellant was not entitle to exemption under Section 54 of the Act with respect to the investment in flat situated at Pune.

1.3 While doing so, the CIT (A) failed to appreciate that exemption under Section 54 of the Act could not be denied to the assessee if, he purchases or constructs more than one residential house out of sales proceeds of a residential house.

II. DISALLOWANCE OF RS.13,00,000/- BEING THE LITIGATION EXPENSES INCURRED IN RESPECT OF THE SALE OF DISPUTED PROPERTY

2.1 On the facts and in the circumstances of the case, and in law, the CIT(A) erred in disallowing Rs.13,00,000/- out of total legal expenses paid of Rs.21,00,000/- with respect of the sale of capital asset.

2.2 On the facts and in the circumstances of the case, and in law, the CIT(A) erred in estimating the legal expenses of Rs.8,00,000/- pertaining to the transfer of the property being the Appellant's share.

2.3 On the facts and in the circumstances of the case, and in law, the CIT(A) failed to appreciate that the Appellant's mother or his brothers have not claimed deduction of the legal expenses incurred towards sale of capital asset in their returns of income.

2.4 Without prejudice to the above and without admitting, the Appellant's share in the sale of the said property is 59%, therefore, the Appellant is entitled to claim atleast 59% of the said legal expenses.

III. DISALLOWANCE OF COMMISSION EXPENSES OF RS.8,61,812/-

3.1 On the facts and in the circumstances of the case and in law the CIT(A) erred in disallowing Rs.8,61,812/-out of total commission expenses paid of Rs.21,01,981/- incurred by the Appellant with respect to the sale of capital asset.

3.2 On the facts and in the circumstances of the case, and in law, the CIT(A) erred in allowing only 59% out of the commission expenses Rs.21,01,981/- pertaining to the transfer of the property being the Appellant's share.

3.3 On the facts and in the circumstances of the case, and in law, the CIT(A) failed to appreciate that the Appellant's mother or his

brothers have not claimed deduction of the commission expenses incurred towards sale of capital asset in their returns of income.

IV. DISALLOWANCE OF RS.3,00,00,000/- BEING THE SHARE OF TWO BROTHERS PAID IN RESPECT OF THE SALE OF THE DISPUTED PROPERTY.

4.1 *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in disallowing a sum of Rs.3,00,00,000/- being the share of two brothers of the Appellant in the sale proceeds of the capital asset.*

4.2 *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in holding that the brothers of the Appellant had no legal right in the said property and therefore, the amount paid to them cannot be allowed as a deduction while computing the long-term capital gains.*

4.3 *On the facts and in the circumstances of the case, and in law, the CIT(A) failed to appreciate that the capital asset sold during the year was ancestral property belonging to the parents of the Appellant and thus, all of their legal heirs (i.e. the Appellant, his sister and his two brothers) had a right to receive their share on the sale of the said property.*

V. DISALLOWANCE OF RS.1,52.85.259/- BEING THE EXPENSES INCURRED FOR THE RENOVATION/REPAIR OF THE NEW FLAT

5.1 *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in disallowing Rs.1,52,85,259/- out of Rs.1,62,70,225/- being the renovation/repair expenses incurred in respect of the new residential property.*

5.2 *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in holding that expenses only to the tune of Rs.19,69,733/- has been incurred by the Appellant for the repairs/renovation and out of that also only 50% has been incurred in respect of the Appellant's new residential unit.*

The Appellant craves leave to add, alter, amend, modify or delete any of the above grounds of appeal."

20. At the time of hearing, Ld. AR of the assessee submitted its written submissions, for the sake of clarity it is reproduced below: -

"First of all, appellant would like reproduce the Computation of Long Term Capital Gain on sale of Property located at Bandra West as follows: -

	Particulars	Amount in Rs.
	Sales Proceeds	130,000,000
Less:	Commission	2,101,981
	Share of Brother	30,000,000
	Legal Fees	2,100,000
		95,798,019
Less:	Indexed Cost of Acquisition (61,95,000*939/ 100)	-58,171,050
		37,626,969
Less:	Exemption u/s 54	23,440,800
	Renovation Expenditure	14,170,225
	Lon Term Capital Gains	15,944

Ground No. 1

DISALLOWANCE OF EXEMPTION CLAIMED U/S. 54 AMOUNTING TO RS.1,18,58,360/- OF THE INCOME TAX ACT, 1961

The Ld CIT(A) has erred in confirming the disallowance of exemption claimed under section 54 of the act of purchase of immovable property situated at Pune on the basis of the following reason

"Exemption can be claimed in respect of only one property and hence the exemption is granted only in respect of Mumbai property"

Our Objections

- On the facts and in the circumstances of the case, and in law, the Commissioner of Income tax (Appeals) -32, Mumbai (hereinafter referred to as "the CIT(A)") erred in confirming the disallowance of exemption claimed by the Appellant under section 54 of the Income tax Act, 1961 (hereinafter referred to as "the Act") in respect of long term capital gains being invested in the second residential property at Pune.*

- *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in holding that the Appellant was not entitled to exemption under Section 54 of the Act with respect to the investment in flat situated at Pune.*
- *While doing so, the CIT (A) failed to appreciate that exemption under Section 54 of the Act could not be denied to the assessee if, he purchases or constructs more than one residential house out of sales proceeds of a residential house.*
- *Prior to A.Y. 2015-16 there were no restriction on number of property to be purchased and to claim the exemption under section 54 of the act*
- *From A.Y. 2015-16 the amendment was introduced where the word "a house" was replaced with "one residential house property".*
- *Hence from the aforesaid it can be stated that prior to such amendment the benefit under section 54 can be used and extended to the purchase multiple houses*
- *The Appellant had received and declared Rs.13 crores as his share for capital gain tax purposes. Further, the Appellant had purchased two flats one at Versova, Mumbai purchased on 04.04.2014 for Rs.1,15,82,440/- including Stamp duty and registration charges and another at Pune, Kharadi purchased on 17.02.2014 for Rs.1,18,58,360/- including Stamp duty and registration charges aggregating to Rs.2,34,40,800/-. Thus, the Appellant had purchased two houses. The Ld A.O. has allowed the exemption under section 54 in relation to the property purchased at Versova, Mumbai and denied in case of Pune Property.*

(Copy of Agreement of purchase of Pune property enclosed in paper book page no. 49-108)

- *Before your Honor, the Appellant states and submits that the amendment to Section 54 was brought into effect from the Asst. Year 2015-16 by the Finance (No.2) Act, 2014 w.e.f. 1.4.2015 wherein, the words construed a residential house had been replaced with "one residential house".*

- *The Ld. CIT(A) erred in confirming the Disallowances of exemption disregarding the facts the property were purchased before the said amendment and hence prior to said amendment, the exemption used to be allowed on multiple houses or even more so as to fully exhaust the amount of capital gains and such benefit were also allowed on various other factors such as looking to the size of family. After amendment, the picture is totally different.*
- *The Appellant states and submit that Section 54 is a beneficial provision, a liberal interpretation is called for.*
- *Section 54 has to be read in conjunction with section 13 of the General Clauses Act, 1987 which proclaims that the term "singular" shall include "plural" and vice-versa as held in:*
- *In regards to the same relies on the following case laws*

CASE LAW	CITATION
<i>The Judgement of ITAT, New Delhi, in case of Sunandan Kumar Minocha V. ITO, Ward 63(1) (Copy of Order enclosed in Paper book Page No. 125-132)</i>	<i>"Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residential purpose It was held the assessee is eligible for claim of 3 different residential houses and amendment brought in the Finance Act, 2014 w.e.f. 01.04.2015 will not be applicable for A.Y. 2013-14"</i>
<i>The Judgment of High Court of Madras, in case of Tilokchand & Sons V. Income Tax Officer, Ward-II (4), Madurai. (Copy of Order enclosed in Paper book Page No. 133-152)</i>	<i>"Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residential purpose - Assessment year 2005-06 - Whether word a residential house t as occurring in section 54(1) can include more than one or plural residential house - Held, yes Whether where assessee HUF sold its residential house and invested capital gain in purchasing more than one residential houses within stipulated time limit, assessee would be entitled to benefit of exemption under section 54 - Held, yes"</i>

CASE LAW	CITATION
<i>The Judgment of ITAT Mumbai, Nilufer Income in case of V. Sayed Tax Officer- 25(3)(5), Mumbai. (Copy enclosed of in Order Paper book Page No. 153-161</i>	<i>"Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence (Residential house - Position prior to 1-4-2015) - Assessment year 2011-12 - Whether word 'residential house' as occurring in section 54 can include more than one or plural residential house - Held, yes</i>
<i>The Judgment of High Court of Karnataka, in case of Arun K. Thiagarajan V. Commissioner of Income Tax (Appeals)- 11 (Copy of Order enclosed in Paper book Page No. 162- 170)</i>	<i>"Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence (Residential house, connotation of) Assessment year 2003-04 - Whether for purpose of allowing benefit of deduction under section 54(1), in respect of purchase of two properties, assessee's claim for deduction was to be allowed - Held, yes"</i> <i>Whether, in view of aforesaid legal position, where assessee earned capital gain from sale of a residential property and claimed deduction under section 54(1) in respect of purchase of two properties, assessee's claim for deduction was to be allowed - Held, yes</i>
<i>The Judgment of ITAT Delhi, in case of Saroj Arora V. Income Tax Officer. (Copy enclosed of in Order Paper book Page No. 171-179</i>	<i>"Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence (One Residential house) - Assessment year 2013-14 - During year, assessee had received long term capital gain (LTCG) on sale of a residential property which was set-off towards purchase of two residential properties Accordingly, assessee sought exemption under section 54. Assessing Officer in view of amended provision of section 54 restricted assessee's claim to purchase value of only one property having higher value Whether since amendment to provision of section 54 restricting deduction allowed under section 54</i>

CASE LAW	CITATION
	<i>to only one residential property was applicable prospectively from 1-4-2015, exemption claimed by assessee under section 54 during assessment year 2013-14 would not fall within ambit of amended provision - Held, yes. Whether, therefore, assessee was entitled to benefit of exemption under section 54 to extent of value of two residential house properties and not just one - Held, yes</i>
<i>The Judgment of ITAT Mumbai, in case of Nilesh Pravin Vora & Yatin Pravin Vora V. Income Tax Officer. (Copy of Order enclosed in Paper book Page No. 180-184)</i>	<i>"Section 54 of the Income-tax Act, 1961 Capital gains Profits on sale of property used for residence (One house, connotation of position prior TO 1-4-2015) - Assessment year 2009-10 - Deduction under section 54 is allowable in respect of purchase of two flats"</i>
<i>The Judgment of High Court of Karnataka, in case of Commissioner Income-tax v. Khoobchand M. Makhija (Copy of Order enclosed in Paper Book Page No. 185-199)</i>	<i>"Section 54 of the Income-tax Act, 1961, read with section 13 of the General Clauses Act, 1897 - Capital gains Profit on sale of property used v. for residential house (Acquisition of more than one house property) - Assessment year 1996- 97 - Whether if amount of capital gain is deposited enclosed in Paper in nationalized bank as required book unutilized capital gain chargeable under section 45 is to be offered for tax only in previous year in which period of three years from date of transfer of original asset expires - Held, yes - Whether letter 'a' in expression 'a residential house', used in section 54 should not be construed as meaning singular, but being an indefinite article, said expression should be read in consonance with other words 'buildings and lands' - Held, yes - Whether therefore, 'a residential house' also permits use of plural by virtue of section 13(2) of General Clauses Act - Held, yes -</i>

CASE LAW	CITATION
	<i>Assessee sold his residential house and invested sale consideration in purchasing two residential houses for his two sons - Whether acquisition of two residential houses by assessee out of capital gains would fall within phrase 'a residential house' and, accordingly, assessee was entitled to benefit conferred under section 54(1) - Held, yes"</i>

Ground No. 2**Disallowance of ₹.13,00,000/- being the litigation expenses incurred in respect of the sale of disputed property**

- *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in disallowing Rs. 13,00,000/- out of total legal expenses paid of Rs.21,00,000/- with respect of the sale of capital asset.*
- *On the facts and in the circumstances of the case, and in law, the CIT (A) erred in estimating the legal expenses of Rs.8,00,000/- pertaining to the transfer of the property being the Appellant's share.*
- *On the facts and in the circumstances of the case, and in law, the CIT (A) failed to appreciate that the Appellant's mother or his father have not claimed deduction of the legal expenses incurred towards sale of capital asset in their returns of income.*
- *Without prejudice to the above and without admitting, the Appellant's share in the sale of the said property is 59%, therefore, the Appellant is entitled to claim 100% of the said legal expenses which is incurred on sale of his share of 59%*
- *In the sale transaction, the Appellant was in charge of carrying out the entire transaction right from meeting parties. Meeting various expenses paying compensation till the stage of complying to registration formalities and handing over possession.*
- *The Appellant had paid by cheques to Shri Subhash Pradhan, Solicitor and Advocate -Rs. 16 lakhs and Shri Kishore També -Rs.5 lakhs in connection with sale transactions. (Copy enclosed in paper book page no 109-113).*

- *The Appellant had single handedly carried out the entire sale transaction by incurring various needful expenses in connection with the transaction of sale. Accordingly, the legal expenses was incurred for Rs.21 lakhs as payment made to Subhash Pradhan, Solicitor and Advocate and Shri Kishore Tambe.*

Ground No. 3

DISALLOWANCE OF COMMISSION EXPENSES OF RS.8,61,812/-

- *On the facts and in the circumstances of the case and in law the CIT(A) erred in disallowing Rs.8,61,812/- out of total commission expenses paid of Rs.21,01,981/- incurred by the Appellant with respect to the sale of capital asset.*
- *On the facts and in the circumstances of the case, and in law, the A.O. erred in allowing only 59% out of the commission expenses Rs.21,01,981/- pertaining to the transfer of the property being the Appellant's share.*
- *On the facts and in the circumstances of the case, and in law, the CIT(A) failed to appreciate that the Appellant's mother or his father have not claimed deduction of the commission expenses incurred towards sale of capital asset in their returns of income as this was paid by appellant on his 59% share.*
- *Further, an amount had been paid to Shri Pankaj Ashar as commission expenses on the transfer and sale. The Ld. A.O. issued notice u/s. 133(6) to the said Pankaj Ashar. The said Shri Ashar had submitted his reply on 13.12.2016 and he had confirmed the same (Copy Enclosed in Paper Book Page No 123-124)*
- *As per court direction the amount of Rs.21,01,981/- was totally incurred by the Appellant and the receipts are identified and the parties have confirmed, the entire amount spent by the Appellant. The Assessing Officer does not deny or doubt the quantum of expenditure but restricts the allowance to 59%.*
- *As noticed from the computation of income, the Appellant had received his share of consideration at 59%, the Assessing Officer after completely satisfied with the genuineness of particular expenditure has restricted the claim to the extent of 59% only which comes to Rs. 12,40,169/ and the balance amount of Rs.8,61,812/ was not allowed.*

- *The Appellant states and submits that the Appellant having found no alternative to raise funds and pay off his erring father as per the direction of Court Order, had single handily carried out the entire sale transactions. Entire expenses and/or compensation incurred were at the instance of the Appellant. At the same time, it is not the case of the Assessing Officer that his father and his mother had claimed their respective share of expenses while filing their respective returns.*
- *The same can be verified. As the entire transaction of sale was carried out by the Appellant, on the same footing entire expenses incurred deserves to be allowed only in the hands of the Appellant. Thus, if becomes a legitimate claim in the case of the Appellant. Literally, as the Assessing Officer accepts the legitimacy of entire expenses and when other two co-owners have not claimed any expenses, the same has only to be allowed in the hands of the Appellant. For correct computation of capital gains, expenses incurred are to be identified and allowed. Thus it is not the case of the Assessing Officer that other two co-owners have claimed any part of their respective share of expenses, thus there is legitimate and bonafide nature of this particular expenses incurred wholly and exclusively for the sale transaction which deserves to be allowed in full in the case of the appellant.*

Ground No. 4

DISALLOWANCE OF RS.3,00,00,000/ BEING THE SHARE OF TWO BROTHERS PAID IN RESPECT OF THE SALE OF THE DISPUTED PROPERTY

- *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in disallowing a sum of Rs.3,00,00,000/- being the share of two brothers of the Appellant in the sale proceeds of the capital asset.*
- *On the facts and in the circumstances of the case, and in law, the CIT(A) erred in holding that the brothers of the Appellant had no legal right in the said property and therefore, the amount paid to them cannot be allowed as a deduction while computing the long term capital gains.*
- *On the facts and in the circumstances of the case, and in law, the CIT(A) failed to appreciate that the capital asset sold during the year was ancestral property belonging to the parents of the Appellant and thus, all of their legal heirs (i.e.*

the Appellant, his sister and his two brothers) had a right to receive their share on the sale of the said property.

- *The appellant had paid compensation to two brothers, namely*

Name	Residing at	Amount in Rs.
Mansoor A. Merchant	Canada	1,50,00,000
Kassan A. Merchant	New Zealand	1,50,00,000
		3,00,00,000

This expenditure of compensation was necessary to complete the transaction of sale, registration and consequent transfer. Thus, the recipients have settled abroad. They were stumbling block to carry out the transaction of sale smoothly. Unless and until they were compensated, it was difficult to obtain their consent to effect sale and the smooth transfer. It could take place the moment they got compensation and gave no objection to the Appellant. Thus, in the hands of the Appellant, the said payment becomes a necessary expenditure before carrying out and completes the sale transaction. As far as the Appellant is concerned, it becomes an expenditure u/s. 48 to give unhindered effect to the distress sale transaction.

- *The no objection was to be obtained in the absence of which the sale transaction could not have taken place. An MOU was entered and they gave no objection permitting the Appellant to go ahead with the sale transaction (Copy of MOU enclosed in paper book page No. 114-115)*
- *Without the payment of due compensation no sale transaction could have taken place. Therefore, the compensation amount be treated as legitimate expenses to carry out the sale transaction. The Ld. A.O. erred in holding that "As per Sale Agreement, there are three vendors only and the recipient of compensation has no legal right in the said property so the claim of payment is not tenable."*
- *As submitted before the Ld. A.O, it was practically difficult to complete the sale transaction without making compensation to two brothers namely, Mansoor A. Merchant and Kassam A. Merchant. An MOU was entered between the Appellant and two brothers.*
- *Thus, within the meaning of Section 48, this is an expenditure incurred exclusively in connection with such transfer.*

In addition to the above the appellant would like to provide the extract of the following case references

Case Laws	Citations
HIGH COURT OF BOMBAY Section 48 of the Income-tax Act, Abrar Alvi (Copy of Order enclosed in Paper book Page No.200-204)	<i>Section 48 of the Income Tax Act, 1961, Capital Gains- Computation of Assessee sold Paper book Page No. 200-204) tenant Tribunal held that what was to be allowed as deduction for working out capital gains was not cost of tenancy but cost of ownership rights Tribunal remanded matter to Assessing Officer to work out market value of property as on 4-8-1983 and allow as a deduction to work out capital gains Whether Tribunal's finding was a pure finding of fact and order of remand was justified Held, yes Tribunal also allowed deduction of amount paid by assessee to his son who had filed a suit seeking injunction restraining assessee from selling property in question - Tribunal found that there was acrimonious dispute between father and son and amount was paid to remove encumbrance Whether Tribunal rightly allowed deduction of expenditure incurred by assessee to remove encumbrance to transfer - Held, yes</i>
[1991] 58 TAXMAN 106 (BOM) HIGH COURT OF BOMBAY Commissioner of Income-tax V. Smt. Shakuntala Kantilal (Copy of Order enclosed in Paper book Page No. 205-209)	<i>Section 48, read with section 55(2), of the Income-tax Act, 1961 - Capital gains - Computation of - Assessment year 1968-69 Whether compensation paid by assessee, party to whom assessee had contracted to sell plot, but did not sell, is deductible while computing capital gains arising from sale of such plot to another party later - Held, yes Whether section 48 directly or indirectly prohibits disallowance of any expenditure which can be claimed under that section in case a person has exercised option under</i>

Case Laws	Citations
	section 55(2)(i) - Held, no Section 55(2)(i) of the Income-tax Act, 1961 Capital gains - Cost of acquisition Assessment year 1968-69 Whether Tribunal rightly allowed exercise of option for substituting fair market value as on 1-1-1954 for actual cost in computing capital gains where plot was purchased in 1948 Held, yes
[2010] 129 TTJ 463 (VISAKHA) IN THE ITAT, VISAKHAPATNAM BENCH M. Siva Parvathi & Ors. v. Income-tax Officer (Copy of Order enclosed in Paper book Page No. 210-226)	Section 48 of the Income-tax Act, M 1961 Capital gains 5. Computation of - Assessment year 2005-06 Where out of sale in consideration of property question assessee in made payment to two persons who claimed to be legal heirs along with assessee inheriting said property, such payment made to remove encumbrance was deductible from consideration received [In favour of assessee] The expenditure incurred in removing encumbrances has an intimate connection with the transfer and hence the same is deductible for the purpose of computation of capital gain. Where out of sale consideration of the property in question the assessee made payment to two persons who claimed to be legal heirs along with the assessee inheriting said property, such payment made to remove encumbrance was deductible from the consideration received

Ground No. 5

DISALLOWANCE OF RS.1,31,85,359/- BEING THE EXPENSES INCURRED FOR THE RENOVATION/REPAIR OF THE NEW FLAT

- On the facts and in the circumstances of the case, and in law, the CIT(A) erred in disallowing Rs.1,31,85,359/- out of Rs.1,41,70,225/- being the renovation/repair expenses

incurred in respect of the new residential property Entire expenditure incurred were placed before the Assessing Officer The house purchased was not habitable The Appellant had to incur necessary expenditure to make to house habitable It is a cost of improvement. (Copy enclosed in paper book page number 116-122)

- *All these expenses incurred were meant to make the house habitable which was this over and above the cost of the house The will add to the Capital Cost and necessarily to be considered while considering the implication of Section 48*
- *To clear doubt about the genuineness of expenses, the Ld. A.O deputed inspector to carry out the enquiry and issued summons u/s 131 to Laxman Mistry on 23.12.2016 which is prior to 5 days of passing order*
- *However, the said Mistry produced bills of Rs. 1,34,17,373/-. As Mr Mistry regularly goes to Pune for his work, he was not found in this place at that period The inspector reported he is not available at his present address.*
- *Accordingly, the Assessing Officer concludes that bills given by Mistry are not genuine and the expenses of Rs. 1,41,70,225/- is not genuine*
- *The Amount of Rs. 1,62,70,225/ is the aggregate of Rs. 1,41,70,225/- the Mistry Bill and Rs.21,00,000/- the legal expenditure incurred in respect of sale of disputed property.*
- *The said amount of Rs.21,00,000/- have a separate ground numbered at 2 and is not a part of renovation expenditure.*
- *The Ld. A.O has wrongfully added the said amount of Rs.21,00,000/- in Renovation expenditure*
- *Further at CIT(A) the order was in partly allowed and a relief was provided for an amount of Rs.8,00,000 and hence amount of Rs. 13,00,000/- was disallowed for which there is a ground numbered at 2.*
- *Considering all the fact the appealable amount in respect of ground number 5 should be Rs.1,31,85,259/- which is Rs.1,52,85,259/- reduced by Rs.21,00,000/- the legal expenditure incurred in respect of sale of disputed property*
- *The Appellant states and submits that the party is fully identified. On the relevant day, he was not staying at Mumbai*

as he had returned late from Pune. He can come and depose before the A.O. and confirms the transaction of work and related payments. All works pertaining to cost of improvement are genuine. The disallowance on the failure of equity and natural justice is not called for.

21. On the other hand, Ld.DR supported the findings of the lower authorities and he brought to our notice Page No. 13 of the appellate order and argued that the findings are fair and just. Further, Ld.DR, with regard to deduction claimed u/s. 54 of the Act, brought to our notice Para No. 5.3. of the Ld.CIT(A) order and submitted that Ld.CIT(A) has rightly dismissed the claim of the assessee considering the fact that assessee has two flats in Mumbai and Pune, as per the provisions of section 54 assessee cannot claim deduction u/s. 54 of the Act in two separate residential units. Accordingly, he supported the findings of the lower authorities.

22. With regard to legal expenses and brokerage he relied on the findings of the lower authorities. With regard to settlement brothers he brought to our notice Page No. 234 of the Paper Book to submit that there is no reference to brothers in the consent decree and various reference are only relation to three parties only, therefore he supported the findings of the lower authorities. Further, he brought to our notice Page No. 234 of the Paper Book which is the consent decree between family members from the Hon'ble Bombay High Court and he brought specifically to the

Para No. 18 of the order in which the Hon'ble High Court has clearly held that no one has any right, title and interest in the suit property, and, if any claim is made by defendants and / or their family members on behalf of the defendants, the defendants shall indemnify and keep the plaintiff and the court receiver, high court, Mumbai indemnified at their own cost and expenses. Therefore, he submitted that Ld.CIT(A) is right in dismissing the grounds raised by the assessee. With regard to renovation expenses claimed by the assessee he submitted that assessee has sold the property on 24.12.2013 and bought the property in Pune and Mumbai on 17.02.2014 and 04.04.2014 respectively and he relied on the findings of the lower authorities.

23. In rejoinder, Ld. AR of the assessee submitted as under: -

(i) During the hearing it was asked to explain that, though the possession of the Flat was given in April 2014 the expenses were incurred prior to that. We have to state that the Appellant agreed to purchase a raw flat from the Builders. The Appellant got occupation of the Flat prior to execution of the final agreement in order to carry out the interior work So the Appellant had to incur expenses relating to the flat prior to taking possession. Laxman Mistry was only a Supervisor who handled all the payments of all the civil work done.

(ii) As regards expenses incurred in respect of the said Flat Appellant wish to state that all the expenses are duly accounted for. Mr. Laxman Mistry, was in charge (mukhia) of the work assigned and he was an illiterate person so instead of signature he has placed his thumb impressions. A list of payments mentioned with Name of Vendor and Cheque No. or Cash as the case May be, to various vendors was given.

(iii) *With regards to no signature on the bill of Idris (POP False Ceiling person) we wish to state that the said person signed in hindi.*

2. *As regards payments to two Brothers Mr. Kasam A. Merchant, residing in Canada and Mr. Mansur A. Merchant, residing in New Zealand. It is a known fact that they are also the legal heirs along with Appellant. It was mutually decided in the Family during the time of Consent decree being passed by the Bombay High Court that the siblings would distribute the amount amongst themselves.*

However since it was the Appellant who was involved in getting all the work done including the expenses and various clearances, the Appellant was entitled to a larger share. Agreement among the brothers is filed as part of the paper book.

Without the consent of all the Siblings the Purchaser was not agreeing to enter into contract. So obviously the brothers were to be paid. Since they were out of India, they executed Power of Attorney in favour of Appellant.

We hope the above explanation clarifies the queries raised and request the Hon'ble Member to consider the facts on merits and pass the order in favour of the Appellant."

24. Considered the rival submissions and material placed on record, we observe from the record that assessee has sold joint property held in the name of Mr. Mohammed Abdulla Ebrahim Merchant and Mrs. Jamila Abdulla Merchant. We observe from the consent decree passed by Hon'ble Bombay High Court in which plaintiff Mr. Mohammed Abdulla Ebrahim Merchant (plaintiff) who was having 67% of the undivided share while the defendant Mrs. Jamila Abdulla Merchant (Defendant No.1) having 33% undivided share. As per the consent decree the plaintiff on receipt of payment of ₹.6.5 crores will execute necessary transfer documents to perfect the title in favour of Defendant No. 2., i.e., Farooq

Abdulla Merchant. Based on the consent decree, we observe that assessee has settled ₹.6.5 Crores to the plaintiff and perfected the Title in favour of the assessee. Further, we observe that assessee has two more brothers and one sister having lien over the property. As per the family settlement we observe that assessee has corrected the title of the property by paying ₹.6.5 crores to his father. Therefore, the assessee has sold the property for the value of ₹.22 crores. As per the information available on record assessee has sold the property and made various arrangements relating to transfer. Therefore, the commission paid to the extent of ₹.21,01,981 is solely related to the transfer of the above said property, even though the share of the assessee is determined by the Assessing Officer at 59%. However, as per the facts brought on record we observe that based on the consent decree assessee along with his mother corrected the title by settling ₹.6.5 crores to his father. Therefore, the payment of ₹.6.5 Crores is directly relating to transfer of the property. Therefore, it should be allowed as an expenditure in lieu of transfer. With the above observation in our considered view the whole expenditure is borne only by the assessee. Therefore, there is a direct relationship with the transfer of the property. Therefore, the above said expenditure (includes commission and legal expenses) may be allowed as an expenditure in the hands of the assessee only and further it is submitted

that the assessee's father and mother has not claimed any of such expenses. The Assessing Officer is directed to verify the fact that the father and mother of the assessee has not claimed any expenses pertaining to the same. Accordingly, Ground No. II and III are allowed in favour of the assessee.

25. Next issue is with regard to payment of shares to the brothers, we observe from the record that the family of assessee consist of mother, two more brothers and one sister. As per the record available on record, we observe that assessee has acquired the property by paying ₹.6.5 Crores to his father by correcting the title based on the settlement decree. Therefore, the value of the property is ₹.22 Crores and payment to correct the title of ₹.6.5 crores is an allowable expenditure. Further, we observe that the sister who has surrendered her share to the assessee and two more brothers have also surrendered their right to the assessee. However, by entering into MOU they agreed to take the amount only to the extent of ₹.3 crores against their share. Further, we observe from the record that the sale consideration of the property is ₹.22 crores and the share paid to assessee's father is treated as correction of title to the property and is allowable expenditure in lieu of the transfer of the property and to the extent of share of mother which was separately declared as the income in her hands and assessed to tax. Balance amount of

₹.13 crores has to be assessed to tax in the hands of the assessee. Since assessee has not brought anything on record to show that assessee has made the above settlement to the brothers who has received the above share from the sale consideration are to be declared the same in their return of income which they are supposed to declare and should have paid the relevant tax or assessee should have borne the relevant tax burden. Since no records are available on record, in our considered view the sale proceeds received by the assessee on behalf other brothers of the assessee either assessee has to remit the relevant tax or the brothers should have declare and pay the relevant tax. Since there is no record available on record to the extent of ₹.3 crores which was declared to the income-tax and remitted the relevant tax, in absence of the same we are inclined to agree with the findings of the Assessing Officer for rejecting the above claim. No income can go without offering the same to tax under law. Therefore, the ground No. IV raised by the assessee is dismissed.

26. Coming to the next issue of deduction claimed u/s. 54 of the Act, we observe from the record that assessee has sold the property during the year and invested the same in two properties one in Mumbai and one in Pune. Both Assessing Officer and Ld.CIT(A) has rejected the claim of

the assessee observing that "a residential house" mentioned in section 54 relates to one property only. However, the expression of "a residential house" was interpreted by various courts including Hon'ble High Courts to say "more than one property". It is also fact on record that the Finance Act, 2014 has amended the provisions of section 54 to restrict the claim of deduction u/s. 54 of the Act only to one flat w.e.f. 01.04.2015. After careful consideration of the submissions of both the parties we observe that the ITAT Delhi Bench has considered the similar issue in the case of Sunandan Kumar Minocha v. Income Tax Officer in ITA.No. 3135/Del/2018 dated 23.12.2021 and held as under: -

5. We have heard the rival submissions and gone through the impugned order as well as material placed on record. The case of the assessee is that the expression "a residential house" is to be understood in a sense that the building should be residential one and the word "a residential" should not be construed as a singular number. Before us, Id. counsel has relied upon various judgments which we shall discuss hereinafter.

6. On the other hand, the case of the Revenue is that "a residential house" should be treated as one residential house and the amendment brought in the statute w.e.f. 01.04.2015 is mere clarificatory.

7. It is an undisputed fact that the assessee has claimed exemption under long term capital gain after selling 3 units of residential property and thereafter has purchased another 3 units in the same city. The only issue is whether exemption is available in respect of one residential house or more than one on facts of the present case.

8. There are various judgments, as relied upon by the Id. counsel for the assessee, wherein Hon'ble Courts has held that exemption u/s 54 is available even for more than one residential unit are

purchased which are used for residential purpose and the amendment brought in the statute w.e.f. 01.04.2015 is not retrospective. Prior to the amendment, there were various judgments wherein favourable view has been taken by the Hon'ble High Courts, viz.,:-

- *CIT & ANR. vs. D. ANANDA BASAPPA - 309 ITR 329 (Karnataka High Court)*

Capital gains-Exemption under s. 54- investment in more than one residential units/houses - Expression "a residential house" should be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number- That apart, the apartments purchased by the assessee are situated side by side and the builder has effected modification of the flats to make it as one unit-Fact that the flats were found to be occupied by two different tenants is no ground to hold that the apartment is not one residential unit-Therefore, assessee is entitled to exemption under s. 54.

- *CIT vs. GITA DUGGAL ITA -1237/2011 (Delhi) HC (21.02.2013)*

Expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number; Residential house consisting of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54/54F, it is neither expressly nor by necessary implication prohibited

- *CIT & ANR. vs. SMT. K.G. RUKMINIAMMA - 331 ITR 211 (Karnataka High Court)*

Capital gains-Exemption under s. 54-Investment in more than one residential houses/flats Assessee entered into a joint development agreement with builder to develop her property under which builder agreed to construct and agreed to deliver 48 per cent of the super built area to the assessee in the form of residential apartments-Builder constructed eight flats and handed over four flats to the assessee=-Assessee claimed exemption of capital gain under s. 54F which was rejected by the AO – Not justified - Expression "a residential house" should be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular numberFour residential flats cannot be construed as four residential houses for the purpose of s. 54

but it has to be construed only as "a residential house" and the assessee is entitled to the benefit accordingly.

- *NILESH PRAVIN VORA & YATIN PRAYIN YORA VS. ITO (2016) 045 ITR (Trib) 0228*

Capital gains - Exemption under section 54 Purchase of two flats - In the course of assessment proceedings, AO asked as to why exemption under section 54 in respect of one house might not be withdrawn as deduction was available in respect of only one house. Assessee had submitted that both flats were taken in the same Vile Parle, Mumbai for residential purpose hence the same might be treated as one residential unit. AO, however, denied deduction in respect of one flat. CIT(A) confirmed the order of AO. Held: AO was directed to allow the claim of the assessee with respect to two flats purchased by the assessee as it was pertinent to mention that in the case of CIT v. Smt. V R. Karpagam (2015) 373 ITR 127 (Mad), it was clearly held that the amendment to provision of section 54F is effective from 1-4-2015, which makes it clear that benefit of section 54F will be applicable to one residential house in India. Prior to the amendment, it was clear that a residential house would include multiple residential units. Thus, assessee was entitled to claim deduction under section 54.

- *BRIJ BHUSHAN TAYAL VS. ACIT, CIRCLE 19(1), ITA NO. 3272/DEL/2014 DTD 13.10.2016, [DELHI ITAT]*

That the intention of legislature before 1.4.2015 was not to restrict the exemption to one residential property only and therefore investment could be made in multiple residential properties before 1.4.2015.

This issue came up before ITAT Mumbai in the case of Nilesh Pravin Vora and Vatin Pravin Vora (Legal Heirs of Late Pravin Laxmidas Vora) Vs ITO 2016 (5) TM164 and it has been held that exemption u/s 54F will be allowed for purchase of more than one residential unit as the amendment to section 54F is effective from 1.4.2015.

The facts being similar, following the same reasoning the Assessing Officer is directed to allow the claim of the assessee with respect to two flats purchased by the assessee as discussed above. It is pertinent to mention here that the Hon'ble Madras High Court, in the case of CIT v. Smt. V. R.

Karpagarn [2015] 373 TTR 127 (Mad), has clearly held that the amendment to provision of section 54F is effective from April 1,2015, which makes it clear that benefit of section 54F will be applicable to one residential house in India. Prior to the amendment it was clear that a residential house would include multiple residential units.

Since the issue is squarely covered by the judgement of ITAT Mumbai in the case of Nilesh Pravin Vora and Yatin Pravin Vora (Supra) and also the exemption is withdrawn in the subsequent year by the assessee himself exemption claimed by the assessee cannot be disallowed."

- *CIT VS. SYED ALI ADIL (AP)(HC) (2013) 260 CTR 219 DATED 20.12.2012*

Held that the expression "a residential house" in section. 54 (1) has to be understood in the sense that the building should be of residential nature and "a" should not be understood to indicate a singular number. Where an assessee had purchased two residential flats. he is entitled to exemption under section 54 in respect of capital gains on sale of its property on purchase of both the flats, despite the fact that the flats were purchased by separate sale deeds. Deduction is allowable even if the flats are on different floors. On facts, as the two flats purchased by the assessee are adjacent to one another and have a common meeting point, the deduction cannot be denied.

The final conclusion drawn after studying the above mentioned judgements of various authorities is that the expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number.

Also, section 54/54F uses the expression "a residential house" and not "a residential unit" Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the

requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans, requirements and compulsions. A person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement.

The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54/54F, It is neither expressly nor by necessary implication prohibited,

Hence, it can be reasonably inferred that even after the amendment of Section 54 and 54F, providing for exemption from long-term capital gains tax, only if the investment is made in one residential house property, one can still invest in more than one house and claim the tax: exemption, provided the taxpayer can prove that all such flats are used as a single residential unit by the family, In the abovementioned case, two residential units were purchased, which were separated by a strong wall and were purchased from two different vendors under two separate Sale deeds, The exemption was still granted to the tax payer, because both the flats were capable of being used as a single residential unit.

Therefore the letter 'a' in the context it is used should not be construed as meaning "singular." But, being an indefinite article, the said expression should be read in consonance with the other words 'buildings' and 'lands' and, therefore, the singular 'a residential house' also permits use of plural by virtue of Section 13(2) of the General Clauses Act."

9. Since there are favourable judgments in support of the contention raised by the assessee, therefore, we hold that assessee is eligible for claim of exemption u/s 54 in respect of purchase of 3 different residential houses and amendment brought in the Finance Act, 2014 w.e.f. 01.04.2015 will not be applicable in AY 2013-14."

27. Similar view was also expressed by Hon'ble Madras High Court in the case of *Tilokchand & Sons v. ITO* [2019] 105 taxmann.com 151 (Madras) wherein the expression "a residential house" was interpreted to mean more than one or plural residential houses. The relevant ratio of the decision is given below:

*"21. In our understanding, if the word 'a' as employed under Section 54 prior to its amendment and substitution by the words 'one' with effect from 01.04.2015 could not include plural units of residential houses, there was no need to amend the said provisions by Finance Act No.2 of 2014 with effect from 01.04.2015 which the Legislature specifically made it clear to operate only prospectively from A.Y.2015-2016. Once we can hold that the word 'a' employed can include plural residential houses also in Section 54 prior to its amendment such interpretations will not change merely because the purchase of new assets in the form of residential houses is at different addresses which would depend upon the facts and circumstances of each case. So long as the same Assessee (HUF) purchased one or more residential houses out of the sale consideration for which the capital gain tax liability is in question in its own name, the same Assessee should be held entitled to the benefit of deduction under Section 54 of the Act, subject to the purchase or construction being within the stipulated time limit in respect of the plural number of residential houses also. The said provision also envisages an investment in the prescribed securities which to some extent the present Assessee also made and even that was held entitled to deduction from Capital Gains tax liability by the authorities below. If that be so, the Assessee-HUF in the present case, in our opinion complied with the conditions of Section 54 of the Act in its true letter and spirit and, therefore was entitled to the deduction under Section 54 of the Act for the entire investment in the properties and securities. Therefore, in our opinion, Judgment rendered by the Karnataka High Court in *D. Ananda Basappa* (supra)*

& Khoobchand M.Makhija (supra) cited at bar by the learned counsel for the Assessee apply on all fours to the facts of the present case."

28. Respectfully following the above said decisions, we are inclined to allow the claim made by the assessee for deduction of two separate properties u/s. 54 of the Act and also considering the fact that amendment made by the Finance Act, 2014 is applicable w.e.f. 01.04.2015, since the relevant assessment year under consideration is 2014-15 and it is held that the amendment made to Finance Act, 2014 is prospective in nature. Therefore, the claim made by the assessee is just and proper. Accordingly, we allow the ground No. I raised by the assessee in this regard.

29. With regard to addition made to the new houses to the extent of ₹.1,62,70,225/-, we observe that Ld.CIT(A) has allowed the deduction to the extent of ₹.9,84,866/-. We observe from the record that assessee has claimed development and furnishing of the property acquired by the assessee in Mumbai as well as Pune and submitted bills from Mr. Laxmanji Mistry, electrical bills of Apte Electrical Work and bills from Md. Idris. The allegation of the revenue is that the bill of Md. Idris is not signed and Mr. Laxmanji Mistry was not present for verification during the course of the assessment proceedings. However, assessee has claimed that assessee

incurred the above said expenditure after acquiring the above said properties in Mumbai as well as in Pune. We observe that Ld.CIT(A) has considered the various submissions of the assessee for incurring the expenditure on renovation of the same in both the properties and to the extent of payment made by the assessee through bank he has allowed the same to the extent of ₹.19,69,733/-. However, he restricted the same to the extent of 50% of the above.

30. After careful consideration, we are of the view that the persons Mr.Laxmanji Mistry and Md. Idris are illiterate and they may not be knowing the proper way of making the bill and the investigation carried on by the Assessing Officer only during the assessment proceedings i.e., 23.12.2016. However, these expenses were incurred during the Financial Year 2013-14, due to efflux of time and non-cooperation of the small time suppliers like Mr. Laxmanji Mistry and Md. Idris, the claim of the assessee cannot be denied. It is fact on record that the assessee has incurred certain expenses to make these flats for livable and made renovation. When there is evidence of incurring certain expenses in the newly acquired flats, in our considered view atleast to the extent of 50% expenses claimed by the assessee should have been allowed. Therefore, we are inclined to direct the Assessing Officer to allow 50% of the

expenditure claimed by the assessee. In the result, Ground No. V raised by the assessee is partly allowed.

31. In the result, appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on 02nd May, 2023

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai / Dated 02/05/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum