

Income Tax Appellate Tribunal - Mumbai

Manish Sinha, Mumbai vs Income Tax Officer-23(3)(3) ... on 2 August, 2019

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI

BEFORE SHRI M. BALAGANESH, AM

&

SHRI AMARJIT SINGH, JM

ITA No.602/Mum/2018
(Assessment Year :2010-11)

Shri Manish Sinha	Vs. Income Tax Officer -
MF 15, Eldelco	23(3)(3) Erstwhile Income
Mansion	Tax Officer - 19(3)(3)
Opp. Omaxe City Centre	1 s t Floor, Matru Mandir
Sector-48, Sohna Road	Tardeo Road
Gurgaon, Haryana-122018	Grant Road,
	Mumbai - 400 007
PAN/GIR No. APNPS4291R	
(Appellant)	.. (Respondent)

Assessee by Shri R.C.Modi & Ms.Ketki Rajshirke Revenue by Shri H.N.Singh Date of Hearing
30/07/2019 Date of Pronouncement 02/08/2019 / O R D E R PER M. BALAGANESH (A.M):

This appeal in ITA No.602/Mum/2018 for A.Y.2010-11 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-33, Mumbai in appeal No.CIT(A)-33/Rg.23/71/2013-14 dated 09/06/2017 (ld. CIT(A) in short) against the order of assessment passed u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 12/03/2013 by the ld. Income Tax Officer, 19(3)(3), Mumbai (hereinafter referred to as ld. AO).

ITA No.602/Mum/2018 Shri Manish Sinha

2. The only issue to be decided in this appeal is as to whether the assessee is eligible for exemption u/s.54 of the Act in respect of purchase of new property out of loan availed from HDFC bank as against the sale consideration received from sale of old property.

3. We have heard rival submissions and perused the material available on record. It is not in dispute that assessee had sold the old property on 03/03/2010. It is not in dispute that assessee had purchased the new property on 27/04/2010. The return of income for the A.Y.2010-11 was filed on 15/10/2010 wherein the sale consideration of old property of Rs.55 lakhs was disclosed together with the cost of acquisition of the said property and the claim of deduction u/s.54 in respect of reinvestment in new property was restricted to the extent of long term capital gains in the said return of income filed. These facts are available in page 16 of the paper book containing entire set of return of income. The assessee even though received sale consideration of Rs.55 lakhs from old property had not used the same for re-investment in new property and had instead availed loan from HDFC bank to the tune of Rs.40 lakhs and used the same for purchasing a new property. We

find that there is no mandate in the provisions of Section 54 that the very same sum of sale consideration should be utilised for investment in new property. The only requirement of Section 54 is that the assessee would be eligible for exemption u/s.54 of the Act if he had purchased/constructed the new property within the prescribed time. This condition has been duly complied with by the assessee in the instant case. We find that reliance placed by the ld. AR wherein our understanding of the provisions of section 54 of the Act has been duly endorsed by various co-ordinate bench decisions of the Tribunal as under:-

ITA No.602/Mum/2018 Shri Manish Sinha Sr.No. ITA No. Assessee Name Date of Order 1 1136/Mum/2018 Yatin Prakash Telang vs 04/07/2018 Income Tax Officer, Ward No.21(3)(5) 2 607/Mum/2018 Hansa Shah vs. Income Tax 05/10/2018 Officer, Ward-21(1)(4) 3 526/Mum/2016 Deepak A Shah vs. Income Tax 11/04/2018 Officer 18(1)(3) 4 6808/Mum/2003 ACIT 26(1) vs. Dr. 11/01/2008 P.S.Pasricha 3.1. In view of the aforesaid observation and respectfully following the aforesaid decisions, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this

02/08/2019

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, sr.ps

02/08/2019

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai