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

BEFORE SHRI PRASHANT MAHARISHI, AM &
SHRI N. K. CHOUDHRY, JM

I.T.A. No. 706/Mum/2023
(Assessment Year: 2014-15)

Khalid Sayed 5936, Talisman Court, Mississaunga, Ontario, Canada. PAN No. **AECPS2988F**	Vs.	**Centralized Processing Centre,** Bangalore, Karnataka-560500
Appellant)	:	**Respondent**)

Appellant by	:	Mr. Akash Kumar
Respondent by	:	Sh. S.N. Kabra, Sr. DR
Date of Hearing	:	13.06.2023
Date of Pronouncement	:	18.08.2023

O R D E R

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred this appeal against the order dated 13.12.2022 impugned herein, passed by National Faceless Appeal Centre (NFAC), Delhi {in short 'Ld. Commissioner)'} u/s 250 of the Income Tax Act 1961 (in short 'the Act').

2. In this case, the Assessee jointly and equally with his wife Smt. Aditi Khalid Sayed, owned a property i.e. Flat No. 401, Ratnakar, Versova (West), Mumbai, which was purchased on 29.10.2003 for a consideration amount of Rs.25,30,020/- from Harasiddh Corporation

registered partnership concern, having its office situated at 1, Bapuji Niwas 6th Road, Santa Cruz (East), Mumbai-400055.

2.1 The Assessee lateron along with his wife migrated to Canada and on dated 19-07/2013 sold the said flat on a consideration of Rs.1,55,00,000/- by excluding stamp duty, registration charges and 50% of the society transfer charges, which were borne by the purchaser. The Assessee also deducted the tax at source amounting to Rs.10,68,000/- on its behalf.

2.2 Thereafter, the Assessee on 31st July 2013, purchased a residential property i.e. 5936, Talisman Court, Mississauga, Ontario L5M 6A1, at Canada, on a consideration of Canadian Dollor 775,000/- from Ronald Maizis and Barcelisa Maizis and remitted the entire long term capital gain of Rs. 1,03,68,923/- excluding TDS to the account of the seller in Canada and paid the rest amount of consideration by getting financed from Canada Street Capital Finance corporation.

2.3 The Assessee therefore claimed, as entire long term capital gain of Rs.1,03,68,923/- was invested in residential property and in the return filed by submitting a detailed note claimed the TDS, which was refunded to the Assessee.

2.4 However thereafter vide order dated 30.10.2020 u/s 154 of the Act passed by the AO/CPC, the disallowance of Rs.11,38,080/- was made .

3. The Assessee being aggrieved against the said order dated 30.10.2020 u/s 154 of the Act and the disallowance made, preferred

first appeal before the Ld. Commissioner and claimed that prior to AY 2015-16, there was no restriction on purchase of property in foreign/out side India, for claiming exemption u/s 54 of the Act, as the provision of 'one residential house **in India**" was introduced vide Finance Act, 2014 w.e.f. 01.04.2015 and as the Assessee sold the original property on 19-07-2013 and subsequently purchased the property on 31-07-2013 in foreign, and therefore can not be subjected to such restriction, which was introduced w.e.f. 01.04.2015.

4. The Ld. CIT(A) though considered the claim of the Assessee, however affirmed the addition and denied the claim u/s 54 of the Act, by holding as under:

> *6. After considering the facts of the case and material on record, it is noted that the AO, CPC has raised the demand of Rs. 11,38.080/- by disallowing the TDS claim of the appellant. The appellant has contended that prior to A.Y. 2016-17, there was no restriction on purchase of property which could be in India or abroad for the purpose of claiming exemption W/s 54. The provision is confirmed by the introduction of the words "in India" by the Finance Act, 2015 with effect from April 1, 2015.*
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> *7. However, It is worth noting here that the Act is applicable only to the whole of India and, therefore, on a plain reading of the provisions, the purchase/construction of a residential house must necessarily be in India and not outside India. Further, merely because the provisions of section 54 do not explicitly mandate that in order to be eligible to claim exemption under section 54, the investment should be made in a house property in India, it cannot be construed that investment in a house property in a foreign country, will make one entitled for exemption. Also, the section was introduced to encourage the construction activities within India, therefore, the construction activities outside India would defeat the basic objective of this section.*
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> *8. Also, reliance is placed on the judgement of Hon'ble ITAT Ahmedabad in the case of Leena J. Shah v. Assistant Commissioner of Income-tax, Circle 1(1), Baroda in ITA No. 2467 (AHD.) OF 2000 for the Asst. Year 1998-99 dated 10.11.2005, where the benefit of exemption us 54F was disallowed for a residential house purchased/constructed outside India.*

> *9. In view of the above discussion, I am of the considered view that the CPC, AO is justified in disallowing the TDS claim of the appellant.*
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> *The same is hereby confirmed. Thus Grounds of appeal Nos. 1 and 2 of the appellant are dismissed.*
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> *10. In the result, the appeal is dismissed."*

5. Being aggrieved the Assessee is in appeal before us.

6. Having heard the parties and given thoughtful consideration to the peculiar facts and circumstances of the case, we observe that sole issue involved in the instant appeal is "whether prior to the introduction of the words" in India" in section 54F of the Act vide Finance Act, 2014, the Assessee was entitled to claim the exemption u/s 54 of the Act qua residential house purchased or constructed in Foreign country/out side India.

6.1 It is not in doubt that the words "in India" was introduced vide Finance Act, 2014 and made applicable w.e.f. 01.04.2015 and in the instant case, the property was acquired on 31.07.2013 and therefore, we have to consider as to whether the newly inserted provision is also applicable to the case of the Assessee/for the AY 2014-15 .

6.2 We observe that identical situation/issue has been dealt with by the Hon'ble Co-ordinate Bench of the Tribunal at Bangalore in ITO(IT), Ward 1(1), Bangalore v. Arshia Basith {IT(IT)A No.2768/Bang/2017 AY 2014-15 decided on dated 14.8.2018}, wherein the Assessee has acquired property in abroad and claimed the exemption u/s 54 of the Act. The Hon'ble Bench allowed the claim qua deduction claimed under section 54F of the Act, by holding as under:

> *"3. Having carefully examined the orders of authorities below in the light of rival submissions, we find that the assessment year in this appeal is*

2014-15 and the provision in section 54F comes w.e.f. 01.04.2015 according to which it was clarified that the residential house is to be acquired only in India meaning thereby before this amendment it was not clear as to whether the benefit of section 54F can be given to residential house acquired in India or abroad. This issue was examined by the Tribunal in the case of ACIT Vs. Iqbal Jafar (supra) which was authored by one of the members of this Bench and it was held by the Tribunal that before the amendments, the benefit can also be given to the residential house acquired in abroad. The relevant observation of the Tribunal is extracted hereunder for the sake of reference:

> *"9. Having heard the rival submissions and from a careful perusal of the orders of the authorities below, find that it has been repeatedly held by the Hon'ble Apex Court and various High Courts that cardinal rule of interpretation is that the statute must be construed according to its plain language and neither should anything be added nor subtracted therefrom unless there are adequate grounds to justify the inference that the legislature clearly so intended. It is also well settled that in a taxing statute one has to look merely at what is clearly stated .The meaning and extent of the statute must be collected from the plain and unambiguous expression used therein, rather than from any notions which may be entertained by the Court as to what is just or expedient.*
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> *10. In the case of TV. Sundaram Iyengar & Sons (P.) Ltd. (supra), their Lordships have held that if the language of the statute is clear and unambiguous, the court cannot discard the plain meaning, even if it leads to an injustice.*
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> *11. Again in the case of Smt. Tarulata Shyam v. CIT (supra), it was held that there is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by Legislation and not by judicial interpretation.*
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> *12. Further, in the case of Sodra Devi (supra), it was held by the Hon'ble Apex court that unless there is an ambiguity, it would not be open to the Court to depart from the normal rule of construction which is that the intention of the legislature should be primarily to gather from the words which are used. It is only when the words used are ambiguous that they would stand to be*

examined and considered on surrounding circumstances and constitutionally proposed practices.

13. We have also examined the order of the Tribunal in the case of Vinay Mishra (supra), in which it has been held that the words 'in India; cannot be read into section 54F when Parliament in its legislative wisdom has deliberately not used the words 'in India' in section 54F of the Act. The Tribunal accordingly held that assessee 's claim for exemption under section 54F of the Act shall be allowed since all conditions laid down in this section are satisfied for availing the said exemption, though he has acquired house property in U.S.A.

14. Similarly in the case of Mrs. Prema P. Shah (supra), the Tribunal has again held that the assessee was entitled to the benefit under section 54 of the Act, which does not exclude the right of the assessee to claim property purchased in a foreign country, if all other conditions laid down in the section are satisfied, merely because the property acquired was in a foreign country.

15. Again in the case of Dr. Girish M Shah (supra), the Mumbai Bench of the Tribunal has taken a view by holding that the assessee is entitled for exemption under section 54F of the Act for of house property outside India i.e. in Canada.

16. Having carefully examined various judicial pronouncements and the order of the Id. CIT(A), we find in the case of Leena J. Shah v. Assts. (2006) 6 SOT 72 I (Ahd.), the Tribunal has taken a view that the words "in India" cannot be inserted in section 54F of the Act and as per plain of section 54F of the Act, the sale proceeds of capital asset shall be invested in residential house or outside India. We, accordingly, following the judgment of the Hon'ble Apex Court in the case v. Vegetable Products Ltd [1973] 88 ITR 192, hold that the view favourable to the assessee taken ous Benches of the Tribunal should be followed and accordingly following the same, we hold that the assessee is entitled for exemption under section 54F of the Act. We, therefore, do not find any infirmity in the order of the Id. CIT(A), who has rightly adjudicated the issue in the light of the ratio laid down by the Tribunal in a number of cases. Accordingly, the order of the ld. CIT(A) is confirmed and the appeal of the Revenue is dismissed."

4. Since the Tribunal has taken a view in similar set of facts, we find no justification to take a contrary view in this appeal. Accordingly, following

> *the same, we hold that the assessee is entitled for deduction under section 54F of the Act. Therefore, we find no infirmity in the order of the CIT(A). We accordingly confirm the same."*

6.3 We further observe that the Hon'ble Co-ordinate Bench of the Tribunal at Bangalore in the case of Shri Rajasugumar Subramani Vs. The Income Tax Officer, Ward 2(1), Bengaluru. {ITA no. 2015/Bang/2019 decided on 10-01-2020} also dealt with identical issue as involved in this case and by following the aforesaid judgment, allowed the contention raised by the then Assessee, by holding as under :

> 9. We have given a careful consideration to the rival submissions. We find that in the decision rendered in the case of Jai Kumar Gupta HUF (supra) on identical facts the assessee had made a claim for deduction u/s. 54 of the Act instead of 54F of the Act. The Tribunal held that the assessee's claim for deduction u/s. 54F should be examined. In the case of Arshia Basith (supra) the Bangalore Bench of the Tribunal held that assessee would be entitled to deduction u/s. 54F of the Act even in respect of property purchased which is located outside India. The following were the relevant observations of the Tribunal:-
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> *10. We are of the view that in the case of assessee the deduction claimed should be examined in the parameters of section 54F of the Act in the light of decision cited before us. The AO is directed to apply the ratio laid down in the aforesaid decision and allow the claim of deduction of assessee in accordance with the law, after affording assessee opportunity of being heard.*

6.4 We further observe that the Ld. Commissioner while declining the claim of the Assessee, also relied upon the judgment passed by

the Tribunal in Leena J. Shah v. ACIT, Baroda in ITA 2467 (Ahd.) of 2000 decided on 10.11.2005 wherein the benefit of exemption u/s 54F was disallowed for residential house purchased/constructed outside India.

We observe that the Hon'ble Tribunal in the case of ITO (IT), Ward 1(1), Bangalore Vs. Arshia Basith, (supra) also taken into consideration the said judgment in Leena J. Shah v. ACIT (supra) and while following the dictum laid down by the Hon'ble Apex Court in the case of CIT Vs Vegetable Products Ltd. (1973) 88 ITR 192, followed the decision of the Tribunal favoring the Assessee and allowed the exemption under section 54F of the Act qua property purchased outside India, by holding as under:

> *16. Having carefully examined various judicial pronouncements and the order of the Id. CIT(A), we find in the case of Leena J. Shah v. Assts. (2006) 6 SOT 72 I (Ahd.), the Tribunal has taken a view that the words "in India" cannot be inserted in section 54F of the Act and as per plain of section 54F of the Act, the sale proceeds of capital asset shall be invested in residential house or outside India. We, accordingly, following the judgment of the Hon'ble Apex Court in the case v. Vegetable Products Ltd [1973] 88 ITR 192, hold that the view favourable to the Assessee taken by Benches of the Tribunal should be followed and accordingly following the same, we hold that the Assessee is entitled for exemption under section 54F of the Act. We, therefore, do not find any infirmity in the order of the Id. CIT(A), who has rightly adjudicated the issue in the light of the ratio laid down by the Tribunal in a number of cases. Accordingly, the order of the ld. CIT(A) is confirmed and the appeal of the Revenue is dismissed."*

6.5 Considering the facts of the instant case, in view of the determinations made by the Hon'ble Benches of the Tribunal in the aforesaid cases and respectfully following the judgments referred to favoring the Assessee, we do not have any hesitation to hold that for the period prior to AY 2015-16 or to the introduction of the words 'in

India" in section 54 of the Act vide Finance Act No. 2 of 2014, which came into effect from 01.04.2015, the Assessee would get benefit of deduction u/s 54F of the Act even for the property purchased or constructed in abroad/out side India as well, but not from A.Y. 2015-16 onwards.

6.6 Here in this case, the Assessee purchased the property in foreign country on 31st July 2013 and claimed the benefit of the provisions of section 54F of the Act in AY 2014-15, hence the Assessee would get benefit of section 54F of the Act and therefore we direct the AO allow the deduction accordingly, by examining/fulfilling other parameters as set out in section 54F of the Act.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 18-08-2023.

Sd/-	*Sd/-*
(**PRASHANT MAHARISHI**)	**(N. K. CHOUDHRY)**
Accountant Member	**Judicial Member**

SK, Sr.PS.

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai