IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 244 OF 2014

The Commissioner of Income Tax-II,
Pune .. Appellant

v/s.

Late Jameelunnisa Begum .. Respondent

Mr. Suresh Kumar i/b Vipul Bajpayee, Ms. Samiksha Kanani for the appellant
Mr. Mihir Naniwadekar for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 16th AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th May, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

2. The Revenue urges the following questions of law for our consideration :-

"(i) Whether on the facts and circumstances of the case and

in law, the Tribunal erred in allowing deduction u/s 54 of the Act relying on the development agreement dated 31.05.2004?

(ii) Whether on the facts and circumstances of the case and in law, the Tribunal erred in holding that the development agreement was an agreement for construction of residential and other properties by the developer on behalf of the assessee and therefore extended period of three years would be available to the assessee?"

3. The respondent assessee was owner of a plot with a residential house thereon. On 31st May, 2004 the respondent assessee entered into a development agreement with a builder M/s. Sana Associates. The above agreement recorded the fact that actual and physical possession of the plot with house was given by the respondent assessee to it. It provided that the developer will construct residential and commercial complex. It further provided that 46% of the constructed area would be handed over to the respondent assessee as it belong to her and the balance would be owned by the developer. The respondent assessee claimed the benefit of exemption of Rs. 33.83 lakhs under Section 54 of the Act on account of the amount being invested in construction of a house. However, the Assessing Officer

disallowed the claim holding that this is a case of purchase of new house. Therefore, this purchase has to take place within two years from the date of the transfer of the asset and in this case it is on 7th December, 2006. Thus, beyond a period of two years.

4. Being aggrieved, the respondent assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By order dated 31st October, 2011, the CIT(A) held on consideration of terms of the agreement with the Developer that it was an agreement for construction of residential and other properties. Thus, a period of three years for construction was available from the date of handing over the possession. Admittedly, the construction was completed within 3 years. Therefore, the respondent assessee was entitled to exemption under Section 54 of the Act.

5. Being aggrieved, the Revenue filed an appeal to the Tribunal. By the impugned order, the Tribunal on consideration of the clauses of the agreement, concluded that Section 54 of the Act is applicable and the respondent assessee is entitled to the exemption as the new premises has been constructed within a period of 3 years from the date of the transfer.

6. We find that the impugned order of the Tribunal has followed its decision in the case of ***Jatinder Kumar Madan Vs. Income Tax Officer, in ITA No.6921/Mum/2010,*** (order dated 25th April, 2012). Mr. Suresh Kumar, learned Counsel for the Revenue, upon being asked, very fairly states that no appeal has been preferred against the order of the Tribunal in *Jatinder Kumar Madan (supra)*. No distinguishing features have been shown to us in the present facts, which would warrant us taking a different view. Further, two authorities have concurrently held that the possession of constructed residential premises was available to the assessee within a period of 3 years from the date of the transfer. Even otherwise, the view taken by the impugned order is a possible view.

7. In the above circumstances, the questions as framed do not give rise to any substantial question of law. Thus, not entertained.

8. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**