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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 615/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-10

..... Appellant

**Through: Mr. Asheesh Jain with Mr. Ajit
Sharma & Mr. Adnan Siddiqui, Adv.**

versus

SHRI SIDDHARTH AHUJA

..... Respondent

Through: Ms. Rubal Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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08.03.2018

1. The Revenue in this appeal under Section 260A of the Income Tax Act, 1961 (hereafter referred to as “the Act”) questions the decision of the Income Tax Appellate Tribunal (ITAT). The ITAT upheld the order of the CIT(A) which had ruled that the assessee/respondent was entitled to the benefit of Section 54F of the Act, in regard to the purchase of a new residential property.

2. The assessee had sold premises that were used for its guest house but concededly which were residential when purchased. The capital asset was held for more than 3 years. The gain was sought to be off-set. The proceeds of sale were used for purchasing another property - again residential in nature but to be utilized for a guest house. The AO ruled out applicability of both

Section 54 and 54F of the Act. The CIT(A) agreed with the assessee and held that Section 54F of the Act was attracted since the property purchased from the gains was a residential house.

3. The ITAT confirmed the Appellate Commissioner's order. The counsel for the Revenue stresses that neither Section 54 (which deploys the expression "use of residential property") nor Section 54F (which talks of gain arising out of transfer of a premises not being a residential house), applied to the circumstances of the case.

4. It is evident from the factual narrative that when the premises were in fact transferred, they were put to use as a residential premises – not for occupation of any single individual but for the assessee's employees and officials. In lieu of the asset, the asset was substituted – through the gains derived with another like capital asset i.e. the residential premises. In either case, the assessee was entitled to relief. The Revenue's attempt to rely exclusively upon the expression "use of residential property" under Section 54(1), on the one hand, and, at the same time, state that what was sold was not a residential house, is inconsistent.

5. There is no substantial question of law; the findings of fact being concurrent. The Court is of the opinion that there is no merit; the appeal is consequently dismissed.

S. RAVINDRA BHAT, J

MARCH 08, 2018/kks

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