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

+ W.P.(C) 9859/2019 and CM APPL. 40767/2019

PR. COMMISSIONER OF INCOME TAX,-
INTERNATIONAL TAXATION -1

..... Petitioner

Through: Mr. Ruchir Bhatia, Advocate.

versus

DIPANKAR MOHAN GHOSH

..... Respondent

Through: Mr. Rajat Navet, Advocate.
Mr. Sumit Lalchandani, Advocate for
Mr. Salil Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.09.2019

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1. The challenge in the present writ petition preferred by the Revenue is to the order dated 22.12.2017 passed by the Authority for Advance Rulings in AAR No. 1356/2012. The said authority has held that the respondent/applicant would be eligible for the benefit available under the provisions of Section 54 of the Income-Tax Act and to the extent of re-investment in residential property outside India, i.e. in London in this particular case.

2. The respondent assessee is a Non-Resident Indian. He sold his residential property bearing No. 1/26, Shanti Niketan, New Delhi and earned long term capital gain which was partially invested in purchasing the property, i.e. residential Flat No. 47, Abingdon Court, Abingdon Villas,

Kensington, London for a consideration of GBP 26,75,000 plus stamp duty and other expenses estimated at GBP 1,89,974.34 (Approx.), aggregating to GBP 28,64,974.34. The said consideration was paid out of remittances made by the respondent from India and the sale consideration received by him in respect of the aforesaid Indian asset. The authority arrived at its conclusion with regard to the respondent being entitled to exemption under Section 54 of the Act by placing reliance on the decision of the Gujarat High Court in ***Leena Jugalkishor Shah Vs. Assistant Commissioner of Income-Tax***, (2017) 392 ITR 18 (Guj.). The authority has noted that the Revenue has not assailed the said decision before the Supreme Court.

3. Reference has also been made to the Circular No. 01/2015 containing explanatory notes to the provisions of the Finance (No. 2) Act, 2014 whereby Section 54 of the Act was amended to specifically include the word “in India” in respect of the residential house acquired out of the long term capital gain earned by the assessee. The said explanatory note in terms provides that the said amendment would take effect from 01.04.2015 and would, accordingly, apply for the assessment year 2015-16 and subsequent assessment years. Thus, the said amendment is prospective and would not apply in the facts of the present case since the respondent sold the residential property in India and earned long term capital gain in the assessment year 2012-13 and invested the said gain in the same year for purchase of the property, as aforesaid, in London.

4. This Court has also had an occasion to deal with the said issue in ITA No.1169/2018 titled ***The Commissioner of Income-Tax International Taxation-2 Vs. Anurag Pandit***, decided on 14.05.2019.

5. In the light of the aforesaid, we are not inclined to interfere with the impugned order.

6. Dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 18, 2019

B.S.Rohella