

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “J”, MUMBAI  
BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No. 1125/Mum/2015 (Assessment Year- 2011-12)**

Jayantilal K. Jain 1101, Pearl Heritage, Dawood Baug Lane, J.P. Road, Andheri (West), Mumbai-400058. <b>PAN: AADPJ9239P</b>	<b>Vs.</b>	ITO 19(3)(2), Piramal Chambers, Lalbaug, Mumbai-400012
(Appellant)		(Respondent)

Assessee by : Sh Hero Rai Advocate  
Revenue by : Ms. Anju Garodia (DR)  
Date of hearing : 26.07.2017  
Date of Pronouncement : 31.07.2017

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee under 253 of the Act ('Act') is directed against the order of Id. CIT(A)-33, Mumbai dated 30.01.2015 for Ay 2011-12. The sole ground of appeal raised by assessee relates to confirming the treatment of Capital Gain arising out of sale of Shop as Short Term Capital Gain (STCG) and in denying the exemption under section 54 of the Act.
2. Brief facts of the case are that the assessee is an individual and deriving its income from Business, Other Sources and Capital Gain, filed his return of income for relevant AY on 20.07.2011. The assessment was completed on

25.11.2013 under section 143(3) of the Act. The assessing officer while framing the assessment order denied the benefit of LTCG claimed. The assessing officer treated the LTCG as STCG. After deducting the cost of acquisition, the STCG of Rs. 77,66,743/- was calculated and was brought to tax. On appeal before the Id. CIT(A), the action of AO was confirmed. Thus, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the Id. Counsel / Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The Id. AR of the assessee argued that assessee acquired the tenancy in the property in the year 1998. The tenancy right of the assessee was converted into ownership on 06.05.2010 on payment of lump sum consideration of Rs. 9,11,000/-. Thus, the assessee is entitled for LTCG on the asset. In support of his submission, the Id. AR of the assessee relied upon the decision of Hon'ble Allahabad High Court in CIT vs. Smt. Rama Rani Kalia (2013) 358 ITR 499 (All) and decisions of Tribunal in (i) Mrs. Tauqeer Fatema Rizvi vs. ITO in ITA No. 8862/Mum/2011 dated 02.05.2014,(ii) Late Mulya B. Das vs. ITO in ITA No. 2628/Mum/12 dated 30.04. 2014 (2014) 40 CCH 0173 (Mum. Trib.), (iii) Mr. Ajit M. Pendurkar vs. ITO in ITA No. 3225/Mum/2009 dated 19.12.2012. On the other hand, Id. DR for the Revenue supported the order

of authorities below. It was further argued that the assessee acquired the capital asset only on 06.05.2010 and was not qualified for LTCG. It was argued that case law relied by ld. DR for Revenue are distinguishable on the facts.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below and the various decision cited by ld. AR of the assessee. In the return of income, the assessee claimed Capital Gain of Rs. 88,00,000/- on sale of Shop situated at Turner Road, Bandra. The assessing officer assessee was asked to substantiate the claim of LTCG. The assessee furnished the detailed, wherein the assessee contended that he was tenant in the said Shop vide agreement dated 16.01.1998 under Mr. Maneck Gidwani. The assessee purchased the said Shop vide Agreement dated 06.05.2010 from the owner for a consideration of Rs. 9,11,000/- by registered Agreement. Thus, the assessee's tenancy right acquired on 16.01.1998 was converted into Ownership Right of a lump sum consideration of Rs. 9,11,000/-. The assessee sold the said Shop on 12.10.2010 for a consideration of Rs. 88,00,000/-. The contention of assessee was not accepted by AO holding that the assessee acquired the Shop vide Agreement dated 06.05.2010 and sold vide Agreement dated 12.10.2010, the capital asset was held by assessee only for five months. Thus, the AO denied the LTCG and treated the same as STCG. After

deducting the cost of acquisition, the STCG of Rs. 77,66,743/- was calculated and was brought to tax. The Id CIT(A) confirmed the action of the AO holding that the assessee had taken the property in question on a monthly rent vide agreement dated 16/01/1998 from landlord Maneck Gidwani. The assessee acquired the said property vide agreement dated 06/05/2010 on payment of consideration of Rs. 9,11,000/-. On purchase of the property the tenancy right was converted into ownership. The tenancy right was extinguished on 06/05/2010. The assessee sold the property on 12/10/2010 for a consideration of Rs.88,00,000/-. The Id CIT(A) concluded that the assessee has not sold the tenancy right in the property, rather the assessee become owner of the property on payment of consideration on 06/05/2010. The assessee had transferred the property as his absolute owner. The assessee held the asset as owner of the property only for five months thus gain arises on such sale is Short Term Capital Gain (STCG). We have considered the various decisions cited by Id AR of the assessee. In our view none of the decision is applicable on the facts of the present case as the ratio decided in all the case are at variance. In case of CIT Vs Rama Rani Kalia (supra) the assessee was himself owner of the leasehold property since July 1984 which was converted in to freehold in March 2004, under the Rule by Collector and thus was qualified for LTCG. In Mrs Tauqueer Fatema Rizvi Vs ITO (supra) the property/ flat was allotted in lieu of surrender of tenancy

in 1982 and was sold in October 2004. In Late Mulya B Dass Vs ITO (supra) the asset was acquired on surrender of tenancy in the year 2005 and sold within 36 months of taking possession of the property, the AO treated the same as STCG, the AO treated the cost of acquisition of the property as nil. The coordinate bench of the Tribunal remanded the matter to the file of AO with the direction to consider the cost of acquisition as per market value; however no finding was given by Tribunal with regard to claim of Long Term or short Term. In Ajit M Pendurkar Vs ITO , the assessee was tenant in the property from the year 1984. On 04.03.2004 by the scheme of the Government the assessee become owner of the property on payment of certain amount. The assessee sold the property on 31.10.2004. The assessing officer treated the gain as STCG as property was sold in less than 36 month. During the appeal before the Tribunal the assessee conceded that the Gain could be treated as STCG. Thus, none of the decision relied by the Id AR for the assessee is helpful to the assessee. In our view the conclusion of the Id CIT(A) is based on factual matrix and well as on legal aspect is correct. Thus, the ground of appeal raised by the assessee is dismissed.

5. In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on 31<sup>st</sup> day of July 2017.

Sd/-

Sd/-

**(RAJENDRA)**  
**ACCOUNTANT MEMBER**

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 31/07/2017

S.K.PS

**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.

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**