आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2208/Ahd/2016
(**निर्धारण वर्ष /** Assessment Year : 2013-14)

Smt. Hansaben Pravinbhai Patel Bungalow No. – 2, Devkutir – Part – III, B/h. Madhurya Hotel, Ambli Bopal Road, Ahmedabad - 380058	**बनाम**/ Vs.	**The Income Tax Officer** Ward-3(3)(2), Pratyaksh Kar Bhavan, Ahmedabad - 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIUPP8251C		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri D. R. Thakkar, A.R.
प्रत्यर्थी की ओर से / **Respondent by :**	Shri Lalit P. Jain, Sr.D.R.

सुनवाई की तारीख/**Date of Hearing**	15/11/2019
घोषणा की तारीख /**Date of Pronouncement**	08/02/2019

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-3, Ahmedabad ('CIT(A)' in short), dated 29.06.2016 arising in the assessment order dated 31.12.2015 passed by the Assessing

Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. As per the grounds of appeal, the assessee has challenged the action of the Revenue authorities in denying deduction under s.54F of the Act amounting to Rs.2,67,18,560/-.

3. Briefly stated, the assessee, an individual filed its return of income for AY 2013-14 belatedly under s.139(4) of the Act on 31.03.2014 declaring a total income of Rs.6,996/- therein. The return filed was subjected to scrutiny assessment. In the course of the scrutiny assessment, the AO noticed that the assessee has sold certain urban agricultural land at Gota, Ahmedabad at a sale consideration of Rs.3,50,00,000/- and after reducing index cost of acquisition of Rs.82,81,440/- declared long term capital gains at Rs.2,67,18,560/-. Against the long term capital gains so earned, the assessee claimed exemption under s.54F of the Act for the full amount of capital gains of Rs.2,67,18,560/- on the ground that the entire sale consideration of Rs.3,50,00,000/- was deposited in the 'capital gain account scheme' on 31.03.2014 i.e. prior to / on the date of filing of return of income.

3.1 On inquiry by the AO into the eligibility towards deduction under s.54F of the Act so claimed the assessee contended that the deposit in the capital gain account scheme has been made on 31.03.2014 i.e. on or before extended due date in terms of Section 139(4) of the Act instead of depositing it on or before the due date 31-07-2013 in terms of Section 139(1) of the Act. While it was the case of the assessee that the belated deposit in capital gain account scheme within the extended due date under s.139(1) of the Act is sufficient compliance for eligibility of deduction, the assessee also pointed out her inability to make deposits within the time frame provided under

s.139(1) of the Act on the ground that she had received only part payment to the extent of Rs.1.25 crores till the due date specified under s. 139(1) of the Act against the total sale consideration of Rs.3.50 Crore. It was thus the case of the assessee that it was not possible for her to invest the entire sale consideration of Rs.3,50,00,000/- on or before 31.07.2013 i.e. due date under s.139(1) of the Act. The assessee accordingly pleaded before the AO that the inability of the assessee to deposit the money within the due date under s.139(1) of the Act should be borne in mind and deposit in the later period within the due date under s.139(4) of the Act should be taken as sufficient compliance of Section 54F of the Act by granting liberal construction to the beneficial provision.

3.2 The AO however did not pay any heed to such arguments and held that Section 54F(4) of the Act requires that such deposit in capital gain account scheme cannot be made later than due date applicable to the assessee for furnishing the return of income under s.139(1) of the Act. The AO accordingly declined to grant exemption of Rs.2,67,18,560/- claimed under s.54F of the Act on the ground that belated deposits in the scheme is not in terms with the provisions of the Act. Consequently the AO increased the assessed income to the extent of the exemption claimed under s.54F of the Act and assessed the total income at Rs.2,67,25,556/- in place of return of income of Rs.6,996 only.

4. Aggrieved, the assessee preferred the appeal before the CIT(A).

5. The CIT(A) revisited the submissions made on behalf of the assessee but however did not find merit therein either. The CIT(A) accordingly endorsed the action of the AO for non eligibility of exemption claimed under s.54F of the Act concerning AY 2013-14 in

question. The CIT(A) however entertained the additional ground raised on behalf of the assessee in the first appellate proceedings towards credit of tax paid in the subsequent year of withdrawal of the amount from capital gain account scheme. Suitable observations were made by the CIT(A) in this regard.

6. Aggrieved by the denial of exemption by the Revenue authorities in AY 2013-14 in question, the assessee preferred appeal before the Tribunal.

7. The learned AR for the assessee reiterated various submissions made before the lower authorities. The main plank of the argument of the assessee before us was inability of the assessee to deposit the money within the prior permission contemplated under s. 139(1) of the Act owing to non receipt of sale consideration in full on sale of original assets before due date under s.139(1) of the Act. The other plank of contention being that time limits under s.139(4) of the Act should be reckoned for the purpose of eligibility of deduction under s.54F of the Act. The learned AR for the assessee relied upon the decision of the co-ordinate bench in Sunayana Devi vs. ITO ITA No. 996/Kol/2013 order dated 13.09.2017 and Mrs. Seema Sabharwal vs. ITO ITA No. 272/Chd/2017 order dated 05.02.2018 for this purpose.

8. The learned DR, on the other hand, relied upon the Revenue authorities.

9. We have carefully considered the rival submissions. The central controversy in the instant case is towards allowability of deduction under s.54F of the Act having regard to the deposits made in the designated capital gain account scheme within the extended due date under s.139(4) of the Act.

9.1 The Revenue seeks to deny the deduction on the ground that explicit conditions of Section 54F of the Act has not been fulfilled in as much as the assessee has failed to deposit the consideration (arising from sale of original asset) before the due date contemplated under s.139(1) of the Act as enjoined by Section 54F(4) of the Act. The controversy revolves around the phraseology of Section 54F(4) of the Act. It will thus be apt to refer to Section 54F(4) of the Act with which we presently concerned:

"54F. (1)……..

(2)……..

(3)……..

[(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

***Provided** that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—*

(i) the amount by which—

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1),
exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid."

[underline is ours]

9.2 From a plain reading, we notice that Section 54F(4) of the Act enjoins that the net consideration received on sale of original asset is required to be appropriated by the assessee towards purchase of new assets before furnishing of return of income under s. 139 of the Act. Alternatively, in the event of non-utilization of net consideration towards purchase of new asset, the assessee is required to deposit the capital gains in specified bank account before the due date of filing of return of income under s.139(1) of the Act. In the instant case, the assessee has not claimed any purchase of new asset. We are thus only concerned with deposit of the net consideration in the designated capital gain account scheme. Thus, the claim of the assessee is required to be weighed on the first limb of Section 54F(4) of the Act i.e. whether sale consideration has been utilized for deposit in the designated scheme before the date of filing of return of income. At this juncture, we straightway notice that the legislature in its own wisdom has used the expression; Section 139 of the Act with reference to second limb i.e. purchase etc. of new asset, while on the other hand, the time limit was under s.139(1) of the Act has been specified for deposit in capital gain account scheme. Thus, when viewed, the distinction between the two different forms of expression of time limit can yield different results. While Section 139 used with reference to

purchase of new asset is possibly open to varied interpretation i.e. time limit under s. 139(1) of the Act as well as extended time under s.139(4) of the Act, the time limit provided for deposit in scheme, on the other hand, has been categorically provided to be as per Section 139(1) of the Act without any ambiguity. There is presumption that words are used in an act of Parliament, correctly and exactly, and not loosely and inexactly. In the present case, we are concerned with utilization of net consideration arising on sale of original assets towards deposit in capital gain account scheme. The time stipulated for such deposit is qua Section 139(1) of the Act. Hence, the suggestion on behalf of the assessee for eligibility of deposits subsequent to expiry of time limit under s.139(1) of the Act [expressly provided in the Act] is not aligned with and militates against the plain provisions of law codified in Section 54F(4) of the Act.

9.3 The mandate of Section 54F(4) of the Act being crystal clear, it is quite difficult to depart therefrom. While holding so, we also refer to the decision of the Hon'ble Supreme Court rendered in the case of Dilipkumar & Co. [2018] 9 SCC 1 requiring strict construction of beneficial provision. In the absence of any ambiguity in the exemption provision for eligibility, we do not see any reason to interfere with the order of the CIT(A) where the net consideration has not been utilized for the purposes of deposit in the notified bank account in terms of Section 54F(4) of the Act before due date specified under s.139(1) of the Act.

9.4 We now turn to decisions referred to on behalf of the assessee. These decisions were rendered in the context of their own facts. In both cases, the consideration was invested for purchase of residential house within stipulated period. In the instant case, the issue is with reference to deposit in scheme. Coupled with this, the benefit of law

on interpretation of beneficial provision by Hon'ble Supreme Court in Dilipkumar & Co. (supra) was not available in those cases. Thus, we are not persuaded by the decisions cited.

10. In the result, appeal of the Assessee is dismissed.

This Order pronounced in Open Court on 08/02/2019

Sd/-	Sd/-
(MADHUMITA ROY)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 08/02/2019

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।