

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH, MUMBAI

BEFORE HON’BLE SHRI SANDEEP GOSAIN, JM

& HON’BLE SHRI G. MANJUNATHA, AM

आयकरअपीलसं./ I.T.A. No. 5923/Mum/2017

(निर्धारणवर्ष / Assessment Year: 2013-14)

ITO – 25(3)(5), R. No. 609, C-10, 6 th floor, Pratykshkar Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400 051	बनाम/ Vs.	Nilima Abhijit Tannu, 002, Ground floor, Sunder Apartment, Ajamal Road, Vile Parle (east), Mumbai-400 057.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AFBPT0182L		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

C.O. No. 333/Mum/2018

(निर्धारणवर्ष / Assessment Year: 2013-14)

Nilima Abhijit Tannu, 002, Ground floor, Sunder Apartment, Ajamal Road, Vile Parle (east), Mumbai- 400 057.	बनाम/ Vs.	ITO – 25(3)(5), R. No. 609, C-10, 6 th floor, Pratykshkar Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400 051
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Bharti Singh, DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Vignesh Palkar, AR
सुनवाईकीतारीख/ Date of Hearing	:	09/01/2019
घोषणाकीतारीख / Date of Pronouncement	:	05.04.2019

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present appeal as well as cross objection have been filed by the revenue as well as assessee are against the order of Commissioner of Income Tax (Appeals)-37, Mumbai dated 03.07.17 for AY 2013-14.

2. Since, the facts raised in the appeal filed by the revenue as well as C.O. filed by the assessee are identical, therefore for the sake of convenience; they are clubbed, heard and disposed of by this consolidated order.

3. First of all we take up appeal in **ITA No. 5923/Mum/2017** filed by revenue for AY 2013-14 on the grounds mentioned herein below:-

1."On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 82,89,448/- on account of exemption u/s. 54F of the IT Act ignoring the fact that amount shall be deposited with in time limit u/s. 139(1) of the Act as per Central government notification in the

official Gazette, and such return shall be accompanied by proof of such deposit with in due date of filing of Return as per prescribed time limit u/s. 139(1) of the IT Act."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 82,89,448/- on account of exemption u/s. 54F of the IT Act. Further the legislature would not have emphasized that such deposit being made in any case later than the due date applicable in the case of the assessee for furnishing the return of income under sub section 1 of the section 139."

3. "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the assessing officer be restored.

4. The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary.

4. As per the facts of the present case are that the assessee is an individual and is earning income in the form of income from salary, capital, gain and income from other sources. The return of income had e-filed on 27.08.2013 declaring total income of

Rs.3,06,787/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961. Subsequently, the case was selected for scrutiny by issue of notice u/s. 143(2) of the Income Tax Act. The authorized representative appeared before the A.O. and filed details during the assessment proceedings. The assessee had shown long term capital gain of Rs.85,60,916/- on sale of shares and claimed deduction of Rs.82,89,448/- u/s 54F of I.T. Act on purchase of new flat. The AO had disallowed deduction u/s 54F and added back to the total income of the assessee.

5. Aggrieved by the order of the AO, the assessee preferred appeal before Ld.CIT(A) and Ld. CIT(A) after appreciating the facts of the present case, had *allowed* the appeal of the assessee.

6. Now before us, the revenue as well as assessee have preferred their respective appeal/ cross objection. Firstly we are dealing with the appeal filed by the revenue.

7. The solitary ground raised by the revenue relates to challenging the order of Ld. CIT(A) in deleting the disallowance

of Rs. 82,89,448/- on account of exemption u/s 54F of the Act made by the AO.

8. Ld. DR appearing on behalf of the revenue relied upon the orders passed by AO and submitted that as per section 54F of the Act, the amount of the capital Gain 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 utilized 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. It was submitted that such deposit being made in any case not later than the due date applicable in the case of 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 utilized in accordance with any scheme which the central government may be notification in the official Gazette, framed 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 utilized by the

assessee for the purchases or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset. It was further submitted that there are two different dates specified for the investments u/s 54F of the Act.

According to Ld. DR, in the first situation where the utilization of sale consideration are made for purchase/construction of property before the date of filing the return, it was mentioned as before the date of furnishing the return of income u/s 139 of the Act. It was further submitted that in the second situation, where the amounts are to be deposited in the specified modes it was mentioned as 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 section 1 of section 139 of the Act. Thus, according to Ld. DR, it is clear that the time limits for the purpose of utilization of sale proceeds for purchase/construction of property before the date of filing of return and for the purposes of making deposits in the specified modes are totally different. According to Ld. DR, in the former case, it was the date of filing the return u/s 139 of the Act, however, in the later situation it was the date to file return u/s 139(1) of the Income Tax Act.

9. Ld. DR relied upon the judgment of Hon'ble Supreme court in the case of *Prakash Nath Khanna & Ors vs CIT & another (2004) 266 ITR 1(SC)*, wherein the Apex Court interpreted the words " due date" as mentioned in section 139(1) and 139(4) of the Act. Therefore, while interpreting section 139(1) 139(2) and 139(4) of the Act, the Apex Court found that due dated certainly mean due date as prescribed in sub section 1 of section 139. Even though the concept of criminal prosecution is disastrous for assessee, the Hon'ble Apex Court has decided the intent of legislature behind the insertion of due date in section 139(1) of the Income Tax Act. The Hon'ble Apex Court has held that, even if a return is filed in terms of sub-section (4) of section 139 that would not dilute the infraction in not furnishing the return in due time as prescribed under sub-section (1) of section 139 otherwise the use of the expression 'in due time' would lose its relevant and it cannot be said that the said expression was used without any purpose. Ld. DR also relied upon the judgment in the case of *Sri K. T. Biju Kannur 768/Coch/2013 dated 21.11.14* pronounced by Hon'ble ITAT Cochin, the Hon'ble ITAT has held that to claim deduction u/s 54 of the Act, the

assessee has to make investment within due date of filing the return u/s 139(1) of the I.T. Act.

10. It was further submitted that Ld. CIT(A) had erred in deleting the disallowance of Rs. 82,89,448/- on account of exemption u/s. 54F of the IT Act by ignoring the fact that amount shall be deposited within time limit u/s. 139(1) of the Act as per Central government notification in the official Gazette, and such return shall be accompanied by proof of such deposit within due date of filing of Return as per prescribed time limit u/s. 139(1) of the IT Act. Therefore, Ld. DR submitted that the additions were rightly made by AO.

11. On the other hand, Ld. AR reiterated the same arguments as were raised by him before Ld. CIT(A) and submitted as under:-

i) Section 54F(1) is subject to sub section (4), from the plain reading of provisions of sub section (4) of section 54F, it is clearly evident that the time limit for investment in new asset is two years from the date sale of original assets in case of purchase, from the facts of the case the assessee has sold original asset

being shares on 22.02.2013 and investment in new assets was made on 10.06.2014, i.e. within a period of two years.

ii) Now, as pointed out by AO and as evident from isolated reading of provisions of sub section 4 of section 54F, the unutilised amount, if any was to be deposited in capital gain scheme account before due date of filing return as provided in sub section 1 of section 139 of ITA.

iii) From joint reading of the entire sub section 4 of section 54F, the legislature has prescribed due date for utilization of sale consideration is as provided under section 139 of ITA, Now, as per provisions of section 139(4) of the ITA, the due date is one year from end of the relevant assessment year, in this case being 31.03.2015. The purchase of new assets was made on 10.06.2014, being within the time provided. The assessee in support of the said contention relies on the judicial precedents as below;

iv) Hon 'ble Mumbai Bench of ITAT in case of Anil Kumar Omkar Singh Aurora v/s ITO 12(3) (4), Mumbai, held that section 139(4) has to be read along with sub section 1 of section 139 and the due date for furnishing the return of income u/s 139(1) is subject to the extended period provided u/s 139(4). Hence,

extended period u/s 139(4) has to be considered for the purpose of utilisation of the capital gain amount. Assessee is entitled to claim deduction u/s 54F of the Act for utilisation of sale consideration for investment in new residential property within due date as stipulated u/s 139 of the Act. In the cited case, the assessee had sold original assets on 21.11.2008 for sale consideration of Rs. 70,00,000.00, the said assessee then went on to file his return of income on 25.09.2009, within due date as per sub section 4 of section 139, due date as per section 139(1) being 31.07.2009. The assessee purchased new asset on 15.10.2009, therefore capital gain for the purchase of property has been utilised before the extended due date of filing of return u/s 139(4).

12. We have heard counsels for both the parties at length and we have also perused the material placed on record, judgment cited by the parties as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). Ld. CIT(A) has dealt with this ground in para no. 3 to 6 of its detailed order. The

operative portion of the order of Ld. CIT(A) is contained in para no. 5(5.1 to 5.12) of its order and the same is reproduced below:-

5.1 In the instant case it is seen that the grounds of appeal pertains to disallowance of deduction u/s 54F of the Act. For the sake of convenience, all the grounds are disposed together.

5.2 The assessee sold 16,393 shares of Seclore Technologies Private Limited on 22.02.2013 for Rs. 85,60,916.00/- .The said shares were purchased on 20.10.2010 for Rs. 2,71,468.08.The assessee filed return of income on 27.08.2013 claiming exemption on capital gain on sale of shares of Rs. 82,89,448.00/-, after indexation. The exemption was claimed against deposit of the amount in capital gain account scheme in State Bank of India on 01.08.13 of Rs. 85,61,000.00/-. The assessee further invested the same sale proceeds in purchase of residential flat namely B-305, Silversrest Chs Ltd, Raheja Vihar Complex, Chandivali Farm Rd., Powai, Mumbai 400 072 on 10.06.2014. The investment in new asset was made with period of 2 years from date of sale and the entire sale consideration was invested in purchase of new asset. The Purchase price of new assets being Rs. 1, 58, 10, 000.00 and the sale consideration was Rs. 85, 60, 916.00.The assessing officer has issued show cause notice dated regarding the allowability of exemption u/s 54F of Rs. 82,35,592/-. The A.O. in the assessment order dated 11/02/2016, after considering the facts of the case, has

disallowed the claim of the appellant u/s 54F of the IT Act. The AO had mentioned in the assessment order stated that the time limit for investment of sale proceeds towards purchase/construction of new assets was as provided u/s 139, whereas the time limit for deposit of sale consideration in capital gain scheme account was as provided u/s 139(1) of ITA.

The AO in the assessment order on page number 3 states that;

As per the provisions of section 54F of the Act, the amount of capital gain which is not appropriated by the assessee towards 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 due of furnishing of 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 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 purpose of sub section 1 the amount is 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. Thus there are two different dates specified for the investment u/s 54F of the Act. In the first situation where the utilisation of sale consideration are made for purchase/construction of property before the date of filing the return, it was mentioned as before the date of furnishing the return of income under section 139. In the second situation, where the amounts are to be deposited in the specified modes it was mentioned as "such deposit beine 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.

5.3 I have considered the submission of the appellant and observation of the assessment order. The Section 54 only talks about deposit within the prescribed time period. From a plain reading of Sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only Section 139 of the Income-tax Act, 1961, is mentioned in Section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under Section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only Section 139(1) but it means all sub-sections of Section 139 of the Income-tax Act, 1961. Provisions of section 54 are beneficial provisions and should be construed liberally.

5.4 *The provisions of section 54 of I.T. Act are summarized as under:-*

54. (1) Subject to the provisions of sub-section (2), -where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its

purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain 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 Mm before furnishing such return fsuch 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 utilized wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,

(i) the amount not so utilised shall be charged under section 45 as the 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 such amount in accordance with the scheme aforesaid'.

5.5 The Honorable Income Tax Appellate Tribunal, Chennai, has decided identical issue in the case of ACIT Vs. Smt. Umayal Annamalai, I.T.A. No.415/Mds/2015 & C.O.No.43/Mds/2015 ITA No.415/Mds/2015. The assessee has not invested in Capital Gain Account Scheme before 139(1) of the Act but complied with the conditions under section 54F(1) of the Act by purchasing and construction of residential property within three years from the date of transfer of original asset which is not disputed in the assessment proceedings or in appellate proceedings. The provisions of section 54F are beneficial provisions and are to be considered liberally in the aspect of limitation.

5.6. Further stated that the Hon'ble High Court of Punjab and Haryana at Chandigarh, has held in the case of

the Commissioner of Income Tax, Rohtak Vrs. Shri Jagtar Singh Chawala, that 'Sec 54F - Deposit in capital gains account scheme by sec 139(4) is the correct due date'. ITA No. 71 of 2012 (O&M). The Honourable High Court of Guwahati, in the case of Commissioner Of Income-Tax vs Rajesh Kumar Jalan on 9 August, 2006, 286 ITR 274, (Paras 6 and 11), held that from a plain reading of Sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only Section 139 of the Income-tax Act, 1961, is mentioned in Section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under Section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only Section 139(1) but it means all sub-sections of Section 139 of the Income-tax Act, 1961.

5.7 The Hon'ble Mumbai Bench of ITAT in case of Anil Kumar Omkar Singh Aurora v/s ITO 12(3)(4), Mumbai held that section 139(4) has to be read along with sub section 1 of section 139 and the due date for furnishing the return of income u/s 139(1) is subject to the extended period provided u/s 139(4). Hence, extended period u/s 139(4) has to be considered for the purpose of utilisation of the capital gain amount. Assessee is entitled to claim deduction u/s 54F of the Act for utilisation of sale consideration for investment in new residential property within due date as stipulated u/s 139 of the Act. In the cited case, the assessee had sold original assets on 21.11.2008

*I.T.A. No. 5923/Mum/2017
and C.O. No. 333/Mum/2018*

Nilima Abhijit Tannu

for sale consideration of Rs. 70,00,000.00, the said assessee then went on to file his return of income on 25.09.2009, within due date as per sub section 4 of section 139, due date as per section 139(1) being 31.07.2009. The assessee purchased new asset on 15.10.2009, therefore capital gain for the purchase of property has-been utilised before the extended due date of filing of return u/s 139(4). The relevant part of the decision are as under:-

Only issue involves in this appeal is as to whether extended period as per section 139(4) has to be considered for the purpose of utilization of amount of capital gain for the purpose of claiming exemption u/s,54F of the Act. The above issue is squarely covered by the decision of Hon'ble Punjab and Haryana High Court in the case of CIT V/s. Ms. Jagriti Agganval (2011) 339 ITR 610 (P&H), wherein, Their Lordships have held that provision of section 139(4) is not an independent provision, but is related to time contemplated under the provision of section 139(1) of the Act. Accordingly, section 139(4) had to be read along with sub-section (1) of section 139 and the due date for furnishing the return of income u/s. 139(1) is subject to the extended period provided u/s. 139(4). Hence, extended period u/s. 139(4) has to be considered for the purpose of utilization of the capital gain amount. The ITAT, Mumbai following the decision of the Hon 'ble Punjab and Haryana High Court in the case of Kishore Galaiya V/s. ITO (137ITD 229) has held that when the assessee had utilized the amount which was more than the capital gain earned

towards consideration of new residential house within extended period u/s. 139(4) of the Act, the claim made by assessee for exemption u/s. 54F of the Act could not be denied.

The similar issue had also come up before the Hon'ble Guwahati High Court in the case of CIT V/s. Rajesh Kumar Jain (supra) and the Hon 'ble High Court has held that if the assessee fulfils the condition for exemption u/s.54 within the extended time of filing of return u/s. 139(4) of the Act.The assessee is entitled to exemption u/s.54 of the Act. In view of above, we hold that the assessee is entitled to claim deduction u/s.54F of the Ac for utilization of sale consideration for investment in new residential property within due date as stipulate u/s 139 of the Act. Hence, grounds of appeal taken by assessee are allowed by reversing the orders of authorities below.

5.8 The Hon'ble Mumbai Bench of Tribunal in the case of Kishore H.Galaiya V/s.ITO [2012] 24 taxmann.com 11 (Mum), wherein on identical facts and circumstances, the issue has been decided in favour of the assessee. The Hon'ble Mumbai bench of ITAT discussed at length the provisions of section 54 with respect to due dates mentioned in section 139(1) and 139(4) of the I.T.Act. Finally the Hon'ble Mumbai bench of the ITAT held that if investment in new asset is made within the date as stated u/s 139(4) of I.T.Act, then the exemption u/s 54 of I.T.Act should be extended to the assessee. Further, the similar

view taken by the other Court and Tribunal in the case of Smt.Rita Chetan Naik in ITA No.3986/Mum/2012 (AY.2008-09) dated 10-7-2013, CIT V/s Rajesh Kumar Jain (2006) 286 ITR 274 (Gauhati), FathimaBai V/s ITO (2009) 32 DTR (Kar) 243, Trustees of Tulsidas Gopaji Charitable and Chaleshwar Temple Trust (1994) 207 ITR 368 (Bom), CIT V/s. Jagtar Singh Chawla (2013) 215 Taxman 154 and P.R.Kulkarni and Sons (HUF) V/s.Adll.CIT(2011) 135 TTJ (Bang) 630. In the context of the above cited judgement it is pertinent to note that provisions of section 54 and 54F of the I.T.Act are similar and hence the above judgement can be applied to understand the provisions of section 54 of I.T.Act.

5.9 The Hon'ble Mumbai bench of ITAT in case of Smt. Rita Chetan Naik v/s ITO 19(3)(2), Mumbai 2013 (7) TMI 1016 -ITAT Mumbai has relied on judgement of Hon'ble Punjab and Haryana High Court in case of CIT v/s MsJagrati Aggarwal 339 ITR 610 (P&H) where The Hon'ble High Court had an occasion to deal with the similar issue in the case of CIT Vs.MsJagrati Aggarwal (supra), wherein their lordships after analyzing the provision of section 54(2) and section 139(1) reached to the following conclusion.

'Having heard learned counsel for the parties, we are of the opinion that subsection (4) of section 139 of the Act is, in fact, a provision to sub-section(1) of section 139 of the Act. Section 139 of the Act fixes the different dates for filing the returns for different assesseees. In the case of the assessee

as the respondent, it is the 31st day of July of the assessment year in terms of clause (c) of Explanation 2 to subS section (1) of section 139 of the Act, -whereas sub-section (4) of section 139 provides for extension in period of due date in certain circumstances. It reads as under:

"(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under subsection(10) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

A regarding of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-section (1), i.e. before the 31st day of July of the assessment year, the assessee can file return before the expiry of one year from the end of the relevant assessment year.

The sale of the asset having taken place on January 13, 2006, falling in the year 2006-2007, the return could be

*filed before the end of the relevant assessment year 2007-08, i.e., March 31, 2007. Thus, subsection (4) of section 139 provides the extended period of limitation as an exception to sub-section (1) of section 139 of the Act. Sub-section (4) is in relation to the time allowed to an assessee under subsection (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under sub-section (1) of section 139. Therefore, such sub-section (4) has to be read along with sub-section (1). Similar is the view taken by the Division Bench of the Karnataka and Gauhati High Courts in *Faitma Bai* (2009) 32 DTK 243 and *Rajesh Kumar Jalan* (2006) 266 ITR 274 (Gauhati) respectively.*

In view of the above, we find that due date for furnishing the return of income as per section 139(1) of the Act is subject to the extended period provided under subsection (4) of section 139 of the Act.

Consequently, the question of law is answered against the Revenue and in favour of the assessee. Thus, the present appeal is dismissed.

5.10 The Hon'ble Bombay High Court 1994 207 ITR 368 Bomin case of Trustees of Tulsidas Gopalji...v/s CIT was held that on a careful reading of sec 139 of ITA, we are of the clear opinion that sub sections (1) and (4) of section 139 have to be read together and on such a reading, the inevitable conclusion is that a return made within the time specified in sub section (4) has to be considered as having

been made within time prescribed in sub section (1) or sub section (2) of section 139 of ITAct. In other words, if a return is filed within the time specified in sub section (4) of section 139 of ITA and the option contemplated by the Explanation to section 11(1) is exercised in writing along with such return, the requirements of the Explanation to section 11(1) would stand satisfied.

5.11 *After considering the totality of facts, rival submissions, the applicable law and on the basis of discussion mentioned above, I find force in the argument of the appellant and draw strength from the decision given by the Hon'ble Mumbai ITAT and Bombay High Court on identical facts. The appellant had invested the sale proceeds in ; purchase of residential flat namely B-305, Silversrest Chs Ltd, Raheja Vihar Complex, t Chandivali Farm Rd., Powai, Mumbai 400 072 on 10.06.2014. The investment in new asset was made with period of 2 years from date of sale and the entire sale consideration was invested in purchase of new asset. The appellant had deposited the sale amount of Rs.85,61,000/- in capital gain account scheme in State Bank of India on 01.08.2013 on 05-08-2013. The due date of filing of return of income was extended from 31-07-2013 to 05.08.2013 by CBDT vide instruction no. F.No. 225/117/2013/ITA.II dated 31.07.2013 . According to the provisions of section 54 of the Act, appellant had invested into new residential flat Silversrest CHS Ltd. Chandivili, Mumbai within the period of 2 years. The ^condition to deposit within the stipulated*

time was duly satisfied and the 2nd condition to buy a new house property within a limited time frame was also duly satisfied by the appellant. According to the provisions of section 54 of the Act, an assessee has an option to claim deduction against long term capital gain on transfer of a residential flat, provided he/she invests within a period of one year before or two years after the date on which the transfer takes place to purchase or within a period of three years after that date to construct, one residential house in India. The appellant has duly acquired a new house property within 2 years from the date of the original transfer of flat and has accordingly rightly claimed deduction u/s 54 of the Act. Section 54 only provides that the assessee has to purchase a house property for the purpose of his own residence within a period of one year before or after the date on which the transfer of his property took place or he should have constructed a house property within a period of two years after the date of transfer. It was further held that entitlement of exemption under Section 54 relates to the cost of acquisition of a new estate in the nature of a house property for the purpose of his own residence within the specified period.. If the assessee fulfils the condition for exemption u/s.54 within the extended time of filing of return u/s. 139(4) of the Act, the assessee is entitled to exemption u/s.54 of the Act. In view of above, I came to conclusion that the appellant is entitled to claim deduction u/s.54 of the Act for utilization of sale consideration for investment in new residential property within due date as stipulated u/s. 139 of the Act.

the Section 139 of the Income-tax Act, 1961, cannot be meant only section 139(1) but it means all sub-sections of section 139 of the Income-tax Act, 1961. Under sub-section (4) of section 139 of the Income-tax Act any person who has not furnished a return within the time allowed to him under sub-section (1) of section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier. Such being the situation, it is the case of the appellant that the appellant has fulfilled the requirement under section 54 of the Income-tax Act for exemption of the capital gain.

5.12 In view of legal provisions of I.T.Act and judicial precedents of jurisdiction, the disallowance of claim of 54 of I.T.Act made by the A.O. cannot be sustainable. The appellant is entitled to exemption u/s.54 of I.T.Act. Therefore, the A.O. is directed to allow the deduction of Rs.82,89,448/-.

13. After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by both the parties, we find as per the facts of the present case, the assessee sold 16,393 shares of *Seclore Technologies Private Limited* on 22.02.2013 for Rs. 85,60,916.00/- .The said shares were purchased on 20.10.2010

for Rs. 2,71,468.08. The return of income was filed claiming exemption on capital gain on sale of shares after indexation. The said exemption was claimed by the assessee against deposit of the amount in capital gain account scheme in State Bank of India on 01.08.13 of Rs. 85,61,000.00/-. Although, the assessee further invested the same sale proceeds in purchase of residential flat namely B-305, Silversrest Chs Ltd, Raheja Vihar Complex, Chandivali Farm Rd., Powai, Mumbai 400 072 on 10.06.2014. The said investment in new asset was made within the period of 2 years from the date of sale and the entire sale consideration was invested in purchase of new asset. The Purchase price of new assets being Rs. 1, 58, 10, 000.00 and the sale consideration was Rs. 85,60,916.00. The A.O. disallowed the claim of assessee u/s 54F of the IT Act by holding that the time limit for investment of sale proceeds towards purchase/construction of new assets was as provided u/s 139, whereas the time limit for deposit of sale consideration in capital gain scheme account was as provided u/s 139(1) of IT Act.

14. We are of the view that section 54F of the Act only talks about deposit within the prescribed time period. Even on the plain reading of Sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only Section 139 of the Income-tax Act, 1961, is mentioned in Section 54(2) in the context that the *unutilised portion* of the capital gain on the sale of property used for residence should be deposited *before* the date of furnishing the return of the Income-tax under Section 139 of the Income-tax Act. In our view, section 139 of the Income-tax Act, 1961, *cannot be meant only* Section 139(1), but it means all sub-sections of Section 139 of the Income-tax Act, 1961. The provisions of section 54 are *beneficial provisions* and are to be construed liberally as has been held by the Coordinate Bench of ITAT, Chennai in the case of *ACIT Vs. Smt. Umayal Annamalai, I.T.A. No.415/Mds/2015 & C.O.No.43/Mds/2015 ITA No.415/Mds/2015*. The Hon'ble High Court of Punjab and Haryana in the case of the *Commissioner of Income Tax, Rohtak Vrs. Shri Jagtar Singh Chawala*, held that 'Sec 54F - Deposit in capital gains account scheme by sec 139(4) is the correct due date'. Further, in the case of *Commissioner Of*

Income-Tax vs Rajesh Kumar Jalan on 9 August, 2006, 286

ITR 274, (Paras 6 and 11), held that only Section 139 of the Income-tax Act, 1961, is mentioned in Section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under Section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only Section 139(1) but it means all sub-sections of Section 139 of the Income-tax Act, 1961.

15. We have also considered all the other judgments cited by the parties as well as mentioned in the order of Ld. CIT(A) and we are also of the view that according to the provisions of section 54 of the Act, an assessee has an option to claim deduction against long term capital gain on transfer of a residential flat, provided he/she invests within a period of one year **before** or two years **after** the date on which the transfer takes place to purchase or within a period of three years after that date to construct, one residential house in India. As per the facts, the assessee has duly acquired a new house property within 2 years from the date of the

original transfer of flat and has accordingly rightly claimed deduction u/s 54 of the Act. The entitlement of exemption under Section 54 relates to the cost of acquisition of a new estate in the nature of a house property for the purpose of his own residence within the specified period. If the assessee fulfils the condition for exemption u/s.54 within the extended time of filing of return u/s. 139(4) of the Act, the assessee is entitled to exemption u/s.54 of the Act. Accordingly, the assessee is entitled deduction u/s 54 of the Act for utilization of sale consideration for investment in new residential property within due date as stipulated u/s. 139 of the Act. As already held that Section 139 of the Act cannot be meant only section 139(1), but it means all sub-sections of section 139 of the Act. Thus, under sub-section (4) of section 139 of the Income-tax Act any person who has not furnished a return within the time allowed to him under sub-section (1) of section 142 may furnish the return for any previous year at any time *before* the expiry of one year from the end of the relevant assessment year or *before* the completion of the assessment year whichever is earlier. Since the assessee has fulfilled the requirement under section 54 of the Income-tax Act for

exemption of the capital gain, therefore the assessee is entitled for the same.

16. Even before us, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the revenue stands **dismissed**.

17. In view of our above findings, the appeal filed by the revenue stands **dismissed**.

C.O. No. 333/Mum/2018 for AY 2013-14

18. Now we take up **C.O. No. 333/Mum/2018 for AY 2013-14** filed by the assessee. Since we have already decided the similar ground of appeal in ITA No. 5923/Mum/2017 for AY 2013-14 on merits. Therefore, following our own decision in ITA

No. 5923/Mum/17, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable *mutatis mutandis*.

19. Consequently, the CO filed by the assessee stands **dismissed**.

20. In the net result, the appeal filed by the revenue and C.O. filed by the assessee stands **dismissed** with no order as to cost.

Order pronounced in the open court on 5th April, 2019

Sd/-

(G. Manjunatha)

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :

Sr.PS. *Dhananjay*

Sd/-

(Sandeep Gosain)

न्यायिकसदस्य / Judicial Member

05.04.2019

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai