

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER And  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 2646/Ahd/2017

(निर्धारण वर्ष/Assessment Year : 2010-11)

Bhavin Piyushbhai Palkhiwala 302, Shapath-3 Nr.GNFC Info Tower SG Highway Ahmedabad-380 054	<b>बनाम/ Vs.</b>	The Income Tax Officer Ward-2(1)(4) Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEAPP 8972 Q</b>		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Dipak R. Thakkar, AR
प्रत्यर्थी की ओर से/Respondent by:	Shri O.P. Pathak, Sr.DR

सुनवाई की तारीख/ Date of Hearing	28/03/2019
घोषणा की तारीख/Date of Pronouncement	27 /05/2019

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-2/181/ITO, Wd.2(1)(4)/2015-16 dated 06/10/2017 arising in the assessment order passed under s.143(3) r.w.s.263 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 29/07/2015 relevant to Assessment Year (AY) 2010-11.

2. The assessee has raised the following grounds of appeal:-

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- 1.01. That learned CIT(A)-2, Ahmedabad has erred in confirming addition of Long Term Capital Gain of Rs.27,00,000/-.*
- 1.02. That various reasons advanced by Learned CIT(A)-2, are contrary to the facts and circumstances of my case.*
- 1.03. Therefore addition of Rs.27,00,000/- confirmed by Learned CIT(A)-2, Ahmedabad should be deleted.*

3. The interconnected issue raised by the assessee is that the Ld. CIT (A) erred in confirming the addition made by the AO for a sum of Rs. 27,00,000/- as income under the head capital gain.

4. The facts of the case are that the assessee is an Individual and deriving his income from salary, house property, and interest. The assessee during the year under consideration received has deposited a sum of Rs. 31,00,000/- in his bank account which was received from the sale of property (Bungalow No.16, Ashwamegh, Ahmedabad) and his father for Rs. 27,00,000/- and Rs. 4,00,000/- respectively.

5. The assessee further submitted that he relinquished his right in the Bungalow No.15, Ashwamegh, Ahmedabad which was jointly held by him in favor of family members in the F.Y.2008-09 through registered document dated 28/05/2008 without any consideration.

5.1. However, the AO did not make any inquiry regarding the above facts in his assessment proceedings under section 143(3) of the Act. Later on the Ld. PCIT was of the view that order framed by the AO under section 143(3) of the Act was erroneous and prejudicial to the interest of

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Revenue. Thus the Ld. PCIT passed his order under section 263 of the Act after observing as under;

1. That the sum was credited in the assessee's bank account in the year under consideration was received from Piyush Palkhiwala (Assessee's Father) and Manoj Kumar Vasudeo Sompura against the sale of the property.
2. That the assessee received the said sum for the relinquishment of his right in the immovable property detailed as Bungalow No. 15 Ashwamegh, Satellite, Ahmedabad. It is because the assessee relinquished his right of the ownership before the date of the conveyance deed dated 18/08/2009.
3. The assessee relinquished his right in favor of the family members by registering the document dated 28/05/2008 (i.e., F.Y. 2008-09).
4. The assessee's claim that he did not receive any consideration against his relinquishment of right was not acceptable.
5. The assessee was the signatory of the conveyance deed of the bungalow no-16, ashwamegh, Ahmedabad which was sold to Shree Manojkumar Yadav Sompura.
6. The assessee did not submit any evidence or related document whether he offered to tax on the capital gain arose upon relinquishment of his right.
7. The claim of receipt for Rs. 4,00,000/- from the father as a gift was supported with the confirmation, bank statement and return of income.

However, the AO neither called any information regarding this, nor the assessee submitted any documents during the assessment proceedings under section 143(3) and proceedings under section 263 of the Act.

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Accordingly, the Ld. PCIT directed the AO to make an addition of Rs. 27,00,000/- to the total income of the assessee as long term capital gain. Accordingly, the AO in pursuance to the direction of the learned PCIT made an addition of ₹27 Lacs under the head capital gain on account of relinquishment of the right to the total income of the assessee.

6. The aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) submits that if he is liable to tax under the head capital gain on the income considered by AO, then he is also eligible for deduction under section 54 of the Act. But the fact of purchase of another property jointly with the family member was ignored by the AO during the assessment proceedings. As such the investment was made to purchase another property within the time limit specified under the provision of section 54 of the Act.

However, the Ld. CIT (A) observed that the assessee was the owner of Bungalow No. 15 and 16 Ashwamegh, A'bad along with his family members. As such the assessee relinquished his share in the ownership in ownership in Bungalow No. 15 without any consideration through the registered document in favor of his family members dated 27/05/2008.

The Ld. CIT-A also observed that the assessee sold Bungalow No 16, Ashwamegh A'bad as per the conveyance deed executed on 18/08/2009 and received consideration of Rs. 27,00,000/- against his share in the said Bungalow. After that assessee invested the sale proceeds Rs. 27,00,000/- and Rs. 4,00,000/- received from his father to purchase Bungalow No 16, Neelkanth Green Bungalow on 29/09/2000. Therefore the assessee did

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not offer the tax on capital gain income as per the provision of section 54F.

However, the Ld. CIT (A) was of the view that assessee did not declare any capital gain on relinquishment of his share in Bungalow No. 15, Ashwamegh, Ahmedabad though it is considered a transfer under the Income Tax Act. As such on perusal of the sale and purchase deed the Ld. CIT (A) observed that the assessee sold Bungalow No. 16, Ashwamegh, Ahmedabad to Manoj V. Sompura dated 18/08/2009, and after 41 days the same Bungalow was purchased by him.

In view of the above, the Ld. CIT (A) was of the opinion that the assessee's contention was contradictory and therefore addition made by the AO was upheld.

Being aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before us.

7. The Ld. AR before us filed a paper book running from pages 1 to 123 and submitted that the assessee is entitled to the benefit under section 54 of the Act. The Ld. AR before us reiterated the submission as made before the authorities below.

8. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

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9. We have heard the rival contention of both the parties and perused the materials available on record. The issue in the instant case relates to the fact that the assessee has not offered income under the head capital gain on the relinquishment of his right in the property against which it received consideration of Rs. 27,00,000.00.

The assessee was the joint-owner in 2 bungalows bearing No. 15 and 16 located at Ashwamegh Ahmedabad along with his family members. The assessee claimed to have relinquished his right in bungalow No. 15 without any consideration in favor of his relatives. However, the AO was of the view that the assessee received consideration of ₹ 27 Lacs on account of relinquishment of his right in the property which was not disclosed in the income tax return. Accordingly, the AO treated such sum of ₹27 Lacs as income of the assessee under the head capital gain. The learned CIT (A) subsequently confirmed the order of the AO.

From the preceding discussion, we inter-alia also note that the assessee has invested in another property dated 29-09-2009 bearing address Bungalow No. 16, Neelkanth Green Bungalow for rupees 93,00,000.00 in the year under consideration along other two co-owners being family members. Accordingly, the assessee claimed to have invested in his share the property for ₹31 lakhs only. The copy of the sale deed is available on pages 106 to 123 of the paper book.

As such the assessee before the learned CIT (A) claimed to allow the benefit of exemption under section 54 of the Act if the sum of ₹ 27 Lacs

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is treated as his income on account of relinquishment of his right the property. But the learned CIT (A) rejected the contention of the assessee by observing that the assessee has made a contradictory statement. As such the assessee before the learned CIT (A) claimed to have received consideration of ₹27 Lacs against the sale of bungalow No. 16 and which was invested in 16, Neelkanth Green Bungalow on 29/09/2009. However, the learned CIT (A) misunderstood the claim of the assessee and observed in his order that the assessee after selling bungalow No. 16 Ashwamegh Ahmedabad to Manoj Kumar Vasudeo Sompura had purchased again after a gap of 41 days. Indeed the assessee has invested after 41 days of bungalow No. 16 Ashwamegh Ahmedabad sale, but the same was not repurchased by him as alleged by the ld. CIT-A. In fact, the assessee has invested in the bearing number 16, Neelkanth Green Bungalow on 29/09/2009. This fact for the purchase of bungalow No. 16, located at Neelkanth Green Bungalow on 29/09/2009 was not doubted by the authorities below.

We are also conscious to the fact the relinquishment deed was made on 27/05/2008 FY 2008-09 corresponding to AY 2009-10 as evident from the relinquishment deed placed on pages 63 to 76 of the PB. Thus if any tax is required to be levied, then it has to be levied in the AY 2009-10.

In view of the above, we conclude that the assessee was entitled to the benefit under section 54 of the Act in the given facts and circumstances. Accordingly, we are not inclined to adjudicate other contentions raised by the assessee before the authorities below. Thus we reverse the order of

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the learned CIT (A) and direct the AO delete the addition made by him.  
Hence, the ground of appeal of the assessee is allowed.

10. In the result, appeal of the assessee is allowed.

<b>This Order pronounced in Open Court on</b>	<b>27/05/2019</b>
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Sd/-  
( RAJPAL YADAV )  
JUDICIAL MEMBER

Sd/-  
( WASEEM AHMED )  
ACCOUNTANT MEMBER

Ahmedabad; Dated 27/05/2019

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-2, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad