आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

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

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

आयकर अपील सं./I.T.A. Nos. 1225/Ahd/2013 & 997/Ahd/2016

(**निर्धारण वर्ष /** Assessment Year : 2008-09)

Balkrishna P. Trivedi HUF 10, SBI Soc., Opp. Manekbaug Hall, Ambawadi, Ahmedabad 380015	**बनाम**/ Vs.	**Commissioner of Income Tax, Ahmedabad-III** Ahmedabad & **Deputy Commissioner of Income Tax** Circle-6, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad 380015
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

&

आयकर अपील सं./I.T.A. No. 1229/Ahd/2016

(**निर्धारण वर्ष /** Assessment Year : 2008-09)

Jt. Commissioner of Income-tax Circle-5(2), Ahmedabad	**बनाम**/ Vs.	**Balkrishna P. Trivedi HUF** 10, SBI Soc., Opp. Manekbaug Hall, Ambawadi, Ahmedabad 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHT1746C		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Assessee by :**	Shri Hardik Vora, A.R.
राजस्व की ओर से/**Revenue by :**	Shri Ritesh Parmar, CIT. D.R. Shri Umesh Kumar Agarwal, Sr. D.R.

सुनवाई की तारीख / **Date of Hearing**	30/01/2020
घोषणा की तारीख /**Date of Pronouncement**	31/01/2020

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals by the Assessee and Revenue are directed against the Commissioner of Income Tax, Ahmedabad-3 (in ITA No.1225/Ahd/2013) and Commissioner of Income Tax (Appeals)-5, Ahmedabad in other two appeals. The relevant details are tabulated as under:

ITA Nos.	Name of assessee	AY	CIT/ CIT(A)'s order dated	AO's penalty order dated	AO's order under Section
1225/Ahd/13	Balkrishna P. Trivedi HUF	2008-09	18.03.13	30.09.10	143(3) of the Income Tax Act, 1961 (in short 'the Act')
1229/Ahd/16	-Do-	-Do-	01.02.2016	24.03.2014	143(3) r.w.s. 263 of the Act
997/Ahd/16	-Do-	-Do-	-Do-	-Do-	-Do-

2. When the matter was called for hearing, the learned AR for the assessee fairly pointed out that the legal challenge to the jurisdiction assumed by the Commissioner of Income Tax under s.263 of the Act is not sustainable having regard to the decision of the co-ordinate bench of Tribunal in case of other co-owner namely *Riddhish B. Trivedi ITA No. 1226/Ahd/2013* order dated *17.01.2020* concerning the same land. In view of the submissions made on behalf of the assessee, we take note of the decision of the Tribunal hereunder upholding the jurisdiction under s.263 of the Act by the Commissioner of Income Tax:

"5. We have carefully considered the rival submissions. Section 263 of the Act confers power upon the Pr.CIT/CIT to call for and examine the records of a proceeding under the Act and revise and order if he considers the same to be erroneous and prejudicial to the interest of the Revenue. The Pr.CIT can take recourse to revision under s.263 of the Act where the assessment order is erroneous as well as prejudicial to the interest of Revenue. It is well settled that twin conditions are required to be specified simultaneously. The Pr.CIT in the present case has purported to act in exercise of power under s.263 of the Act and thereby has sought to dislodge and modify the assessment order of the AO passed under s.143(3) of the Act. The Pr.CIT essentially observed that the AO has wrongly allowed the deduction under s.54B of the Act in contravention of the provisions of the Act and without making any requisite inquiry on the factual aspects.

5.1 It is the case of the assessee that the pre-requisites of Section 54B of the Act have been complied with and there is no contravention of law in this regard. Controversy hinges around availability of deduction under s.54B of the Act against long term capital gain earned on sale of land. On a perusal of 54B of the Act, it is noticed that Section 54B of the Act is divided into two parts. First part deals with exemption of capital gains from transfer of land (original asset) used for agricultural purpose in the two years immediately preceding the date on which the transfer took place. The second part deals with the manner of utilization of gains arising from transfer of such land used for agricultural purposes. The Pr.CIT has impugned the eligibility of deduction under s.54B of the Act in both the parts. It is an admitted fact that on the date of transfer of land (which is broadly the legislative expression used in Section 54B of the Act), the land in question was neither agricultural land nor was used for agricultural purposes. The land has been admittedly declared as 'fallow land' on which no agricultural produce is plausible. Thus, as per the certificate of Talati as produced by the assessee himself, the viability of carrying out agricultural activity was quite dismal. We also find that the assessee has not declared any worthwhile agricultural income in the earlier years from such a large track of land (9286 sq.mtr.). Some expenses voucher produced for expenditure incurred on Tractor does not inspire any confidence. Such material was not produced before the lower authorities as well. The assessee has failed to adduce any satisfactory evidence that the land was subjected to any systematic agricultural operation in last two years immediately preceding the date of transfer as required in law indeed. The reply of the assessee and evidence relied thereupon appears to be cosmetic. The AO has failed to make any inquiry on this vital aspect while admitting the claim of the assessee and allowed the claim summarily. The Pr.CIT in our view correctly appreciated the facts and applied the law in perspective to draw an adverse conclusion on eligibility of deduction. We see no error in the conclusion drawn by the Pr.CIT to hold that the claim under s.54B of the Act has been allowed without fulfillment of prescribed conditions. We thus decline to interfere with the revisional order of the Pr.CIT on this score.

5.2 Notwithstanding that claim of deduction under s.54B of the Act is found to be in contravention with law and therefore the second aspect

of the assessee need not to be gone into, we would however deal with the second aspect of controversy as well, for the sake of completeness.

5.3 The assessee claims to have transfer an amount of Rs.30,45,500/- from 'capital gains saving scheme' to 'capital gain deposit scheme' on same stipulations and claims to have not diverted the money for the purposes other than specified under s.54B(2) of the Act. However, it is the admitted position that no evidence in this regard was filed before the AO to substantiate the assertions being made. The AO has accepted the claim without looking into this aspect which has direct bearing on maintainability of deduction. The Pr.CIT, in the circumstances, has rightly remitted the issue back to the file of the AO for requisite verification action of Pr.CIT has shunned prejudice to Revenue without any perceptible prejudice to assessee. We see no error in such direction and hence decline to interfere.

6. In the result, appeal filed by the assessee in ITA No.1226/Ahd/2013 is dismissed."

3. In parity, appeal of the assessee challenging the jurisdiction under s.263 of the Act is dismissed in the case of the partner co-owner namely Balkrishna P. Trivedi HUF as well.

4. In the result, appeal filed by the assessee in ITA No.1225/Ahd/2013 is dismissed.

ITA No. 997/Ahd/2016

5. The grounds of appeal raised on behalf of the assessee is reproduced hereunder:

"1. On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.77,90,000/- claimed u/s 54B of the Act.

2. On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.50,00,000/-claimed u/s 54EC of the Act.

3. On the facts and circumstances of the case as well as law on the subject, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of brokerage amounting to Rs.5,00,000/-."

6. Ground No.1 concerns disallowance of claim made under s.54B of the Act. We find that the identical issue has been examined by the co-ordinate bench of Tribunal in the case of other co-owner namely *Riddhish B. Trivedi vs. CIT ITA No. 1226/Ahd/2013* order dated *17.01.2020*

7. The learned AR for the assessee fairly pointed out that in view of the decision rendered by the co-ordinate bench in the case of other co-owner against the assessee, he does not have any fresh point to support the aforesaid ground.

8. In the light of the observations made by the co-ordinate bench in other co-owner namely *Riddhish B. Trivedi (supra)* as reproduced above in para 2 (supra) against the assessee for allowability of deduction under s.54B of the Act, Ground No.1 of the assessee's appeal is dismissed.

9. Ground No.2 concerns disallowance of Rs.50 Lakhs claimed under s.54EC of the Act. As pointed out on behalf of the assessee, the identical issue came for adjudication in the case of other co-owner namely *Sudhaben Balkrishna Trivedi* in *ITA No.2658/Ahd/2011* order dated *17.08.2017* wherein the issue was adjudicated in favour of the assessee in following terms:

> *"3. To adjudicate on this grievance, only a few material facts need to be taken note of. The assessee had made qualifying investments in REC Bonds, amounting to Rs.50,00,000/- each, on 31.03.2007 and 31.10.2007, so as to claim deductions under section 54EC. The Assessing Office was of the view that "as per section 54EC, there is a cap of Rs.50,00,000/- anytime within six months from the date of transfer of property" and, accordingly, he disallowed the amount of Rs.50,00,000/-. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) who reversed the action of the Assessing Officer. While doing so, learned CIT(A) observed as follows:-*
>
> > *"6. The third ground of appeal is disallowance of claim made U/s. 54EC of Rs.50,00,000/-. The facts of the case are the appellant has made investment of Rs.50,00,000/- on 31.03.2007*

and Rs.50,00,000/- on 31.10.2007 in RFC bond u/s. 54EC of the Act. The Assessing officer mentioned in the assessment order that there is a cap of Rs.50,00,000/- in Sec. 54EC of the Act. The assessing officer has therefore allowed claim of investment of Rs.50,00,000/- made on 31.10.2007 and has not allowed claim of investment of Rs.50,00,000/- made on 31.03.2007. The learned A.R. has argued before me that the cap is on investment is made applicable for investment made on or after 01.04.2007. Further, the cap is for Rs.50,00,000/- during any financial year. The above provision is applicable with respect to investment made on or after 01.04.2007 only. Further the ceiling limit of Rs.50,00,000/- is for investment in financial year only. The ceiling limit is not for Assessee or not for total deduction eligible under above section. Therefore the interpretation would be that the Assessee can make investment of Rs.50,00,000/- in one financial year. If the period of investment available to Assessee extends in two financial years, then the Assessee can make investment of Rs.50,00,000/- each in both financial years and can claim deduction accordingly. The learned A.R. has also relied on circular no.359 date 10.05.1983. The copy of circular is filled before me. Paragraph-2 of the above circular reads as under:

> *"On consideration of the matter in consultation with Ministry of Law, it is felt that the foregoing interpretation would go against the purpose and spirit of the section. As the section contemplates investment of the net consideration in specified asset for a minimum period and as earnest money or advance is a part of sale consideration, the Board have decided that if the Assessee invest the earnest money or the advance received in specified asset before the date of transfer of asset, the amount so invested will qualify for exemption u/s. 54E of the Income Tax Act 1961."*

7. The A.R. has therefore submitted that the investment can be made before the date of transfer and is eligible for exemption. Though the circular is issued for section 54E, the same should be applied to investment u/s. 54EC of the Act as the provisions of both the sections are same. It is further submitted that on perusal of provisions u/s. 54EC of the Act and circular it is clarified that the Appellant has fulfilled all the conditions of Section 54EC i.e. within 6 months (i.e. 08.06.2007) of transfer appellant has made investment in REC bonds and provision for ceiling limit is effective w.e.f. 01.04.2007 and before that the appellant has made investment of Rs. 50,00,000/- on 31.03.2007.

8. I have considered the arguments of learned A.R. The amendment is made w.e.f. 01.04.2007 and therefore the same cannot be applied to investment made before 01.04.2007. The investment made by the appellant of Rs.50,00,000/- on 31.03.2007 is therefore, not covered by the amendment. Further, the limit is for financial year only and is not per assessee nor per deduction. Therefore, the investment made on 31.03.2007 is

allowable in view of above circular. This ground of appeal is allowed and the Assessing Officer is directed to further allow the deduction of Rs.50,00,000/- made on 31.03.2007 subject to verification of documents for proof of investment."

4. Aggrieved by the relief so granted by the learned CIT(A), the Assessing Officer is in appeal before us.

5. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We see no reasons to interfere in the stand of the learned CIT(A). As he rightly observes, the limit on investment in qualifying assets is with respect to a financial year but then the investments made by the assessee pertain to two different financial years. The restriction, as such, does not come into play. We uphold the well reasoned order of the learned CIT(A) on this point as well and decline to interfere in the matter."

10. Ground No.2 of the assessee's appeal is accordingly allowed.

11. Ground No.3 concerns disallowance of brokerage. As pointed out on behalf of the assessee, the issue is covered in favour of the assessee in *ITA No. 651/Ahd/2016* order dated *17.01.2020.* In parity, the issue is decided in favour of the assessee.

12. In the result, appeal filed by the assessee in ITA No.997/Ahd/2016 is partly allowed.

ITA No. 1229/Ahd/2016 (Revenue's appeal)

13. The grounds of appeal raised by the Revenue read as under:

"(1) The Ld.CIT(A) has erred on facts and in law in admitting various additional evidences in contravention of provisions of Rule 46A of the I.T. Rules. The CIT(A) ought to have afforded the AO an opportunity to offer his comments on the additional evidences such as 7/12 Uttara, Hak Patrak in Form No.6, declaration dated 29.03.1971 etc., which were not furnished before the AO during the assessment proceedings.

(2) The Ld.CIT(A) has erred on facts and in law in directing the AO to treat the gain on transfer of land as LTCG instead of STCG on the basis additional evidences admitted in contravention of Rule 46A.

(3) The Ld.CIT(A) has erred on facts and in law in directing the AO to allow exemption of Rs.50,00,000/- u/s 54EC of the Act Rs.51,29,236/- u/s 54F of the Act."

14. Ground No.1 of Revenue's appeal concerns contravention of provisions of Rule 46A of the Income Tax Rules. The grievance has bearing with the substantive ground no.2 of the Revenue's appeal and therefore is dealt with together.

15. As per Ground No.2 of the Revenue's appeal, the Revenue is aggrieved by the action of the AO in holding the capital gains arising from the sale of land to be long term capital gain in the hands of assessee HUF. It is the case of the Revenue that in the absence of relevant evidences and details, the ownership of the assese HUF in the property is not established. In the course of hearing, the CIT(A) has taken note of the sale deed in which the assessee HUF is one of the co-seller, the Title Clearance Certificate issued and other documents showing the ownership of the assessee HUF. In the course of hearing before the Tribunal also, the assessee has referred to copy of 7/12 showing land and Hak Patrak in Form No.6 issued by Talati wherein the name of the assessee HUF as a joint owner appear the certificate in Form No.6 has been issued on 07.12.2000. Therefore, at the time of sale, the asset is surely a long term capital gain asset. The CIT(A) has taken cognizance of such document issued by an independent local authority to adjudicate the issue in favour of the assessee. We do not see any serious breach of violation of Rule 46A for alleged delinquency in not referring the matter to the AO in relation to such certificate. The holding of asset as long term asset is patent and obvious. The CIT(A) has dealt with the substantive issue as under:

"3.4. The first ground raised by the appellant is regarding treating of Rs.3,80,50,000/-being sale value of property as short term capital gain in the hands of the appellant. During the year, the assessee has sold land situated at Village: Danilimda, Survey No.74, City Ahmedabad. The land was non-agricultural land and claimed to be held in joint ownership with Radheshyam Purshottarndas HUF, Sudha Balkrishna

Trivedi and Ridheesh Balkrishna Trivedi. The assessee has claimed ownership of this land prior to 1.4.1981. In the order u/s.263 of the Act, the CIT has directed the Assessing Officer to call for the revenue records and bank account of the assessee for the relevant period by which the ownership of land passed on two HUFs i.e. assessee HUF and Radheshyam P. Trivedi, HUF and also examined the declaration dtd.29.3.1971 to ascertain the ownership right of the assessee HUF on the sold out land. During the assessment proceedings, the AO was called for various details from the assessee, The AO has of the opinion that in absence of relevant evidences and details the ownership of the assessee with date is not established. Therefore, the AO has considered the income derived from the sale of land as short term capital gain and cost of the acquisition is taken at Rs.Nil.

3.5. During the appellate proceedings, the appellant has submitted following submissions that in connection with the claim of ownership.

1. The sale deed is executed by Balkrishna P. Trivedi, HUF the assessee, which proves that Shri Balkrishna P. Trivedi HUF is the owner of the land.

2. Title clearance certificate issued by Kilol Vinod Shelat, Advocate on 15.2.2001 and in the said title report complete history of land at Survey No.74 is mentioned prior to 1946.

3. The land was sold to Neeldeep Malls Developers Pvt. Ltd. and the said party has also obtained title clearance certificate from Sanghi & Co., Advocate Solicitor and Notary.

4. Revenue records in 7/12 9entry No.2670) shows the ownership of the assessee in land at Survey No.74.

5. It is submitted that the land was owned prior to 1946 by Madhuradas Mansukhram, the grant father of Shri Balkrishnabhai. The appellant has submitted that he has enclosed Form No.6 (hak patrak) in proof of the said ownership.

6. Declaration of Sudhaben Trivedi dtd. 3.1.2000 in which the ownership of the land of ShriB.P. Trivedi is confirmed.

7. It is submitted that in the declaration dtd. 29.3.1971 it is confirmed by Shri Balkrishna P. Trivedi about the properties received by him on partial partition of properties of Purshottamdas Madhuradas.

8. The sale price is credited in bank account of B.P, Trivedi, HUF with Oriental Bank of Commerce. Thus, the assessee should be considered to the owner of the property.

3.6. The appellant has submitted that the above evidences submitted by the appellant clearly proves that the appellant was owner of above

land from 1971 and therefore capital gain on sale of land should be taken as long term capital gain and while computing long term capital gain, the value should be taken as 1.4.1981 and indexation should be given as claimed by the appellant.

3.7 The appellant has relied upon various documents and details filed by him to show that the assessee is the owner of the said land from 1971. The appellant has mainly relied upon the declaration of Sudha B. Trivedi did. 30.1.2000 and earlier declaration dtd. 29.3.1971. He has also relied upon hak patrak in Form No.6. The appellant has also filed title clearance certificate from Kilol Vinod Shelat, Advocate wherein the history of the ownership of the land is mentioned in detail. The appellant has also furnished 7/12 dtd. 30.4.1971 which shows the ownership of the land in the name of the B.P. Trivedi, HUF. The AO has did not accept the appellant's contention on the ground that relevant details proving the ownership of assessee form 1971 is not furnished. The appellant's contention is that he has furnished all the details during the course of assessment proceedings and also furnished a certificate in this regard. Considering all these details and submission, the contention of the appellant is found to be correct. All these details shows that the appellant is owner of the land from 1971. Therefore, income by way of sale of this land should be treated as long term capital gain instead of short term capital gain and benefit of indexation from 1.4.1981 is also available to the appellant. Hence the addition made by the AO by treating income from sale of land as STCG is deleted and the AO is directed to compute the LTCG after giving benefit of indexation."

16. As reproduced above, the CIT(A), in our view, has appreciated the facts in perspective and held the capital gains arising on sale of land to be long term capital gain in the hands of the assessee HUF. We do not see any error in the process of reasoning adopted by the CIT(A) while granting the relief to the assessee. Ground Nos. 1 & 2 of the Revenue's appeal are accordingly dismissed.

17. Ground No.3 concerns deduction under s.54EC & 54F of the Act.

18. The CIT(A) has adjudicated both the issues in favour of the assessee. The relevant extracts are reproduced hereunder:

"6.3. I have considered the facts of the case and submission made by the appellant. The next ground is regarding denial of exemption claimed by the assessee of Rs.l crore U/S.54EC of the Act. In the order u/s.263 of the Act. the CIT has held that the assessee has required to

invest in the specified asset within a period of six months after the date of transfer of the asset. In the present case, the date of transfer is 8.6.2007 therefore the assessee was required to invest in the specified asset on or before 8!h December, 2007 and the maximum amount was to be for Rs.50 lakhs. Following the decision of Ahmedabad Tribunal in the case of Smt. Daxaben R. Patel, 52 SOT 212 (Ahmedabad) the CIT was of the opinion that the assesse was entitle only to the deduction of Rs.50 lakhs U/S.54EC of the Act. In the assessment order, the AO has disallowed the entire claim of Rs.l crore made by the assessee u/s.54EC of the Act on the ground that the sale of land is treated as short term capital gain, therefore, exemption u/s.54EC of the Act is not allowable to the assessee.

6.4. During the appellate proceedings, the appellant has contended that there is no bar in the law that assessee can make this investment only once in life time. It is further contended that only condition to be complied with is within a F.Y. investment should not exceed Rs.50 lakhs and there is also no restriction that deduction of investment made in anyone F.Y. can only be set off against capital gain arising from any one transaction. The appellant has further contended that all the investment made in notified bonds can be claimed as deduction u/s.54EC of the Act against capital gain arising from anyone transaction subject to the condition that the same is made within 6 months from the date of transfer. The assessee has made investment of Rs.50 lakhs on 3Tl March, 2007 which is before the amendment which is applicable from lst April, 2007 and the said investment is made out of advance money of sale consideration received by the appellant which is as per circular No.359 dtd. 10.5.1983 the appellant is also relied upon following judgments:-

- *A. Aspi Jinwala v/s ACIT Baroda, Ahmedabad ITAT 20 Taxman.com75.*
- *B. CIT v/s C. Jaichander Madras High Court-2014(ll) EMI54. Dt.15.09.2014.*
- *C. Smt. Shriram Indubal v/s ITO Chenai Tribunal(2013) 32 Taxman.com 118*
- *D. ITO v/s Rania Faleiro, Panaji Tribunal(2013) 33 Taxman.com 611*

6.5. The facts of the case and the conditions of the appellant are considered. The facts of the case are that the appellant has made investment in the notified bonds on 31f March, 2007 and 3Tr October, 2007 amounting to Rs.50 lakhs each on respective dates. The appellant has claimed this investment of Rs.l crore as deduction u/s.54EC of the Act against the sale of land during the year. The AO has disallowed the entire claim of deduction on the ground that the transaction of sale of land is treated as short term capital gain therefore exemption u/s.54EC of the Act is not allowable. As discussed in the preceding paras the transaction of sale of land is treated as long term capital gain as the ownership of the land is of the HUF from 1971, therefore, the disallowance of entire deduction claimed by the assessee u/s.54EC of the Act is not justified. Now the second question arises whether the assessee is eligible for deduction of Rs.50 lakhs which was enlisted on 31st March, 2007, before the sale of the land. The appellant has relied upon the provisions of Section and certain judgments wherein it is held

that the assessee is eligible for deduction u/'s.54EC of the Act exceeding Rs.50 lakhs if it is made within six months of transfer. The facts of the case of the assessee are different. Here the assessee has made investment of Rs.50 lakhs before the date of sale of land and Rs.50 lakhs within six months of date of sale of land. The provisions of Section 54EC of the Act clearly states that the investment in specified bonds is to be made within a period of 6 months after the date of such transfer. The intention of the legislature is clear. It was not desired by them to give the exemption u/s.54EC of the Act even investment made before the transfer of the long term capital asset. In this regard the appellant has relied upon the Circular No.359 dtd. 10.5.1983 which says that if the assessee invests the earnest money or the advance received in a specified assets before the date of transfer of asset, the amount so invested will qualify for exemption u/s.54E of the Act. The appellant has further contended that the wording of Section 54E and 54EC are same therefore, the said circular should also make applicable for investment made out of banakhat money u/s.54ECof the Act.

6.6. In the case of Smt. Daxaben R. Patel (supra) the Hon'ble ITAT, Ahmedabad Bench has clearly held that investment in specified bond is to be made within a period of 6 months after the date of such transfer and investment made before the date of sale are not eligible for exemption u/s.54EC of the Act. Further while holding the same the Hon'ble Tribunal has also considered the Circular No.359 dtd. 10.5.1983. The above cited decision of Hon'ble ITAT is directly applicable to the facts of the case, therefore, the assessee is eligible for deduction U/S.54EC of the Act for Rs.50 lakhs only. Hence the ground raised by the appellant is partly allowed."

……

"7.3. I have considered the facts of the case and submission made by the appellant. The next ground is regarding the disallowance of deduction claimed u/s.54F of the Act. The AO has disallowed the claim of the assessee on the ground that the exemption is available on transfer of long term capital asset whereas the capital gain on transfer of land by the assessee is considered as short term capital asset and as such the exemption is not available to the assessee.

7.4. The assessee has claimed exemption u/s.54F of the Act of Rs.51,29,236/- against actual investment of Rs.65 lakhs. During the appellate proceedings the appellant has contended that the assessee has made deposit of Rs.1,25,00,000/- in capital gain scheme account before 31st July, 2008 which is the due date of filing of return. The assessee has also furnished copy of bank account showing the deposit in capital gain scheme. The disallowance made by the AO is not justified as it is already held that sale of the land is long term capital gain instead of short term capital gain as held in the assessment order. Since the assessee has transferred long term capital asset, the deduction u/s.54F is available to the assessee. The assessee has also invested an amount of Rs.1,25,00,000/-before the due date of filing of return as prescribed in the Section 54EC of the Act. As the assessee has fulfilled the conditions prescribed in Section 54EC of the Act, he is eligible for the

deduction u/s.54F of the Act. Hence the disallowance made by the AO is deleted and the ground of appeal is allowed."

19. We find that the conclusion drawn by the CIT(A) is on legally sound basis and does not call for any interference. The Revenue has also failed to rebut the findings of the CIT(A) in assertive manner.

20. Ground No.3 of the Revenue's appeal is also dismissed.

21. In the result, appeal filed by the Revenue in ITA No. 1229/Ahd/2016 is dismissed.

22. In the combined result, appeal of the assessee in ITA No.1225/Ahd/2013 is dismissed and in ITA No.997/Ahd/2016 is partly allowed whereas Revenue's appeal in ITA No. 1229/Ahd/2016 is dismissed.

This Order pronounced in Open Court on 31/01/2020

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

Ahmedabad: Dated 31/01/2020

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 ।