

**आयकर अपीलीय अधिकरण “एक-सदस्यमामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.279/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Niranjan Raheja Pratik Building, V.P. Road Behind Arya Samaj Santacruz (W), Mumbai-400 054	बनाम/ Vs.	CIT(A)-38 Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AMLPR-1370-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Dr. K. Shivram- Ld. Sr. Counsel & Shri Sashi Bekal -Ld. AR
Revenue by	:	Shri Sanjay J. Sethi – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	08/07/2021
घोषणा की तारीख / Date of Pronouncement	:	08/07/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by denial of exemption u/s 54 for Rs.27.20 Lacs, the assessee is in further appeal before us. The assessee has also raised an additional ground to submit that Ld. CIT(A) erred in not admitting the additional evidences filed by the assessee. An application has also been made before us for admission of additional evidences.

2. Having heard rival submissions and upon perusal of material on record, our adjudication would be as follows.

3. An assessment was framed against the assessee on 29/02/2016. While examining assessee's claim of deduction u/s 54, it was noted that the assessee earned Long-Term Capital Gain of Rs.27.20 Lacs on sale of a flat situated at Khar (W), Mumbai and claimed deduction u/s 54 on account of investment in an under construction flat situated at 701, Gokul Anand Building. The flat at Khar was sold on 16/05/2012. It was submitted by the assessee that new flat was purchased from Balkrishna Builders for Rs.132.25 Lacs and a sum of Rs.121.91 Lacs was paid. The builder issued allotment letter dated 16/05/2012 and thus a right was created in the flat and the conditions of Sec.54 were fulfilled by the assessee. However, no other document could be furnished by the assessee in support of investment in new flat. The field visit by ward-inspector revealed that the said flat was in the name of Shri Dilpreet Singh Anand. In response to notice u/s 133(6), the builder submitted that due to some reasons, the booking was cancelled and the amount paid by the assessee was transferred to another project Gokul Valley Flat No.B-1004. Though the assessee pleaded that the conditions of Sec.54 were fulfilled, however, not convinced, Ld. AO denied deduction u/s 54 as claimed by the assessee.

4. During appellate proceedings, the assessee submitted that the booking of Flat No.701 was cancelled and the entire amount was transferred to Flat No.B-1004. Thus no money was received back by the assessee and the conditions of Sec. 54 were duly fulfilled. The assessee also sought admission of additional

evidences in the shape of allotment letter dated 28/03/2014 issued by the builder. However, the same was not admitted. The Ld. CIT(A), opined that there were two independent transactions. The Flat No. 701 was cancelled and the proceeds were transferred to Flat No.B-1004. Further the allotment letter dated 16/05/2012 with respect to Flat No.701 did not specify the terms as generally contained in the allotment letter and the same was not legally enforceable allotment letter. Thus the action of Ld. AO in denying the deduction was upheld. Aggrieved, the assessee is in further appeal before us.

5. Before us, Ld. Sr. Counsel, *inter-alia*, assailed the action of Ld. CIT(A) in rejecting the additional evidences. The Ld. Sr. Counsel also submitted that no disallowance of deduction could be made where *bona-fide* investment was made by the assessee in accordance with the requirements of Sec.54. Reliance has been placed on various judicial pronouncements to submit that Sec.54 was beneficial provisions to encourage investment in housing sector. The Ld. Sr. Counsel also pleaded that even new property at Gokul Valley was purchased by 15/05/2014 which is within stipulated period. The Ld. DR, on the other hand, submitted that the onus to to demonstrate the fulfillment of conditions envisaged by Sec.54 was on the assessee.

6. Upon careful consideration, we find that the additional evidences as submitted by the assessee are in the shape of allotment letter dated 28/03/2014 and agreement dated 30/03/2016. These documents shall have material bearing to ascertain the assessee's claim of deduction u/s 54. Therefore,

these evidences ought to have been admitted. Keeping in view the arguments made before us, we direct Ld. CIT(A) to admit the additional evidences and re-adjudicate the issue of deduction u/s 54 in the light of these evidences as well as factual matrix on record. The assessee is directed to substantiate his claim, in this regard. Keeping in view the fact that the assessee is non-resident, Ld. CIT(A) is directed to dispose-off the appeal preferably within a period of six months from the date of receipt of this order.

7. The appeal stands allowed for statistical purposes.

Order pronounced on 08th July, 2021.

Sd/- (Amarjit Singh)	Sd/- (Manoj Kumar Aggarwal)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 08/07/2021
Sr.PS, Jaisy Varghese

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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.