

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.811/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Mr. Vitthal Ramchandra Raut,  
Flat No. 402, 4<sup>th</sup> Floor, Plot No. 10, 12 & 14,  
Road No. 1, Sector 19, New Panvel (E),  
Dist.-Raigad – 410206

PAN : ABBPR7759K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

ITO, Ward-(5),  
Panvel

.....प्रत्यर्थी / Respondent

Assessee by : Shri Digambar Surwase  
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 22-10-2021

घोषणा की तारीख / Date of Pronouncement : 25-10-2021

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 20-02-2017 passed by the Commissioner of Income Tax (Appeals)-1, Aurangabad [‘CIT(A)'] for assessment year 2012-13.

2. The assessee raised four grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified

in denying the deduction u/s. 54F of the Act in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. We note that the assessee sold a property for a total consideration of Rs.1,00,65,000/- on 04-08-2011, out of which Rs.50,00,000/- was paid to the original landlord for peaceful release of tenancy rights. The assessee claimed deduction u/s. 54F of the Act at Rs.50,65,000/- (Rs.1,00,65,000/- - Rs.50,00,000/-). In order to verify the genuineness of the said deduction the AO asked supporting evidences. According to the AO the assessee has not appropriated the amount of long term capital gains for the purpose of purchase of residential house before the due date of filing of return of income u/s. 139(1) of the Act. It was explained that the amount of long term capital gains was invested on 18-04-2013 and its claim is well within the stipulated time prescribed u/s. 139 of the Act. The AO held the explanation of the assessee has no relevance at all as the assessee did not invest the said amount of capital gains before the due date of furnishing of return of income u/s. 139(1) of the Act. The CIT(A) held that after the sale of capital asset till the date of investment the funds had to be deposited in an account any such bank or institution. Having not complied, the CIT(A) confirmed the denial of deduction u/s. 54F of the Act.

4. We note that the assessee sold the original asset on 04-08-2011. According to the authorities below the assessee shall invest the said sale proceeds before the due date of filing of return of income u/s. 139(1) of the Act i.e. on 31-07-2012. In the present case, the assessee made investment in a residential house on 18-04-2013 and filed return of income u/s. 139(4) of the Act on 02-09-2013. The ld. DR, Shri S.P. Walimbe argued

that the CIT(A) discussed the issue in detail and the assessee did not invest the sale proceeds in specified account before the due date of filing of return of income u/s. 139(1) of the Act. The ld. AR contends that the assessee invested the said sale proceeds in a residential house and filed return of income u/s. 139(4) of the Act on 02-09-2013 and the due date of filing of such return of income is available up to 31-03-2014. He argued that the assessee is entitled to get deduction u/s. 54F of the Act as the assessee invested the amount of capital gains in a residential house before due date as available u/s. 139(4) of the Act.

5. The main contention of the ld. DR is that the assessee did not utilize the amount of capital gains in purchasing a residential house nor deposited in any capital gain account. We find that admittedly, the assessee had not filed return of income u/s. 139 of the Act which is available up to 31-07-2012 but the assessee filed return of income on 02-09-2013 which is well within the time available u/s. 139(4) of the Act. The ld. AR submits that the assessee had utilized the entire sale proceeds in acquisition of new residential house prior to filing of return of income u/s. 139(4) of the Act which was not disputed by the ld. DR. The ld. AR also placed on record various decisions in the case laws compilation and submitted that the benefit of section 54F of the Act is allowable when the assessee acquired the new asset before filing of return of income u/s. 139(4) of the Act. It is noted as per the case laws as submitted by the ld. AR, which held that the requirement of utilization of capital gain amounts before the date of furnishing of return of income u/s. 139 of the Act, which include all sub-section 139 of the Act including sub-section (4) of the Act. In view of the same, in our opinion, that if, the capital gain amount is utilized before the due date of filing of return of income u/s. 139 of the Act

i.e. 31-03-2014 u/s. 139(4) of the Act. Therefore, it is clear that section 139 includes all sub-sections but not confined to sub-section (1) of section 139 of the Act alone. It is evident that the assessee invested amount of capital gains before the time available u/s. 139(4) of the Act and therefore, in our opinion the assessee is entitled to claim deduction u/s. 54F of the Act. Thus, the order of CIT(A) is not justified and it is set aside. Ground raised by the assessee is allowed.

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

Order pronounced in the open court on 25<sup>th</sup> October, 2021.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> October, 2021.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad
4. The Pr. CIT-2, Thane
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune