

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 2543/Ahd/2015 (AY: 2011-12)  
**(Hearing in Physical Court)**

Jigneshbhai Kishorbhai Bhajiyawala (HUF), Kamal Plot No. 40-41, Gayatri Co-Op. Housing Society, Udhna, Surat-394210. <b>PAN : AACHJ 5976 L</b>	Vs.	I.T.O., Ward-2(1), Surat.
APPELLANT		RESPONDEDNT

ITA No. 2544/Ahd/2015 (AY: 2011-12)

Jasmine Vilasbhai Bhajiyawala, Kamal Plot No. 40-41, Gayatri Co-Op. Housing Society, Udhna, Surat-394210. <b>PAN : AFYPB 3864 L</b>	Vs.	I.T.O., Ward-2(1), Surat.
APPELLANT		RESPONDEDNT

ITA No. 2545/Ahd/2015 (AY: 2011-12)

Varshaben Jigneshbhai Bhajiyawala, Kamal Plot No. 40-41, Gayatri Co-Op. Housing Society, Udhna, Surat-394210. <b>PAN : AEJPB 1315 C</b>	Vs.	I.T.O., Ward-2(1), Surat.
APPELLANT		RESPONDEDNT

ITA No. 2644/Ahd/2015 (AY: 2011-12)

Vilash Kishorbhai Bhajiyawala (HUF), Kamal Plot No. 40-41, Gayatri Co-Op. Housing Society, Udhna, Surat-394210. <b>PAN : AAEHV 2621 L</b>	Vs.	I.T.O., Ward-2(1), Surat.
APPELLANT		RESPONDEDNT

Assessee by	Shri Hiren Vepari, CA with Ms. Ishiti Madhwani, CA
Department by	Shri Abhishek Gautam, Sr.DR
Date of hearing/ reserve for order	07/04/2022
Order pronounced on	04/07/2022

**Order under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This group of four appeals by different assessee's of same group being family members are directed against the separate orders of the Id. Commissioner of Income tax (Appeals)-II, Surat [Id. CIT(A) for short] all for the Assessment Year (AY) 2011-12. In All the appeals the assessee(s) have raised certain common grounds of appeals, certain facts are common in all the appeals, thus, with the consent of parties all the appeals are clubbed and heard together and are decided by this consolidated order to avoid the conflicting decision. With the consent of parties the appeal of Varshaben Jigneshbhai Bhajiyawala in ITA No. 2545/Ahd/2015 for AY 2011-12 is treated as '**lead**' case. Varshaben Jigneshbhai Bhajiyawala in her appeal in ITA No. 2545/Ahd/2015 for AY 2011-12 has raised the following grounds of appeal:-

*“(I) Treating share of Long Term Capital gains of the appellant of Rs. 20,43,716/- as short term capital gains on sale of property at Salabatpura at Rs. 21,40,770 by not giving benefit of indexation.*

*(1) The CIT(A) was not justified in treating share of the long term capital gains on sale of property of the appellant as short term capital gains particularly when the property was acquired on 14/02/2007 by executing a*

*notarized possession-cum-satakhata and sold on 18/08/2010 through a registered sale deed.*

*(2) The CIT(A) was driven by extraneous considerations in treating such clear long term capital gains on transfer of long term capital asset as short term capital gains by disregarding the evidence of notarized possession-cum-satakhata dated 14/02/2007.*

*(3) On the facts and circumstances of the case, the appellant submits that her appeal may be allowed.*

*(4) The CIT(A) further erred in treating sale of property at Salabatpura to be of "not residential" in nature while the appellant gave clear evidence that the property sold was mainly residential in nature qualifying for relief u/s 54.*

*(5) Without prejudice to clause (4) above, the appellant was entitled to relief u/s 54F of the Act.*

*(6) The CIT(A) erred in disallowing relief u/s 54 of the Act, particularly when the appellant had completed construction of the house on or before 16/05/2013.*

*(7) Without prejudice to (6) above, assuming even if the new residential premises was incomplete, the appellant having fully utilized the consideration arising out of capital gains before 31/03/2011, relief u/s 54/54F ought to have been granted.*

*(II) Denying relief u/s 54F on Long term capital gains of on sale Rs. 3,92,116/- (Rs. 1,96,058 + Rs 1,96,058) of godowns at 45A/45B, Green Park, Unn, Surat.*

*(1) The CIT(A) ought to have granted alternate relief u/s 54F against relief claimed u/s 54 by the appellant against the sale of godowns sold at 45A/45B, Green Park, Unn, Surat particularly when such claim was made during assessment proceedings.*

*(2) The CIT(A) overlooked the submission that particularly when the appellant proved beyond doubt that she had only one residential property at the relevant time qualifying for relief u/s 54F.*

(III) Treating "Agriculture income" of Rs. 55,000 at Rs. 75,000 as "Income from other sources" and adding cash deposits of Rs. 75,000 (including Rs. 55,000) as income.

(1) The CIT(A) was not justified in confirming rent received of Rs. 55,000 for agriculture as "Income from other sources".

(2) The CIT(A) further erred in confirming Rs. 75,000 being cash deposit into bank as income from other sources.

(3) On the circumstances, the appeal may be allowed.

(4) Without prejudice to the above, if the CIT(A) having allowed appeal on accepting rent received by the appellant in case, he ought to have granted relief to the extent of cash being so made available while considering addition of cash deposit into the bank under this ground of appeal.

(IV) Miscellaneous

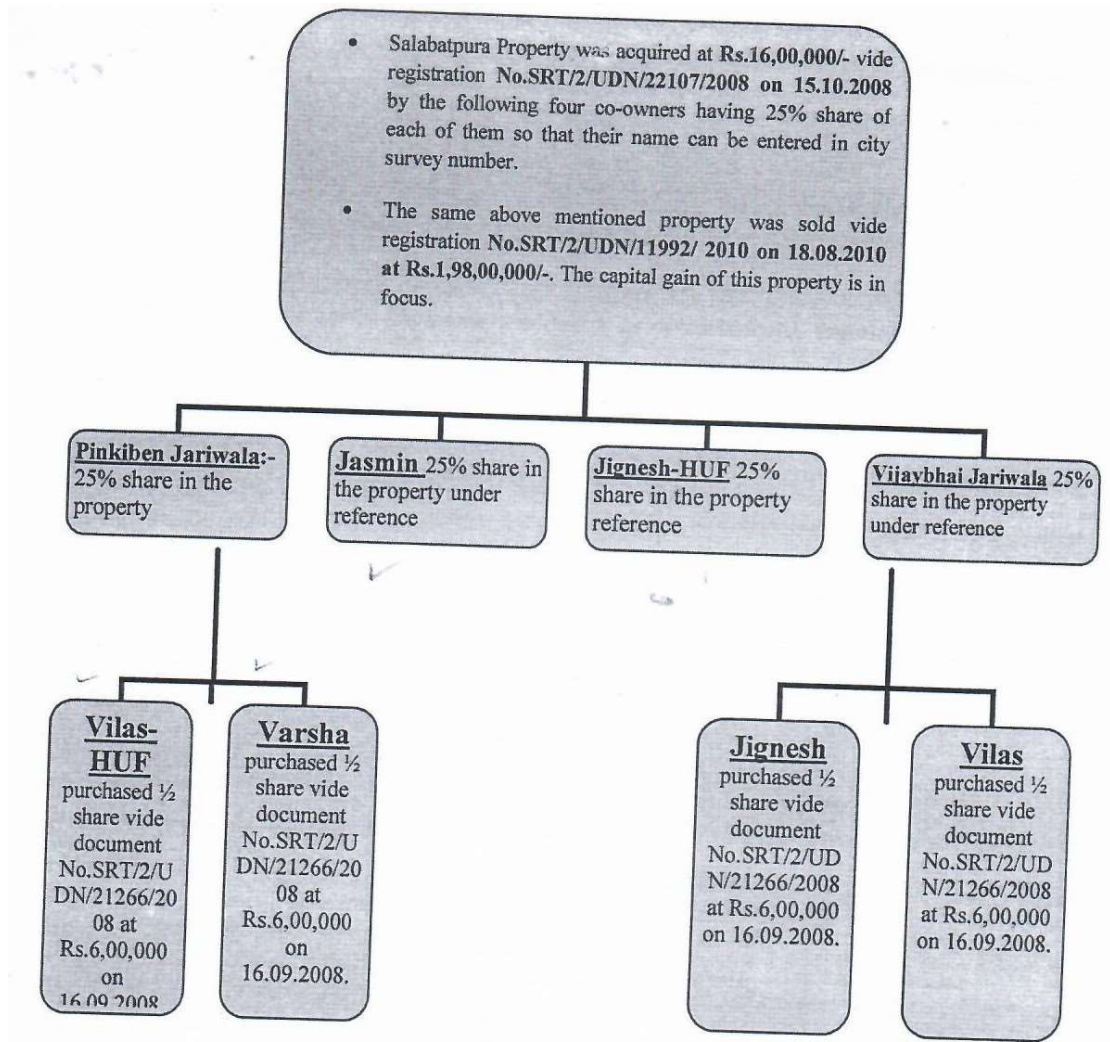
*The appellant craves to add, alter, vary, modify or withdraw any of the Grounds of appeal."*

2. Brief facts of the case are that the assessee is an individual and filed her return of income for assessment year 2011-12, which was selected for scrutiny assessment. In the return of income filed on 29/07/2011, the assessee offered taxable income of Rs. 4,95,299/- and agricultural income of Rs. 55,000/-. During the assessment proceedings, the Assessing Officer noted that in the computation of income, the assessee has claimed deduction under Section 54 of the Income Tax Act, 1961 (in short, the Act) of Rs. 26,94,500/-. For verification of facts and to examine the claim of assessee, the assessing officer required the assessee to substantiate her claim. The assessee furnished necessary working and the evidences to support her claim. On further verification of facts the Assessing

Officer noted the assessee acquired the asset i.e. share in immovable property at Salabatpura Surat; vide sale deed executed on 15/09/2008, in her favour, which was registered on 16/09/2008 with sub-registrar concern. The same asset was sold on 18/08/2010 to M/s Sal Developers, a partnership firm for a consideration of Rs. 1.98 crores. The assessee was having 12.5% of share in the asset. Further on the basis of purchase deed executed on 15/09/2008 and the transfer of asset/sale deed on 18/08/2010, the Assessing Officer took his view that the gain earned on sale of property under reference is short term capital gain (STCG) and not long term capital gain (LTCG). Resultantly, the capital gain of assessee (Varshaben Jigneshbhai Bhajiyawala) having 1/8<sup>th</sup> share of Rs. 24,75,000/- out of total sale consideration of Rs. 1.98 crore. Thus, the deduction claimed under Section 54 of the Act is erroneous as it is clear that it is not a case of long term capital gain but it is a case of short term capital gain. Accordingly, the assessee is not entitled for any type of deduction indexed cost of acquisition which has been wrongly claimed in the computation of income. On finding such incriminating fact, the Assessing Officer issued show cause notices.

3. The Assessing Officer recorded that on issuing various notices, the assessee furnished the bank account and explanation with regard to her claim of deduction under Section 54. In the explanation, the assessee stated that the assessee purchased asset on 14/02/2007. Assessee further claimed deduction under Section 54F of the Act on the LTCG. The assessee was asked to furnish complete details in support of her claim. However, the assessee stated that the

copy of purchase deed of 2007 was not traceable. In absence of authenticated document of purchase prior to 16/09/2008, the Assessing officer treated the surplus earned on sale of property as short term capital gain in place of long term capital gain and denied deduction under Section 54 as well as alternative claim of Section 54F of the Act. The assessing officer prepared the following details of shares of other family members in the asset at Salabatpura Surat;



4. The Assessing officer further noted that the assessee has also shown sale of house No. 45A and 45B, Green Park Unn, Surat and claimed capital gain on such

sale. The said assets were acquired on 06/09/2004. The said assets were sold on 08/02/2011. The assessee computed long term capital gain of Rs. 3,03,942/- in each of the asset and also claimed deduction under Section 54 of the Act. The Assessing officer also disallowed exemption of capital gain on the ground that the said property is not a residential house and cannot qualify of long term capital gain, thus the deduction of capital gain for the share of assessee was also disallowed and made addition of Rs, 3,92,116/-.

5. The Assessing Officer further recorded that the assessee in his alternative claim, claimed deduction under Section 54F of the Act for construction of residential house. The assessee furnished certificate of architect Sh. Sanjay Joshi about the completion of structure as per approved plan of newly constructed residential house, on investment against which such exemptions were claimed. The Assessing officer recorded the statement of architect under Section 131 and noted that only RCC structure was completed on the issuance of certificate. To ascertain the construction at site, the Assessing Officer deputed the Inspector for spot verification, who obtained certain photographs, copies of which were scanned on page No. 22 and 23 of the assessment order. Inspector reported that construction of the newly constructed house not completed. Inspector also reported that no water or drainage is available in the newly constructed house. The Assessing Officer further recorded that approved completion certificate by Surat Municipal Corporation is not produced. Accordingly, the Assessing Officer also disallowed the other/alternative claim under Section 54F of the Act.

Accordingly, the Assessing officer disallowed deduction under Section 54 or 54F of the Act with regard to long term capital gain. The Assessing Officer also disallowed the deduction under Section 54/54F on one more ground that the assessee was having more than one residential house at the time of claiming of deduction of long term capital gain.

6. The Assessing Officer further recorded that the assessee has shown cash deposit in his bank account of Rs. 75,000/- i.e. Rs. 30,000/- on 06/09/2010 and Rs. 45,000/- on 12/06/2010. The cash deposit is shown from agricultural income whereas the assessee has shown agricultural income of Rs. 55,000/-. The Assessing officer recorded that in absence of any documentary evidence, the agricultural income claimed by assessee to be treated as income from undisclosed sources.
7. Aggrieved by the various additions and disallowance of exemption under section 54/ 54F, in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed statements of fact as well as written submission on various additions. On treatment of long term capital gain as short term capital gain on sale of property at Salabatpura where the assessee was having 12.5%, the assessee stated that the property was acquired on 14/02/2007 by executing a notarized possession cum Satakat and was sold on 18/08/2010 by way of registered sale deed. The Assessing officer was not justified in treating the gain which was clearly a 'long term capital gain' and not 'short term capital gain' by disregarding the evidence of notarized



possession of Satakat dated 14/02/2007. The assessee explained ground of acquiring the Salabatpura property and stated that the said property was acquired by two families viz 50% by Jariwala family (consisting of Pinkyben Jariwala and Jasmine Jariwala) and 50% by Bhajiyawala family (consisting of Vijaybhai and Jignesh (HUF)) on 21/01/2002 vide registered sale deed. Later on, the share of Jariwala family was acquired by assessee along with her other family members. Jariwala family handed over the possession on executing satakat-cum-possession on 14/02/2007 wherein 25% share of Pinky Jariwala was given to assessee and Vilasbhai Bhajiyawala (HUF) i.e. 12.5% each while Vijay Jariwala agreed to give his share of 12.5% to Jigneshbhai Bhajiyawala and Vilasbhai Bhajiyawala 12.5% each. The Satakat-cum-possession was also notarized with Notary Shri Bharat D Bharti on 29/02/2007. The assessee urged that the assessee clearly earned long term capital gain as the property was transferred on execution of Satakat and execution and handing over the possession on 14/02/2007. On the claim of deduction under Section 54 or 54F of the Act, the assessee claimed that the assessee was denied deduction under Section 54 by treating the Salabatpura property as non-residential. The assessee stated that there is no dispute that Salabatpura property was sold on 18/08/2010 and resulted in long term capital gain, thus the assessee is eligible for full benefit under Section 54 or 54F of the Act for investment of capital gain in construction of residential house within three years from the date of transfer. The assessee along with her other family members viz; Vilasbhai Bhajiyawala HUF, Jigneshbhai

Bhajiyawala, Jigneshbhai Bhajiyawala HUF and Vilasbhai Bhajiyawala had acquired jointly a piece of land at TPS No. 02 (Vesu Bharthana, Vesu) F.P. No. 87, R.S. No. 92/1/P, Vesu, Udhna Magdalla Road, Surat to construct a residential bungalow to be jointly held by the family members. The assessee completed the construction of residential premises before 16/05/2013 and thus justified the claim under Section 54 or in alternative under Section 54F of the Act. The assessee also furnished the completion certificate issued by the architect.

8. The Id. CIT(A) after considering the assessment order and the submission of assessee held that the assessee along iwth other family members, sold the property at Salabatpura on 18/08/2010 on which long term capital gain was claimed after indexation at Rs. 20,43,716/-. The Assessing officer held that the said property was purchased by assessee along with other co-owners vide registered sale deed on 16/09/2008. The Assessing officer not accepted the deed of execution on the basis of notarized possession-Satakat-cum-possession dated 14/02/2007. The Assessing Officer treated the gain so earned as short term capital gain in place of long term capital gain. On perusal of registered sale deed of acquisition, the Id. CIT(A) held that notarized Satakat is not a registered document and is not having evidentiary value as per decision of Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. Vs State of Haryana &Anr. 2009 (7) SCC 363. The Id. CIT(A) also held that unregistered Satakat is nothing but a fabricated document to avail the benefit of long term capital gain. The Id. CIT(A) upheld the action of Assessing officer for acquisition of property on

16/09/2008 and long term capital gain was upheld as short term capital gain. Accordingly, consequential disallowance under Section 54 or 54F of the Act was upheld.

9. On the issue with regard to property at Salabatpura being residential in nature or not, the Id. CIT(A) recoded that as the property sold was not residential, therefore, benefit of Section 54 of the Act cannot be granted as deduction is available for property of residential in nature. The majority of property was residential in nature as 56.52 was having residential character as per stamp valuation authority as mentioned in the registered sale deed wherein in the breakup of residential and shops is mentioned. Thus, the action of Assessing Officer in treating the Salabatpura property as non-residential and deduction under Section 54 was also affirmed on this count as well.
10. On the other alternative claim of assessee under Section 54F of the Act, the Id. CIT(A) held that the assessee claimed that she was not having any residential property when Salabatpura property was sold and claimed relief under Section 54F of the Act. The Id. CIT(A) held that in the return of income filed on 29/07/2011 shows that the assessee claimed deduction under Section 54 in her return of income. The assessee made claim of deduction under Section 54F of the Act by filing revised computation of income vide letter dated 26/03/2014. The Id. CIT(A) held that the claim of assessee in revised return is also not eligible for the reasons that for claiming exemption under Section 54F there should be a sale of property other than residential in nature, the capital gain should be long

term in nature not owing more than one residential house other than new asset and the proceeds of long term capital gain should have been applied towards either to purchase or construction of new residential unit. The assessee claimed to have acquired a piece of land at Vesu for constructing a bungalow jointly with family members and claimed to have completed before 16/05/2013 and furnished completion certificate. To substantiate her claim, the assessee filed certificate of completion by the architect. The architect examined by the Assessing Officer who stated that he had issued a certificate of RCC structure of structure plan. The Inspector was deputed by the Assessing Officer for spot verification who reported that the construction is going on and there is no water or drainage system. The Id. CIT(A) ultimately held that the assessee failed to construct a residential house within three years for qualifying the benefit of provisions of Section 54/54F of the Act and affirmed the order of Assessing Officer. The Id. CIT(A) further held that the assessee claimed benefit of Section 54F only on filing revised computation. In absence of revised return, the Assessing Officer was bound to make assessment on original return. There is no provision in the Act to enable the assessee to revise her return by way of filing of revised statement of income as made by assessee. The Assessing Officer has no power to entertain such fresh claim made after filing return of income other than by filing revised return. Therefore, the assessee is not entitled for deduction under Section 54 and the action of Assessing Officer was further affirmed with these findings.

11. On the disallowance of Rs. 3.92 lacs being indexed cost of acquisition of godown sold at Green Park, Unn, Surat, the Id. CIT(A) noted that the Assessing Officer held that the assessee claimed deduction under Section 54 of the Act. The Assessing Officer disallowed claim under Section 54 as the property has to be residential in nature to qualify for deduction under Section 54. The assessee claimed that the property was acquired by way of registered sale deed dated 06/09/2014 and was sold on 08/10/2011 which clearly qualified for long term capital gain. The assessee claimed deduction under Section 54 of the Act in place of deduction under Section 54F claimed initially. The Id. CIT(A) find that the claim of assessee under Section 54 is incorrect as the property in question was commercial and not residential. Section 54 of the Act allowed deduction only in case of residential property. The Id. CIT(A) held that the assessee is eligible for benefit of indexation while calculating long term capital gain and rejected the deduction under Section 54/54F of the Act.
12. On the addition of income from other sources by disallowing the agricultural income, the Id. CIT(A) held that before the Assessing Officer, the assessee has not produced any evidence regarding source of cash deposit of Rs. 75,000/- which includes Rs. 55,000/- claimed on account of agricultural income. The assessee claimed to have received Rs. 55,000/- as rent for using of agricultural land at Dhoran Pardi. The Id. CIT(A) recorded that during appellate proceedings, the assessee has not furnished any evidence regarding genuineness of rental income on agricultural holding and the source of net cash deposit. In absence of

any detail, the addition made by the Assessing officer was upheld. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

13. We have heard the submissions of the Id. Authorised Representative (AR) of the assessee and the Id. Senior Departmental Representative (Sr. DR) for the Revenue and have gone through the orders of lower authorities. Ground No.(I) 1 (1) to (3) of the appeal relates to treatment of capital gain as 'short term capital gain' in place of 'long term capital gain' claimed by assessee. The Id. AR of the assessee submits that Salabatpura property was initially acquired by Bhajiyawala family and Jariwala family. Both the families were having good and cordial relation. Initially that property was acquired jointly by both the parties in the year 2002. Since 50% of share was already owned by Bhajiyawala family and their HUF and rest 50% of property was owned by Jariwala family. 50% share of Jariwala family was purchased by assessee and her family members by way of possession-cum-Satakat dated 14/02/2007. On the execution of possession-cum-Satakat on 14/02/2007, possession was handed over, thus transfer book place on handing over the possession. The Assessing Officer not considered the evidentiary value of document and has not brought on adverse material against the assessee. The sale transaction from Jariwala family to Bhajiyawala family was registered on 16/09/2008 and the Assessing Officer instead of considering the date of acquisition from the date of Satakat on 14/02/2007, considered the transfer/acquisition only from the date of registered deed on 16/09/2008. The Id. AR of the assessee submits that the Satakat-cum-possession, the document is a

genuine document and the assessee acquired the asset/share in the said property on 14/02/2007 and it was sold on 18/08/2010. Thus, the assessee clearly was eligible for 'long term capital gain' and consequential deductions under section 54 or 54F. The assessee made investment in acquisition of plot and construction of bungalow in Vesu with in time limit prescribed in the Act and is eligible for deduction under section 54F or 54. The assessee has already filed sufficient evidence to substantiate her claim. There is no condition under law that the construction should have been completed in all the ways. To support his submissions the Id AR for the assessee relied on the following case laws;

- ❖ Dr R Balaji (222 Taxman 405 Karnataka High Court),
- ❖ Sambandam Udaikumar ( 345 ITR 389) (Kar- HC)'
- ❖ Smt Usha Vaid ( 53 SOT 385( Amritsar Bench),
- ❖ Narasimha Raju Rudra Raju ( 143 ITD 586 Hyderabad- Trib),
- ❖ Ranjeet Sandhu ( 133 TTJ 64) ( Chandigarh-Trib) and
- ❖ Kishore Galaiya ( 150 TTJ 444) ( Mumbai-Trib)

14. To support various contentions the assessee has also filed following documents on record with the certificate / verification by Id AR of the assessee that copies of all these documents were filed either before assessing officer or Id CIT(A).

Sr. No.	Particulars
1.	Notarised possession-cum-satakhata agreement vide registration No. 360 dated 14/02/2007(Gujarati Version) with english version/translation.
2.	Registered sale deed for purchases, vide document No. 21266 dated 16/09/2008 (Gujarati Version) with english version/translation.
3.	Registered deed for purchase vide document no.21266 dated 16.09.2008 (English version)
4.	Registered deed for sale vide document no. 11992 dated

	18.08.2010 (Gujarati version) with english version/translation.
5.	Details of capital gain
6.	Completion certificate from architect for completion of construction work of Residential bungalow at Vesu.
7.	Justification for claim of deduction u/s.54
8.	Copy of some of the bills to substantiate the construction
9.	Copies of photos of the structure of Vesu Property
10.	Undertaking from the Little Champ's school dated 27.03.2014
11.	Letter dated 26.03.2014 from the Income-tax officer along with the Inspector's Report and photographs
12.	Letter No. TX-522 of 30-06-2015 addressed to the CIT(A).
13.	Completion certificate from architect for completion of construction work of Residential bungalow at Vesu
14.	Undertaking from the Little Champ's school dated 27.03.2014
15.	Balance sheet as at 31-03-2011 showing investment into Vesu Plot for residence.
16.	Copy of 7/12 of agricultural land at village Bonand, Dist, Surat
17.	Copy of bank statement and bank book of the appellant
18.	Acknowledgement and computation of total income along with calculation of capital gain
19.	Letter to the Assessing Officer vide letter no. TV-1672 dated 20.01.2014
20.	Letter to the Assessing Officer vide letter no. TV-1983 dated 03.03.2014
21.	Letter to the Assessing Officer vide letter no. TV-2004 dated 06.03.2014
22.	Letter to the Assessing Officer vide letter no. TV-2028 dated 10.03.2014
23.	Letter to the Assessing Officer vide letter no. TV-2112 dated 26.03.2014
24.	Letter to the Assessing Officer vide letter no. TV-2117 dated 27.03.2014
25.	Application u/s 144A of the Act to the Additional Commissioner of Income-tax vide letter no. TV- 2133 dated 28.03.2014
26.	Reply of the petition filed u/s 144A of the Act from the Additional Commissioner of Income-tax vide letter dated 28.03.2014.

15. On the other hand, the Id. Sr. DR for the Revenue supported the orders of lower authorities. The Id. Sr. DR submits that Satakat-cum document is nothing but a



self serving document and prepared to claim the benefit of long term capital gain. There is no reference in the sale deed executed by previous owner on 16/09/2008 that the assessee entered into an agreement to sell prior to execution of sale deed on 16/09/2008, thus the assessee propounded the theory of Satakat-cum-possession letter dated 14/02/2007 only to get qualified for long term capital gain. The Id. CIT(A) while considering the claim of assessee clearly held that the said document is nothing but a fabricated document even otherwise such documents have no evidentiary value as held by the Hon'ble Supreme Court in the case of Suraj Lap & Industries Pvt. Ltd. Vs State of Haryana & Anr (supra). The Id. Sr. DR for the revenue submits that once the capital gain is held as 'short term capital gain' and not 'long term capital gain', the assessee would not be entitled for claiming exemption of such surplus either under Section 54 or under Section 54F of the Act.

16. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We have further deliberated on various case laws relied by the Id. CIT(A) as well as by the Id. AR of the assessee in his written submission. We find that the Assessing Officer treated the 'long term capital gain' as 'short term capital gain' on consideration of fact that the registered sale deed for acquisition of Salabatpura property was executed on 16/09/2008 and it was sold on 18.08.2010. The assessee claimed that she acquired possession of property on the basis of Satakat-cum-possession letter dated 14/02/2007. The Id. CIT(A) also upheld the action of assessing officer by

taking view that unregistered Satakat is nothing but a fabricated document to avail the benefit of long term capital gain. The Id. CIT(A) upheld the action of Assessing officer for acquisition of property on 16/09/2008 and long term capital gain was upheld as short term capital gain. The Id CiT(A) held that on perusal of registered sale deed of acquisition /notarized Satakat, it was held that is not a registered document and not having evidentiary value as per decision of Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. Vs State of Haryana &Anr. 2009 (7) SCC 363. Accordingly, consequential disallowance under Section 54 or 54F of the Act was upheld.

17. We have independently examined the Satakat-cum-possession agreement dated 14/02/2007 and ultimate registered sale deed executed on 16/09/2008. On perusal of sale deed dated 16/09/2008, we find that there is no reference of any agreement either orally, documentary or otherwise in the sale deed dated 16/09/2008. We also find that the no part consideration of acquisition of asset/property was paid on alleged execution of possession-cum-Satakat dated 14/02/2007, therefore, document of Satakat does not inspire our confidence that property was handed over to the assessee. There is no dispute on the date of transfer of asset on 18.08.2010. We find that there is no other corroborative evidence to substantiate the claim of assessee that she acquired or holding possession of the property since 14/02/2007, therefore, we uphold the orders of lower authorities in treating the capital gain as short term capital gain in place of long term capital gain as claimed by the assessee. Considering the fact that the

gain earned on surplus on sale of Salabatpura property is held as short term capital gain, therefore, the assessee is not eligible for any deduction either under Section 54 or 54F of the Act. Thus, the grounds of appeal under various sub grounds i.e. (1) to (3) of ground No. I of assessee's appeal are dismissed.

18. Considering the fact that the capital gain earned by assessee on sale of Salabatpura asset is short term capital gain, thus, the consequential relief claimed by assessee in Ground No.(I) 4 to 7 have become infructuous and dismissed as such. In the result, the Ground No.(I) of the appeal raised by the assessee is dismissed.

19. Ground No.(II) relates to denying of deduction under section 54F on sale of godown at Green Park Unn, Surat. The Id AR for the assessee submits that the assessee incorrectly claimed deduction of long term capital gain on sale of godown under section 54 instead of under section 54F. The assessee during the course of assessment conceded her mistake and prayed for alternative relief under section 54F as she owned only one residential house entitling her for relief under section 54F. The assessee is clearly earned 'long term capital gain' on sale of godown at Unn. The said asset (godown) was acquired vide registered sale deed dated 06.09.2004 and was sold on 08.10.2011. The assessing officer as well as Id CIT(A) denied relief to the assessee under section 54 on the ground that the property was not residential in nature. The Id CIT(A) accepted that the assessee earned long term capital gain on sale of this property (asset). However, the claim of assessee under section 54F was not considered by taking view that

during assessment and appellate stage the assessee has not furnished evidences. The Id AR for the assessee submits that the assessee furnished complete evidence to substantiate her alternative claim under section 54F, copies of which is palced on record at page No. 406 of PB.

20. On the other hand the Id SR DR for the revenue supported the order of the lower authorities. The Id DR for the revenue submits that the assessee made wrong claim under section 54 by showing the non-residential property as residential one. During the assessment the assessee admitted such fact as recorded by assessing officer. The assessing officer has no power to entertain alternative plea in absence of revised return of income.

21. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. There is no doubt that on sale of asset at Unn, Surat the assessee earned long term capital gain. the assessee initially claimed exemption under section 54. The nature of said property was non-residential, thus, the assessee was disallowed such deduction. Before, us the Id AR for the assessee vehemently submitted that during assessment conceded her mistake and prayed for alternative relief under section 54F as she owned only one residential house entitling her for relief under section 54F. And that assessee is clearly eligible for 'long term capital gain' on sale of such asset. The assessing officer as well as Id CIT(A) denied relief to the assessee under section 54 on the ground that the property was not residential in nature. The Id CIT(A) accepted that the assessee earned long term capital gain on sale of this property

(asset). However, the claim of assessee under section 54F was not considered by taking view that during assessment and appellate stage the assessee has not furnished evidences. Before us the Id AR for the assessee urged that the assessee furnished complete evidence to substantiate her alternative claim under section 54F. On considering the submissions of both the parties, we find merit in the submissions of Id DR for the revenue that the assessing officer is not empowered to admit alternative claim of the assessee in absence of revised return of income.

22. We find that though the assessing officer is not empowered to admit the alternative or additional claim, however, this restriction is not applicable on the appellate authorities as has been held by Hon'ble Apex Court in Goetz India Ltd. (284 ITR 323 SC). The Hon'ble Jurisdictional High Court in CIT Vs Mitesh Impex (2014) 367 ITR 85 (Guj)/ 46 taxmann.com 30 (Guj) and Hon'ble Bombay High Court in CIT Vs. Prithivi Brokers & Share Holders (P) Ltd. 349 ITR 336/208 Taxman 498 (Bom) held that Tribunal have jurisdiction to consider the additional claim and discretion to permit additional ground by way of additional claims. Such claims needs not to be those which became available on account of change of circumstances of law but which was even available when return was filed.  
*(Emphasis added by us)*

23. Considering the facts that the Id CIT(A) accepted the claim of the assessee that the assessee earned and is eligible for LTCG and benefit of indexation, we admit the additional/ alternative claim of the assessee for just decision of the case

under section 54F and direct the assessing officer to grant the benefit to the assessee under section 54F, after verification of working of indexation and other conditions as per law. Needless to direct that before passing the order the assessing officer shall grant opportunity to the assessee. In the result, ground No. (II) of appeal is allowed for statistical purpose.

24. Ground No. (III) relates to treatment of agriculture income receipt as income from other sources. The Id AR for the assessee submits that cash deposit in the bank of Rs. 75,000/- was treated as 'income from other sources'. The assessing officer treated the deposit in bank of Rs. 55,000/- by taking view that the assessee has not furnished the evidences and identity of the person who was paying the rent again the agriculture holdings. The Id CIT(A) confirmed the action of the assessing officer with similar view. The assessee before the lower authorities submitted that the assessee owned agriculture holding and earned agriculture income as well as rent received in cash. The department has not disputed the rental income. The assessee furnished extract of Form-7/12 record, with summary of the bank account and copies of the Municipal Bills. The agriculture income was shown in the return of income. The copies of the Municipal bills clearly show that the assessee was getting rental income. Rent which is already offered for income and reclassifying same under other sources has resulted in double addition. The Id AR for the assessee prayed for allowing the relief to the assessee.

25. On the other hand the Id Sr DR for the revenue supported the order of the lower authorities. The Id DR for the revenue submits that no documents were filed before the lower authorities to substantiate the claim of agriculture income.
26. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. We find that the lower authorities treated the agriculture income receipt as income from other sources by taking view that no documentary evidences were furnished by the assessee to substantiate the agriculture income receipt. Before us, the Id AR for the assessee vehemently argued that before the lower authorities they submitted the evidences of agriculture holding, and evidence of rent received in cash and that the department has not disputed the rental income. And that assessee furnished extract of Form-7/12 record, with summary of the bank account and copies of the Municipal Bills, agriculture income was shown in the return of income. The copies of the Municipal bills clearly show that the assessee was getting rental income. The copies of the evidences which were filed before the lower authorities is placed before us. We find that while considering the ground No. 3 in para 6.4.1, the Id CIT(A) accepted that the assessee was receiving rent in cash as the property was let out to small tenants. Such rental income is also supported with the municipal records as income was disclosed with the municipal authorities. We find that once the Id CIT(A) accepted the receipt of income in cash, he was not justified in confirming the treatment of entire cash deposit as income from other sources. We find that the assessee claimed that cash deposit

of Rs. 55,000/-, also include receipt of agriculture rent of Rs.75,000/-. In support of which the assessee has placed on record of extract under Form-7/12 showing the substantial holding, therefore, we reverse the treatment of agriculture income receipt as income from other sources. In the result, this ground of appeal is allowed.

27. In the result, the appeal of the assessee is partly allowed.

28. Now advertng to **ITA No. 2644/Ahd/2015 by Vilas Bhajiwala (HUF)**.

29. The assessee has raised following grounds of appeals;

“(I) *Treating share of Long Term Capital gains of the appellant of Rs. 20,43,716/- as short term capital gains on sale of property at Salabatpura at Rs. 21,40,770/- by not giving benefit of indexation.*

*(1) The CIT(A) was not justified in treating share of the long term capital gains on sale of property of the appellant as short term capital gains particularly when the property was acquired on 14/02/2007 by executing a notarized possession-cum-satakhat and sold on 18/08/2010 through a registered sale deed.*

*(2) The CIT(A) was driven by extraneous considerations in treating such clear long term capital gains on transfer of long term capital asset as short term capital gains by disregarding the evidence of notarized possession-cum-satakhat dated 14/02/2007.*

*(3) On the facts and circumstances of the case, the appellant submits that her appeal may be allowed.*

*(4) The CIT(A) further erred in treating sale of property at Salabatpura to be of “not residential” in nature while the appellant gave clear evidence that the property sold was mainly residential in nature qualifying for relief u/s 54.*

*(5) Without prejudice to clause (4) above, the appellant was entitled to relief u/s 54F of the Act.*



*(6) The CIT(A) erred in disallowing relief u/s 54 of the Act, particularly when the appellant had completed construction of the house on or before 16/05/2013.*

*(7) Without prejudice to (6) above, assuming even if the new residential premises was incomplete, the appellant having fully utilized the consideration arising out of capital gains before 31/03/2011, relief u/s 54/54F ought to have been granted.*

*(II) Treating "Agriculture income" of Rs. 95,400 at Rs. 75,000 as "Income from other sources" and adding cash deposits of Rs. 1,80,000/- (including Rs. 95,400) as income.*

*(1) The CIT(A) was not justified in confirming rent received of Rs. 95,400 for agriculture as "Income from other sources".*

*(2) The CIT(A) further erred in confirming Rs. 1,80,000/- being cash deposit into bank as income from other sources.*

*(3) On the circumstances, the appeal may be allowed.*

*(4) Without prejudice to the above, if the CIT(A) having allowed appeal on accepting rent received by the appellant in case, he ought to have granted relief to the extent of cash being so made available while considering addition of cash deposit into the bank under this ground of appeal.*

*(III) Miscellaneous*

*The appellant craves to add, alter, vary, modify or withdraw any of the Grounds of appeal."*

30. Ground No.I relates denial of deduction under section 54/54F on sale of Salabatpura Property. We find that the ground No.I in this appeal is similar to the ground No.I in ITA No. 2545/Ahd/2015, which we have dismissed. Therefore, following the principal of consistency, this ground of appeal is dismissed with similar observation.

31. Ground No. II relates to treatment of agriculture income receipt as income from other sources. We find that this ground of appeal is identical with the ground No.III in ITA No. 2545/Ahd/2015, which we have allowed, therefore following the principal of consistency, this ground of appeal is allowed with similar directions.

32. In the result, this appeal is partly allowed.

**ITA No. 2543/Ahd/2015 by Jignesh K Bhajiwala (HUF)**

33. The assessee has raised following grounds of appeals;

*(I) Denying relief under section 54/54F of Long Term Capital gains of the appellant of Rs. 41,82,724/- on sale of property at Salabatpura at Rs. 44,82,542/-*

*(1) The CIT(A) erred in treating sale of property at Salabatpura to be of "not residential" in nature while the appellant gave clear evidence that the property sold was mainly residential in nature qualifying for relief u/s 54.*

*(2) Without prejudice to clause (4) above, the appellant was entitled to relief u/s 54F of the Act.*

*(3) The erred in disallowing relief u/s 54 of the Act, particularly when the appellant had completed construction of the house on or before 16/05/2013.*

*(4) the Id CIT(A) further erred in not treating sale of property at Salabatpura to be non-residential in nature while appellant gave clear evidence that property sold was mainly residential in nature qualifying for relief u/s 54.*

*(II) Denying relief u/s 54F on Long term capital gains of on sale Rs. 3,92,116/- (Rs. 1,96,058 + Rs 1,96,058) of godowns at 46A/46B, Green Park, Unn, Surat.*

*(1) The CIT(A) ought to have granted alternate relief u/s 54F against relief claimed u/s 54 by the appellant against the sale of godowns sold at 46A/46B, Green Park, Unn, Surat particularly when such claim was made during assessment proceedings.*

*(2) The CIT(A) overlooked the submission that particularly when the appellant proved beyond doubt that she had only one residential property at the relevant time qualifying for relief u/s 54F.*

*(III) Treating "Agriculture income" of Rs.1,05,000 at Rs.2,45,000/- as "Income from other sources" and adding cash deposits of Rs. 2,45,000 (including Rs. 1,05,000) as income.*

*(1) The CIT(A) was not justified in confirming rent received of Rs. 95,400 for agriculture as "Income from other sources".*

*(2) The CIT(A) further erred in confirming Rs. 1,80,000/- being cash deposit into bank as income from other sources.*

*(3) On the circumstances, the appeal may be allowed.*

*(4) Without prejudice to the above, if the CIT(A) having allowed appeal on accepting rent received by the appellant in case, he ought to have granted relief to the extent of cash being so made available while considering addition of cash deposit into the bank under this ground of appeal.*

*(IV) Miscellaneous*

*The appellant craves to add, alter, vary, modify or withdraw any of the Grounds of appeal."*

34. Ground No. I relates denial of deduction under section 54/54F on sale of Salabatpura Property. We find that the ground No.I in this appeal is substantially similar to the ground No. I in ITA No. 2545/Ahd/2015, which we have dismissed. Therefore, following the principal of consistency, this ground of appeal is dismissed with similar observation.

35. Ground No.II relates to denial of deduction under section 54F with regard to surplus earned on sale of Godown at Unn, Surat. We find that this ground of appeal is identical to the ground No. II in ITA No. 2545/Ahd/2015, which we

have allowed for statistical purpose, therefore, following the principal of consistency this ground of appeal is allowed with similar direction.

36. Ground No. III relates to treatment of agriculture income receipt as income from other sources. We find that this ground of appeal is identical with the ground No.III in ITA No. 2545/Ahd/2015, which we have allowed, therefore following the principal of consistency, this ground of appeal is allowed with similar directions.

37. In the result, this appeal is partly allowed.

**ITA No. 2544/Ahd/2015 by Jasmine V Bhajiwala**

38. The assessee has raised following grounds of appeals;

*(I) Denying relief u/s 54F on Long term capital gains of on sale Rs. 3,92,116/- (Rs. 1,96,058 + Rs 1,96,058) of godowns at 47A/47B, Green Park, Unn, Surat.*

*(1) The CIT(A) ought to have granted alternate relief u/s 54F against relief claimed u/s 54 by the appellant against the sale of godowns sold at 47A/47B, Green Park, Unn, Surat particularly when such claim was made during assessment proceedings.*

*(2) The CIT(A) overlooked the submission that particularly when the appellant proved beyond doubt that she had only one residential property at the relevant time qualifying for relief u/s 54F.*

39. The sole ground raised in this appeal relates to denial of alternate relief under section 54F. We find that this ground of appeal raised by the assessee is identical as raised in ITA No. 2545/AHD/2015, which we have allowed statistically, therefore, following the principal of consistency, this ground of appeal is allowed with similar directions. In the result, the sole ground of appeal raised by the assessee is allowed for statistical purpose with similar directions.

40. In the result, this appeal is allowed for statistical purpose.

41. One copy of this order be placed in respective appeals file folders.

Order pronounced on 04/07/2022 in open court and result was also placed  
on the notice board.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 04/07/2022

*\*Ranjan/ self*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat