

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.2199/Ahd/2018

Asstt.Year : 2013-14

Kanubhai R. Patel, HUF B-45, Alok Bungalow B/s.Smriti Mandir Isanpur Ahmedabad 382 435. PAN : AAHHK 3056 R	Vs	DCIT, Cir.3(2) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Ms.Arti N. Shah, AR
Revenue by :	Shri Mukesh Sharma,

सुनवाई की तारीख/Date of Hearing : 19/09/2022

घोषणा की तारीख /Date of Pronouncement: 28/09/2022

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-3, Ahmedabad in short referred to as "Id.CIT(A)" under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), 4.10.2018 pertaining to Asst.Year 2013-14.

2. Sole issue raised in the appeal relates to disallowance of deduction under section 54/54F of the Act on account of investment in property amounting to Rs.37,41,054/-.

3. The AO, we find, reopened the case of the assessee in the present case on the basis of the information that the assessee has made huge investment in immovable property during the year under consideration, and from thereon he noted that the assessee had

purchased a bungalow for Rs.35,38,054/- and paid stamp duty therein at Rs.2,03,000/- on 15.3.2013 during the impugned year. From thereon, the AO goes on to discuss that in Asst.Year 2011-12 the assessee has sold land on 30.4.2010 giving rise to capital gain and claimed deduction under section 54 at Rs.37,41,054/- against the same. The AO thereafter noted, that the return for the said year i.e. Asst.Year 2011-12, was filed belated on 25-09-2014 and the terms and condition for claiming deduction were not fulfilled since the assessee had not deposited the capital gain in the Capital Gain account Scheme in Bank before the due date of filing return of income. He further noted that the assessee made payments for new residential house in the period 30-12-2009 to 09-03-2013. He accordingly held that since the assessee had claimed deduction on account of investment in property purchased during the year but had failed to follow the terms and conditions in law therefore the deduction claimed by the assessee needed to be taxed in the impugned year. Accordingly the deduction claimed by the assessee u/s 54/54F of the Act in A.Y 2011-12 of Rs.37,41,054/- was subjected to tax in the impugned year.

4. The Id.CIT(A) upheld the order of the AO holding that since the assessee had violated conditions of section 54 in the impugned year, the addition of the deduction claimed by the assessee had been rightly made by the AO in the impugned year.

5. I am not in agreement with the Ld. CIT(A). It is not disputed that the assessee had claimed deduction/exemption u/s 54 of Rs. 37,41,054/- in A.Y 2011-12 and not in the impugned year, i.e A.Y 2013-14. The condition which the Revenue authorities note the assessee to have violated, for the purposes of denying deduction u/s 54 of the Act, is not depositing the capital gain earned in the capital

gain account scheme of the Bank as required by law before the due date of filing return of income of A.Y 2011-12 ,in which the deduction was claimed. For this violation the claim of deduction in the said year itself, i.e A.Y 2011-12, should have been denied. Merely because the assessee files his return for that year belatedly, i.e during the impugned year, does not mean that the deduction claimed will be added to the income of the assessee for the impugned year. The violation of conditions having taken place in A.Y 2011-12 itself, the deduction should have been rightfully denied in that year alone. Even otherwise we find that the assessee in any case has been denied the claim of deduction in A.Y 2011-12, wherein the AO has treated the long term capital gain returned by the assessee on sale of asset as short term capital gain and denied benefit of deduction u/s 54 against the same. Copy of the assessment order for A.Y 2011-12 dated 11/12/2018 was placed before us. The same deduction cannot be denied and added to the income of the assessee in two years.

In view of the above therefore the addition on account of denial of deduction u/s 54 of Rs. 37,41,054/- is directed to be deleted. The appeal of the assessee is therefore allowed.

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

Order pronounced in the Court on 28th September, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 28/9/2022