

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 102/SRT/2021 (AY: 2016-17)  
(Hearing in Physical Court)

Smt. Nayanaben F. Patel, 1, Indraprashtha Society, Nr. Puna Patiya, Magob, Surat-395010. <b>PAN: BHRPP 4706 K</b>	Vs.	Pr.C.I.T. Surat-1, Surat.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Assessee by	Shri Sapnesh Sheth, CA
Department by	Shri Ashish Pophare, CIT-DR
Date of hearing	24/02/2023
Date of pronouncement	17/04/2023

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

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of learned Principal Commissioner of Income tax-1, Surat [ in short the Id. Pr.CIT] dated 30/03/2021 passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) for the Assessment Year (AY) 2016-17. The assessee in her appeal has raised the following grounds of appeal:-

- “1. On the facts and circumstances of the case as well as law on the subject, the Id. Pr.CIT has erred in passing revisionary order u/s 263 of the I.T. Act setting aside the order of Id. Assessing officer passed u/s 143(3) of the Act dated 15/12/2018 for the year under consideration although said order is neither erroneous nor prejudicial to the interest of revenue.
2. On the facts and circumstances of the case as well as law on the subject, the Id. Pr.CIT has erred in observing that order passed by assessing officer

*u/s 143(3) of the Act is erroneous as deductions claimed by assessee u/s 54B & 54F of the Act is not allowable.*

3. *It is, therefore, prayed that order passed by Pr.CIT u/s 263 of the I.T. Act setting aside the order of assessing officer and directing assessing officer to make fresh investigations on deductions claimed by assessee may please be quashed.*
4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Brief facts of the case are that the assessee is an individual, filed her return of income for the A.Y. 2016-17 on 31/03/2018 declaring income of Rs. 27,72,370/-. The case of assessee was selected for scrutiny under Computer Audited Scrutiny Selection (CASS) for examination of deduction/exemption of capital gain, capital gain/loss on sale of property and investment in immovable property. The assessment was completed by the Assessing Officer in accepting the returned income vide assessment order dated 15/12/2018 passed under Section 143(3) of the Act. The Assessing Officer while passing the assessment order, recorded that the assessee sold agricultural land at Revenue Survey No. 21/1, Block No. 49, Village- Saroli, Taluka, Choryasi, District -Surat for sale consideration of Rs. 4.51 crores on 12/10/2015. On verification of capital gain, it was noticed that the assessee reduced her share of capital gain by Rs. 20.00 lacs on account of life time interest of legal heir Smt. Pushpaben Maganbhai, mother of assessee. To support such contention, the assessee filed notarized agreement /family settlement dated

25/11/2010. On further verification of said agreement, the Assessing Officer recorded that as per agreement, the family members of assessee divided two properties between the assessee and his sister Ms. Latifaben N Patel. As per agreement, the agricultural land situated in Revenue Survey No. 21/1, Block No. 49, Village- Saroli, Taluka-Choryasi, District - Surat came in the share of assessee and other agricultural land situated at Revenue Survey No. 67/B, Block No. 103, Village- Saroli, Taluka-Choryasi, District -Surat was given to Ms. Latifaben N Patel in lieu of her share. The Assessing Officer not allowed reduction of Rs. 20,00,000/- on account of life time interest of assessee's mother from capital gain from taxable capital gain, in the hand of assessee. However, the Assessing Officer allowed deduction under Section 54B of Rs. 30,31,390/- and deduction under Section 54F of Rs. 82,95,685/-.

3. Later on, assessment order was revised by the Id. Pr.CIT by exercising his jurisdiction under Section 263 of the Act. Before revising the assessment order, the Id. Pr.CIT issued show cause notice under Section 263 dated 22/03/2021. In the show cause notice, the Id. Pr.CIT identified two issues i.e. (i) the assessee claimed deduction under Section 54F of Rs. 82,95,685/- against the construction of residential house situated at 1, Indraprastha Row House, Magob, Surat, by taking view that on examination of record, it was noted that the assessee has not purchased new asset but merely carried out construction of existing house owned

since 2008. Thus, the condition of Section 54F are not fulfilled by the assessee and deduction was required to be disallowed. Secondly, the assessee claimed deduction under Section 54B of the Act of Rs. 30,31,390/- for purchase of four blocks/parcel of land at Ambheti on four different dates before execution of sale deed of agriculture land, and that such deduction is available only, if the assessee purchased agricultural land within two years after transfer of agricultural land from which capital gain arise. The assessee purchased three pieces of land before transferring of land on which the capital gain earned, therefore, deduction claimed on three pieces of land aggregating to Rs. 15,52,740/- was required to be disallowed. The Id. Pr. CIT was of the view that assessment order was passed without making proper enquiry, non-application of mind coupled with non-verification of details of property, which makes the assessment order erroneous and prejudicial to the interest of revenue, which required revision.

4. The assessee filed his reply dated 25/03/2021. On the deduction claimed under Section 54B, the assessee submitted that she sold agricultural land at Block No. 49, Saroli, Choryasi, Surat for a consideration of Rs. 2.25 crores (as her part). The part of the consideration was received by assessee on 14/10/2014 by way of cheque No. 118 of Rs. 25.00 lacs. Such part of consideration was used for purchase of agricultural lands on 18/10/2014 and 19/11/2014. Cheque No. 271188 of Rs. 1,05,735/- was

paid for sale consideration for purchase of agricultural land at Block No. 273, Ambheti on 18/10/2014. Again cheque No. 271189 of Rs. 6,92,000/- was paid for purchase of agricultural land at Block No. 281, Ambheti and on 19/11/2014, cheque No. 271190 of Rs. 6,63,150/- was paid for purchase of agricultural land at Block No. 280, Ambheti. Copy of bank pass book/ account was furnished. The assessee further stated that she sold agricultural land situated in Saroli, Surat wherein new textile Mills and other business activities were carried out and there was an Air and Water pollution around the nearby area, so it was difficult to carry out farming activities in such environment, so they decided to sale this land and to buy new agricultural land. The assessee is from farmer's family and wanted to remain as farmer, thus, to require to retain his name in revenue record as a farmer, as per condition under State land laws, she must purchase a new agricultural land before sale of old agricultural land. Once the name of assessee is removed from revenue record as a farmer, she cannot buy new agricultural land in such event. So the assessee contended that she is eligible for deduction under Section 54B on purchase of new agricultural land. The purpose and condition of Section 54B was indeed fulfilled as the assessee invested amount which was received as part of sale consideration. To support his submission, the assessee relied upon decision of Tribunal in ITO Vs Shri Mahendrabhai Shankarji Thakore (full details of case law is not mentioned in order).

5. On the issue of deduction under Section 54F, the assessee submitted that part of capital gain was used (invested) for construction of new house and not for any kind of renovation. The assessee made construction agreement with contractor which clearly mentioned that the agreement was for new construction of house. The exemption under Section 54F is available for investment in a residential house and to avail the exemption, the assessee is required to satisfy the condition No. (i) the assessee is an individual or HUF, (ii) the capital gain is earned on transfer of any long term capital asset other than the residential house, the net consideration on transfer of long term capital asset is invested to purchase a residential house in India, (iii) it must be within a period of one year before or two years after the date of transfer or the amount is invested within a period of three years to construct new residential house in India. All three major conditions are satisfied in her case.
6. The reply of assessee was not accepted by the Id. Pr.CIT. On the issue of deduction under Section 54B, the Id. Pr.CIT concluded that the deduction under Section 54B is available only, if the assessee purchased agricultural land within two years after transfer of agricultural land from which capital gain arise. The contention of assessee that she purchased new agricultural land before sale of original asset in order to retain her name in Government record as agriculturist, otherwise she would not have been able to buy agricultural land in State of Gujarat. Such

contention of assessee is devoid of merit in view of specific provision of Section 54B. On the issue of deduction under Section 54F, the Id. Pr.CIT noted that the assessee furnished copy of construction agreement with one Shri Rameshbhai Ramsinghbhai Prajapati. Ongoing through such construction agreement, first party is Shri Aakash Fakirbhai Patel and amount of construction work was Rs. 88.00 lacs. In the balance sheet of assessee as on 31/03/2015, the value of house "Indraprakash Row House" was shown at Rs. 3.51 lacs as on 31/06/2016. The value was shown at Rs. 1.09 crores, the value of construction of house should be Rs. 1.05 crores. The assessee has not furnished copy of approved plan from Town Planning/Municipal Corporation for construction of new house. Details furnished by the assessee are neither sufficient nor relevant. The Assessing Officer has not made necessary enquiry. Non-application of mind by Assessing officer and providing relief without making enquiry relates the order erroneous and prejudicial to the interest of revenue. The Id. Pr.CIT referred the various case laws to strengthen his view and held that Explanation-2 to Section 263 clearly says that non-enquiry and non-verification of fact or provisions of excess relief to assessee is deemed to be order prejudicial to the interest of revenue. The Id. Pr.CIT set aside the assessment order and directed the Assessing Officer to decide the issue *de novo* on the issue of deduction under Section 54B and 54F after granting reasonable opportunity of hearing to

the assessee. Aggrieved by the order of Id. Pr.CIT, the assessee has filed the present appeal before this Tribunal.

7. We have heard the submissions of the learned Authorised Representative (AR) of the assessee and the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue and have gone through the orders of the lower authorities carefully. The Id. AR of the assessee submits that the case of assessee was selected for scrutiny vide notice dated 12/09/2018 for verification of exemption of capital gain/investment in immovable property. The copy of notice under Section 143(2) dated 12/09/2018 is filed on record. The Assessing Officer during the assessment, issued notice under Section 142(1) dated 20/11/2018. In the said notice in question No. 4, the Assessing Officer raised the issue of long term capital gain and required copy of sale deed and copy of purchase deed for verification. The Assessing Officer also required the details of expenses of Rs. 20.00 lacs against the long term capital gain with necessary supporting evidences. The assessee vide his reply dated 05/12/2018 furnished details of three bank accounts with Varachha Cooperative Bank about the investment for purchase of new agricultural land. The assessee furnished copy of four purchase deed of agricultural land. Further, investment of Rs. 1.05 crores made in construction of house plus Rs. 2.50 lacs as site supervision and consultation fees, details of Rs. 85,000/- of kitchen equipment and Rs. 71,000/- in solar equipment

and furniture fitting of Rs. 7,66,971/- aggregating of Rs. 1.17 crores were furnished. The assessee also furnished construction agreement and purchase deed of said house. Copy of notice of Assessing Officer and reply of assessee is filed on record. The Id AR for the assessee submits that assessing officer on verification of facts and examination of all the documents accepted the claim of assessee on deduction under Section 54B as well as under Section 54F of the Act. The Id. AR of the assessee submits that the Assessing Officer examined both the issues thoroughly and took reasonable plausible and legally sustainable view. The Assessing Officer in the assessment order in para 3 of assessment order has recorded certain facts about the examination of such issue. The Assessing Officer only disallowed Rs. 20.00 lacs from taxable capital gain which clearly shows that the Assessing Officer applied his mind on the issue and passed the assessment order. If the Id. Pr.CIT is not agreeing with the assessment order which is change of opinion on the issue and no revision under Section 263 is permissible on merely change of opinion. The Id. AR of the assessee submits that the assessment order is not at all erroneous and legally sustainable order.

8. The Id. AR for the assessee on the deduction under Section 54F submits that the assessee received Rs. 25.00 lacs on 14/10/2014. The advance received as part of sale consideration was invested for purchase of three agricultural piece of land. Two agricultural lands were purchased on

18/10/2014 and third one on 19/11/2014. The assessee received part of sale consideration through cheque, copy of bank statement showing clearing of such sale consideration is filed on record at page No. 17 of paper book. The assessee paid the sale consideration for purchase of new agricultural land through cheque vide cheque No. 271188, 271189 and 271190 which are clearly reflected in the bank statement. The Id. AR submits that the Id. Pr.CIT raised objection only on the ground that new agricultural land was purchased prior to sale of old agricultural land. The Id. AR for the assessee reiterated that in fact the assessee utilized the sale proceed/consideration for purchase of new agricultural land and substantially complied with the condition. No other objection for non-fulfilling any other condition was raised by the Id. Pr.CIT. To support his submission, the Id. AR of the assessee has relied on the decision of Tribunal in Atul K Patel Vs Pr.CIT in ITA No. 267/Srt/2018 dated 09/11/2021.

9. On the issue of deduction under Section 54F, the Id. AR of the assessee submits that the assessee demolished entire old construction and made a fresh construction, copy of agreement with the contractor is filed at page No. 25 to 29 of the paper book. True English translation of relevant part of construction agreement is also filed on record. The agreement clearly specified about the demolition of old construction and making of new construction consisting ground floor and two additional floors for a

total cost of Rs.1.05 crore. The specification of work is also described in clause (s) of the agreement. The Id. AR for assessee submits that the assessee made payment to the contractor through account payee cheque which is duly reflected in the bank statement of the assessee. To support the submission on deduction under Section 54F of the Act, the Id. AR of the assessee relied upon the decision of Hon'ble Madras High Court in CIT Vs. P.V. Narasimhan (1989) 47 Taxman 89 (Mad), Gujarat High Court in CIT Vs Kodandas Chanchlomal (1985) 23 Taxman 579 (Guj), Hyderabad Tribunal in Ms. Juveria Begum & Ors Vs ITO in ITA No. 2224/Hyd/2018, 297, 298 & 340/Hyd/2019 order dated 04/09/2020 and Chennai Tribunal in B. Sivasubramanian Vs ITO (2014) 45 taxmann.com 74 (Chennai-Trib).

10. On the other hand, the Id. CIT-DR for the revenue supported the order of Id. Pr.CIT. On the issue of deduction under Section 54B of the Act, the Id. CIT-DR for the revenue submits that language of Section 54B is clear and unambiguous. The deduction under Section 54B of the Act is only available after transfer of agriculture land by assessee. On the issue of deduction under Section 54F of the Act, the Id. CIT-DR for the revenue submits that on page No. 3 of impugned order, the Id. Pr.CIT clearly held that the assessee claimed deduction merely on the basis of agreement. The assessee again claimed such deduction on renovation of house owned by assessee. If it a renovation or construction, it is not clear from

the reply of the assessee before the Id. Pr CIT. The Id CIT-DR for the revenue submits that before revising the assessing order Id Pr CIT has given his clear finding that the assessing officer has not examined both the issues and allow relief to the assessee.

11. We have considered the rival submissions of the parties and have gone through the contents of assessment order as well as the order passed by the Id. Pr.CIT which is impugned before us. We find that the case of assessee was selected for examination/ verification of deduction/ exemption of capital gain and investment in immovable property. We find that assessing officer during the assessment, issued show cause notice dated 20/11/2018 seeking the details of long term capital gain and required copy of sale deed and copy of purchase deed for verification and the details of expenses of Rs. 20.00 lacs against the long term capital gain with necessary supporting evidences. The assessee filed her reply on 05/12/2018 and furnished details of three bank accounts with Varachha Cooperative Bank to substantiate investment for purchase of new agricultural land. The assessee also furnished copy of (purchase) sale deed of new agricultural land. On deduction under section 54F, the assessee furnished the details of investment of Rs. 1.05 crores made in construction of house, details of Rs. 2.50 lacs as site supervision and consultation fees, details of Rs. 85,000/- of kitchen equipment and Rs. 71,000/- in solar equipment and furniture fitting of Rs. 7,66,971/-

aggregating of Rs. 1.17 crores. We find that the assessee also furnished construction agreement and purchase deed of said house. The assessee has already filed copy of various notices issued by assessing officer and reply of assessee on record. Before us, the Id AR for the assessee vehemently submitted that assessing officer on verification of facts and examination of all the documents accepted the claim of assessee on deduction under Section 54B as well as under Section 54F of the Act. We find merit in the submissions of the Id AR for the assessee that both the issues were examined by the assessing officer. Although, there is no detail discussions in the assessment order on both the issues.

12. Now, we have to examine, whether, the assessing officer took reasonable and legally sustainable and plausible or not. First issue relates to the deduction under section 54F. The stand of the assessee throughout the proceedings was that she invested the part of capital gain in reconstruction of her old house. The Id Pr CIT at the time of revision observed that there is no sanction plan from the Municipal Committee and that there is mismatch in the balance sheet of assessee as on 31/03/2015, the value of house "Indraprakash Row House" was shown at Rs. 3.51 lacs as on 31/06/2016. The value of construction of house should be Rs. 1.05 crores. The Id AR for the assessee during his submissions explained that investment of Rs. 1.05 crores made in construction of house plus Rs. 2.50 lacs as site supervision and

consultation fees, details of Rs. 85,000/- of kitchen equipment and Rs. 71,000/- in solar equipment and furniture fitting of Rs. 7,66,971/- aggregating of Rs. 1.17 crores. We find that coordinate bench of Chennai Tribunal in B Siva Subramanian Vs ITO (supra) held that there is no condition in section 54F that building plan of residential house should be approved by Municipal Corporation or any other competent authority. Hon'ble Madras High Court in CIT Vs P V Narasimhan (supra) held that utilisation of sale proceed of one house to construct first floor after demolishing old structure of second house, the assessee would be entitled for exemption under section 54F. Thus, considering the above legal view by the Tribunal and High Court of Madras, we are of the view that the view taken by assessing officer in passively allowing relief to the assessee on the deduction/ exemption under section 54F is not erroneous. Adverting to the other issue of deduction under section 54B, we find that the only objection raised by the assessing officer is that the assessee purchased new agriculture land prior to transfer of old agriculture land. We find that the sale consideration paid by the assessee is from the advance of Rs. 25.00 lakhs received on execution of agreement. This fact is clearly discernible from the bank statement of the assessee, copy of which is filed at page no. 17 of paper book. We find that the combination of this bench in Atul K Patel Vs Pr CIT (supra), by following the decision of Bombay High Court in Praveen P Bharucha (WP No. 10437 of 2021)

held that when part payment so received in advance, was utilized by the assessee in purchasing another agricultural land the assessee is entitled to claim exemption under section 54B of the Act.

13. The Hon'ble Apex Court in *Malabar Industrial Co. Limited Vs CIT* [\[2000\] 109 Taxman 66/243 ITR 83](#) held that twin conditions is to be satisfied before exercising jurisdiction under section 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In such circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the assessing officer has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order.

14. Again turning to the facts of the present case that when the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the Pr CIT does not agree, it cannot be treated as an erroneous order unless the view taken by the Assessing Officer is legally not sustainable. Thus, the twin conditions of

section 263 of the Act are not clearly meet out in the in the present case, thus, the order passed by Id Pr CIT under section 263 is not justified, which we set aside. In the result, the grounds of appeal raised by the assessee is allowed,

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

Order pronounced on 17/04/2023 in open court.

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

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

Surat, Dated: 17/04/2023  
*\*Ranjan*

Copy to:

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

By Order

Sr. Private Secretary, ITAT Surat