

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 194/Rjt/2019
(निर्धारण वर्ष / Assessment Year : 2015-16)

Smt. Kusumben Amritlal Sanghavi C/o. Kantilal And Brothers, Grain Market, Jamnagar - 361001	बनाम/ Vs.	Dy. Commissioner of Income Tax Circle-2, Jamnagar - 361008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFHPS5412C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri D. S. Varia, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri B. D. Gupta, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	06/04/2023
घोषणा की तारीख /Date of Pronouncement	30/05/2023

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal at the instance of the assessee is directed against the order dated 25.06.2019 passed by the Commissioner of Income Tax (Appeals), Jamnagar ('the CIT(A)'), arising out of the assessment order dated 30.06.2017 passed by the Learned DCIT, Circle-2, Jamnagar under Section

143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2015-16, whereby and whereunder the claim of exemption under Section 54F of the Act to the tune of Rs.10,53,975/- has been disallowed.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. The brief facts leading to this case is this that the assessee, an individual, filed the return of income on 05.08.2015 declaring total income of Rs.59,37,270/-, which was subsequently revised at Rs.48,83,290/- by filing the revised return of income on 31.10.2015. Such revised return of income was filed to claim deduction of Rs.10,53,975/- under Section 54F of the Act on account of purchase of residential building by the appellant. In fact, on 05.11.2014, the assessee sold her immovable property being a godown for a consideration of Rs.60 Lakhs and the long term capital gain out of that was also offered to tax by filing the original return. Within one year of such sale of property, the appellant purchased the residential house on 07.10.2015 for a sum of Rs.12 Lakhs and claimed deduction 10,53,975/- under Section 54F of the Act by filing revised return of income. Upon selection of the case under scrutiny, the assessment was finalized under Section 143(3) of the Act in terms of the original return of income at Rs.59,37,270/- rejecting the claim of deduction to the tune of Rs.10,53,975/- under Section 54F of the Act as per the revised return filed by the appellant on the ground that the appellant had not invested the fund into capital gain scheme before purchase of the residential property before filing of the return of income under Section 139(1) of the Act. The case of the Revenue is this that the appellant is not entitled for

exemption under Section 54F of the Act, since the unutilized amount was not deposited by him before the due date of filing of return of income under Section 139(1) of the Act. On this aspect, both the authorities below relied upon the judgment passed in the matter of Suleman Merchant passed by the Hon'ble High Court of Bombay, wherein it was held that the amount which has not been invested either in purchase or in construction of house has to be deposited in the specified accounts before the due date of filing of return of income under Section 139(1) of the Act. On the other hand, series of a judgment has been relied upon by the assessee in support of his case to this effect that if the investment in the residential property is made within the time limit of Section 139(4) of the Act, the deduction under Section 54F of the Act is allowable. In fact, the judgment passed by the Hon'ble Karnataka High Court in case of CIT vs. K. Ramachandra Rao, reported in (2015) 56 Taxmann.com 163 (Karnataka HC) was basically relied upon. Some other judgments observing a liberal approach should be taken by interpreting the provision of Section 54 of the Act were also relied upon by the appellant. The judgment passed by the Co-ordinate Bench in the case of Shrawankumar G. Jain vs. ITO, reported in (2018) 99 taxmann.com 88 (ITAT-AHD) was also relied upon by the appellant.

4. We have considered the entire aspect of the matter and the judgments relied upon by the respective parties. Hon'ble Karnataka High Court in the case K. Ramachandra Rao (supra) dealt with a similar case wherein following observation was made:

“6.3 In the present case, the assessee purchased new asset on 05/10/2009 and had transferred the original asset on 8/01/2008. As per Section 54F (1) of the Act, the

exemption would be available if the assessee purchased the residential house within two years after the date when transfer took place. As per the judgment of Hon'ble Karnataka High Court, the provisions of section 54F(4) would not be attracted in the event if the assessee has purchased or constructed the residential house within the period prescribed under section 54(1) of the Act. In the case in hand, there is no dispute with regard to the fact that the assessee had purchased within two years [the period prescribed u/s.54(F(1))] a new asset on 05/10/2009 from the date of transfer of the original asset. The Revenue has not cited or placed on record any contrary judgment by the Hon'ble Jurisdictional High Court or Hon'ble Supreme Court. Therefore, respectfully following the ratio laid down by the Hon'ble Karnataka High Court in the case of CIT v. K. Ramachandra Rao (supra), we hereby set aside the impugned order and direct the AO to re-compute the assessed income after granting the benefit of section 54F of the Act to the assessee."

5. In that view of the matter, the Hon'ble Karnataka High Court has been pleased to laid down the ratio to this effect that when the assessee has purchased a new residential house within due date specified under Section 139(4) of the Act from the date of transfer of the original asset, requirement to deposit net consideration received by the assessee in capital gain account scheme as per Section 54F(4) of the Act, would not be attracted and the assessee would be eligible to benefit of exemption under Section 54F of the Act. Taking into consideration the ratio laid down by the Hon'ble Karnataka High Court, we find that the assessee's case is squarely covered under the same, as the assessee within one year from the sale of asset at a consideration of Rs.60 Lakhs the long term capital gain whereof was also offered to tax by filing original return, purchased the residential house on 07.10.2015 for a sum of Rs.12 Lakhs and claimed deduction of Rs.10,53,975/- under Section 54F of the Act by filing revised return of income and entitled to relief as claimed for

exemption under Section 54F of the Act to the tune of Rs.1,10,53,975/-. Thus, the addition made by the Revenue is not justifiable and hence, deleted.

6. In the result, assessee's appeal is allowed.

This Order pronounced on 30/05/2023

Sd/-

(ANNAPURNA GUPTA)

ACCOUNTANT MEMBER

Ahmedabad; Dated 30/05/2023

S. K. SINHA

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot