IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM &DR. A.L.SAINI, AM

आयकरअपील सं./**ITA No.589/SRT/2019**

(निर्धारण वर्ष / **Assessment Year: (2011-12)**

(Physical Court Hearing)

Pankajbhai Hathibhai Patel 112, Sangath Mall 1, Opp. Govt. Engineering College, Motera, Ahmedabad-380005	**Vs.**	Income Tax Officer, Ward-6(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAZPP 0099 B**		
(अपीलार्थी **/Appellant)**		**(**प्रत्यर्थी **/Respondent)**

निर्धारिती की ओर से /Assessee by : Shri Rasesh Shah, C.A

राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-D.R

सुनवाई की तारीख/ **Date of Hearing : 13/04/2023**

घोषणा की तारीख/**Date of Pronouncement : 26/06/2023**

आदेश / **O R D E R**

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to assessment year 2011-12, is directed against the order passed by the Learned Commissioner of Income-tax (Appeals)-1, Surat [in short "the Ld.CIT(A)"] dated 11.10.2019, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"] dated 28.03.2014.

2. Grounds of appeal raised by the assessee are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in taking sale consideration as per provisions of Sec 50C of the Act at Rs.3,32,34,124/- as against actual sale consideration of Rs.3,11,00,000/- in respect sale of house property.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in not allowing further deduction of Rs.1,45,20,981/- u/s 54 of the Act for further construction made till date of filing of ITR.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in taking the share of the assessee as 50% instead of 20% in respect of capital gain arising from sale of land.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in not allowing deduction of Sec 54EC of Rs.50,00,000 against Long term Capital Gain arising from sale of plot. If assessee's ground no 2 is allowed then assessee would be benefitted if deduction u/s 54EC of Rs.50,00,000 is allowed against sale of land.

5. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs.2,00,995/- u/s 23 of the Act on account of income from house property.

6. It is therefore prayed that the above addition made by the Assessing Officer may please be deleted.

7. The appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

3. At the outset Learned Counsel for the assessee, informs the Bench that assessee does not wish to press Ground No.5 raised by him, therefore, we dismiss Ground No.5 as "not pressed" by the assessee.

4. Now we shall take assessee's grounds one-by-one. Ground No.1 relates to sale consideration as per provision of Section 50C of the Act taken by the Assessing Officer at Rs.3,32,34,124/- as against actual sale consideration of Rs.3,11,00,000/- in respect of sale of house property.

5. At the outset Learned Counsel for the assessee submitted that Assessing Officer took the sale consideration as per provision of section 50C of the Act at Rs.3,32,34,124/- as against actual sale consideration of Rs.3,11,00,000/-, as per assessee, in respect of sale of house property. The Ld. Counsel for the assessee submitted that difference between value taken by the Assessing Officer and value taken by the Assessee is only 6.42% which is less than 10% tolerance limit prescribed in third proviso to section

50C(1) of the Act. Therefore, addition should not be made in the hands of the assessee u/s 50C of the Act.

6. On the other hand, Learned Sr.DR for the Revenue relied on the order of lower authorities.

7. We have heard both the parties and perused the materials available on record. We note that third proviso of section 50C of the Act states as follows:

> *"[**Special provision for full value of consideration in certain cases**.*
> ***50C**. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed[or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:*
> *[**Provided** that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:*
> ***Provided further** that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed] on or before the date of the agreement for transfer:]*
> ***[Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and [ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.]**"*

8. Therefore we note that third proviso of section 50C(1) of the Act clearly states that where value adopted by the Stamp Valuation Authority does not exceed 110% of the consideration received, the consideration so received for the purpose of Section 48, will be deemed to be the full value of consideration. Therefore, we note that the difference between value adopted

by the Stamp Valuation Authority and value adopted by Assessee does not exceed 10%, hence we allow ground No.1 raised by the assessee.

9. Ground No.2 raised by the assessee relates to not allowing deduction of Rs.1,45,20,981/- under section 54 of the Act for construction of house made till the date of filing of Income Tax Return.

10. Brief facts *qua* the issue are that assessee during the assessment proceedings, vide letter dated 10.03.2014, the assessee made fresh claim of deduction u/s 54 of the Act. Relevant part of his letter is reproduced hereunder:

> *"During the year, the assessee has sold one house property for the sale consideration of Rs.3,11,00,000/- and capital gain of Rs.2,07,17,633/- arose as reflected in the computation of income. As against the said capital gain, the assessee has made investment of the sale proceeds in buying residential plot situated at Ahmedabad to the tune of Rs.1,43,01,825/- inclusive of stamp duty and registration charges and an amount of Rs.26,27,596/- towards construction of the residential house during the year. Accordingly, the assessee has claimed deduction u/s 54F to the tune of Rs.1,69,29,421/-*
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> *It is worthwhile to mention that the assessee had carried out construction in the residential property in the subsequent year and till the filling of return of income on 26.03.2013 for A.Y 2012-13, the assessee has made further construction and incurred total expenditure of Rs.1,45,27,981/- which is allowable u/s 54 of the Act. The assessee has further invested in Infrastructure Bonds (NHAI) to the tune of Rs.50,00,000/- u/s 54EC as per provision of Act. The ledger copy of account alongwith copy of infrastructure bond was submitted vide Annexure-C"*

11. The Assessing Officer noted that the assessee has claimed further deduction u/s 54 in respect of further construction of the house of Rs.1,45,27,981/- made during the assessment year 2012-13 (*over and above the claim of Rs.1,69,29,421/-*) made in the return. The claim is not acceptable at all, as the assessee has not made any deposit into the "Capital Gain Deposit Scheme" on or before the due date of filing the return of the income for the year under consideration i.e. A.Y 2011-12. It is not understood as to how the assessee is claiming deduction for the expenditure

incurred during the period relevant to the A.Y 2012-13. It may be reiterated that if any assessee wants to get benefit u/s 54 of the Act in respect of the investment made towards construction of the house, he needs to make such deposit into "Capital Gain Deposit Scheme" in any designated bank. Therefore, Assessing Officer denied the deduction u/s 54 of the Act, in respect of construction of the house of Rs.1,45,27,981/-.

12. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A), who has confirmed the addition made by the Assessing Officer observing as follows:

> *"7.2 Addition in capital gains on the transfer of residential property at Sai Enclave, Udhna Magdalla Road, Surat.*
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> *7.2.1 The assessee sold this residential property at recorded price of Rs.3,11,00,000/- and computed LTCG against which he claimed deduction u/s 54 & 54EC, to the extent of capital gains computed. The Ld. AO found that the value as stamp duty valuation Authority (SVA) is Rs.3,32,34,124/- and accordingly proposed to make addition of Rs.9,22,336/-. The assessee filed revised computation wherein he claimed further deduction u/s 54 of Rs.1,45,20,981/- on the ground that amount was spent in construction of residence till date of filing of ITR. The assessee also sought to shift the claim of deduction u/s 54EC against this capital gains to the capital gains arising from sale of another land during the year but not disclosed in ITR. In effect the assessee computed Nil capital gains arising out of sale of the impugned property. The Ld. AO rejected this revised computation for the following reasons:*
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> *(i) the assessee had not invested the sale consideration in the notified Capital Gains Scheme in Bank.*
> *(ii) additional claim of deduction cannot be allowed by the Ld. AO due to decision of Hon SC in the case of Goetze (India) Ltd (supra)*
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> *7.2.2 I have examined the issue and find that the only question for adjudication here is. "Is the assessee eligible to claim additional deduction u/s 54 to the extent of addition made to capital gain by invoking section 50C. This issue already has been decided by me in appeal no. CIT(A)Surat-3/10342/16-17 dated 13.09.2017 as in case of Rameshkumar M. Gajeera under:*
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> *"In original computation, the appellant had claimed deduction u/s 54F to the extent of Rs.31.11 lakhs and the same has been allowed by the ld Assessing Officer in the assessment order. The AR pleaded that, the appellant has invested the full value received as per sale deed in eligible assets u/s 54F. The AR maintains the even after applying section 50C of the IT Act the entire re-computed LTCG is eligible for deduction u/s 54F. I have perused the provisions of section 54F and the decisions of Hon'ble ITAT Jaipur. The Hon'ble ITAT Jaipur in its*

decision in the case of Prakash Karnawat v/s ITO Ward 6, Jaipur (49 SOT 160 (Jaipur) has considered the above provision and also earlier decisions of Hon'ble ITAT Jaipur Bench & the order of the Hon'ble ITAT Bangalore. The Hon'ble ITAT relies on decision of Hon'ble ITAT Bangalore in the case of Gouli Mahadevappa ITA No.587/Bang/2009 dated 16.07.2010. the Hon'ble ITAT Bangalore in para 8.22 has illustrated how to work out LTCG and deduction u/s 54F in all probable situations. As per that illustration given therein, where the appellant has invested entire sale proceeds/net consideration in purchase of new asset, then the deduction u/s 54F is restricted to the capital gains calculated u/s 48 without applying section 50C."

The above discussion & conclusion is applicable mutatis mutandis to the instant appeal and hence this ground of appeal is decided against the assessee. The assessee is not eligible for additional deduction claimed in revised computation of income."

Another ground of appellant is that the property was not referred to DVO for valuation by Ld AO 50C. My Ld predecessor found this a valid ground and directed the Ld AO to reefer the property to DVO. Since then the report of DVO dated 30.09.2016 is received and the DVO has valued it at same value as the SVA (jantri value). (Ref. Remand Report of AO dated04.01.2017. Hence, the appellant will not get any relief on this account, even though the ground has been allowed by my Ld predecessor."

13. Aggrieved, by the order of ld CIT(A) the assessee is in further appeal before us.

14. Shri Rasesh Shah, Learned Counsel for the assessee argued that assessee is a partner in the firm of M/s Pancham Developers whereby deriving interest income from the said firm as well as earning rent income from UTI bank and HDFC bank on letting out the properties. The assessee has filed his return of income for A.Y. 2011-12 on 28.03.2012, declaring total income to the tune of Rs.1,12,360/-. The assessee is assessed to tax since last many years. The assessee during the course of assessment proceedings filed exhaustive details from time to time along with annexure. The assessee has sold one house property bearing R.S. No. 43/2, situated at Plot No. 17, Sai Enclave Bungalow, Vesu, Surat on 09.04.2020, for the sale consideration of Rs.3,11,00,000/- for which registered sale deed document was executed with the Sub-Registrar, Surat. The stamp duty valuation of the

property is Rs.3,32,34,124/-. The assessee had claimed indexed cost of acquisition of Rs.1,03,82,367/- and claimed deduction u/s 54 by making investment in residential plot situated at Ahmedabad amounting to Rs.1,43,01,825/- inclusive of stamp duty and registration charges. The assessee also claimed the deduction u/s 54 for construction expenses of Rs.26,27,596/- incurred till 31.03.2011 in the return of income. The assessee made deposit in NHA bond of Rs.50,00,000/-. However, in the return of income, the assessee claimed the deduction u/s 54EC of Rs. 37,88,212/- by restricting it to the amount of net capital gain after deduction u/s 54 in respect of the property at Sai Enclave Bungalow.

15. Learned Counsel further submitted that assessee incurred total expenses of Rs. 1,45,27,981/- towards construction of residential house up to the date of filing the return for A.Y. 2011-12 i.e. 28.03.2012. Therefore, the further construction expenses of Rs.1,19,00,385/- (*Rs.1,45,27,981 - Rs. 26,27,596*) were incurred till 31.03.2012. The assessee has claimed construction expenses of Rs.26,27,596/- in the original return of income. However, the construction expenses of Rs.1,19,00,385/- was claimed by way of a letter filed during the assessment proceedings before the Assessing Officer. The Assessing Officer denied deduction u/s 54 of the Act in respect of construction expenses of Rs.1,19,00,385/-, therefore assessee is in appeal before this Tribunal. Therefore assessee claimed deduction u/s 54 of the Act in respect of total construction expenses of Rs.1,45,27,981/-, This includes expenses Rs.26,27,596/- which was claimed by the assessee in the original return of income. These expenses are in addition to the cost of land of Rs.1,43,01,825/- in the revised computation of total income filed in the course of the assessment proceedings on the ground that assessee is not required to deposit the amount in capital gain scheme to the extent of construction expenses incurred till due date of the filing the return of income

u/s 139(4) of the Act. Accordingly, assessee claimed total deduction of Rs.2,88,29,806/- (*Rs.1,45,27,981 + Rs.1,43,01,825*) u/s 54 of the Act. This amount was restricted to the extent of the capital gain of Rs.2,28,51,757/- in the revised computation of total income filed in the course of assessment proceedings. Therefore, ld Counsel contended that construction expenses of Rs.1,19,00,385/- (*Rs.1,45,27,981 - Rs. 26,27,596*) which were incurred till 31.03.2012, the deduction u/s 54 of the Act should be allowed.

16. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

17. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that Assessing Officer did not allow the deduction u/s 54 of the Act, on the ground that the amount was not deposited in the capital gain scheme and the fresh claim could not be allowed by the Assessing Officer due to the decision of the Hon`ble Supreme Court in case of Goetze (India) Ltd. Vs. CIT - 157 Taxman 1 (SC). On appeal, ld CIT(A) also held that fresh claim cannot be allowed by the Assessing Officer as mentioned in the judgment of the Hon`ble Supreme Court in case of Goetze (India) Ltd (supra). However, we note that Judgment of Hon`ble Supreme Court in case of Goetze (India) Ltd (supra) is not applicable in case of appellate proceedings as held by Hon`ble Gujarat High Court in case of Principal Commissioner o Income Tax v/s. UTI Bank Ltd. - 99 taxmann.com 392(Guj.), wherein it was held as follows:

> ***"5.*** *Having heard learned counsel for the parties and having perused the documents on record, we do not see any error in the view of the Tribunal. The question of disallowance under section 14A of the Act has been examined on the basis of materials on record. The Tribunal found that the assessee's interest-free funds far exceeded its interest-free investments. The Tribunal relied on the decisions of this court in the case of this very assessee concerning similar issues*

in the later assessment years, against which we are informed that the special leave petition has been dismissed.

6. *Regarding a claim contrary to the disclosures in the return, the Tribunal relied on the decision of the Supreme Court in the case of National Thermal Power Co. Ltd. (supra) to observe that the purpose of assessment is to tax real income. This court taking note of the decisions of the Supreme Court in the case of Goetze (India) Ltd. v. CIT [2006] 284 ITR 323/157 Taxman 1 and National Thermal Power Co. Ltd. (supra) in the case of Mitesh Impex (supra) had observed as under (page 103 of 367 ITR) :*

"It thus becomes clear that the decision of the Supreme Court in the case of Goetze (India) Ltd. v. CIT (supra) is confined to the powers of the Assessing Officer and accepting a claim without revised return. This is what the Supreme Court observed in the said judgment while distinguishing the judgment in the case of National Thermal Power Co. Ltd. v. CIT (supra) and that is how various High Courts have viewed the dictum of the decision in the case of Goetze (India) Ltd. v. CIT (supra). When it comes to the power of the Appellate Commissioner or the Tribunal, the courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of law or mixed question of law or facts. A legal contention would ordinarily be a pure question of law without raising any dispute about the facts. Not only such additional ground or contention, the courts have also, as noted above, recognized the powers of the Appellate Commissioner and the Tribunal to entertain a new claim for the first time though not made before the Assessing Officer. Income-tax proceedings are not strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income.

This is primarily on the premise that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the Assessing Officer.

Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assessees for deductions under sections 80-IB and 80HHC of the Act. In the result, no question of law arises. All tax appeals are dismissed."

18. After going through the judgment of Hon`ble Gujarat High Court in the case of UTI Bank Ltd (supra), it is abundantly clear that even a fresh claim would be permissible to be raised for the first time before the appellate

authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. We note that assessee under consideration, during the assessment proceedings, vide assessee`s letter dated 10.03.2014, the assessee had raised fresh claim of deduction u/s 54 of the Act about construction expenses of Rs.1,19,00,385/-, which is part of total construction expenses of Rs.1,45,27,981/-. The relevant part of assessee`s letter is reproduced by the Assessing Officer in para No.12 of the assessment order, therefore we note that facts were already on record and the Tribunal can adjudicate this fresh claim of assessee.

19. We note that total construction expenses of Rs. 1,45,27,981/- was incurred/claimed by the assessee, and out of such total construction expenses of Rs.1,45,27,981/-, the assessing officer has allowed the deduction u/s 54 of the Act to the tune of Rs. 26,27,596/-, as claimed in the original return of income by the assessee. The assessee is in appeal before us and contended that deduction u/s 54 of the Act should be allowed for balance construction expenses of Rs.1,19,00,385/- (*Rs. 1,45,27,981- Rs. 26,27,596*). We have examined these balance construction expenses of Rs.1,19,00,385/-, being the actual disallowance of the claim of deduction u/s 54 made by Assessing Officer (*1,45,24,981 – 26,27,596*) and noted that assessee is eligible to claim deduction under section 54 of the Act. The Assessing Officer observed that in order to claim deduction u/s 54 of the Act, the assessee is required to make deposit in the capital gain scheme Rs.1,19,00,385/-. We do not accept the said observation made by the Assessing Officer, reason being the assessee is not required to make deposit in the capital gain scheme, if the amount is invested in property before due date of filing the return of income u/s 139(1) of the Act. This is very clear from the wordings of section 54(2) of the Act, where assessee has to utilize the amount for the purchase or construction of the new asset before the date of furnishing the return of

income u/s 139 of the Act. In this regard, the reliance can be placed on the judgment of Hon`ble High Court of Punjab and Haryana, in the case of Jagtar Singh Chawla, [2013] 33 taxmann.com 38 (Punjab & Haryana), wherein it was held that where assessee paid substantial amount of sale consideration of a residential house for purchase of another residential property within extended period of limitation of filing of return under section 139, his claim for deduction under section 54F was to be allowed. The findings of the Hon`ble Court is reproduced below:

> ***"8.*** *The provisions of Section 54F(4) of the Act are pari-materia with Section 54(2) of the Act. Section 54 deals with the profit on sale of a residential house, whereas Section 54F deals with the transfer of any long term capital assets not being a residential house.*
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> ***9.*** *A Division Bench of the Gauhati High Court in a case reported as CIT v. Rajesh Kumar Jalan [2006] 286 ITR 274/157 Taxman 398, held that only Section 139 of the Act is mentioned in Section 54(2) of the Act in the context that the unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income Tax under Section 139 of the Act and that it would include extended period to file return in terms of Sub Section 4 of Section 139 of the Act. It was held as under:*
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> *"From a plain reading of sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only section 139 of the Income-tax Act, 1961, is mentioned in section 54(2) in the context that the unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only section 139(1), but it means all sub-sections of section 139 of the Income-tax Act, 1961. Under sub-section (4) of section 139 of the Income-tax Act any person who has not furnished a return within the time allowed to him under sub-section (1) of Section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier."*
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> ***10.*** *The said judgment was relied upon by a Division Bench of the Karnataka High Court in Fathima Bai v. ITO, ITA No.435 of 2004 Decided on 17th October 2008, wherein it was held to the following effect:-*
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> *"11. The extended due date under section 139(4) would be 31.3.1990. The assessee did not file the return within the extended due date, but filed the return on 27.2.2000. However, the assessee had utilized the entire capital gains by purchase of a house property within the stipulated period of section 54(2) i.e., before the extended due date for return under section 139. The assessee technically may have defaulted in not filing the return under section 139(4). But, however, utilized the capital gains for purchase of property before the extended due date under section 139(4). The*

contention of the revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention."

11. *A Division Bench of this Court in which one of us (Hemant Gupta, J.) was a member, had an occasion to consider the provisions of Section 54(2) of the Act, wherein it has been held that sub-section (4) of Section 139 of the Act is in fact a proviso to Section 139(1) of the Act. Therefore, since the assessee has invested the sale proceeds in a residential house within the extended period of limitation, the capital gain is not payable. The judgments in Rajesh Kumar Jalan's case (supra) and Fathima Bai's case (supra) were referred to. It has been held as under:*

"Having heard learned counsel for the parties, we are of the opinion that sub-section (4) of Section 139 of the Act is, in fact, a proviso to sub-section (1) of Section 139 of the Act. Section 139 of the Act fixes the different dates for filing the returns for different assesses. In the case of assessee as the respondent, it is 31st day of July, of the Assessment Year in terms of clause (c) of the Explanation 2 to sub-section 1 of Section 139 of the Act, whereas sub-section (4) of Section 139 provides for extension in period of due date in certain circumstances. It reads as under:

"(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier;

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-section (1) i.e. before 31st day of July of the Assessment Year, the assessee can file return before the expiry of one year from the end of ever relevant Assessment Year."

12. *In the present case, the assessee has proved the payment of substantial amount of sale consideration for purchase of a residential property on or before 31.3.2008, that is within extended period of limitation of filing of return. Only a sum of Rs.24 lacs was paid out of total sale consideration of Rs. Two Crores on 23.4.2008, though possession was delivered to the assessee on execution of the power of attorney on 30.3.2008. Since the assessee, has acquired a residential house before the end of the next Financial Year in which sale has taken place, therefore, the assessee is not liable to pay any capital gain. Such is the view taken by the Income Tax Appellate Tribunal.*

13. *In view of the above, we do not find any merit in the present appeal. Hence, the same is dismissed."*

20. Our view is fortified by the another judgment of Hon`ble High Court of Punjab and Haryana, in the case of Ms. Jagriti Aggarwal, **[2**011] 15 taxmann.com 146 (Punjab & Haryana), wherein it was held that due date for

furnishing the return of income as per section 139(1) of the Act is subject to the extended period provided under Sub-Section (4) of Section 139 of the Act. The findings of the Hon`ble Court is reproduced below:

> ***"10.*** *Having heard learned counsel for the parties, we are of the opinion that Sub-Section (4) of Section 139 of the Act is, in fact, a proviso to Sub-Section (1) of Section 139 of the Act. Section 139 of the Act fixes the different dates for filing the returns for different assessees. In the case of assessee as the respondent, it is 31st day of July of the Assessment Year in terms of clause (c) of the Explanation 2 to Sub-Section 1 of Section 139 of the Act, whereas Sub-Section (4) of Section 139 provides for extension in period of due date in certain circumstances. It reads as under:*
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> *"(4) Any person who has not furnished a return within the time allowed to him under Sub-Section (1), or within the time allowed under a notice issued under Sub-Section (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier;*
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> *Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."*
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> ***11.*** *A reading of the aforesaid Sub-Section would show that if a person has not furnished the return of the previous year within the time allowed under Sub-Section (1) i.e. before 31st day of July of the Assessment Year, the assessee can file return before the expiry of one year from the end of the relevant Assessment Year.*
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> ***12.*** *The sale of the asset having been taken place on 13.1.2006, falling in the previous year 2006-2007, the return could be filed before the end of relevant assessment year 2007-2008 i.e. 31.3.2007. Thus, Sub-Section (4) of Section 139 provides extended period of limitation as an exception to Sub-Section (1) of Section 139 of the Act. Sub-Section (4) is in relation to the time allowed to an assessee under Sub-Section (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under Sub-Section (1) of Section 139. Therefore, such Sub-Section (4) has to be read along with Sub-Section (1). Similar is the view taken by the Division Bench of Karnataka and Gauhati High Courts in Fathima Bai's case (supra) and Rajesh Kumar Jalan's case (supra) respectively.*
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> ***13.*** *In view of the above, we find that due date for furnishing the return of income as per Section 139(1) of the Act is subject to the extended period provided under Sub-Section (4) of Section 139 of the Act.*
>
> ***14.*** *Consequently, the question of law is answered against the Revenue and in favour of the assessee. Thus, the present appeal is dismissed."*

21. Hon`ble High Court of Gauhati in the case of Rajesh Kumar Jalan, [2006] 157 Taxman 398 (Gauhati) held that under sub-section (4) of section 139, the assessee could fulfil requirement under section 54 for exemption of

capital gain from being charged to income-tax on sale of property used for residence. The detailed conclusion of the Hon`ble Court is reproduced below:

> *"**3.** The facts which would suffice for deciding the present appeal are that the respondent/assessee sold his 1/4th share in a residential property known as "Jalal House" at Rehabari, Guwahati, for a consideration of Rs. 40,00,000 (rupees forty lakhs) only to the Government of Meghalaya for the sale deed No. 348, dated 21-12-1995. Admittedly, the indexed cost of the property was worked out at Rs. 10,26,925 (rupees ten lakhs twenty- six thousand nine hundred and twenty-five) and, thus, there was a capital gain of Rs. 29,73,048 (rupees twenty-nine lakhs seventy-three thousand and forty eight) earned by the respondent/assessee and it was also not disputed. The respondent/assessee with the money for the sale of his residential property known as "Jalal House" decided to purchase a residential Flat No. 4B on the fourth floor of a multi-storied building situated at Bally High, 1, Ballygunge Park Road, Calcutta-19, from Shri Radha Krishna Jalan and Smt. Anguri Devi Jalan on 8-2-1996, each having one half share of ownership of the residential flat. The respondent/assessee negotiated with the above two owners to purchase their residential flat for a consideration of Rs. 30,00,000 (rupees thirty lakhs) and, accordingly, entered into two agreements dated 9-5-1996, and 17-5-1996, and under the said two agreements, the respondent/assessee had taken physical possession of the said residential flat. From the two agreements of purchase, it is clear that each of the co-owners agreed to transfer and assign their respective shares or interest in the said flat together with a car park space for a consideration of Rs. 30,00,000 (rupees thirty lakhs) in total.*
>
> ***4.** The Assessing Officer (for short the "AO") under his assessment order rejected the respondent/assessee's claim for exemption under section 54 of the Income-tax Act, 1961, for the reason that (a) the appellant/assessee has taken only a sub-lease of the property vide indenture of sub-lease dated 17-1-1998, in between him and M/s Agarwal Company Ltd. and the said indenture has been executed in pursuance of the letter dated 28-8-1961, written by Shri R. K. Jalan and Smt. Anguri Devi Jalan to the said lessee; (b) the sub-lease cannot be taken as a clear purchase as per the meaning of the provisions of section 54(1) of the Income-tax Act and also that there was no transfer of property as claimed and the same was merely a sub-lease; (c) the appellant/assessee had not complied with the provisions of section 54(2) of the Income-tax Act by not depositing the unappropriated amount of capital gain in the Capital Gains Deposit Scheme, 1988, within the stipulated time of furnishing the return of income-tax under section 139(1) of the Income-tax Act. The respondent/assessee preferred the first appeal being Appeal No. GUWA-75/99/2000 against the assessment order of the Assessing Officer to the Commissioner of Income-tax (Appeals), Guwahati. The first appellate authority had partly allowed the appeal by passing the final order dated 24-9-1999, wherein the first appellate authority held that even a lease also amounts to a transfer within the meaning of the Transfer of Property Act, 1882, by referring to two decisions of the Supreme Court in R. K. Palshikar (HUF) v. CIT [(1988) 172 ITR 311][1] and A.R. Krishnamurthy v. CIT [(1989) 176 ITR 417][2], 421, and as such, the transfer in question between the respondent/assessee on the one side and Shri Radha Krishna Jalan and Smt. Anguri Devi Jalan on the other*

side is the transfer of capital asset within the provisions of section 2(47)(v) of the Income-tax Act but the first appellate authority held that the respondent/assessee could utilise only Rs. 14,43,254 (rupees fourteen lakhs forty-three thousand two hundred and fifty-four) up to 31-8-1996, towards the purchase of the property and balance amount of capital gain of Rs. 15,29,794 (rupees fifteen lakhs twenty nine thousand seven hundred and ninety-four) was not deposited in a separate capital gain account with the bank by construing sub-section (2) of section 54 of the Income-tax Act, 1961, in such a manner that the appellant/assessee did not deposit the unutilized portion of the capital gain before the date of furnishing the return of income-tax under section 139(1) of the Income-tax Act, 1961.

5. *The respondent being aggrieved by the findings of the first appellate authority, i.e., the Commissioner of Income-tax (Appeals), that the respondent/assessee was eligible for exemption under section 54 of the Income-tax Act, 1961, to the extent of only Rs. 14,43,254 (rupees fourteen lakhs forty-three thousand two hundred and fifty-four) and direction to the Assessing Officer to levy the capital gains tax on the amount of Rs. 15,29,794 (rupees fifteen lakhs twenty nine thousand seven hundred and ninety-four) only in place of Rs. 29,73,048 (rupees twenty-nine lakhs seventy-three thousand and forty eight) under section 54 of the Income-tax Act also preferred an appeal against the order of the first appellate authority dated 24-9-1999, before the Income-tax Appellate Tribunal, Gauhati Bench, Gauhati. The department also preferred an appeal against the order of the learned first appellate authority, i.e., the learned Commissioner of Income-tax dated 24-9-1999, before the learned Income-tax Appellate Tribunal, Gauhati Bench, Gauhati. By a common order dated 18-4-2001, the Income-tax Appellate Tribunal had allowed the appeal preferred by the respondent/assessee and rejected the appeal preferred by the appellant/Commissioner of Income-tax, Gauhati Bench. The basis on which the Income-tax Appellate Tribunal, Gauhati Bench, allowed the appeal preferred by the respondent/assessee is that section 54 of the Income-tax Act being the beneficial provision, it should be construed liberally to advance the object of giving benefit to the assessee by exempting the capital gain on the sale of property used for residence from being charged to income-tax and also that sub-section (2) of section 54 of the Income-tax Act, 1961, simply mentions that the unutilized portion of the capital gain on the sale of the property used for residence could be deposited by the assessee before the date of furnishing return of income-tax under section 139 of the Income-tax Act and also that the sub-section (2) of section 54 of the Income-tax Act does not mention that the date of furnishing of return of income-tax should be construed within the meaning of section 139(1) of the Income-tax Act, 1961. The learned Income-tax Appellate Tribunal, Gauhati Bench was of the view that the date of furnishing of return of income-tax contemplated in sub-section (2) of section 54 should also include sub-section (4) of section 139 of the Income-tax Act inasmuch as sub-section (2) of section 54 of the Income-tax Act mentions only section 139 of the Income-tax Act without any further restriction or without confining to sub-section (1) of section 139 of the Income-tax Act, 1961. The operative portion of the order of the learned Income-tax Appellate Tribunal, Gauhati Bench, Gauhati, dated 18-4-2001, reads as follows :*

"9. We have carefully considered the submissions of the learned representatives of the parties. We have also gone through the orders of the authorities below and the copies of the documents to which our attention was drawn by the learned representatives of the parties at the time of hearing of the appeals.

10. There is no dispute that the assessee entered into two separate agreements with Shri Radha Krishna Jalan dated 9-5-1996; and Smt. Anguri Devi Jalan dated 17-5-1996, for purchase of undivided ½ share of each in the said flat together with the said undivided share in the land for a consideration of Rs. 15 lakhs to each aggregating to Rs. 30 lakhs. We also observe from the said agreement that the said vendors agreed to transfer and assign in favour of the assessee all their rights and interest in the said flat with the absolute ownership without any objection, obstruction and/or hindrance whatsoever on their part or any person claiming through under or on their behalf. We also observe that the assessee was liable to pay all future maintenance charges, municipal rates and taxes and other outgoings in respect of the said flat. Not only this, there is no dispute that the assessee got the possession of the said flat in May, 1996. We further observe that in the balance-sheet, a copy of which is placed at pages B-1 to B-6 of the paper book the assessee had shown in the list of investments in Schedule E the total investment in the properties in respect of the said flat at Rs. 30 lakhs and the balance amount payable to Sri Radha Krishan Jalan and Smt. Anguri Devi Jalan was shown as unsecured loans. Clause 5 of section 2(47) of the Act reads as under :

'any transaction involving the allowing of possession of any immovable property to be taken or retain in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), or, . . .'

11. Therefore, for the purpose of transfer the possession of the flat in part performance of the contract under section 53A of the Transfer of Property Act is essential. Further, under the provision of section 54(1) of the Act, it is stipulated that a person is entitled to take the benefit if the purchase has been made within the stipulated period of one year before or two years after the date on which the transfer took place. In the case before us, the assessee has undisputedly entered into agreement for purchase of the flat and taken possession within one year from the date of sale of the old residential house. Therefore, we agree with the learned authorised representative of the assessee that the assessee has complied with the requirements as laid down in section 54(1) of the Act by purchasing the flat at a cost of Rs. 30 lakhs as against the capital gain of Rs. 29,73,048. Therefore, we agree with the learned authorised representative of the assessee that there has been no necessity to comply with the conditions for availing of the benefit from tax of the capital gain, as laid down under section 54(2) of the Act, i.e., to deposit the unpaid amount in a separate bank account under the Capital Gains Account Scheme. We are of the view that the assessee had already appropriated the entire capital gain for purchase of the new asset within the stipulated time. In this regard, we find support from the decision of the Kerala High Court in the case of K.C. Gopalan wherein it was held that the assessee is entitled to exemption under section 54 even though for the construction of the new house, the amount that was received by way of sale of his old property as such was not utilised. It was held by the Kerala High Court that no provision is made by the statute that the assessee should utilise the amount which he obtained by way of sale consideration for the purpose of meeting the cost of the new asset. It was held that section 54 only provides that the assessee has to purchase a house property for the purpose of his own residence within a period of one year before or after the date on which the transfer of his property took place or he should have constructed a house property within a period of two years after the date of transfer. It was further held that entitlement of exemption under section 54 relates to

the cost of acquisition of a new estate in the nature of a house property for the purpose of his own residence within the specified period.

12. In the case before us, the ratio laid down by the Hon'ble Kerala High Court squarely applies to the case before us as the assessee had acquired the house at a cost more than the capital gains within the specified period.

13. Therefore, we hold that the assessee is entitled to for the exemption under section 54 of the Act for the entire long-term capital gain of Rs. 29,73,048. Accordingly, we allow the ground of appeal of the assessee and reject the ground of appeal of the Department."

***6.** From a plain reading of sub-section (2) of section 54 of the Income-tax Act, 1961, it is clear that only section 139 of the Income-tax Act, 1961, is mentioned in section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only section 139(1) but it means all sub-sections of section 139 of the Income-tax Act, 1961. Under sub-section (4) of section 139 of the Income-tax Act, any person who has not furnished a return within the time allowed to him under sub-section (1) of section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier. Such being the situation, it is the case of the respondent/assessee that the respondent/assessee could fulfil the requirement under section 54 of the Income-tax Act for exemption of the capital gain from being charged to income-tax on the sale of property used for residence up to 30-3-1998, inasmuch as the return of income-tax for the assessment year 1997-98 could be furnished before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier under sub-section (4) of section 139 of the Income-tax Act, 1961.*

***7.** The Apex Court in State of Maharashtra v. Santosh Shankar Acharya [2000] 7 SCC 463 held that it is too well-known a principle of construction of statutes that the Legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be given effect. The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons.*

***8.** The Apex Court in Bhavnagar University v. Palitana Sugar Mill (P.) Ltd. [2003] 2 SCC 111, held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Paras 24 and 25 of the Bhavnagar University's case (supra) read as follows :*

"24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the Legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words,

statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute." (p. 121)

9. *For the reasons discussed above, we answer the question formulated in the present case in positive. Accordingly, the order of the learned Income-tax Appellate Tribunal, Gauhati Bench, Gauhati, dated 18-4-2001, passed in I.T.A. No. 328/Gau./1999 and I.T.A. No. 49/Gau./2000 is not interfered with and the appeal is dismissed."*

22. Thus, it is clear that section 54 of the Income-tax Act being the beneficial provision, it should be construed liberally to advance the object of giving benefit to the assessee by exempting the capital gain on the sale of property used for residence from being charged to income-tax and also that sub-section (2) of section 54 of the Income-tax Act, 1961, simply mentions that the unutilized portion of the capital gain on the sale of the property used for residence could be deposited by the assessee before the date of furnishing return of income-tax under section 139 of the Income-tax Act and also that the sub-section (2) of section 54 of the Income-tax Act does not mention that the date of furnishing of return of income-tax should be construed within the meaning of section 139(1) of the Act.

We note that total construction expenses of Rs.1,45,27,981/- was incurred by the assessee, and out that the Assessing Officer has allowed the deduction u/s 54 of the Act to the tune of Rs.26,27,596/-, as claimed in the original return of income by the assessee, therefore, considering the above facts and legal position we allow balance construction expenses of Rs.1,19,00,385/- (*Rs. 1,45,27,981- Rs. 26,27,596*), u/s 54 of the Act, therefore ground No.2 raised by the assessee is allowed.

23. So far ground No.4 raised by the assessee is concerned, we note that it is connected with ground No. 2 raised by the assessee, which we have adjudicated in above para of this order. Basically, ground No.4 raised by the

assessee relates to the action of Assessing Officer in not allowing deduction of Sec 54EC of Rs.50,00,000 against Long term Capital Gain arising from sale of plot. The ld Counsel for the assessee submitted that if assessee's ground no 2 is allowed then assessee would be benefitted if deduction u/s 54EC of Rs.50,00,000 is allowed against sale of land. On the other hand, ld DR for the Revenue relied on the findings of the assessing officer.

24. We have heard both the parties. We have allowed ground No.2 raised by the assessee. The ground No. 4 raised by the assessee relates to deduction under section 54EC of the Act. Section 54EC states that capital gain should not be charged in the hands of the assessee, provided assessee makes investment in certain bonds. Where the capital gain arises from the transfer of a long term capital asset, being land or building or both and the assessee has, at any time within a period of six months, after the date of such transfer, invested the whole or any part of capital gains in the long term specified asset, the assessee would be entitled to get the deduction u/s 54EC of the Act. The ld Counsel states that Assessing Officer allowed the deduction u/s 54EC at Rs. 50,00,000/- against the capital gain derived in respect of property situated at Sai Enclave Bungalow. However, as the deduction u/s 54 is clearly allowable at Rs.2,88,29,806/- as per revised computation of total income, the net capital gain would result in Nil and therefore this deduction u/s 54EC will be still eligible for deduction against the capital gain derived in respect of property situated at Kajli Farm. Even the Id. CIT(A) held that it is allowable if the assessee had succeeded in his ground for allowing additional deduction u/s 54 of the Act against the capital gain on sale of residence at Surat as per his finding at para no. 7.3.3 of the appellate order. Therefore, we direct the assessing officer to allow the deduction under section 54EC of the Act.

25. Thus, ground No.4 raised by the assessee is allowed.

26. Coming to ground No.3 raised by the assessee, which relates to action of Assessing Officer in taking the share of the assessee as 50% instead of 20% in respect of capital gain arising from sale of land.

27. Succinct facts *qua* the issue are that assessee along with the one another co-owner viz. Randhirbhai Dharmendrasingh Mahida had purchased one agricultural land situated at Kajli in the year 2005-2006 having equal share. It is worthwhile to mention that during the F.Y.2005-06 three other co-owners (i) llyasbhai Taherbhai Railwaywala, (ii) Balwantbhai Devjibhai Umrighar and (iii) Sarvaprit Jitendrasingh Chawla contributed an amount of Rs.1,50,000/- each for their share in the said agricultural land and accordingly all the five persons became co- owners having 20% equal share on the basis of MoU executed by these persons. Since these three persons were non-agriculturist and could not purchase agriculture land in their name, they entered into MoU with the purchasers (assessee and co-owner) for their 60% share (20% each) in the said agricultural land. Accordingly, the assessee is having 20% share only in the said property. However, A.O. has rejected the claim of the assessee, on the ground that the assessee has not shown the capital gain in the original return of income filed by him and further stated to have fabricated the story of co-owners in said sale of land. Further, the A.O. has rejected the MoU executed amongst the co-owners.

28. On appeal, ld CIT(A) confirmed the action of the Assessing Officer, therefore assessee is in appeal before us. The ld Counsel for the assessee submitted that during the year under consideration i.e. A.Y.2011-12, the assessee sold the said agricultural land situated at Kajli for which the sale deed document was executed. The assessee as per his 50% share received an

amount of Rs.49,27,620/- out of which the assessee handed over 20% share to each of these co-owners amounting to Rs. 28,06,500/-(Rs.9,35,500/- paid to each one of these three co-owners) towards their share in the said land. Accordingly, these co-owners had declared the capital gain in their returns of income for A.Y.2011-12 for their share as per the MOU. The ld Counsel submitted that the assessee have accounted the amount of sale proceeds of Rs.49,27,620/- received on sale of immovable property situated at Kajli farm in his books of accounts and has also accounted the amount paid to the three co-owners amounting to Rs.28,06,500/- as per their share.In view of the above facts and circumstances, the assessee has received an amount of Rs.21,21,120/- only for his 20% share after giving the share of the other co-owners. Therefore, ld Counsel contended that assessee`s share should be taken 20% only.

29. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

30. We have heard both the parties. We note that assessee has not filed valid evidentiary document or proof to assume assessee`s share 20% only. The share of assessee at 20% cannot be decided based on MoU, as it is not registered, therefore we dismiss ground No.3 raised by the assessee. The ground No.3 raised by the assessee is dismissed.

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

Order is pronounced on 26/06/2023 by placing the result on the Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat/दिनांक/ Date: 26/06/2023
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Senior Private Secretary/Private Secretary/Assistant Registrar, ITAT, Surat