

2. In this case, the Assessee had shown its total income at Rs.55,50,890/- by filing its return of income on 29/11/2014, which was processed under section 143(1) of the Act. Subsequently, the case of the Assessee was selected for scrutiny under CASS and consequently, statutory notices have been issued, in response to which the Assessee filed its submission and the details.

2.1 The Assessing Officer on perusal of the return of income filed by the Assessee observed that the Assessee has claimed deduction of Rs.2,15,63,497/- under section 54 of the Act under the head "capital gain" by segregating the amount of Rs.1,05,00,000 invested in house property and depositing the amount of Rs.1,40,00,000/- in capital gain account scheme under section 54 of the Act. Therefore the Assessee was asked to furnish the details such as copy of documents supporting deduction claimed viz. payment details and property purchased for Rs.1,05,00,000/- and copy of bank statement and copy of bank account opening form, supporting that the sum of Rs.1,40,00,000/- was deposited in capital gain account scheme under section 54 of the Act. The Assessee in response filed its submissions which were considered by the Assessing Officer; however, not found acceptable and ultimately, the Assessing Officer though accepted the claim of the Assessee with regard to the deposit of Rs.1,40,,00,000/- in capital gain account scheme, however, disallowed the investment of Rs.1,05,00,000/- in house

property under section 54 of the Act and added to the total income of the Assessee by holding as under:-

“8. The submission of the assessee has been considered and acceptable regarding amount Rs. 1,40,00,000/- deposited in Capital Gain Scheme, However, the same is found to be not acceptable regarding investment Rs.1,05,00,000/- in house property u/s. 54. As per the provisions of section 54, the assessee is entitled to get benefit of investment in one house on sale/profit from selling of a residential property. Assessee has claimed deduction u/s 54 by way of investment in two house properties which is not as per the intent of law and is not permissible as per provisions of section 54 of I.T.Act. Apart from this, as discussed in the show cause, this amount of Rs. 1,05,00,000 /- was paid for purchase of property which went in disputa. It shows that payment made by assessee contested and supposed to be return back to the assessee. Once the sellers of property are not the owners and no sale document is executed, it cannot be said that sum of Rs.1,05,00,000/- paid by assessee was payment made for purchase of house property eligible for deduction u/s 54 of the I.T. Act. Hence, the deduction u/s 54 amount 1,05,00,000/- is not allowable. In view of the same, the amount of Rs.1,05,00,000/- is disallowed and added to the total income of the assessee.”

3. The Assessee being aggrieved, challenged the said addition before the Commissioner (Appeals), who upheld the said addition by holding as under:-

“5.7 In view of the above it is clear that the assessed 'has not fulfilled the primary condition laid down in section 54 for availing the said deduction. After selling the residential house property, the assessee has not been able to either purchase or construct a residential property within the prescribed timelines as laid down in section

54. The assessee intended to purchase a residential property but because of the dispute with the prospective seller was unable to do so. Neither was any Agreement for Sale/Sale Deed executed nor any possession was handed over. In fact eventually the impugned property was sold to a third party. Therefore, I see no infirmity in the action of the AO in denying the deduction u/s 54 to the assessee. Since, the primary condition for the purchase/construction of a new residential property has not been fulfilled resulting in disallowance of deduction u/s 54, so the question whether the benefit of section 54 is available for one house property or two house properties has been rendered academic and does not require adjudication. In view of the above, this ground of appeal is dismissed.”

4. The Assessee being aggrieved preferred the instant appeal. In spite of sending notice for the date of hearing through R.P.A.D. as well as by e-mail, neither appeared nor filed any adjournment application. Hence, we are constrained to decide this appeal ex-parte. We observe as it appears from the orders passed by the authorities below that the Assessee though claimed the exemption of Rs.,1,05,00,000/- under section 54 of the Act qua investment in house property, however, failed to file any documents in order to substantiate its claim, therefore, the authorities below denied the claim of the Assessee. Even otherwise, we do not find any reason or material contrary to the findings of the Ld. Commissioner. Consequently, we are constrained to affirm the impugned order, accordingly the appeal of the Assessee is liable to be dismissed.

5. In the result, appeal filed by the Assessee stands dismissed.

Order pronounced in the open Court on 22/11/2023.

Sd/-

sd/-

(GAGAN GOYAL)	(NARENDER KUMAR CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private
Secretary

ITAT, Mumbai