

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.534/Ahd/2023
Assessment Year : 2018-19

Viral Rajendra Patel "Shital Baug", Old Schivalaya Road Opp. Ketav Petrol Pump Ambawadi Ahmedabad-380 015 (Gujarat)	Vs	The Pr.CIT Ahmedabad-1
PAN: AGWPP 4660 R		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Bandish Soparkar, A.R.
Revenue by :		Shri Raj Deep Singh, CIT-DR

सुनवाई की तारीख/Date of Hearing : 22/02/2024
घोषणा की तारीख /Date of Pronouncement: 28/02/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This appeal filed by the assessee is directed against the order of Learned Principal Commissioner of Income-Tax, Ahmedabad-1 [hereinafter referred to as "Ld. Pr. CIT" for short] dated 26/03/2023 passed in exercise of his revisionary jurisdiction under Section 263 of the Income-Tax Act, 1961 [hereinafter referred to as "the Act" for short] for Assessment Year (AY) 2018-19.

2. The assessee has raised the following grounds of appeal:-

"1. The order u/s 263 of the I.T.Act passed by Id. Principal Commissioner of Income tax is bad in law and on fact.

2. The Assessment Order dated 26TH March, 2021 passed by Id. A.O. was neither erroneous nor prejudicial to the interest of the revenue.

3. The Learned A.O. have passed the Assessment Order dated 26th March, 2021 after detailed verification of appellants claim, which is on record.

4. The Ld. Principal Commissioner of Income Tax had exceeded his jurisdiction to invoke section 263 in the facts and circumstances of this case there by ignoring the submission made and documentary evidence filed by the appellant before the A.O. in the course of Assessment Proceedings and again before him by the appellant."

3. At the outset, Ld. Counsel for the assessee stated that the present order passed by the Ld. Pr.CIT is not sustainable in law since the Ld. Pr.CIT has held the assessment order erroneous on an incorrect application of law to the issue under consideration.

3.1. Drawing our attention to the facts of the case, Ld. Counsel for the assessee pointed out that the Ld. Pr.CIT found the assessment order passed in the case of the assessee, u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for short) to be erroneous causing prejudice to the Revenue for the reason that it had been incorrectly allowed the claim of deduction of Capital Gain earned u/s.54F of the Act to the tune of Rs.6,82,74,989/-. He pointed out from Page No.2 of the Ld. Pr.CIT's order, where the facts leading to the invocation of powers to revise the assessment order were detailed mentioning that the assessee had sold equity shares of unlisted company during the year and had invested the Capital Gain earned thereon for the purchases of land amounting to

Rs.7,73,08,000/- and claimed an exemption of Rs.6,82,74,989/- on account of the same u/s.54F of the Act. The Ld. Counsel for the assessee pointed out that the assessee had claimed total exemption of the Capital Gain earned of Rs.14,13,71,427/- on account of investment in NHAI Bonds u/s.54EC of the Act; on account of purchase of land and deposit of the balance in Capital Gain Accounts Scheme u/s.54F of the Act, details of which find mentioned at Page No.3 of the Ld. Pr.CIT's order are as under:

<i>Description</i>	<i>Section</i>	<i>Total Purchase/deposit Amount (Rs.)</i>	<i>Exemption claimed Amount (Rs.)</i>
<i>NHAI BOND</i>	<i>54EC</i>	<i>50,00,000</i>	<i>50,00,000</i>
<i>Land Purchase</i>	<i>54F</i>	<i>7,30,00,000</i>	<i>6,82,74,989</i>
<i>Registration Fees</i>		<i>7,31,000</i>	
<i>Stamp Duty Value</i>		<i>35,77,000</i>	
<i>TOTAL VALUE</i>		<i>7,73,08,000</i>	
<i>Amount deposited in designated capital gain account Scheme, 1988 as approved by IT Authority</i>	<i>54F(4)</i>	<i>8,50,00,000</i>	<i>6,80,96,439</i>
<i>TOTAL EXEMPTION CLAIMED DURING THE YEAR U/S.54EC AND 54F</i>			<i>14,13,71,427</i>

3.2. The Ld. Counsel for the assessee contended that the Ld. Pr.CIT noted that the exemption claimed u/s.54F of the Act by the assessee on account of purchase of land was wrongly allowed to the assessee since the land had not been found to have been purchased within the prescribed period of two years from the date of transfer of shares ,as provided in law. He noted that,

while the transfer of shares/asset on which Capital Gain had been earned by the assessee took place on 05/01/2018, the assessee had entered into the purchase-deed for the purchase of land on 15/12/2020 which was beyond two years from the date of transfer of the original asset. He accordingly held that this claim of deduction u/s.54F of the Act, on account of purchase of land, was not in accordance with law and had been wrongly allowed by the Assessing Officer. The Ld. Counsel for the assessee drew our attention to Page No.5.3 of Ld. Pr. CIT's order which holds the assessment order erroneous on account of noting this fact of the claim u/s.54F of the Act being incorrectly allowed to the assessee since the land was purchased by the assessee beyond the alleged prescribed period of two years from the date of transfer of the original asset.

3.3. The Ld. Counsel for the assessee contended that this understanding of the requirement of law by the Ld. Pr.CIT was itself flawed. He pointed out that as per Section 54F of the Act the requirement for claiming deduction was that either construction of a house property should take place within three years from the transfer of an original asset or purchase of a new house property should happen within two years of the transfer of the original asset. The Ld. Counsel for the assessee drew our attention to the provisions of section 54F of the Act, which is reproduced in the order of the Ld. Pr.CIT in Paragraph No.5.1. He contended that the purchase of land by the assessee for the purposes of claiming u/s.54F of the Act was with the intention of a construction of house property for which a period of three years is allowed as per the provisions of law. That the Pr. CIT had misinterpreted the provisions of section and applied the time limit prescribed for the purchase of a new property, to the intention of

construction of a new property by the assessee to hold that it was beyond the prescribed time limit. That, therefore the Ld. Pr.CIT had incorrectly applied the provisions of law to the facts of the case for holding the assessment order erroneous for having allowed the assessee's claim of exemption of Capital Gain u/s.54F of the Act to the tune of Rs.6,82,74,989/-.

4. The Ld.DR was unable to controvert the contentions of the assessee either on facts or on law. He fairly agreed that as per the provisions of law, the assessee is provided a time period of three years for the construction of a house property for claiming deduction/exemption of the Capital Gain earned by assessee u/s.54F of the Act by investing the consideration received on transfer of the asset in the new constructed property .

5. We have gone through the provisions of section 54F of the Act and we agreed that as per section 54F of the Act, a time period of three years is provided to the assessee for construction of a house property for claiming exemption of capital gains under the said section . Even the Ld.DR was unable to controvert this interpretation of the provision of law before us. In view of the same, it is abundantly clear that in the present case that the Ld. Pr.CIT has misinterpreted the provision of law to hold that the assessee was ineligible to claim exemption u/s.54F of the Act on the investment made in the land beyond two years ,amounting to Rs.6,82,74,989/- since it was beyond the time limit prescribed in law and, accordingly holding the assessment order to be in error causing prejudice to the Revenue for having allowed the assessee this claim. We, therefore, see no reason to confirm the order of the Ld. Pr.CIT , finding his exercise of revisionary power to be based on an incorrect interpretation of the provisions of law on the issue.

We accordingly set aside the order of Ld. Pr.CIT and allow the appeal of the assessee.

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

Order pronounced in the Court on 28 February, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

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

Ahmedabad, Dated 28/02/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

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 ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित //True Copy//सत्यापित प्रति //

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad