

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.967/Ahd/2023
Assessment Year: 2012-13**

Umesh Sumanlal Shah, 403, Favourite Residency, B/h. St. Xavier Loyola Hall, Memnagar, Ahmedabad – 380 062. [PAN – AFQPS 3273 L]	Vs.	Income Tax Officer, Ward – 1(1)(3), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Parin S. Shah, AR	
Revenue by	Shri C.S. Sharma, Sr. DR	
Date of Hearing	17.04.2024	
Date of Pronouncement	14.06.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 03.10.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

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

- “1. The order passed by AO and confirmed by NFAC is bad in law and required to be quashed.*
- 2. Ld. NFAC erred in law and on facts in passing non-speaking order ignoring fact that it is high pitched assessment and required discussion on merits.*
- 3. Ld. NFAC erred in law and on facts in confirming reopening of assessment u/s.148 of the Act ignoring fact that there is full and true disclosure of all material facts and AO failed to observe escapement of income.*

4. *The reopening of assessment is required to be quashed as it is beyond period of four years from end of the relevant assessment year and there is no failure on part of appellant to disclose true and full details of the transaction.*
5. *Ld. NFAC erred in law and on facts in confirming withdrawal of deduction claimed u/s.54 of the Act of Rs.29,19,742/- ignoring submission and documentary evidence submitted by the appellant.*
6. *Ld. NFAC erred in law and on facts in considering fact that show cause notice issued by AO was not served to the appellant and thus order passed is in violation of principle of natural justice and required to be quashed.*
7. *Initiation of penalty proceedings u/s.271(1)(c) is unjustified.*
8. *Charging of interest u/s.234A, 234B, 234C and 234D are unjustified.”*

3. The assessee filed return of income for the Assessment Year 2012-13 on 21.03.2014 declaring total income at Rs.43,560/-. The return was processed under Section 143(1) of the Income Tax Act, 1961. The Assessing Officer observed that the assessee sold an immovable property for Rs.45,00,000/- during the A.Y. 2012-13 but did not furnish the details of transaction despite issue of notice under Section 133(6) of the Act. The case was reopened under Section 147 of the Act and notice under Section 148 of the Act was issued on 29.03.2019 after recoding the reasons and obtaining necessary approval from the competent authority. In response to the notice under Section 148 of the Act, the assessee filed return of income on 18.04.2019 declaring total income of Rs.43,560/-. The reasons recorded for reopening the assessment was provided and the assessee filed objection to the same which was disposed of through order dated 16.05.2019. Notice under Section 142(1) of the Act read with Section 129 of the Act was issued on 12.09.2019 and 10.10.2019 along with questionnaire. The assessee furnished the details and submitted the submissions before the Assessing Officer. After taking cognisance of the same, the Assessing Officer observed that the assessee has not purchased any residential property against the capital gain arisen on account of sale of property and, in light of Hon'ble Supreme Court decision in case of Suraj Lamp & Industries Pvt. Ltd., disallowed the claim of deduction of Rs.29,19,742/- under Section 54 of the Act and added back the same to Long Term Capital Gain.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the sale consideration of Rs.45,00,000/- was already shown by the assessee in its original return of income under the caption Long Term Capital Gain (LTCG) in schedule item no.3 and, therefore, the assessee has claimed exemption under Section 54 of the Act in respect of investment in new residential property. The Ld. AR further submitted that the assessee paid full consideration of Rs.25,00,000/- and taken the possession of the said property in A.Y. 2012-13 only which can be seen from bank statement and Municipal Tax bill which specifically shows the name of the assessee as occupier. The Ld. AR further submitted that the payment of Municipal Tax as well as the bill to that extent is sufficient evidence of possession by the assessee. The Ld. AR further submitted that in view of registered agreement to sell (Banakat) and taking over the possession, the transaction is transfer within the meaning of Section 2(47)(v) and, therefore, the assessee is entitled for deduction under Section 54 of the Act. The Ld. AR further submitted that the decision of Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. (supra) will not be applicable in assessee's case and, therefore, the Assessing Officer as well as the CIT(A) was not justified in disallowing the said deduction.

6. The Id. DR submitted that the CIT(A) as well as the Assessing Officer categorically observed that the information was received to the assessee regarding sale of immovable property but the assessee has not paid stamp duty on the sale of property and only made agreement to sell. The decision of Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. (supra) held that deed of conveyance must be duly stamped and registered as per law. Thus, the Ld. DR relied upon the AO and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has shown consideration in his return of income at Item No.3 under Column (B) Long Term Capital Gain in the schedule Capital Gain in the said return of income. Thus, the capital gain reflected was at Rs.29,19,742/-. The assessee has made investment in new residential

property. The contention of the AR that he had paid full consideration of Rs.25,00,000/- and taken the possession as well as the assessee has shown the bank statement along with Municipal Tax bill for A.Y. 2012-13 wherein the assessee's name as occupier has shown amounts to legal transfer of the property. The observation of the Assessing Officer as well as the CIT(A) that the deed of conveyance must be duly stamped and registered by law will be having support of the conduct of the assessee regarding the actual consideration paid by the assessee as well as the investment made by the assessee in the relevant Assessment Year and which is duly reflected in the return of income as well as books of the assessee. The decision of Hon'ble Supreme Court in the case of Sanjeev Lal vs. CIT, 365 ITR 389, has been relied by the Id. AR wherein it is held that where the assessee executed the agreement to sell in respect of house property, purchased new residential property within one year from the date of agreement to sell and subsequently sale deed could not be executed within the prescribed time due to order passed by the competent authority, in such peculiar facts, a valid transfer took place within the meaning of Section 2(47) of the Act by even executing the agreement to sale and relief under Section 54 was to be granted to assessee in respect of purchase of new residential property subject to fulfilment of other condition. In the present case, the observation of the Assessing Officer that sale deed is not property registered appears to be not justifiable as vide letter dated 14.05.2019 the assessee has given details along with the sale deed and purchase deed which is a registered document including registration fee as well as payment of Municipal Tax in assessee's name. Thus, the decision of Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. (supra) will not be applicable in the present case and the decision of Hon'ble Supreme Court in the case of Sanjeev Lal vs. CIT (supra) has to be taken into account. Therefore, the appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 14th June, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 14th June, 2024

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*