

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

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 179/Ahd/2024
निर्धारण वर्ष/Assessment Year: 2015-16

Shri Kirankumar Rasiklal Sanghvi, 1, Paras Society, Neminathnagar Road, Deesa, Gujarat-385535 PAN : AFOPS 0131 D	Vs.	The Principal Commissioner of Income-tax-4, Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Manish J. Shah & Shri Rushin Patel, ARs	
Revenue by :	Shri Durga Dutt, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 12.09.2024
घोषणा की तारीख /Date of Pronouncement: 24.09.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Principal Commissioner of Income-Tax-4, Ahmedabad [hereinafter referred to as "PCIT"] dated 03.03.2020, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"], for the Assessment Year (AY) 2015-16.

2. The Registry has noted the present appeal to be barred by limitation by 1355 days. The ld. Counsel for the assessee explained that there was, in fact, no delay in filing the appeal before the Tribunal for the reason that the assessee had inadvertently filed the appeal against the order of the ld. PCIT before the Surat Bench of the ITAT which, when the appeal came up for hearing before it, passed a judicial order dated 21.11.2023 dismissing the appeal as withdrawn, noting the fact that the correct jurisdiction lay with the

ITAT, Ahmedabad Benches. The assessee was given the liberty to file a fresh appeal on the same cause of action before the Bench of the Tribunal having jurisdiction. He pointed out that the ITAT allowed liberty to the assessee to avail the benefit of Section 14 of the Limitation Act for exclusion of time spent in Surat Bench. Copy of the order of the ITAT Surat Bench dated 21.11.2023 was placed before us. Noting the above facts, it is held that there was no delay in filing the present appeal before us.

3. Taking up adjudication of the present appeal, the grounds raised by the assessee are as under:-

“(1) The Principal CIT has erred in law and on fact of the case in directing the Assessing Officer to substitute the long term capital gain at Rs.5,74,66,137/- in place of long term capital gain adopted at Rs.1,79,41,770/- in the assessment order passed u/s 143(3) of the Act dated 29.12.2017, by disallowing deduction u/s 54F of Rs.3,86,86,482/- and disallowing cost of acquisition/improvement of Rs.94,739/-.

(2) The Principal CIT has erred in law and on fact of the case in setting aside the assessment u/s 143(3) of the Act for computing income from House Property.”

4. We have heard both the parties at length and gone through the material available on record. The primary error found by the Ld. PCIT in the order passed by the AO was with regards to allowance of claim of exemption/ deduction u/s 54F of the Act, which was claimed by the assessee on account of having invested long term capital gains earned in a new residential house. The Ld.PCIT found the claim to be not allowable since he found the assessee to have contravened the provisions of the said section by owning more than one residential house property on the date of sale of original asset. The AO, he found, had not examined this issue & therefore Ld.PCIT found the assessment order erroneous and causing prejudice to the Revenue. The Ld. PCIT

examined the claim of the assessee from the perspective noted by him and found the assessee to be ineligible to exemption u/s 54F of the Act. He accordingly directed the AO to deny the claim of exemption u/s 54F of the Act, which amounted to Rs.3,86,86,482/-.

4.1 Further he directed the AO to examine the issue of the Annual letting value of these residential house properties, identified by him to be owned by the assessee, to be taxable under the head "Income from house property" as per Section 23 of the Act. He also directed the AO to withdraw deduction of Rs. 1,50,000/- claimed by the assessee under chapter VIA of the Act.

4.2 The entire genesis therefore of the revisionary order passed by the Ld.PCIT rests on his finding the assessee to be owning more than one residential house on the date of sale of original asset, making the assessee, as per the Ld.PCIT, ineligible to exemption/deduction u/s 54F of the Act and also rental income from the same being liable to tax.

4.3 Having perused the order of the Ld.PCIT and after considering the arguments made by both the parties before us, we hold the impugned order to be not sustainable in law. The Ld.PCIT, we find, has miserably failed in arriving at a conclusive finding of the properties being in the nature of residential houses, while directing the AO to deny exemption u/s 54F of the Act and also directing him to tax income from the same under section 23 of the Act. There is, we find, no valid basis in the order of the Ld.PCIT for holding the properties to qualify as residential house in terms of section 54F of the Act.

We shall elaborate the same hereunder.

5. The assessee had claimed exemption u/s 54F of the Act to the tune of Rs.3,86,86,482/- from capital gains earned of Rs.5,73,71,398/-. The computation of the same is reproduced at para 4(f) of the order as under:-

<i>Sale consideration received as per sale deed</i>		Rs.6,71,05,250/-
<i>Indexed cost of acquisition</i>	Rs.55,815/-	
<i>Indexed cost of improvement</i>	Rs.91,79,037/-	
<i>Total</i>	Rs.97,35,852	Rs.97,35,852/-
<i>Long term capital gain before deductions claimed</i>		Rs.5,73,71,398/-
<i>Less: Deduction claimed u/s 54F of the Act</i>		Rs.3,86,86,482/-
<i>Taxable long term capital gain</i>		Rs.1,86,84,916/-

This exemption was claimed on account of investment in residential house being flat no.2601, World Residence, World Tower.

5.1 The other alleged residential houses found by the Id. PCIT to be owned by the assessee are the following:-

- (i) Flat No. B1, first floor building A1, known as Vastu Luxuria, Surat
- (ii) Agricultural lands at Village Patialps, Dahanu, Thane, Maharashtra, which find mentions in table of sub-para 7 of paragraph 2 of the Id. PCIT's order and these agricultural lands were found to have houses thereon.

5.2 The Flat noted at point no. (i) being Vastu Luxuria, Surat, was shown as stock-in-trade by the assessee in its balance-sheet, and the agricultural lands were stated by the assessee to having been used for agricultural purposes only, with the houses constructed thereon being small sized for enabling to carry out agricultural activity alone and not for residential purposes.

6. The Id. PCIT has held both the above two properties to qualify as residential houses in terms of Section 54F of the Act, and finding the assessee

to be the owner of more than one residential houses on the date of sale of original asset, he held the assessee to be not eligible for exemption/ deduction u/s 54F of the Act and directed the Assessing Officer to deny the assessee the claim of exemption u/s 54F of the Act. His findings in this regard are at paragraph no. 4.1 of his order as under:-

"4.1 In view of the above facts as analyzed and appraised on the strength of various details and documents furnished, it is held that the assessee was owning one residential house in Surat, purchased another house in "Vastu Luxuria" scheme at Mumbai and purchased the lands with houses subjected to local property tax with electricity supply at Dahanu. Therefore, the assessee is denied the benefit of deduction claimed u/s 54F of the Act for Rs.3,86,86,482/- . Further, since the assessee has provided wrong working of cost of acquisition as mentioned in clause (9) of sub para 4 of para 2 above, the same is now corrected while working out the taxable long term capital gain as under:-

<i>Sale consideration received as per sale deed</i>		<i>Rs.6,71,05,250/-</i>
<i>Indexed cost of acquisition in respect of 80% share held by the assessee in A.Y 2006-07</i>	<i>Rs.5,53,180/-</i>	
<i>Indexed cost of acquisition in respect of 20% share held by Ritaben J. Shah but purchased by the assessee in A.Y.2010-11</i>	<i>Rs.90,85,933/-</i>	
<i>Indexed cost of improvement</i>	<i>Rs.95,93,113/-</i>	<i>Rs.95.93.113/-</i>
<i>Long term capital gain before deductions claimed</i>		<i>Rs.5,74,66,137/-</i>
<i>Less: Deduction allowable u/s 541 of the Act</i>		<i>Rs. Nil</i>
<i>Taxable long term capital gain</i>		<i>Rs.5,74,66,137/-</i>

7. Thus, in effect, the Ld. PCIT has, on merits, given a finding that two properties as noted above qualified as residential houses in terms of Section 54F of the Act, disentitling the claim of exemption/ deduction of the assessee u/s 54F of the Act. Having said so, we find that there is no basis in the above findings of the ld. PCIT at all.

8. With regard to the residential house property identified as Flat No.B1, 1st Floor of the building No.A1 known as 'Vastu Luxuria', the assessee had stated that the said flat to be in the nature of stock-in-trade. Copy of the financial statements of the assessee forming part of the return of income filed by the assessee, which were part of the assessment records and filed before the Id. PCIT, placed before us at paper-book page Nos. 6-14, reveals that the assessee had filed the balance-sheet in its individual name of proprietary concern 'Navpad Infrastructure', Rajtilak, Surat and shown the impugned property i.e. A/1 & B/1, as stock-in-trade. The Id. PCIT finds the impugned property to qualify as residential house in terms of Section 54F of the Act at paragraph No. 2.7 of his order as under:-

"2.7 The assessee has contended that the house being Flat No. A/1.B1 located at Vastu Luxuria at Surat has been purchased on 25.03.2015 for Rs.1,94,43,789/-. This house was purchased with an intention to sell it and the same has also been sold out on 24.07.2019(the date falling in A.Y.2020-21 for which the time for filing the return of income has not become due as on the date of passing this assessment year) and therefore, it cannot be ascertained from the records as to what treatment would be given by the assessee with regard to this transaction i.e. long term capital gain treating the asset as held for long time period(more than three years) or the profit being the difference between the sale price and the cost of acquisition without taking the benefit of indexed cost of acquisition. Further, the Act in this regard does not provide any distinction between the residential house used for residence as capital asset or as the trading asset."

9. From the above we find, that the Id. PCIT has dismissed the assessee's contention of the property being in the nature of stock-in-trade and thus not qualifying as residential house for the purpose of Section 54F of the Act by stating that it is not clear as to whether the property was held for long term investment purposes to earn capital gains thereon or for the purposes of earning profits from trading transactions.

10. We fail to understand that, when the Id. PCIT himself could not arrive at a conclusive finding of the nature of the asset, whether capital asset or trading asset, what basis then did he have for dismissing the assessee's contention of the asset being a trading asset.

11. We have also noted that he has further gone on to state that the nature of the asset whether capital or trading asset makes no difference as long as it is a residential house property. No basis for holding so is mentioned in the order.

12. The Id. Counsel for the assessee, on the other hand, pointed out that as per section 54F of the Act the new asset qualifying for exemption should be a residential house income from which is chargeable under the head "Income from House Property". He drew our attention to section 54F(1) of the Act in this regard as under:-

*"54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), **and the assessee has, within** a period of one year before or two years after the date on which the transfer took place **purchased**, or has within a period of three years after that date **[constructed, one residential house in India** (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say, –*

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;*
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

Provided that nothing contained in this sub-section shall apply where –

(a) *the assessee, –*

(i) *owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or*

(ii) *purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or*

(iii) *constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and*

(b) *the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".*

Explanation. – For the purposes of this section, –

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."

13. He thereafter stated that residential houses held as stock in trade have been included for taxability under the head income from house property only w.e.f 01-04- 2018, i.e A.Y 2018-19 by virtue of insertion of sub clause (5) to section 23 of the Act by Finance Act 2017. Our attention was drawn to section 23(5) of the Act as under:

Section 23(5)

Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil..

14. It was contended therefore that, even as per law, Incomes from residential houses held as stock in trade were not liable to tax under the head Income from house property in the impugned year i.e. A.Y 2015-16, and therefore did not qualify as "residential house" as per Section 54F.

15. Ld. Counsel for the assessee also pointed out that the provisions of Section 54F of the Act are incorporated in the chapter dealing with the computation of income under the head 'income from capital gains' and it deals primarily with gains on sale of transfer of capital assets. That it provides exemption also on investment in capital assets. He further pointed out that the ld. PCIT has given no basis whatsoever, nor any reasoning to arrive at the finding that even assets not qualifying as capital assets and being in the nature of stock in trade are to be considered for purposes of said section.

16. We are in complete agreement with the ld. Counsel for the assessee on this account. The Ld.PCIT has given no reasoning or basis for holding the Flat No. A/1.B1 located at Vastu Luxuria at Surat, admittedly held as stock in trade by the assessee, as being residential house for the purposes of section 54F of the Act. Ld. Counsel for the assessee has on the contrary demonstrated that, as per law applicable in the impugned year, assets held as stock in trade do not qualify as residential houses in terms of section 54F of the Act.

There is, therefore, we hold, absence of a valid basis with the ld. PCIT for finding the property at 'Vastu Luxuria' qualifying as residential house for the purpose of Section 54F of the Act.

17. As for the agricultural land purchased by the assessee, the assessee's contention was that the houses constructed thereon were of very small sizes and for the purpose of carrying out agricultural activities alone and not for residential purposes. The ld. PCIT, however, finds it otherwise at page No.18 of his order as under:-

“(D) The agricultural lands purchased at Village Patiaipis, Dahanu, Dist. Thane, Maharashtra from various persons in the month of June, 2014 and October, 2014 and as mentioned in the table in sub para 7 of para 2 found to be comprised of the houses for which the local authorities have assessed the tax

and specifically mentioned in all the sale deeds. These houses were also referred to be equipped with the electric supply. Therefore, these houses have also to be treated as "residential houses" for the purpose of section 23 & 54P and purchased within one year from 11.08.2014 (so far as the purchase of land with houses made in the month of October, 2014 is concerned). The section 22 provides the determination of annual letting value in respect of the property consisting of any buildings or land appurtenant thereto of which the assessee is owner."

18. The basis with the Id. PCIT for finding the houses on the agricultural land to qualify as residential houses is that the local authorities have assessed the same to tax and they are equipped with electricity supply. How the fulfilment of these two conditions qualifies a house on agricultural land to be in the nature of residential house has not been elaborated by the Id. PCIT, nor clarified with reference to any law in this regard. It appears to have been found so by the Id. PCIT only on the basis of surmises, conjectures, whims and fancies, and without any basis at all.

19. Therefore, we hold, that the Id. PCIT's findings of the assessee being the owner of more than one residential house as on the date of sale of original asset is without any basis at all. His direction, therefore, to the Assessing Officer to deny the assessee the claim of deduction u/s 54F of the Act is clearly not sustainable in law and the order passed by the Id. PCIT on this count is, therefore, directed to be set aside.

As a corollary his direction to the AO to assess income from these properties under the Income from house Property is also not sustainable.

20. The Id. PCIT has also directed the Assessing Officer to deny the assessee any claim of deduction under Chapter VI A of the Act. In this regard, Ld. Counsel for the assessee drew our attention to the computation of income for the impugned year filed at page No. 1-5 of the paper-book and pointed out

therefrom that the assessee in first place had not claimed any deduction under Chapter VI A of the Act. He stated, therefore, that there was no occasion for denying any deduction to the assessee under Chapter VI A of the Act. The Id. DR was unable to controvert the above contention of the Id. Counsel for the assessee. In view of the same this direction of the Id. PCIT to the Assessing Officer to deny the assessee the benefit of deduction under Chapter VI A is also found to be without any substance and merit, and is set aside.

21. In view of the above, the order of the Id. PCIT passed under Section 263 of the Act is held to be not sustainable in the absence of a concrete finding of error in the order passed by the Assessing Officer on all issues raised by the Ld. PCIT. The grounds raised by the assessee are allowed.

22. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 24/09/2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
 JUDICIAL MEMBER**

Ahmedabad; Dated 24/09/2024

***td*

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, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

Sd/-

**(ANNAPURNA GUPTA)
 ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

TRUE COPY

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