

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

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 369/Ahd/2024  
(निर्धारण वर्ष / Assessment Year : 2017-18)

<b>Prashant Chandulal Parikh, HUF</b> C/o M/s. Chandulal J Parikh, 303 Ushadep Complex, Nr. Navrangpura, Railway Crossing, Navrangpura, Ahmedabad 380009	<b>बनाम/</b> Vs.	<b>Assistant Commissioner of Income Tax</b> Circle 5(2)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADHP9467M		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Rajendera K Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Rignesh Das, Sr. DR

<b>Date of Hearing</b>	19/11/2024
<b>Date of Pronouncement</b>	/11/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 05.01.2024 for the Assessment Year 2017-18.

2. The brief facts of the case are that the return of income for A.Y. 2017-18 was filed on 30.03.2018 declaring income of Rs.20,89,430/-. The case selected for limited scrutiny to examine the capital gain/loss on sale of property and cash deposits made during demonetization period. In the course of assessment, the

AO found that the assessee had sold agricultural land along with his two brothers, on which capital gain was disclosed in the return. It was found that the cost of acquisition of the land was worked out by the assessee @ Rs.70/- per sq. mtr. as on 01.04.1981 on the basis of report of the approved valuer. The AO rejected the report of the valuer and worked out the cost of the property as on 01.04.1981 @ 6.20 per sq. mtr. Further, the assessee had claimed deduction of Rs.2.51 Crore under Section 54F of the Income Tax Act, 1961 (in short 'the Act') in respect of residential house purchased during the year. It was found by the AO that the actual construction on the purchased land was confined to the area of 27 sq. mtr. only on total land area of 840.70 sq. mtr. The AO, therefore, held that the assessee had purchased land and not a residential house. According to the AO, in order to make construction on area of 27 sq. mtr., land of 60 sq. mtr. only was required as per the approved municipal bye-laws. Accordingly, the AO restricted the deduction u/s.54F of the Act in respect of land area of 60 sq. mtrs. only and the proportionate value of remaining 780 sq.mtrs. of land amounting to Rs.2,33,07,140/- was not considered as eligible for deduction u/s.54F of the Act. After taking into account the cost of the land as adopted by the AO and the disallowance u/s.54F of the Act, the long term capital gain was computed at Rs.4,40,34,860/- in the assessment order. As regarding cash deposits in the bank account, the AO found that the total cash deposit during the year was Rs.24,48,000/-, which was explained to be out of agricultural income. The AO was not satisfied with the explanation of the assessee in this regard and the entire cash deposit was treated as unexplained and added to the income. Accordingly, the

assessment was completed u/s 143(3) on 14/12/2019 at total income of Rs.4,86,05,340/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the Ld. CIT(A), which was decided vide the impugned order and the appeal of the assessee was dismissed.

4. The assessee is now in 2<sup>nd</sup> appeal before us. The following grounds have been taken in this appeal:

- “1. The learned CIT(A) NFAC has erred in confirming the valuation of Agriculture Land adopted by ITO as on 01/04/81 at Rs. 6.22/- Per Sq Feet without any basis instead of Rs. 70 Per Sq Feet valued by the Government approved valuer, thereby adopting indexed cost of Rs. 17,37,682/- against a sum of Rs. 1,96,18,988/- claimed by the assessee in Return of Income. The addition by ITO is without any parameter prescribed in law. Hence order of CIT(A) NFAC should be set aside and impugned addition by AO may please be ordered to be deleted.*
- 2. The learned CIT(A) NFAC has erred in confirming the decision of AO restricting the deduction u/s 54F to Rs.17,27,460/- against the claim of the assessee of Rs. 1,47,32,378/- and while doing so the AO has not considered the cost of 718 sq. mt. of Rs. 2,33,07,140/- though the land appurtenant to house is forming part of total investment as a residence house as per evidence on record. The order of CIT(A) NFAC should be set aside and impugned addition by AO may please be ordered to be deleted.*
- 3. The learned CIT(A) NFAC has erred in treating investment date of new property as on 09/05/2018 in spite of investment date is 26/07/2017, as per Banakhat considering the said documents ITO has allowed claimed u/s 54F of Rs. 17,27,460/-.*
- 4. The learned CIT(A) NFAC has erred in confirming the decision of AO in rejecting the claim of agriculture income inter alia making addition u/s 69A of Rs. 24,48,000/- and taxing the same u/s 115BBE, inspite of all the documents and evidences of earning the agriculture income clearly brought*

*on record. The order of CIT(A) NFAC should be set aside and impugned addition by AO may please be ordered to be deleted.*

5. *The learned CIT(A) NFAC has erred in denying opportunity of being heard through videoconferencing, therefore, the order is issued without following prescribed by CBDT, therefore, may please be set aside.”*

5. The first ground taken by the assessee is against the adoption of cost of acquisition of the property sold by the assessee during the year. Shri Rajendera K. Shah, the Ld. AR appearing for the assessee explained that the agricultural land sold by the assessee was ancestral land and the assessee had filed a report from the approved valuer in respect of the cost of the property as on 01.04.1981. He explained that the valuer had worked out the value of land by four alternate methods as per which the value of land varied between Rs.76/- per sq.mtr. to Rs.366/- per sq.mtr. The assessee had adopted the cost of the land on a conservative basis @ Rs.70/- per sq.mtr. only. The Ld. AR contended that in view of the four alternate methods adopted by the approved valuer and the value of the property as on 01.04.1981 as taken by the assessee, the AO was not correct in rejecting the same without any cogent reason. He submitted that if AO was not satisfied with the report of the approved valuer then the matter should have been referred to the DVO to determine the value of the property as on 01.04.1981. According to the Ld. AR, the AO was not competent to determine the value of the property suo motto. He further submitted that the value of the property as on 01.04.1981 as adopted by the assessee was correct, considering the various sale instances as considered by the approved valuer.

6. Per contra, Shri Rignesh Das, Id. Sr. DR supported the orders of the AO & the Ld. CIT(A). He submitted that the wide variation in the rate in the four methods between Rs.76/- per sq.mtr. to Rs.366/- per sq.mtr, as worked out by the approved valuer, itself indicated that the report of the approved valuer was not reliable. Therefore, the value of the property as adopted by the assessee was also doubtful and not correct.

7. We have carefully considered the rival submissions. There is no dispute to the fact that the agricultural land sold by the assessee was an ancestral property. Therefore, the assessee was entitled to take the cost of land as per the value of the property as on 01.04.1981. The assessee had filed a valuation report of the approved valuer in respect of the value of the property in which the value of land was worked out by four alternate methods. As rightly pointed out by the Revenue there was a wide variation in the rate as per the four methods adopted by the approved valuer, which made his report unreliable. The assessee had adopted a conservative rate of Rs.70/- per sq.mtr. as on 01.04.1981, which was less than the minimum value determined by the approved valuer. If the AO was not satisfied with the report of the approved valuer and the rate as adopted by the assessee, he should have referred the matter to the DVO to find out the correct value of the property as on 01.04.1981. The AO being not an expert, his *suo motto* adopting the value of the property at Rs.6.20/- per sq.mtr. cannot be held as correct. In the interest of justice, the matter is, therefore, set aside to the file of the Jurisdictional AO with a direction to refer the matter to the DVO to find out the correct market value of the property as on 01.04.1981. The report

of the DVO should be confronted to the assessee and the objection, if any, of the assessee in this respect should also be taken into account, before arriving at the correct value of the property as on 01.04.1981. **The ground taken by the assessee is allowed for statistical purposes.**

8. The next two grounds pertain to restriction of deduction u/s.54F of the Act as claimed by the assessee. The assessee had claimed deduction of Rs.2.51 Crore u/s.54F of the Act in respect of purchase of residential house. The Ld. AR submitted that the assessee had purchased a house with construction area of 27 sq.mtr. on total land area of 840.70 sq.mtr., in respect of which this deduction was claimed. In this regard, he had drawn our attention to the copy of agreement dated 26<sup>th</sup> July, 2017 and the sale deed dated 09<sup>th</sup> May, 2018 filed in the paper-book. The Ld. AR explained that the construction plan of the property was approved by Ahmedabad Municipal Corporation and the payment for purchase of this property was made on 26<sup>th</sup> July, 2017. The Ld. AR contended that the assessee had purchased a residential house and merely because the house was located on a small portion of the total land area, this cannot be a ground to disallow the claim for deduction u/s.54F of the Act. In this regard, he relied upon the decision of the *Hon'ble Karnataka High Court in the case of CIT vs. Shri M. A. Patel in ITA No.380 of 2012 dated 26.08.2014*. The Ld. AR further submitted that the Ld. CIT(A) was not correct in confirming the disallowance u/s.54F of the Act on the ground that the new property purchased on 09.05.2018 was beyond the two years' time limit from the date of sale of original property and, therefore, the assessee was not eligible for

deduction u/s.54F of the Act. He submitted that the payment for purchase of the property was made much before the expiry of the two years period at the time of the agreement and that there was delay in registration of sale deed due to ill health of the Power of Attorney holder of the Seller.

9. Per contra, Shri Rignesh Das, Ld. Sr. DR submitted that apart from purchase of the new property beyond the permissible time limit of two years, what the assessee had purchased was not a residential house but a big plot of land with a shade thereon. In this regard, he had drawn our attention to the image of the property as appearing on the sale deed. He submitted that the built up area of 27 sq.mtr. on which the residence was located was only 3.21% of the total area. Further that the assessee had not produced any evidence that any house tax was being paid for this residential property. He, therefore, strongly supported the order of the AO as well as the Ld. CIT(A).

10. We have carefully considered the rival submissions. The copy of the sale deed of the purchase of the new property has been brought on record. It is found therefrom that the seller Shri Bhupendrabhai Chandulal Parikh and the assessee were joint owners of Sub-plot No.8 with area of 1681.39 sq.mtr. in Jayendra Park Co-operative Housing Society Limited. The assessee had constructed a residential house of approx. 515.713 sq.mtr. on one half portion of this Sub-plot No.8 after obtaining approval from Ahmedabad Municipal Corporation in May 2012. The other half portion which was with the seller, was approved for usage of construction of residential purpose by AMC in July 2014.

Accordingly, the seller had constructed a structure of 27 sq.mtr. on total land area of 840.70 sq.mtr. This second portion of the construction along with the land has now been acquired by the assessee in respect of which deduction u/s.54F of the Act has been claimed.

11. As per the provision of Section 54F of the Act, the deduction is allowable on purchase of residential house. The sale deed dated 09<sup>th</sup> May, 2018, through which this property was purchased by the assessee, doesn't refer to purchase of any residential house. The property as described in the Annexure of the sale deed is found to be as under:

*“The property of land of subplot No. 8 (subplot no. 3 as per approved plans) located in 'Abhipushpa Society Part-2' having total area of approximately 2011 sq. yard. i.e., 1681.39 sq. mtr. with construction of residential purpose therein, the complete description of which is given in the Annexure below, out of which the land towards the northern 1/2 of the land j.e.. 1005.50 sq. yard i.e., 840.70 sq. mtr. of land with approximately **27 sq.mtr. of construction of residential purpose** situated on non-agriculture lands of residential purpose bearing Final Plot No. 89/2, 90 etc. of Town Planning Scheme No. 37 of Revenue Survey No. 415, 416/1+2 and 435 p are located at the vicinity of Mouje village Thaltej of taluka Ghatlodiya of Sub- district Ahmedabad-9 (Bopal) of Registration District Ahmedabad having its quadrants details as follows. That land/constructed property including membership and share holders' right, share and interest of Jayendra Park Co-operative Housing Society Limited:-*

*In East - 30.00 meter T.P. Road*

*In West - Common Plot and Sub Plot No. 7*

*In North :- Property of Sub Plot No. 9*

*In South- Remaining land/property of Subplot no. 8 p.*

*In this way, all the land between the quadrants and the property with the construction on it is the property of all the rights attached to it.*

*accordingly, this sale deed has been written to the buyer with a healthy mind and body, without any pressure from anyone, after reading it intelligently with his own pleasure by the seller. Which is and shall be binding on the seller and the sellers' lineages, guardians, heirs, successors, assignees, transferees, etc.”*

12. From the description of the property as above, it is apparent that what is the subject matter of transfer is a plot of land with area of 840.70 sq.mtr. Though, it is mentioned that approx. 27 sq.mtr. of construction of residential purpose is situated on this land, the exact description of the residential construction is not mentioned in the Annexure to the sale deed. From the image of the property as appearing in the sale deed, it is found that the constructed area is not a residential house but only an unenclosed space with overhead roof construction supported by pillars. Such an open construction with a size of 27 sq. meters only, can't be used for the purpose of residence. The assessee has filed a copy of commencement letter (Raja Chitti) dated 13<sup>th</sup> May, 2014 of Ahmedabad Municipal Corporation in respect of residential construction on this property, which is reproduced below:

**Ahmedabad Municipal Corporation**

As per Gujarat Town Planning & Urban Development Act, 1976, Section 29(1), 34, 49(1)(B) & The Bombay Provincial Municipal Corporation Act, 1949, section 253/254

**Commencement Letter (Rajachitthi)**

Date: **13 MAY 2014**

Case No:	BLNTR/NWZ/130314/GDR/A1475/R0/M1		
Rajachitthi No:	01280/130314/A1475/R0/M1		
Arch./Engg. No.:	ER0205020916R2	Arch./Engg. Name:	SHRIMALI PRAFULCHANDRA ATMARAM
S.D. No.:	SD0290220217R1	S.D. Name:	CHAVDA PARESH MOHANLAL
C.W. No.:	CW0101020916R2	C.W. Name:	SHRIMALI PRAFULCHANDRA ATMARAM
Owner Name:	CH/SEC. JAYENDRAPARK CO. OPP. HQU. SOCI. LTD.		
Address:	JAYENDRAPARK SOCI., NR. BAUGBAUN APPAT., THALTEJ, AHMEDABAD		
Occupier Name:	PRASHANTBHAI C. PARIKH H.U.F. AND BHUPENDRABHAI C. PARIKH JOINTLY		
Address:	JAYENDRAPARK SOCI., NR. BAUGBAUN APPAT., THALTEJ, AHMEDABAD		
Election Ward:	8-THALTEJ	Zone:	NEW WEST
TP Scheme:	37 - Thaltej	Proposed Final Plot:	106/2 (R.S. NO. 251)
Plot No.:	8	Block/Tenement:	BLOCK- B
Site Address:	S.P. NO- 8, JAYENDRAPARK SOCI., NR. BAUGBAUN APPAT., THALTEJ, AHMEDABAD-380059		
Height of Building:	3.51 METER		

**AHD-9-BPL**

9655      22 38

**2017**

Floor Name	Floor Usage	Build up Area (In SQ. MT.)	Total Nos. of Residential Units	Total Nos. of Non Residential Units
Ground Floor	RESIDENTIAL	27.00	1	0
<b>Total</b>		<b>27.00</b>	<b>1</b>	<b>0</b>

13. It is found from this approval that the occupier name appearing in this commencement letter was “Prashantbhai C. Parikh & Bhupendrabhai Chandulal Parikh jointly”. Therefore, the construction carried out on the land area of 27 sq. mtr. cannot be held as belonging to the seller exclusively. This construction was in joint ownership of the two co-owners of sub-plot no.-8. Thus, even this open construction of 27 sq. mtr was not fully acquired by the assessee as he himself was the co-owner of the property. The reliance placed by the assessee on the decision of *Hon’ble Karnataka High Court in the case of Shri M. A. Patel (supra)* is also found to be misplaced. In that case, 4 built up residential houses were in existence on land area of 19.06 acres. In the present case, however, there is no built up residential house on the land purchased by the assessee. Further, no evidence of house tax payment by the seller has been brought on record. Since, the assessee has failed to establish that it had purchased any residential house, the deduction u/s.54F of the Act was

rightly denied by the AO. In fact, the AO had been generous in considering the open structure area as fit for residence and allowed proportionate deduction u/s.54F of the Act. The ground of the assessee that 780 sq. mtrs. of land for which deduction u/s.54F of the Act was disallowed was land appurtenant to the house cannot be accepted as the existence of any house on the said land has not been established. The disallowance as made by the AO in respect of deduction u/s 54F claimed by the assessee is, therefore, confirmed. Accordingly, **the Ground No.2 as taken by the assessee is rejected.**

14. The next ground pertains to date of acquisition of the new property. The contention of the assessee that investment date in the new property should be taken as 26.07.2017 when the agreement to sale/banakhat was entered and the payment was made by the assessee. Considering the fact that the banakhat was made on 26.07.2017 and the assessee had also made the entire payment on the same day, the contention of the assessee is acceptable. The delay in registration of the sale deed was due to factors beyond the control of the assessee, as explained. Therefore, the ground no.-3 as taken by the assessee is allowed.

15. The next ground pertains to addition of Rs.24,48,000/- in respect of cash deposited in the bank account. The Ld. AR submitted that the assessee was having agricultural land and it has been disclosing agricultural income in all the years. He has drawn our attention to the following chart filed before the lower authorities in respect of the agricultural income derived in different years:

<i>Sr. No.</i>	<i>F.Y.</i>	<i>Total Sale</i>	<i>Expense</i>	<i>Net Agricultural Income</i>	<i>Total Production Item Wise (In Kg.)</i>
1	2013-14	1204665	155168	1009497	14145
2	2014-15	1200877	186495	1014382	15664
3	2015-16	1516788	290786	1226002	17836
4	<b>2016-17</b>	<b>2077772</b>	<b>823852</b>	<b>1253920</b>	<b>22919</b>
5	2017-18	1647435	540934	1106501	25536

16. The Ld. AR explained that the AO has not doubted the earning of agricultural income in the past years as well as in the current year. He submitted that the AO had given a finding that the sale of firewood of Rs.7,32,200/- out of total sale of agricultural produce, cannot be considered as sale of agricultural product, which was also not correct. The Ld. AR submitted that considering the fact that the assessee had cash balances as well as the cash derived out of agricultural income, most of which were in old high denomination notes, the cash was deposited in the bank account post demonetization. Therefore, the AO was not correct in treating the cash deposits as unexplained.

17. Per contra, Shri Rignesh Das, the Ld. Sr. DR has drawn our attention to the cash account filed by the assessee in the paper book and submitted that in spite of huge cash balance as available with the assessee, there were periodic withdrawals of the cash from bank account, which was not explained. Further that the rational for keeping such huge cash in the house, when the assessee was maintaining bank account, was also not been explained by the assessee. The Ld. Sr. DR submitted that the source of cash, particularly the deposits made in the bank account

after demonetization, were unexplained and, therefore, the AO had rightly made the addition.

18. We have carefully considered the rival submissions. The AO had treated the entire cash deposits in the bank account of Rs.24,48,000/- as unexplained, which cannot be held as correct. There is no denial to the fact that the assessee was deriving agricultural income in cash. The net agricultural income disclosed by the assessee during the year was Rs.12,53,920/-, which was comparable with agricultural income of Rs.12,26,002/- disclosed in the preceding year. Thus, it is not the case that the assessee had inflated its agricultural income during the current year. Even though, the AO has disputed the nature of income from sale of firewood, the correctness of the sale transaction has not been challenged. On the other hand, the assessee also has not explained as to why all the cash was kept in the house and why those were deposited in the bank account mostly after demonetization. In fact, the total cash deposit during the demonetization period is to the extent of Rs.23,54,000/-. Apart from the contention that cash was available with the assessee in respect of agricultural income, no explanation has been given in respect of excess cash as deposited in the bank account. Taking into account the opening cash balance of Rs.3,04,049/- available with the assessee as on 01.04.2016 and also the quantum of agricultural income of Rs.12,53,920/- derived by the assessee during the year, it will be reasonable to treat the cash deposits to the extent of Rs.15.48 Lakhs as explained. The balance **addition of Rs.9,00,000/- in respect of**

**unexplained cash deposits in the bank account is confirmed.**

**The ground taken by the assessee is allowed in part.**

19. The ground no.5 taken by the assessee is not pressed.  
Hence, dismissed.

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

**This Order pronounced on 29/11/2024**

Sd/-

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

Ahmedabad; Dated 29/11/2024

S. K. SINHA

*True Copy*

**आदेश की प्रतिलिपि अद्येषित/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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad