

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1112/Ahd/2023  
Assessment Year 2017-18**

Malav Jashwantlal Shah 4, Krishna Society, Nr. Law Garden, Ellisbridge, Ahmedabad-380006 Gujarat  <b>PAN: ACKPS0285K (Appellant)</b>	Vs	Income Tax Officer, Ward-3(1)(1), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Biren Shah, A.R.  
Revenue Represented: Shri Ashok Kumar Suthar, Sr.D.R.**

Date of hearing : 25-09-2024  
Date of pronouncement : 12-12-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the exparte appellate order dated 27.10.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. Brief facts of the case is that the assessee is an individual filed his Return of Income for the Asst. Year 2017-18 on 30-07-2017 declaring total income of Rs.28,34,790/-. The return was taken for scrutiny assessment. The assessee claimed Long Term Capital Gain on sale of land of Rs.1,41,43,038/- and claimed exemption u/s. 54F of the Act reinvestment in a residential house. On perusal, the Assessing Officer found that the assessee has constructed house on a plot of land, which is an agricultural land. The assessee has not furnished conversion certificate for residential purpose from the Competent Authority, therefore the claim of exemption u/s. 54F is not applicable and issued a show cause notice why not to deny the benefit. The assessee filed a detailed reply, however the same was rejected, since the assessee failed to furnish conversion certificate for residential purpose, thereby disallowed the claim of u/s. 54F and demanded Long Term Capital Gain on sale of land.

3. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A), who issued the hearing notice on 04-10-2023 fixing the case for hearing on 19-10-2023. Assessee filed a partial reply on 07-10-2023. Thus the case was fixed for hearing on 06-11-2023. Copy of the screenshot is reproduced in the Statement of Facts filed before us, however with the available material on record, Ld. CIT(A) passed the appellate order on 27-10-2023 holding that the assessee owns more than one residential house, other than the new asset on the date of the transfer of the original asset. Thus Ld. CIT(A) denied the claim of exemption u/s. 54F of the Act and dismissed the appeal filed by the assessee.

4. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

1 In law and in the facts and circumstances of the appellant's case, the order passed by the learned CIT(A) u/s 250 of the Income-tax Act is ab initio void being bad in law.

2. In law and on the facts and in the circumstances of the case of appellant, the Id. CIT(A) has erred making addition of Rs. 1,41,43,038/-by disallowing exemption claimed u/s 54F of the Act. The Ld. CIT(A) may be directed to delete the addition.

3. In law and in the facts and circumstances of the appellant's case the Ld. CIT(A) has erred in charging interest u/s 234A,234B,234C and 234D of the Act when no such interest is chargeable. The appellant denies its liability to pay interest

4. In law, on the facts and circumstances of the case, the Ld. CIT(A) has erred in initiating the proceedings for levy of penalty u/s. 270A(1) for furnishing inaccurate particulars of income when no such penalty is leviable.

5. The appellant craves leave to add, alter or amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

5. Ld. Counsel for the Assessee submitted that the Ld. CIT(A) has given time till 06-11-2023 to represent the case, but passed the impugned order by confirming that the assessee is holding more than one residential house property on the date of transfer of capital asset. Whereas the correct fact is that the assessee is owning three commercial properties and generating rental income from the same which is not the violation as prescribed u/s. 54F of the Act and relied upon case laws in support of his claim. Thus contended that the Ld. CIT(A) is not correct in denying benefit u/s. 54F of the Act and the appeal filed by the Assessee is to be allowed.

5.1. Per contra, Ld. Sr. D.R. appearing for the Revenue supported the order passed by the lower authorities and submitted the claim made by the assessee is not adjudicated by Ld. CIT(A). Therefore it

is fit to remand the matter back to the file of Ld. CIT(A) to decide on merits of the case.

6. We have given our thoughtful consideration and perused the materials available on record. Though assessee filed a Paper Book before us containing various details about the new residential property as well as Municipal Corporation Tax receipt and other details of three commercial properties owned by the assessee and leased to State Bank of India, Axis Bank and New India Assurance Company which are new evidences filed for the first time before this Tribunal. Therefore in the interest of justice, without adjudicating on merits of the case, we deem it fit to set aside the matter back to the file of Ld. CIT(A) to decide the case on merits after taking in into account, the new documents filed by the assessee (before this Tribunal) and by giving reasonable opportunity of hearing to the assessee and also if necessary, call for a remand report from the Assessing Officer. Needless to say, the assessee should cooperate in the appellate proceedings by producing all necessary relevant documents before the appellate authority for passing order on merits.

7. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 12-12-2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 12/12/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद