

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./**ITA No. 399/SRT/2024** (AY 2012-13)
(Physical court hearing)

Bharat Jaswantlal Bhatt A-202, Neelkanth Avenue Beside Water Works, Adajan Bo, Surat-395 009 [PAN : ABNPB 4626 P]	बनाम Vs	Income Tax Officer, Ward- 3(2)(6), Surat, Aayakar Bhavan, Majura Gate, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri P.M. Jagasheth, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	10.12.2024
उद्घोषणा की तारीख/Date of pronouncement	21.01.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld.CIT(A)] dated 22.02.2024 for assessment year (AY) 2012-13, which in turn arises out of assessment order passed by Assessing Officer under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.10.2019.
2. Rival submission of both the parties have been heard and record perused. The Ld. Authorized Representative (Ld.AR) of the assessee submits that during the year under consideration assessee sold a property for a consideration of Rs.60,27,000/-. The Stamp Valuation Authority (Sub-Registrar Office, Surat-3, Navagam) valued the transaction of property for the purposes of

registration of sale deed valued the said property at Rs.86,74,012/-. The Assessing Officer while passing the assessment order in pursuance of reopening proceedings made addition of value determined by Stamp Valuation Authority, instead of taxing the difference vis-à-vis actual sale consideration and the value determined by Stamp Valuation Authority. The assessee alongwith other co-owners have acquired the said property prior to 01.04.1981. Neither any reference to Valuation officer for estimation of fair market value was made by Assessing Officer nor any benefit of cost of acquisition was allowed by Assessing Officer. Before Ld.CIT(A) assessee filed written submission as recorded in para-1.3 of impugned order at page-3. The assessee also furnished additional evidence in the form of Government approved valuer to substantiate the market value of land as on 01.04.1981. The share of assessee was only 30%. The Ld. AR of the assessee submits that additional evidence furnished by assessee was not accepted by Ld.CIT(A) by taking view that condition prescribed for admission of additional evidence is not available to the assessee. The Ld. CIT(A) confirmed the action of assessee. Before us, the assessee also furnished working of capital gain of Rs.13,34,097/-. The assessee purchased a residential flat and invested part of capital gains and thus entitled for deduction under section 54F. The Ld. AR of the assessee submits that neither the Assessing Officer considered the cost of acquisition nor made any reference to the District Valuation Officer (DVO) for estimation of fair market value nor additional evidence filed by assessee was admitted by Ld.CIT(A). The Ld. AR of the assessee has prayed before the Bench that the matter may be restored back to the file of Assessing Officer with the

direction to refer the matter to District Valuation Officer for estimation of fair market value of asset as on 01.04.1981 and to tax gain on share of assessee only. The assessee may further be allowed to raise additional claim for exemption under section 54F of the Act. The Ld. AR of the assessee submits that as per the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Mitesh Impex (2014) 46 taxmann.com 30 (Guj)/[2014] 225 Taxman 168 (Guj) (Mag.)[2014] 367 ITR 85 (Guj)/[2014] 270 CTR 66(Guj) [02-04-2014] the assessee is entitled to raise additional claim if it was available. The Ld. AR of the assessee submits that additional claim of assessee may be accepted and further direction may be given to Assessing Officer to re-compute capital gains after obtaining report from District Valuation Officer and consider the report of Government Approved Valuer. Further to allow exemption under section 54F of the Act.

3. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Id Sr DR for the revenue submits that no additional claim for claiming exemption under section 54F was made before lower authorities. In case, such claim is accepted, the Assessing Officer may be allow to examine the specific condition to avail such benefits.
4. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We find that Assessing Officer completed assessment under section 144 r.w.s 147 of the Act and made addition of entire deemed value of consideration as determined by Stamp Valuation Authority at the of registration of transaction of land. We find that Assessing Officer has not given any set off of cost of acquisition for the purpose

of computation of long-term-capital gain. Further the entire sale consideration is added in the hand of assessee though assessee has claimed that he has only 30% owner of the land. We further find that Ld.CIT(A) despite recording the fact that assessee filed additional evidence before him, still was not accepted for technical reasons. Considering the peculiar facts of the present case, we find that there is no adjudication on the issue / addition on merit by lower authorities. Therefore, we deem it appropriate to restore the matter back to the file of Assessing Officer with a direction to consider the cost of acquisition of asset as on 01.04.1981. The Assessing Officer is also directed to refer the matter to District Valuation Officer for estimation of fair market value of asset as on 01.04.1981, with the direction to consider the Government approved valuer. Considering the fact that assessee has claimed exemption under section 54F of the Act for the first time before the Tribunal. Therefore, by invoking power of second appellate authority, claim of assessee is accepted for consideration and Assessing Officer is directed to verify further fact and allow proper relief to assessee under section 54F of the Act in accordance with law. Needless to direct Assessing Officer before passing the order afresh, the Assessing Officer shall give reasonable opportunity to assessee. In the result, the grounds of appeal raised by the assessee is allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21/01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 21/01/2025

Dkp Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत