

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 4811/MUM/2024 (A.Y: 2018-19)**

Varun Rasiklal Thakkar
602F, Vardhman Nagar, Nr. R. P.
Road, Mulund west, S.O. Mumbai-
400 080

PAN: ACSPT9144Q

(Appellant)

ITO Ward 11(1)(1)/ NFAC,
Mumbai

Vs.

(Respondent)

Assessee Represented by	:	Shri Tejas Sodha, Ld. AR
Department Represented by	:	Shri Leyaqt Ali Afaqui, Ld. DR
Date of conclusion of Hearing	:	28.02.2025
Date of Pronouncement	:	03.04.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 13.08.2024 of Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”], wherein the Ld. CIT(A) has dismissed the appeal of the assessee.



2. The brief facts of the case are that, the assessee is an individual and filed return of income on 30.03.2019 for AY 2018-19 declaring total income of Rs. 15,35,670/-. The case was selected for scrutiny as there was specific information of tax evasion and accordingly statutory notice u/s 143(2) was issued on 30.09.2020 and later on notice u/s 142(1) of the Act alongwith questionnaire was issued on 12.09.2021. As per information on 27.10.17, the assessee has sold a property with agreement value Rs. 26,08,000/- whereas stamp value was Rs. 41,90,000/- hence capital gain was to be calculated on 41,90,000/-, therefore assessee was asked all necessary documents. In response to various show cause notices between 17th March 2021 to 13th April 2021, the assessee has furnished written reply alongwith copy of purchase /sale agreement. Further, the AO asked the assessee to furnish /upload copy of purchase of new residential house or any other evidence showing purchase of property for which deduction u/s 54 of the Act has been claimed. The assessee was asked to comply the said requirement on or before 21.05.21 positively. As per assessment order, the assessee did not comply the said notice and accordingly the AO treated the purchased amount of new house as income on account of LTCG of Rs. 6,26,963/- because the assessee has failed to provide purchase deed of Rs. 69,54,200/- for the investment of



new house. Accordingly, the claimed deduction of Rs. 6,26,963/- was disallowed and added back to the total income of the assessee.

3. Aggrieved by the assessment order, assessee preferred appeal before the Ld. CIT (A) who dismissed the appeal of the assessee on the ground that assessee has failed to furnish the necessary required documents in respect of deduction u/s 54 of the Act before the Ld. AO and has also not furnished before the appellate authority. Accordingly the Ld. CIT(A) confirmed the addition made by AO.
4. Therefore, aggrieved by the impugned order of Ld. CIT(A), assessee preferred the present appeal before us and has raised the following grounds of appeal:-

1. The learned Commissioner of Income Tax (Appeals) erred in law & fact by making additions of Rs.6,26,963/- on account of disallowance of exemption claimed u/s 54F of the Income Tax Act, 1961 which was claimed by the appellant against sale of commercial property made during the year under review. The appellant state that during the year the appellant sold a commercial property which was jointly & equally owned by the appellant and his brother Samir Rasiklal Thakkar. Proportionate sales consideration of the same amounted to Rs.20,95,000/-(50% of Rs.41,90,000/- actual sales consideration) and proportionate Capital gains to the appellant on the aforesaid property arrived at Rs.6,26,963/-. The appellant thereafter purchased a



residential flat namely A-1505-Enigma, LBS Road, Mulund (West), Mumbai-400080, Maharashtra from M/S Oberoi Constructions Limited during the year. Advances made by the appellant towards the said purchase amounted to Rs.85,89,840/-

2. The learned Commissioner of Income Tax (Appeals) erred in fact and law by making the aforesaid additions and dismissing the appeal of the appellant based on the reason that the appellant during the course of appellate proceedings did not provide purchase agreement of residential property and bank statement highlighting the purchase consideration.

3. The learned Commissioner of Income Tax (Appeals) erred in law and fact by overlooking that the appellant during the year under review had made advances to the tune of Rs. 85,89,940/- against the purchase of property & duly submitted documentary evidences.

The appellant furnished ledger of the seller of the residential property M/S Oberoi Constructions Limited and the receipts issued by the seller in the name of appellant confirming said payments. The said advances exceeded the sales consideration of commercial property which amounted to Rs.20,95,000/-

4. The Commissioner of Income Tax (Appeals) erred in law and fact by overlooking that the aforesaid purchase of property was reflected in the form 26AS (Part F) reflecting the TDS paid on the advance payments made in respect to the residential property purchased, Name of the deductee, Acknowledgement of form 26QB filed for payment of TDS amount, Amount of Transaction and TDS thereof. Further the same was mentioned as SFT transactions in form 26AS (Part E) for the year under review. We hereby state that the form 26AS was submitted during the



course of assessment proceeding u/s 143(3) of the Income Tax Act, 1961 & at the time of appellate proceedings u/s 250 of the Income Tax Act, 1961.

5. The appellant states that from the above it was evident that a purchase of residential property has been carried out and the said transaction was genuine and hence eligible for claiming of exemption u/s 54F.

6. The appellant states that the learned Commissioner of Income Tax (Appeals) required specific documents i.e. Purchase agreement of the residential property & bank statement highlighting the said property however, the non-submission of the said documents cannot be the base of dismissal of appellant's appeal as the documentary evidences as discussed above are substantial evidences to prove the transaction of purchase of residential property. Further sufficient opportunity of being heard was not provided to make the aforesaid submission of documentary evidences. We are now in possession of the purchase agreement and bank statements which the appellant shall produce at the time of appellate proceedings before the Income Tax Appellate Tribunal.

7. The Appellant craves leave to add, amend, alter and / or withdraw the aforesaid ground of appeal.

5. We have heard Ld. AR and Ld. DR and examined the record. Assessee has filed an application for additional evidence to place on record the following documents:-



- i) Purchase agreement of Residential property claimed as exemption u/s 54F of the Act.
 - ii) Bank statements highlighting the advances paid for purchase of property.
6. It is further stated in the application that the aforesaid additional evidence is crucial for disposal of present appeal and could not be filed earlier due to reasonable cause before the Ld. CIT(A) and the same may be admitted in the interest of justice. It is further argued by Ld. AR that they were under the impression that the Ld. CIT(A) will consider the case of Hon'ble ITAT Mumbai Bench reported as Manish Sinha Vs. ITO in ITA No. 602/Mum/2018 dated 02.08.19 and would grant the required relief to the assessee and for that reason, they did not consider these documents to be necessary at that time despite due diligence exercised by the assessee.
7. The Ld. DR on the other hand opposed the admission of additional evidence stating they have failed to show the sufficient justification for filing the requisite information before the Ld. AO despite opportunity given to the assessee.



8. We have considered the rival submissions of both parties regarding admission of additional evidence.
9. Now the question before us is whether the assessee/ appellant can be permitted additional evidence in order to establish that he has purchased a new house and entitled to exemption u/s 54F of the Act.
10. The assessee /appellant has sought permission of the additional evidence under Rule 29 of the Appellate Tribunal Rules 1963. Therefore, let us examine the Rule 29 of the Appellate Tribunal Rules, 1963/- which are as under:-

“Production of additional evidence before the Tribunal: -

29. *The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.”*



11. In support of their application, the assessee/appellant has relied the judgment of the Hon'ble Bombay High Court reported as Smt. Prabhavati S. Shah Vs. Commissioner of Income Tax, (1998) 231 ITR 1. Para 9 of the judgment of the Hon'ble Bombay High Court referred (supra) is relevant and reproduced as under:

“9. We are also of the opinion that in the facts and circumstances of this case, even under rule 46A of the Rules the assessee should have been allowed to produce the additional evidence. The Appellate Assistant Commissioner, in our view, was not correct in holding that the case of the assessee did not fall in any of the four exceptions set out in sub-rule (1) of rule 46A. In fact, the present case would fall under clause (c) of subrule (1) of rule 46A because the assessee had no occasion to collect this evidence earlier. He could have reasonably expected that the creditors will appear before the Income-tax Officer in compliance with the summons issued by him. He was never informed by the Income-tax Officer that the creditors were not available or unidentifiable. If he had been informed by the Income-tax Officer in the course of assessment proceedings that he was not inclined to accept the loans as genuine because of the nonavailability of the creditors, he could have tried to satisfy him about the genuineness of the loan by producing other evidence. At the time of hearing of the appeal, the appellant tried to satisfy the Appellate Assistant Commissioner about the genuineness of one of the loans by producing material which he could collect in the meantime. This case, therefore, will fall under clause (c) of sub-rule (1) of rule 46A of the Rules. In any view of the matter, we are of the opinion that in the instant case, the Appellate Assistant Commissioner should have considered the evidence produced by the assessee in regard to the loan of Rs. 40,000 from Champaklal Dalpatrai. In view of the



above, we answer question No. 3 in the negative and in favour of the assessee. In view of the above answer to question No. 3, questions Nos. 1 and 2 need not be answered.”

12. We have considered the contents of the application of the assessee wherein it is stated that they could not produce these documents before the Ld. CIT(A) due to reasonable cause and the said documents are crucial for deciding the appeal. It was contended on behalf of the assessee that those documents were within the public domain and the evidence already produced was sufficient to substantiate the case of the assessee. It is to be noticed that the revenue authorities have not brought on record anything contrary to the claim of the assessee for permitting the additional evidence. At this stage, we have no reason to disbelieve the contents of the application and genuineness of the claim of the assessee for producing additional evidence. For the above reasons, we find reason to allow the additional evidence filed by the assessee /appellant to prove the purchase of the new house and to claim the exemption of the amount which has been denied and added to the total income. In case the documents sought to be filed as additional evidence are allowed and considered by the revenue authorities, the same may help the assessee in justifying the exemption claim u/s 54F of the Act



before the AO. For these reasons, the end of justice requires that assessee be given opportunity to file additional evidence in support of his claim u/s 54F of the Act for purchasing a new house and seeking adjustment /exemption from the total income.

13. Further, Rule 30 of the Appellate Tribunal Rules, 1963 provides as under:

“Mode of taking additional evidence: -

30. Such document may be produced or such witness examined or such evidence adduced either before the Tribunal or before such income-tax authority as the Tribunal may direct.”

14. In view of the provisions of the Rule 30 of the Appellate Tribunal Rules, 1963 and in the given facts and circumstances, the case is restored to the file of the Ld. AO who shall consider the additional evidence to be filed by the assessee/appellant before the Ld. AO within the period of 60 days from this order. The Ld. AO shall decide the case of assessee afresh after considering the additional evidence to be led by the assessee before the revenue authorities. For the above reason, the impugned order is not legally sustainable and we accordingly set aside the same.

15. In the result, the appeal filed by the assessee is **allowed for statistical purposes** in above terms.



ITA No. 4811/Mum/2024
Varun Rasiklal Thakkar

Order pronounced in the open court on 03.04.2025.

Sd/-
(B R BASKARAN)
(ACCOUNTANT MEMBER)

Mumbai / Dated 03.04.2025
Dhananjay, Sr.PS

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. CIT
 4. DR, ITAT, Mumbai
 5. Guard file.
- //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai