

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.19/SRT/2024**

**Assessment Year: (2017-18)**

**(Physical court hearing)**

Arvindbhai Ramniklal Raval (HUF)308, Chhapania Street, Adajan, Surat-395 009	<b>बनाम/ Vs.</b>	Income Tax Officer, Ward- 1(3)(6), Surat, Room No.303, 3 <sup>rd</sup> Floor, Income Tax Office, Anavil Business Centre, Adajan Hazira Road, Adajan, Surat-395 009
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAEHA 1847 D</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

निर्धारिती की ओर से /Appellant by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	30/01/2025
उद्घोषणा की तारीख/Date of Pronouncement	28/04/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 04.12.2023 by the National Faceless Appeal Centre, Delhi /Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer u/s 143(3) of the Act dated 24.12.2019. Grounds of appeal raised by the assessee are as under:

*"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing*

*Officer in disallowing deduction of Rs.1,59,40,044/-/ claimed u/s 54F of the I.T. Act, 1961.*

*2. It is, therefore prayed that the above addition made by the Assessing Officer and confirmed by Commissioner of Income-tax-Appeals, may please be deleted.*

*3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. Facts of the case in brief are that assessee filed its return of income declaring total income of Rs.2,28,680/- for the year under consideration on 29.03.2019. The assessee has sold land at Adajan Gam for a sale consideration of Rs.1,96,81,200/-. The assessee claimed deduction u/s 54F of Rs.1,59,40,004/- based on purchase agreement of a residential property at Haven Hills Housing Society Ltd., Haveli. The assessee submitted sale agreement dated 21.07.2017 to prove genuineness of deduction claimed u/s 54F of the Act. The AO issued notice to the seller party which was not responded. Therefore, deduction claimed u/s 54F of Rs.1,59,40,004/- was not allowed. Total income of assessee was, accordingly, computed at Rs.1,61,68,720/- as against returned income of Rs.2,28,680/-. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A).

3. Before CIT(A), the appellant submitted that appellant had duly invested Rs.1,59,40,044/- u/s 54F of the Act in purchase of new residential house within the time limit prescribed in the Act. The appellant has purchased property at Haven Hills Housing Society for a consideration of Rs.2,65,30,000/- vide Kabja Sahit no Vechan Karar (sale agreement) dated 21.07.2017 and claimed

deduction of Rs.1,59,40,044/-. He submitted that full purchase consideration after deducting TDS of Rs.2,65,000/- u/s 194IA has been paid which is evident from the bank statement and sale agreement submitted during assessment proceedings. The possession was also with the assessee and he enjoy the rights of ownership. The CIT(A) observed that condition of Section 54F are not fulfilled because assessee entered into an agreement of sale, which is a promise for future transfer of property whereas sale deed is an actual transfer of property ownership. The sale agreement comes before the sale deed, which is executed and signed by the buyer and seller on non-judicial stamp paper. To execute a sale deed, the buyer needs to pay registration fee and stamp duty. In case of sale agreement, the title of the property remains with the property owner till a sale deed is executed and registered subsequently. A title of the property can only be transferred by a sale deed. In the instant case, the sale deed has not been executed within the time period. Therefore, the CIT(A) did not interfere with the decision of AO and upheld the action of AO and dismissed the ground.

4. Further aggrieved by the order of CIT(A), the assessee has filed present appeal before the Tribunal. The Ld. AR of the assessee filed a paper book enclosing sale agreement, bank statement and Form-26AS reflecting TDS deducted u/s 194IA of the Act. He has submitted copy of sale agreement in Gujarati language and English translation of the relevant part of the said sale

agreement. He submitted that assessee is required to invest and not purchase by registered deed. For this, he relied on the decisions in cases of (i) CIT vs. Sardarmal Kothari 302 ITR 286 (Mad) (ii) CIT vs. Shahajada Begam 73 CTR 229 (AP), (iii) Kristina Nathabhai Krichchan vs. DCIT 154 taxmann.com 102 (Surat-Trib.), (iv) CIT vs. Dr. Laxmichand Narpal Nagda 211 ITR 804 (Bom) and (v) Sanjeev Lal vs. CIT (2014) 46 taxmann.com 300 (SC). He submitted that all payments have been made and TDS was also deducted. Hence, conditions of Section 54F of the Act are fulfilled.

5. On the other hand, Ld.Sr-DR for the Revenue supported the order of lower authorities. He stated that the only issue in the appeal is claims of deduction of Section 54F of the Act. As per Section 54F, the assessee has to purchase one year before or two years after date of transfer one residential house or has to construct a new house within a period of three years after the date of purchase. The words used is “purchase” or “construct” and therefore, the assessee had to purchase the new residential house before one year or after two years from the date of transfer. It is an undisputed fact that the assessee has not registered the property at Haven Hills Housing Society and only agreement of sale has been executed. The Ld.Sr-DR for the Revenue submitted that the decisions relied upon by Ld. AR are distinguishable in facts. He is submitted that in the case of Sardarmal Kothari (supra), it was construction of house and not purchase of new house. In case of Shahajada Begam (supra) sale deed was subsequently registered; in case of Kristina

Nathabhai Krichchan (supra), only permission of the court was pending because two of the co-sellers were minor at the time of purchase and in case of the Sanjeev Lal (supra), the sale deed was ultimately registered. He submitted that the decision of Hon'ble Bombay High Court relied upon was pronounced on 17.12.1991 but Section 53A of Transfer of Property Act, 1982 was amended by Registration and Other Related Laws (Amendment) Act, 2001. Hence, it is not applicable. Moreover, in the present case, the sale deed has not yet been registered. The Ld.Sr-DR relied on the decisions in cases of (i) Hiteshbhai Mansukhbhai Bagadi vs. ACIT (2024) 162 taxmann.com 547 (Rajkot-Trib.); (ii) Shri Ram Narayan vs. ITO in ITA No.428/JP/2014 dated 28.06.2019 and (iii) Shri Navghanbhai Laxman Rabari vs. ITO in ITA 1864/AHD/2019 dated 18.01.2023.

6. We have heard both the parties and perused the materials on record. We have also deliberated various case laws relied upon both the parties. The only issue is whether assessee is eligible for deduction u/s 54F of Rs.1,59,40,044/- in respect of investment by way of "Agreement of Sale with Possession" from the seller, Badri Ahemadbhai Leswala, for purchase of a residential property at Haven Hill Housing Society, Haveli. The Ld. Sr-DR has relied upon the decisions of co-ordinate Benches in the cases of (i) Hiteshbhai Mansukhbhai Bagadi (supra); (ii) Shri Ram Narayan (supra) and (iii) Shri Navghanbhai Laxman Rabari (supra) and submitted that the similar issue has been decided against the respective appellants. We have duly considered the

decisions relied upon by the Ld. AR. The requirement of Section 54F is that the assessee should purchase any residential house within a period of one year before or two years after the date of transfer of the property or construct a new residential house within a period of three years after the date of transfer. The co-ordinate Benches of ITAT Rajkot, Jaipur and Ahmedabad cited supra decided the issue in favour of Revenue in absence of registered sale deed. In the present case, there is no dispute that the appellant has entered into an "Agreement of Sale with Possession" of the residential house, being a flat at Haven Hill Housing Society within time allowed in the Act. However, the property has not been registered. The Ld. AR submitted that the entire sale consideration of Rs.2,65,30,000/- have been paid to the seller through banking channel by the appellant on various dates from 29.06.2017 to 27.06.2018. The appellant has also deducted TDS of Rs.2,65,300/- on the above payment. As per the agreement, the seller has conveyed to the appellant the vacant and direct possession of the entire property together with all rights and has stated that the appellant has become the sole and absolute owner of the property. The appellant shall have ownership and rights over the property to the same extent as the seller had. We find that the Hon'ble jurisdictional High Court in case of Kishorbhai Harjibhai Patel vs. ITO (2019) 107 taxmann.com 295 (Guj) has held that where assessee had executed an agreement to sell in respect of a house property and purchased a new residential property within one year from date of agreement to sell, even though sale deed could not be executed

within time, section 54F relief was to be granted to assessee in respect of purchase of new residential property. While deciding the issue, the Hon'ble High Court has followed the decision of the Hon'ble Supreme Court in case of Sanjeev Lal (supra) and stated that the Income-tax Act gives precise definition to the term "transfer". It observed that in case of Sanjeev Lal (supra), it is very clear that an agreement to sell would extinguish the rights and the same would amount to transfer within the meaning of Section 2(47) of the Act. This definition of transfer given in the Act is only for the purpose of Income-tax. Accordingly, the issue was decided in favour of the assessee and against the Revenue. In view of the facts discussed above and respectfully following the decision of Hon'ble jurisdictional High Court cited supra, the ground No. 1 is allowed.

6.1 The other grounds raised by assessee are in general in nature and do not require any adjudication.

7. In the result, appeal of assessee is allowed.

Order pronounced under proviso to Rule 34 of the ITAT Rules, 1963 on 28/04/2025 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**  
सूरत /Surat  
दिनांक/ Date: 28/04/2025  
**Dkp Outsourcing Sr.P.S\***

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

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

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

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By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय अधिकरण, सूरत