

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.387/Ahd/2018
(Assessment Year: 2014-15)

DipalSureshbhai Patel 15, Gopinath Society, Behind Shreeji Tower, Vastrapur-380015	Vs.	ITO Ward-3(3)(1), Ahmedabad
PAN No.ACRPP7563N		
(Appellant)	..	(Respondent)

Appellant by :	ShriTej Shah, AR
Respondent by:	ShriL. P. Jain, Sr. DR

Date of Hearing	22.01.2021
Date of Pronouncement	15.04.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 29.11.2017 passed by the Commissioner of Income Tax (Appeals) –3, Ahmedabad arising out of the order dated 07.12.2016 passed by the ITO, Ward-3(3)(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2014-15 whereby and whereunder the claim made by the appellant under Section 54F to the tune of Rs. 35,07,459/- has been confirmed.

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2. As per records, the appeal before the Tribunal has been filed by the assessee beyond the time limit. The delay of 07 days is condoned on due consideration of facts and owing to smallness of delay causing no perceptible prejudice to the other side.

3. The case of the assessee is this that the assessee sold an immovable property bearing Plot No. 182/1, 182/2 and 182/3 at Sushrusa Cooperative Housing Society lying and situated at Swagat Park at Thaltej, Ahmedabad for a consideration of Rs. 71,95,620/- with another co-owner having 50% share on the said sale. The said property was purchased way back in F.Y. 2003-04 at Rs. 44,550/- and the capital gain, therefore, earned by the assessee was at Rs. 35,07,459/-. However, due to mistake the said capital gain was shown in the Income Tax Return at Rs. 17,08,554/-. Subsequently on 11.12.2015 the assessee has purchased another property for a consideration of Rs. 85,00,000/- being Flat No. 3/A/603, Balaji Wind Park, Khoraj, Ahmedabad and wrongly claimed deduction of Rs. 17,08,554/- instead of 35,07,459/-. The assessee has faithfully disclosed the fact of not depositing the capital gain amount into a separate capital account before filing the due date of return of income, but the said capital gain amount has been utilized in acquiring the property within the time allowed by Section 54F of the Act. Thus, the assessee though has not invested the capital gain asset scheme before 139(1) of the Act but complied with the conditions under Section 54F(1) of the Act for purchasing and construction of residential property within three years from the date of transfer of the original asset as the case made out by the assessee. However, such plea of the assessee has not been

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accepted by the Ld. AO and the claim of Rs. 35,07,459/- under Section 54F of the Act was disallowed which was in turn confirmed by the First Appellate Authority. Hence, the instant appeal before us.

4. The crux of the submission made by the Ld. Counsel appearing for the assessee in this that the provision of Section 54F are beneficial provisions and are to be considered liberally in the aspect of limitation period. It was further contended by the Ld.AR that the appellant has also purchased newly constructed asset within the time allowed by the provisions of Section 54F(1) and, therefore, deduction is to be allowed to the extent of the investment in the said new asset.

5. On the other hand, the Ld. DR relied upon the orders passed by the authorities below.

6. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record including various judgments relied upon by the Ld. Counsel appearing for the assessee which we propose to deal in the forthcoming paragraph.

It appears from the record that the assessee on 03.07.2013 sold an immovable property with another co-owner having 50% share on it and subsequently on 11.12.2015 purchased a new property for a consideration of Rs. 85,00,000/-. The assessee then claimed Rs. 35,07,459/- as long term capital gain though the same was not deposited into a separate capital account before filing of the due date of return on income. However, the said amount has been utilized in acquiring the property

purchased on 11.12.2015. The assessee's case is this though the said amount was not deposited in a separate capital account in nationalized bank before the due date of filing of return of income under Section 139, but the said amount of capital gain has been duly utilized in acquiring the property within the time allowed by Section 54F of the Act. Needless to mention that the property was sold on 07.03.2012 and the new asset was purchased on 11.12.2015 which is within the period under the condition stipulated by the provisions of Section 54F of the Act.

7. The case of the Revenue is this that the unutilized amount of sale consideration since not deposited in the capital gain account within the time limit prescribed under Section 139 of the Act, benefit of claim of capital gain under Section 54F cannot be extended to the assessee.

From a plain reading of Section 54(2) of the Act it is clear that only Section 139 is mentioned in the context that the unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of tax under Section 139 of the Act. Therefore, Section 139 cannot be confined only to the provisions of the Section 139(1), but it includes all the sub section of Section 139 of the Act.

On this issue we have considered the judgment passed by the Gauhati High Court in the case of Commissioner of Income Tax vs. Rajesh Kumar Jalan, reported in [2016] 157 taxman 398 (Gauhati) where the assessee sold his one-fourth share in a residential property for a

consideration to the State Government on 21.12.1995 and earned capital gain. The assessee negotiated and entered into the two agreements dated 09.05.1996 and 17.05.1996 with the owners 'R' and 'A' for the purchase of their residential flat for a consideration. The Assessing Officer rejected the assessee's claim of exemption under Section 54 on the ground that the assessee failed to comply with section 54 by not depositing the unutilized amount of capital gain in the Capital Gains Deposit Scheme, 1988 within the stipulated time of furnishing the return of income-tax under Section 139.

While confirming the order passed by the Ld. Tribunal in allowing the claim under Section 54 made by the assessee, the Hon'ble Court has been pleased to observe as follows:-

“6. From a plain reading of sub-section (2) of section 54 of the Income-tax Act, 1961, it is clear that only section 139 of the Income-tax Act, 1961, is mentioned in section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only section 139(1) but it means all sub-sections of section 139 of the Income-tax Act 1961. Under sub-section (4) of section 139 of the Income-tax Act, any person who has not furnished a return within the time allowed to him under sub-section (1) of section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier. Such being the situation, it is the case of the respondent/assessee that the respondent/assessee could fulfil the requirement under section 54 of the Income-tax Act for exemption of the capital gain from being charged to income-tax on the sale of property used for residence up to 30-3-1998, inasmuch as the return of income-tax for the assessment year 1997-98 could be furnished before the expiry of one year from the end; of the relevant assessment year or before the completion of the assessment whichever is earlier under sub-section (4) of section 139 of the Income-tax Act, 1961.”

On the interpretation of the beneficial provision of Section 54F the Hon'ble High Court has further been pleased to rely upon the judgment passed by the Hon'ble Apex Court in the matter of Bhavnagar University vs. Palitana Sugar Mills (P.) Ltd. reported in [2003] 2 SCC 111, on this ratio that the scope of the legislation on the intention of the Legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible.

8. We have considered the judgment passed by the Chandigarh Bench in the matter of Mrs. Seema Sabharwal vs. Income Tax Officer, Ward-4, Panchkula reported in [2018] 91 taxmann.com 2 (Chandigarh – Trib.) where the judgment passed by the Hon'ble Karnataka High Court in the matter of CIT vs. Shri K. Ramachandra Rao 2015 56 taxmann.com 163 has been relied upon;The relevant portion whereof is as follows:-

“10. The said question has been answered by the Hon'ble High Court in the following words:-

“As is clear from Sub-Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In the other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the

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amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not.””

Apart from that we have carefully considered the judgment passed in the matter of ITO vs. Nilima Abhijit Tannu passed by the ITAT, Mumbai Benches, reported in [2019] 106 Taxmann.com 256 (Mumbai – Trib.) where the same issue has cropped up and it was observed that when the unutilized portion of capital gain on sale of capital asset is required to be deposited before the date of furnishing of return of tax under Section 139, in such a situation Section 139 cannot be meant only Section 139 but it means all sub-Sections of Section 139. Therefore the Ld. Tribunal has been pleased to hold that the assessee has fulfilled condition for deduction under Section 54F within extended time limit of filing of return under Section 139(4) and the claim of the assessee cannot be negated merely he did not deposit amount in the said scheme before the expiry of the time period provided under Section 139(1) of the Act.

9. Thus, taking into consideration the entire aspect of the matter the ratio laid down by the Hon’ble Apex Court in the matter Bhavnagar University vs. Palitana Sugar Mills (P.) Ltd. (supra) as also the Hon’ble Karnataka High Court in the matter of CIT vs. Shri K. Ramachandra Rao (supra), and the judgments passed by the different Benches we find that if the intention is not to retain cash but to invest in construction or purchase any property and if such investment period stipulated therein, then Section 54F(4) is not attracted. It appears from the records that the assessee has complied with the requirement of the substantive provision

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of Section 139 and, therefore, is entitled to the claim of exemption under Section 54F of the Act. Hence, we find no reason to pass such order by the Revenue in disallowing the exemption of Rs. 35,07,459/- as the claimed under Section 54F of the Act by the assessee. The order is, thus, quashed. Hence, assessee's appeal is allowed.

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

This Order pronounced in Open Court on	15/04/2021
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 15/04/2021

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/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.

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad