

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 655/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2016-17)

Bhupendrabhai Punjabhai Patel Near Towers Dabhasa, Tal: Padra, Vadodara, Gujarat, 391440	बनाम/ Vs.	Assistant Commissioner of Income Tax Circle-1(3), Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMGPP7772G		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Sanjay R Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Ashesh Rajesh Revar, Sr. DR

Date of Hearing	23/07/2024
Date of Pronouncement	26/07/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 06.10.2023 for the Assessment Year 2016-17.

2. The assessee has raised the following grounds in this appeal:

- “1. *The Learned Assessing Officer erred in law and on facts of the case in rejecting the claim of the Appellant for deduction us. 54F of the IT. Act, 1951 for a sum of Rs.75,80,923/-. The Learned CIT(Appeals) confirmed the same by passing an ex-parte order. It is submitted that the Appellant was prevented by sufficient chase in not being able to file his written*

submissions before CIT(Appeals), and hence, the matter may please be restored to the file of learned CIT(Appeals) for adjudication denovo,

2. *Without prejudice to Ground No.1 above, the Learned Assessing Officer erred in rejecting the claim of the Appellant for deduction u/s 54F for Rs. 75,80,923/-and Learned CTT(Appeals) erred in confirming the said disallowance. It is submitted that Appellant is entitled to deduction u/s 54F for Rs.75,80,923/- and the same be allowed to him.”*

3. There is a delay of 125 days in filing of this appeal. The assessee has filed an affidavit explaining the reason for delay. It has been submitted that the assessee was not a techno savvy person and the notices sent by the Ld. CIT(A) on his email id and also on the departmental portal had escaped his notice which led to non-compliance before the Ld. CIT(A). For the same reason, there was a delay in filing of present appeal as well. Considering the fact that there was no compliance of the assessee before the Ld. CIT(A) and the reason as explained, the delay in filing the present appeal is condoned.

4. Shri Sanjay R. Shah, Ld. AR of the assessee explained that the Ld. CIT(A) had confirmed the order of the AO in limine without considering the details furnished by the assessee in the statement of facts attached in Form No.35 of the appeal memo. He submitted that the Ld. CIT(A) was not correct in dismissing the appeal of the assessee without examining the merits of the case. He has relied upon the decision of Hon'ble Bombay High Court in the case of *CIT vs. Premkumar Arjundas Luthra (HUF)*, [2016] 69 taxmann.com 407 (Bombay). The Ld. AR requested to

restore the matter to the file of the Ld. CIT(A) for fresh adjudication as per the provisions of law.

5. Shri Ashish Rajesh Revar, Ld. Sr. DR did not raise any objection if the matter is set aside to the file of the Ld. CIT(A) for the fresh adjudication as per the provisions of law.

6. We have carefully considered the rival submissions. The only issue involved in this case is deduction of Rs.75,80,923/- claimed under Section 54F of the Income Tax Act, 1961 (in short 'the Act'). The AO had disallowed the claim for the reason that the construction of the house was not completed within the period of 3 years from the date of transfer of the original asset, on which the capital gain was derived by the assessee. In this case, the assessee had declared LTCG of Rs.12,88,49,830/-, against which, deduction of Rs.75,80,923/- was claimed under Section 54F of the Act in respect of investment in residential house. In the statement of facts filed before the Ld. CIT(A), the assessee had explained that a sum of Rs.35 Lacs was deposited on 22.07.2016 in UBI Capital Gain Account. Further, a plot of land was purchased on 17.02.2016 for a total consideration of Rs.42,51,220/- for construction of residential house. The assessee had started the construction on the said plot and expenditure of Rs.36,63,350/- was already incurred by the assessee towards this construction till 05.11.2018. Therefore, the assessee had rightly claimed deduction of Rs.79,63,061/- (Rs.42,51,220/- + Rs.37,11,841/-) i.e. within the period of 3 years

from the sale of land. It is found that the Ld. CIT(A) had not considered the submissions of the assessee in the statement of facts and had merely dismissed the appeal of the assessee due to non-compliance. The provision of Section 250(6) of the Act requires the Ld. CIT(A) to dispose the matter in writing and with reasons on the point of dispute raised by the assessee. Since, the Ld. CIT(A) has not examined the matter on merits, we deem it fit to set aside the matter back to the file of the Ld. CIT(A) with a direction to decide the appeal on merits by giving another opportunity to the assessee. Needless to mention, the assessee shall cooperate during the appellate proceedings and shall not seek any adjournment without just cause.

7. In the result, appeal preferred by the assessee is allowed for statistical purposes.

This Order pronounced on 26/07/2024

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 26/07/2024

S. K. SINHA

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 फाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad