

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
"C" BENCH, AHMEDABAD**

**BEFORE, SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

**And**

**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1780/AHD/2017

अाधरण ँष/Asstt. Year: 2013-2014

Shri Yunus Yasin Qureshi, C/o. Sun Automobiles, Nr.Shahwadi Bus Stop, Narol, Ahmedabad-382405.  PAN: AAAPQ2161J	Vs.	A.C.I.T, Circle-3(2), Ahmedabad.
---	-----	--

<b>(Applicant)</b>		<b>(Respondent)</b>
--------------------	--	---------------------

Assessee by :	Shri Dushyant Maharshi, A.R
Revenue by :	Shri L.P. Jain, Sr.DR

सुनवाई क तारख/Date of Hearing : 11/06/2019

घोषणा क तारख /Date of Pronouncement: 24/06/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad [Ld.CIT(A) in short], dated 30/05/2017 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 29/03/2016 relevant to Assessment Year (AY) 2013-14.

The assessee has raised the following grounds of appeal:

*1 The CIT(A)-3, Ahmedabad has erred in law and in facts in upholding the order of "Ld.Assessing Officer and denying deduction u/s.54F of the Income Tax Act, 1961( the Act) being amount invested towards purchase of residential house, against Long Term Capital Gain arising on transfer of non-agricultural land for the reason the possession was not granted to appellant."*

The only issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by denying the deduction claimed under section 54F of the Act.

2. The briefly stated facts are that the assessee in the present case is an individual and engaged in the trading business of automobile spare parts and vehicles. The assessee is also a director in a company, namely sky-high organizers private Ltd which is engaged in the business of developing the housing projects.

2.1 The assessee in the year under consideration has declared capital gain on the sale of lands amounting to Rs. 53,59,973.00. The assessee against such capital gain income claimed proportionate deduction under section 54F of the Act on account of the investment made in the housing project for 40 lakhs. However, the assessee failed to take the possession of the property in respect of which deduction under section 54F of the Act was claimed within the time prescribed under the provisions of law. Therefore, the AO disallowed the deduction claimed by the assessee under section 54F of the Act.

The aggrieved assessee preferred an appeal to the learned CIT (A).

3. The assessee before the learned CIT (A) submitted that the housing project was not completed within the time due to some unavoidable situations. Therefore he could not obtain the possession of the property.

3.1 However, the learned CIT (A) rejected the contention of the assessee and confirmed the order of the AO by observing as under:

*“The appellant tried very hard and submitted a very detailed arguments. However, any interpretation which negates very tenet of u/s 54F can not be accepted. With due regard to number of judgements relied by appellant, I am not convinced for following reasons.*

*1) The dream of possession of new property(residential house) is is not in sight even after 4 years.*

*2) The developer is not obstructed by any hurdles to complete the impugned project as per information on record.*

*3) The appellant is one of the directors in the company which is constructing the project in question.*

*4) The legislative intention to increase the residential has not fulfilled,hence benefit of any beneficial section can not be allowed to appellant.*

*5)The appellant has not been in a position to lay his hands on any of the direct judgement(s) either from !TAT,Ahmedabad or Hon'ble Gujarat High Court,*

*Hence, in view of the above, I am the opinion that appellant is not eligible for deduction u/s 54F of the IT Act and say that a very well conceived decision by the AO. Hence, ground no. 2 is dismissed.”*

4. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 1 to 53 and submitted as under:

*Appellant claims that deduction be granted for the below stated reasons:-*

*1. Appellant has earned capital gains on sale of " long term capital asset"*

2. *The consideration received from sale of capital asset is invested for purchase of "residential house"*

3. *Conditions as specified in section 54F has been duly complied by appellant*

4. *New property (residential house) could not be purchased for conditions beyond control of appellant*

5. *The funds have been subsequently invested towards purchase of residential house and hence?*

*intention of appellant to invest funds in residential house is evident.*

6. *Out of Rs. 40,00,000-- repaid by developer to whom originally amount was paid, appellant has re invested Rs, 25,55,0007- for purchase of residential house and balance amount is not invested for reasons that the original amount is not received back.*

*Hence, appellant prays that benefit of liberal interpretation of beneficial provisions be granted to appellant.*

5. On the other hand, the learned DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. The assessee in the case on hand has claimed deduction under section 54F of the Act against the capital gain income declared by him in the income tax return. However, the assessee could not take the possession of the property within the time as prescribed under the provisions of section 54F of the Act. Therefore the deduction claimed by the assessee under section 54F of the Act was denied by the AO, which was subsequently confirmed by the learned CIT (A).

6.1 Indeed, the provisions under section 54F of the Act are beneficial provisions, and therefore, these should be read liberally. But the facts of the present case are different from the facts of the case as referred by the learned

AR for the assessee at the time of the hearing. The assessee has invested in the project which was handled by a company in which he was the director. Besides, the learned AR has not brought any iota of evidence highlighting the reasons for not getting the possession of the property within the time. Therefore, The case laws referred by the assessee before the authorities below cannot be applied to the instant facts of the case.

6.2 Moreover the company namely sky high organizers private Ltd has shown the receipt from the assessee for 40 lakhs as loan and not as the advance received from the assessee against the purchase of the property. The entries shown in the books of accounts are crucial to deciding the intention of the assessee, and therefore, the same cannot be ignored while deciding the issue on hand in the present facts of the case.

6.3 We also note that the assessee before the AO has also conceded that he may not be eligible for the deduction under section 54F of the Act in the given facts & circumstances. The relevant submission of the assessee before the AO stands as under:

*"With reference to the above stated assessment, I would like to submit as under :-  
Exemption u/s 54 of the I. J Act.*

*a) During the year under consideration I have sold two plots of land at 53r.-'e; rearing survey number 566/1 and 566/2 which were purchased in July 2008. Hence, the assets sold were held by me for more than 36 months and were long term capital assets.*

*b) Out of the total sale consideration of Rs. 81,56,000/~ I had paid Rs. 40,00,000/- as advance to Sky High Organisers Pvt Ltd. for the project of "Sky Avenue".*

*c) There is no agreement/contract entered into between Sky High Organisers and me. Further, the project for which I have given advance is still "under construction" and no agreement is made till date.*

d) On making this advance for purchase of new flats, I was under the belief that I am eligible to claim deduction u/s 54F and accordingly same has been claimed as deduction in my return of income.

e) However, till date neither the construction is completed nor the property is registered in my name. Hence, the condition of purchase/construction in my name is not fulfilled till date. On a bonafide belief that the construction would be completed and the agreement would be done in my name, I had claimed deduction u/s 54 F at the time of filing return of income. Now, as no agreement is done in my name, I may not be eligible to claim deduction u/s 54F although there being no fault on my side.

The due for revising the return of income for AY 2013-14 i.e 31.03.2015 has passed and hence it would not be possible for me to revise the return. Hence, I request you to consider the above submission and recomputed my total income.''

6.4 In view of the above, we do not find any reason to disturb the finding of the authorities below. Hence the ground of appeal of the assessee is dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

**Order pronounced in the Court on 24/06/2019 at Ahmedabad.**

**-Sd-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER**

**(True Copy)**

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 24/06/2019  
Manish