

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.645/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Sameer Vithalrao Ghanwat,  
722/26, Laxmi Park Colony,  
Navi Peth, Pune – 411030

.... अपीलार्थी/Appellant

PAN: AKPPG0286P

Vs.

The Income Tax Officer,  
Wad 12(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 02.01.2019	घोषणा की तारीख / Date of Pronouncement: 21.01.2019
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by assessee is against order of CIT(A), Pune-5, Pune, dated 04.12.2017 relating to assessment year 2013-14 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Despite service of notice, none appeared on behalf of assessee nor any application was moved for adjournment. However, because of the issue

involved, we proceed to decide the present appeal after hearing the learned Departmental Representative for the Revenue.

3. The assessee has raised the following grounds of appeal:-

*On the facts and in the circumstances of the case and in law, the learned CIT(A) has:*

1. *Erred in confirming the cost of acquisition of the land sold by the Appellant as on 1/4/1981 at Rs.10,360/- as against Rs.3,59,648/- claimed by the Appellant.*
2. *Erred in confirming the deduction claimed u/s 54F of the Act at Rs.33,48,003/- as against Rs.45,41,736/- claimed by the Appellant.*
3. *Erred in passing the ex-parte order by not granting the Appellant sufficient opportunity of being heard.*

*In view of the above grounds and on the facts and in the circumstances of the case and in law, the Appellant prays Your Honour to allow the appeal and set aside the orders passed by the lower authorities, being not justified in law and pass any other order which Your Honours may deemed fit in the interest of justice.*

4. The first issue raised is against cost of acquisition of the property as on 01.04.1981.

5. Briefly, in the facts of the case, the assessee had filed original return of income of income on 30.07.2013 declaring income at ₹ 2,42,617/-. For the year under consideration, the assessee had sold his land at Balewadi, Tal. Haveli, Pune Dist. on 27.09.2012. The assessee had shown the cost of acquisition of the said property as on 01.04.1981 at ₹ 3,59,648/-, whereas the Assessing Officer had adopted at ₹ 10,360/-.

6. The perusal of assessment order reflects that the assessee had admitted before the Assessing Officer to adopt the cost of acquisition at ₹ 10,360/-. In view of the admission of assessee, there is no merit in the ground of appeal raised by assessee in this regard. Hence, the same is dismissed.

7. Now, coming to the claim of deduction under section 54F of the Act at ₹ 33,48,003/- as against ₹ 45,41,736/-.

8. Brief facts relating to the issue are that the assessee explained that he had purchased a new residential property jointly with his wife on 04.03.2013 for a total consideration of ₹ 53,85,000/-, out of which an amount of ₹ 33,85,130/- has been claimed as deduction under section 54 of the Act by the assessee and the balance has been claimed as deduction under section 54F of the Act by his wife. Further, the assessee had also claimed deduction of ₹ 11,56,606/- under section 54F of the Act on account of investment made in a specified bank/institution. Thus, the total deduction claimed under section 54F of the Act by the assessee was at ₹ 45,41,736/-. However, the Assessing Officer on verification of the details submitted during the course of assessment proceedings, noted that the entire claim made by assessee could not be allowed in view of the provisions of section 54F(1)(b) and 54F(4) of the Act and the proviso thereof. In the instant case, the net consideration of the original asset was at ₹ 80,48,041/- i.e. after considering expenditure by way of cost of selling, whereas the cost of net asset was only ₹ 33,85,130/- as claimed by the assessee in the computation. Thus, the proportionate amount of deduction under section 54F of the Act allowable would work out to ₹ 33,48,003/-  $[33,85,130/8048041 \times 7959774]$ . Further, the assessee has also claimed an amount of ₹ 11,56,606/- as deduction under section 54F of the Act on account of deposit to an account of specified bank or institution. As per the provisions of section 54F(4) of the Act, the amount of net consideration which was not appropriated by the assessee towards the purchase of new asset made within one year before the date on which the transfer of the original asset took place, or which was not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139 of

the Act, shall be deposited by him before furnishing such return. Such deposits being made in any case not later than the due date applicable in the case of the assessee for furnishing the return under sub section (1) of section 139 of the Act in an account in any bank or institution as may be specified. In the instant case, the sale of the original asset took place on 27.09.2012 and the due date for furnishing the return under section 139(1) of the Act was 31.07.2013 whereas the assessee has deposited the amount into the aforesaid account on 24.07.2014 i.e. more than one year beyond the due date for furnishing the return. Thus, the authorities below held that the deduction claimed in respect of this amount could not be allowed.

9. The assessee is in appeal against the order of CIT(A).

10. Despite service of notice, none appeared on behalf of assessee. However, we find that the issue stands covered against the assessee by the order of the Hon'ble Bombay High Court in the case of Humayun Suleman Merchant Vs. CCIT (2016) 73 taxmann.com 2 (Bom.).

11. Further, the said proposition laid down by the Hon'ble Bombay High Court in Humayun Suleman Merchant Vs. CCIT (supra) has been applied by the Pune Bench of the Tribunal (where Judicial Member is a party) in ITA No.923/PUN/2015 relating to assessment year 2009-10 vide order dated 20.12.2017. Vide Para No.7 of the order dated 20.12.2017, the claim of deduction under section 54 of the Act was denied to the assessee as he had not deposited the amount in the capital gains scheme account by the due date of filing the return of income.

12. The issue arising in the present appeal is identical to the issue before the Tribunal and following the same parity of reasoning, we hold that the assessee is not entitled to the claim of deduction under section 54F of the Act as the assessee has failed to deposit the unutilized amount of capital gains in the capital gains scheme account by the date of filing of return of income. Since this issue is settled by the Hon'ble Jurisdictional High Court, hence, the matter is being decided *ex-parte* the assessee. The grounds of appeal raised by the assessee are thus dismissed.

13. In the result, the appeal of assessee is dismissed.

Order pronounced on this 21<sup>st</sup> day of January, 2019.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 21<sup>st</sup> January, 2019.

GCVSR

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-5, Pune;
4. The Pr.CIT, Pune-4, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune