

**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**

**श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

**आयकर अपील सं./ ITA No. 5733/Mum/2017**

**(निर्धारण वर्ष / Assessment Year 2013-14)**

Amandeep Singh M. Kohli 401, Le Orchid 15 Road, Off Khar Gymkhana, Khar (W), Mumbai-400 052	Vs.	The Income Tax Officer, Ward 10(1)(4), 427, Parekh Market 39, Kennedy Bridge, Opera House, Mumbai-400 004
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AJCPK5236B</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Ajay R Singh & Shri Ravindra Poojary, ARs'
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Ajey Malik, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	20-02-2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	01-03-2019

**आदेश / ORDER**

**महावीर सिंह, न्यायिक सदस्य/  
PER MAHAVIR SINGH, JM:**

This appeal filed by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-17, Mumbai [in short CIT(A)], in CIT(A)-17/IT-33/16-17 vide order dated 25.07.2017. The Assessment was framed by the Income Tax Officer, Ward-10(1)(4), Mumbai (in short 'ITO/AO') for the A.Y. 2013-14 vide order dated 11.03.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the claim of deduction of long term capital gain claimed under section 54 of the Act on the ground that the assessee has neither utilized nor deposited full capital gain in the capital gain account scheme till the date of filing of return of income under section 139 of the Act for the relevant assessment year. For this assessee has raised the following two grounds: -

*“1. The Id. CIT(A) erred in confirming the disallowance of deduction of LTTCG u/s 54 of the Act at ₹ 77,43,425/- on the ground that the assessee has not utilized nor deposited full capital gain in the Capital Gain Account Scheme till the date of filing return of income under section 139(1) of the relevant Assessment year, without appreciating that the first payment was entitled for exemption without any dispute as the same is before due date under section 139(1). The second, third and fourth payments are before due date u/s 139(4) and before actual return filing date, therefore the exemption claimed by the assessee may be allowed in full.*

*2. Without prejudice and alternatively the Id. CIT(A) erred in not allowing the deduction of LTTCG u/s 54 of the Act as regards to the first payment of ₹ 13,84,600/- without appreciating that complete details were filed before Assessing Officer and same was part of paper book filed before CIT(A), therefore it is entitled*



*for exemption atleast to the above extent without any dispute as the same is before the date under section 139(1).”*

3. We have heard rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that the AO during the assessment proceedings noted that the assessee has claimed exemption of ₹ 77,43,425/- under section 54 of the Act. It was further noted by the AO that the assessee has received capital gain of ₹ 77,43,425/- which was not actually utilized for purchasing of new assets, but was advanced to one company M/s Kohilco Foods and Beverages Pvt. Ltd. on interest basis. It was further noted by the AO that for availing exemption under section 54F, the concerned return of income under section 139(1) should have been filed within the time stipulated under section 139(1) of the Act. However, no return of income was filed under section 139(1) of the Act. It was further noted that as per condition, the unutilized capital gain should have been deposited in a specified capital gain scheme in any of the bank or institution notified by the Central Government. Such deposits should have been made before furnishing return of income under section 139(1) of the Act and conditions prescribed under section 54 of the Act, the AO declined the claim of exemption under section 54F of the Act. The CIT(A) also confirmed the action of the AO. Aggrieved, assessee filed the appeal before Tribunal.

4. Before us, the learned Counsel for the assessee filed detailed chart and relied on the decision of Hon'ble Bombay High Court in the case of Humayun Suleman Merchant vs. CCIT [2016] 387 ITR 421 and also in the case of Anil Hasmukhlal Oza vs. ITO in ITA No. 226/Mum/2012 vide order dated 08.12.2016. The assessee filed the detailed chart which reads as under: -



## ITAs No. 5733/Mum/2017

Sr No.	Details of return filed and investment	As per Assessee's case	As per Humayun Suleman Merchant (Bom)(HC)	As per Anil Hasmukhlal Oz (ITAT)
		AY 2013-15	AY 1996-97	AY 2008-09
1.	Due date Under section 139(1)	31/07/2017	31/10/1996	31/07/2008
2.	Date of Return filed	25/01/2014	04/11/1996	18/11/2008
3.	Due date under section 139(4)	31/03/2015	3103/1998/	31/03/2010
4.	Amount deposited till due date 139(1)	13,84,600/- (date 27/07/2013)	20,00,000/- (till date 23/10/1996)	
5.	Amount deposit till filing of the return	65,01,791/- (till date 16.01.2014)	35,00,000/- (date 01/11/1996)	
6.	Conclusion	Following the jurisdictional decision of Bombay High Court and co-ordinate Bench of ITAT total amount of ₹ 65,01,791/- utilized before filing the return on 25/01.2014	The AO had taken into account all amounts utilized for construction of house before filing the return on 04/11/1996	ITAT held that the assessee had spent amount towards construction of new house till the date of filing return 18.11.2008 should be allowed. ITAT followed the Bombay High Court Humayun Suleman Merchant and matter set aside for verification.



5. We find that this issue has been considered by Hon'ble Bombay High Court in the case of Humayun Suleman Merchant (supra), wherein it is held that if the amount is utilized before the last day of filing of return of income under section 139 of the Act than the provisions of section 54(2) of the Act would not hit the assessee. The Hon'ble Bombay High Court held as under: -

*v) Lastly and in the alternative, it is submitted by Mr. Chatterji, that as the entire amount has been paid to the developer/builder before the last date to file the return of Income under Section 139 of the Act, the exemption is available to the appellant under section 54F(4) of the Act. In support, the decision of Gauhati High Court in Rajesh Kumar Jalan's case (supra) is relied upon. The Gauhati High Court in the above case was concerned with the interpretation of Section 54 of the Act. It construed the provision of sub-Section (2) of Section 54 of the Act which is identically worded to sub-section (4) of Section 54F of the Act. The Court in the aforesaid decision held that the requirement of depositing before the date of furnishing of return of Income under Section 139 of the Act has not to be restricted only to the date specified in Section 139(1) of the Act but would include all sub-section of Section 139 including sub-section (4) of the Act. On the*



*above basis it concluded that if the amount is utilized before the last date of filing of the return under Section 139 of the Act then the provision of Section 54(2) of the Act would not hit the assessee before it. It is not very clear in the above case whether the amounts were utilized before the assessee filed its return of income or not.*

*w) However, the factual situation arising in the present case is different. The return of income is admittedly filed on 4th November, 1996. In terms of Section 54F(4) of the Act as interpreted by the Gauhati High Court in Rajesh Kumar Jalan's case (supra) the amounts subject to capital gain on sale of the capital asset for purpose of exemption, has to be utilized before the date of filing of return of income. In this case 4th November, 1996 is the date of filing the return of Income. It is not disputed that on 4th November, 1996 when the return of income was filed, the entire amount which was subject to capital gain tax had not been utilized for the purpose of construction of new house nor were the unutilized amounts deposited in the notified Bank Accounts in terms of Section 54F(4) of the Act before filing the return of income. It is also to be noted that in line with the interpretation of Gauhati High Court on Section 54F(4) of the*



*Act, the Assessing Officer had taken into account all amounts utilized for construction of a house before filing the return of income on 4th November, 1996 for extending the benefit of exemption under Section 54F of the Act. Therefore, in the present facts, the decision of the Gauhati High Court in Rajesh Kumar Jalan's case (supra) would not apply so as to hold that the appellant had complied with the Section 54F(4) of the Act.*

6. The detailed dates and payments are as under:-

*“Due date under section 139(1) 31/07/2013*

*Due date under section 139(4) 31/03/2015*

*Return filed on 25/1/2014*

*Date of sale 21/5/2012*

*Payment dates:*

*27/07/2013 ₹ 13,84,600/- before due date under section 13(1)*

*16/09/2013 ₹ 7,17,197/- before due date under section 139(4) and actual return filing.*

*7/2/2014 ₹ 4,00,000/- before due date under section 139(4) and actual return filing.*



16/1/2014 ₹ 40,00,000/- before due date us/  
139(4) and actual return filing.

23/12/2014 ₹ 13,84,600/- before due date us/  
139(4) and actual return filing.”

7. From the above, it is clear that when the return of income was filed by the assessee the entire amount which was subject to capital gain tax has not been utilized for the purpose of construction of new house nor were the unutilized amount deposited in the notified bank account in term of section 54F(4) of the Act before filing of return of income. The assessing officer has taken into account all amounts utilized for construction of the house, as the dates noted above and therefore in the present facts the decision of Hon'ble Bombay High Court in the case of Humayun Suleman Merchant (supra) squarely applies the facts of the present case. Hence, respectfully following Hon'ble Bombay High Court we direct the AO to recompute the claim of deduction under section 54 of the Act. We direct the AO accordingly.

**8. In the result, the appeal of the assessee is allowed in term of the above.**

Order pronounced in the open court on 01-03-2019.

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 01-03-2009.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai