

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]

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

I.T.A. No. 261/Ahd/2019
(Assessment Year: 2015-16)

Hiren Himmatsingh Rathod 704, Prabhuvan Flats, 7 th Floor, Nr. Anjalee BRTS Bus Stop, Paldi, Ahmedabad-380007	Vs.	ITO Ward-5(3)(1), Ahmedabad
[PAN No.AJBPR0484R]		
(Appellant)	..	(Respondent)

Assessee by :	Shri Chirag Shah, AR
Revenue by :	Shri R. R. Makwana, Sr. DR

Date of Hearing	09.03.2022
Date of Pronouncement	20.04.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 28.12.2018 passed by the Commissioner of Income Tax (Appeals)-5, Ahmedabad arising out of the order dated 01.12.2017 passed by the ITO, Ward-5(3)(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2015-16.

2. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record.

3. The brief facts leading to the case is this that the assessee had sold the immovable property being 9/A, Uplav Co-operative Housing Society Ltd., Vasna, Ahmedabad for a consideration of Rs.1,10,00,000/- by and under a registered sale deed dated on 04.12.2014. The assessee has claimed exemption

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under Section 54 of the Act to the tune of Rs.62,50,000/- on account of investment in residential property at 704, Prabhuvan Flats, Nr. Sneh Orthopedic Hospital, Paldi, Ahmedabad by and under the allotment deed registered dated 26.04.2016. The assessee has claimed to have invested Rs.62,50,000/-. Since the purchase deed shows the amount of consideration of the new property at Rs.48,50,000/- only, a show-cause was issued to the assessee as to why the excess claim of exemption under Section 54 of the Act to the tune of Rs.14,00,000/- should not be disallowed and added to the total income of the assessee.

In reply to the said show-cause the assessee submitted that though as per the allotment deed the consideration of the flat is Rs.48,50,000/- the assessee has claimed to have incurred expenses of Rs.12,00,000/- for extra work and Rs.2,50,000/- for AEC, Auda charges and legal fees. The case of the assessee is this that in order to make the house inhabitable the assessee had incurred Rs.12,00,000/-. It was further submitted by the assessee that the extra work was undertaken by Prabhuvan Buildcon, the developer of Prabhuvan Flats. The payment of the said expenses has been made through banking channel by cheque No. 25000003 dated 24.12.2014. The documents relevant thereto were duly submitted before the AO by the assessee. In that view of the matter the assessee is entitled to get the relief under Section 54 of the Act. Whereas the case of the Revenue is this that since before taking possession of the flat the assessee has claimed to have incurred expenses to the tune of Rs.14,00,000/- the same is not allowable under Section 54 of the Act and hence rejected by both the authorities below.

4. It is a fact that the assessee had incurred the cost for making the new property inhabitable before taking over possession of the same but considering

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the provision of the act we do not find any embargo in granting relief to the assessee under Section 54 of the Act. Bonafide expenses incurred for making the new house habitable though prior to possession but before the completion of the time limit prescribed is found to be allowable. It further appears from the records available before us that the genuineness of the payment of Rs.12,00,000/- for repairing work along with Rs.2,37,650/- paid towards payment of stamp duty and Rs.48,800/- paid towards registration fees has not been doubted by the authorities below.

On this aspect we have further considered the judgement passed by the ITAT, Hyderabad Benches, in the matter of Sri Vidyasagar Dontineni vs. DCIT, Circle 3(1) in ITA No. 632 and 1238/Hyd/2013 wherein it has been held by the Tribunal that the date of commencement of construction is not relevant for the purpose of deduction under Section 54 and what is relevant is the date of completion of construction as well as a period of investment made by the assessee in such construction. Since the construction of the house was completed within the specified period under Section 54 of the Act the assessee was found to be eligible for deduction under Section 54 as observed by the Hon'ble Bench.

We have further considered the judgement passed by the Coordinate Bench in the matter of Shrinivas R. Desai vs. ACIT(OSD) in ITA No. 1245 and 2432/Ahd/2010 wherein it was held that there is no restriction on the buyer from incurring any construction expenditure on improvisation or supplementary work of ready-made unit. The additional expenses so incurred would be eligible for qualifying investment under Section 54 of the Act.

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5. Taking into consideration the entire aspect of the matter particularly when the assessee has incurred expenditure for making the new property habitable within the stipulated time as framed by the provision of law and particularly when such expenditure has not been doubted by the authorities below respectfully relying upon the ratio laid down by the Coordinate Bench as narrated hereinabove the assessee is found to be entitled to the exemption of Rs.14,00,000/- as the expenditure incurred. The order of addition made by the authorities below is, thus, found to be devoid of any merit and, thus, deleted. Assessee's appeal is, therefore, allowed.

6. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced in Open Court on

20/04/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 20/04/2022
TANMAY, Sr. PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Ahmedabad