

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 20186 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Sd/-****and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Sd/-**

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|---|---|----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  | No |
| 2 | To be referred to the Reporter or not ?   | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

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**ASHWINBHAI BABUBHAI DUDHAT**

Versus

**THE INTERIM BOARD FOR SETTLEMENT (IBS) -1 & ANR.**

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Appearance:

MR SASURBABH SOPARKAR, SENIOR ADVOCATE WITH MR B S SOPARKAR(6851) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 2

SERVED BY RPAD (N) for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

and

**HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 14/06/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Advocate Mr.Saurabh Soparkar with learned advocate Mr.B.S.Soparkar for the petitioner and learned Senior Standing Counsel Mr.Varun K. Patel for the respondent.
  
2. **Rule** returnable forthwith. Learned Senior Standing Counsel Mr.Varun K. Patel waives service of notice of rule for the respondent.
  
3. Having regard to the controversy in narrow compass, with consent of learned advocates for the respective parties, the matter is taken for hearing.
  
4. By this petition under Article 227 of the Constitution of India, the petitioner has prayed for setting aside the impugned

order passed by the Interim Board for Settlement, so far as it rejects the claim of the exemption under Section 54 of the Income Tax Act, 1961 (for short 'the Act') amounting to Rs.2,40,14,000/- for Assessment Year 2016-17.

5. The brief facts of the case are that the petitioner was subjected to search proceedings by the Income Tax Authority under Section 132 of the Act on 06.03.2018. During the course of search proceedings, various incriminating material and documents were found and seized and proceedings for assessment under Section 153A of the Act commenced.

5.1. The petitioner thereafter filed an application before the Settlement

Commission on 27.12.2019 for the period from A.Y. 2011-12 to 2018-19 disclosing the total income of Rs.2,99,15,288/-. The petitioner in the said application stated that the undisclosed income has been earned by carrying out transactions for buying and selling of land. The petitioner also declared unaccounted investment in construction of bungalow out of unaccounted sale proceeds for sale of properties.

5.2. The Settlement Commission processed the application filed by the petitioner by passing an order under Section 245D(1) of the Act on 09.01.2020 and passed an order under Section 245D(2C) of the Act on 19.02.2020.

5.3. The respondent no.2-Principle Commissioner of Income Tax, Central, Ahmedabad submitted report as per Rule 9 of the Settlement Commission Rules (for short 'the Rules') on 29.06.2020 and further requested for permission to conduct inquiry for specific issue, which was permitted by the Settlement Commission.

5.4. The petitioner filed reply under Rule 9A of the Rules on 31.08.2020.

5.5. The Settlement Commission passed an order under Section 245(D) of the Act on 24.11.2020.

5.6. Thereafter by Finance Act, 2021, the

provisions of settlement were amended and the Settlement Commission was abolished with effect from 01.02.2021 and for pending cases with the settlement commission, respondent no.1-Interim Board for Settlement Commission was constituted by inserting Section 245AA of the Act with effect from 01.02.2021.

5.7. The Central Government as per the powers conferred by Sections 11 and 12 of section 245(D) of the Act has framed E-Settlement Scheme 2021 vide notification dated 01.11.2021. The case of the petitioner was allotted to respondent no.1 Board by CBDT vide order dated 13.06.2022.

5.8. Thereafter, the case of the petitioner was fixed for hearing on

various dates from month of September, 2022 till April 2023, before the respondent no.1. The petitioner along with other issues claimed exemption under Section 54 on long term capital gains earned on sale of residential bungalows situated at 13, Sahjanand Bungalows, Thaltej, Ahmedabad during the course of hearing before the respondent no.1 against investment made in residential bungalow no.27 at Sahajanand Villa, Sola, Ahmedabad to the extent of construction of Rs.3,52,67,684/- and offered long term capital gain of Rs.15,50,432/-. However respondent no.1 while passing the impugned order dated 28.04.2023 under Section 245D (4) of the Act, rejected the claim of the petitioner to the extent of cash portion of sale consideration on sale of the

property situated at 13, Sahajanand Bungalow, Thaltej vide para 5.2.4 of the order.

5.9. The petitioner noticing the same preferred a rectification application under Section 245D(6B) on 15.07.2023 before respondent no.1 to rectify the order passed under Section 245D(4) of the Act and to allow exemption under Section 54 of the Act under cash portion of the sale consideration on sale of the property.

5.10. However, respondent no.1 did not decide the rectification application filed by the petitioner and therefore being aggrieved has preferred this petition.

6. Learned Senior Advocate Mr.Saurabh



Soparkar for the petitioner submitted that the order passed by the respondent no.1 under Section 245D(4) of the Act to the extent, it denies the claim of exemption under Section 54 of the Act, on the cash portion of the investment made by the petitioner to purchase the property after sale of the property situated at 13, Sahajanand Bungalows on the ground three grounds, firstly that the claim has not been made in return of income, secondly claim of exemption is not allowed on the concealed transaction and thirdly that the applicant has not deposited the amount of capital gain in the capital gain deposit scheme under Section 54(2) of the Act and all these grounds are contrary to the facts.

6.2. It was submitted that the petitioner has claimed exemption under Section 54 of the Act in the return of income, however so far as undisclosed income is concerned, obviously the petitioner would not have made such claim in the return of income.

6.3. It was submitted that, if the undisclosed sale consideration is brought to tax by the Settlement Commission then the undisclosed payment made for purchase of the property is required to be considered for granting benefit of Section 54 of the Act. In support of his submissions, learned Senior Advocate Mr.Soparkar referred to and relied upon the provision of Section 245D(4) of the Act, which provides that after examination

of the records and reports of Principle Commissioner, the Settlement Commission may in accordance with the provisions of the Act pass an order as it thinks fit on the matters covered by the application. It was therefore submitted that the respondent no.1-Board is discharging the power of Settlement Commission ought to have passed orders in accordance with the provisions of the Act. It was therefore submitted that the petitioner is entitled to the benefit of exemption under Section 54 of the Act to the tune of Rs.2,40,14,000/- for A.Y. 2016-17.

6.4. It was further submitted that the Interim Board has not doubted that the petitioner has received sale consideration of Rs.2,40,14,000/- in cash and the

Interim Board has also not doubted that the investment has been made in new property by the petitioner by utilizing the cash received from the undisclosed consideration received in cash. It was therefore submitted that once it is not doubted that the petitioner received cash in sale of the property, there is nothing in the Act that prohibits the petitioner and claiming deduction under Section 54 of the Act on the sale consideration. It was therefore submitted that the interim board could not have rejected the claim of deduction under Section 54 of the Act, on the ground that the petitioner has received sale consideration in cash.

6.5. Learned Senior Advocate Mr.Soparkar referred to and relied upon various

undisputed facts with regard to the sale and purchase of the bungalow by petitioner and the computation of the long term capital gains offered by the petitioner in the settlement application filed for the settlement as under:

***The petitioner has disclosed the Long Term Capital Gain on sale of Bungalow No.13 as under:***

| Particulars                 | Amount in Cheque | Amount in Cash | Total       |
|-----------------------------|------------------|----------------|-------------|
| Sale Consideration          | 1,50,00,000      | 2,40,14,000    | 3,90,14,000 |
| Indexed Cost of Acquisition | 20,76,666        |                | 20,76,666   |
| Indexed Cost of Improvement | 1,19,818         |                | 1,19,818    |
| Long Term Capital Gain      | 1,28,04,116      | 2,40,14,000    | 3,68,18,116 |

***The petitioner offers long term capital gain of Rs.15,50m432/- by claiming reinvestment in construction of Bungalow No.27 as under:***

| Particulars                | Amount in Cheque | Amount in Cash | Total       |
|----------------------------|------------------|----------------|-------------|
| Villa Land Purchase        | 78,72,000        | 1,44,40,100    | 2,23,12,100 |
| Incidental Expenses        | 7,74,589         |                | 7,74,589    |
| Villa Construction Cost    | 56,00,024        | 65,80,971      | 1,21,80,995 |
| Total Cost of construction | 1,42,46,613      | 2,10,21,071    | 3,52,67,684 |

| Particulars                              | Total       |
|--|-------------|
| Gross Capital Gain                       | 3,68,18,116 |
| Less: amount invested (exemption u/s 54) | 3,52,67,684 |
| Net Capital gain                         | 15,50,432   |

6.6. Learned Senior advocate Mr.Soparkar in support of his submissions placed reliance upon decisions of this Court in case of **Glass Lines Equipments Company Ltd. Vs. Commissioner of Income Tax** reported in **253 ITR 454 (Gujarat)** and in case of **Sumilon Industries Ltd. Vs. Income Tax Settlement Commission** reported in **83 taxmann.com 352 (Gujarat)** to submit that this Court can exercise powers under Article 227 of the Constitution of India as the approach of the respondent no.1-Board was wholly erroneous and judicial review is permitted when the respondent no.1-Board has committed a serious error in law in disallowing the claim of the deduction under Section 54 of the Act.

6.7. It was therefore submitted that the respondent no.1-Board ought to have granted deduction under Section 54 of the Act as claimed by the petitioner.

7. On the other hand learned Senior Standing Counsel Mr.Varun K.Patel for the respondent submitted that the settlement commission after considering the facts of the case in respect of cash portion of Rs.2,40,14,000/- has rightly rejected the claim of the petitioner for deduction under Section 54 of the Act as conditions prescribed under Section 54 of the Act are not complied with by the petitioner as no such claim was made in the return of income. Secondly, such claim of exemption cannot be allowed on the concealed



transactions and when the petitioner has not disclosed the amount in the return of income or books of accounts, the claim is rightly rejected by the Settlement Commission. It is also submitted by learned Senior Standing Counsel Mr.Patel that there is no correlation between the amount received in cash for sale of the property and the amount invested for purchase of property as petitioner has also undisclosed income from other transactions.

7.1. Learned Senior Standing Counsel Mr.Patel invited the attention of the Court to the report of respondent no.2 filed under Rule 9 to point out that from the seized material reproduced in the said report and the disclosure and

interpretation of the petitioner based upon such seized material is found to be inconsistent in as much as the respondent no.2 has analyzed the seized material and the disclosure on the interpretation of the petitioner by observing that in absence of detail cash flow the statement, source of the cash remains unexplained and the petitioner has no provided any actionable information of the person to whom the cash was paid or supporting evidence to prove that such cash was paid.

7.2. It was pointed out that the petitioner has not been able to point out payment of accounted portion of consideration in the books of accounts of the M/s. Shaligram Infra projects LLP, whereas similar trend was also observed in

the transaction record in 2<sup>nd</sup> Part of the page 58 of the Annexure-A/1, which gives details of payment of money for purchase of the plot of Sahajanand Villa from M/s. Himalaya Darshan Developers (Gujarat) Pvt. Ltd. which shows various dates of payments whereas copies of ledger account of Shri. Ashwin B.Dudhat in the books of the said company, which is only in respect of plot no.27 disclosing different dates of payments reflected in the regular books of accounts of the seller and the sale deed.

7.3. It was therefore submitted that there is no correlation between sales consideration received for plot no.13 at Sahajanand Bungalows for purchase of plot in Sahajanand Villa by the petitioner. It was therefore submitted that the

petitioner has not been able to established any nexus between the receipt of the sale consideration and purchase of the property by utilizing such sale consideration accordingly and hence, in absence of detail cash flow statement the source of such cash remains unexplained in as much as the petitioner has also not provided any actionable information of the person to whom such cash was paid.

7.4. It was therefore submitted that the respondent no.1 has rightly not granted exemption under Section 54 of the Act to the petitioner in respect of amount of Rs.2,40,14,000/- pertaining to the cash portion of the sale consideration.

7.5. It was further submitted that the

respondent no.1-Board has rejected the claim of the petitioner as per the provisions of the Act only as provided under Section 245D(4) of the Act and hence, no interference be made by this Court in the impugned order as very limited Judicial Review is permissible vis-a-vis order passed under Section 245D(4) of the Act is concerned.

7.6. In support of his submissions, learned Senior Standing Counsel Mr.Patel referred to and relied upon the decision of this Court in case of **Arpan Associates Vs. Income Tax Settlement Commissioner** reported in **(2013) 37 taxmann.com 317 (Gujarat)**, wherein reliance was placed upon decision of the Hon'ble Apex Court in case of **Jyotendrasinhji Vs. S.I.Tripathi**

reported in **1993 201 ITR 611 SC**. It was submitted that the Hon'ble Apex Court has clearly held in the decision of the **Jyotendrasinhji (Supra)** that only ground upon which interference can be made in the order of the Settlement Commission is if the order is contrary to the provisions of the Act and such contravention prejudices the petitioner apart from the grounds of of bias and overall malice which would constitute a separate and independent category. It was submitted that there is no allegation of malice or bias made by the petitioner and therefore the impugned order may be considered by the Court to find out as to whether the order is contrary to the provisions of the Act denying the exemption under Section 54 of the Act or not. It was submitted that as

per the provisions of Section 54 of the Act, the petitioner is not entitled to deduction on the amount of undisclosed sale consideration received in cash as the same was neither offered in the original return of income nor any amount is deposited in the bank account in absence of any cash flow statement produced by the petitioner.

8. Having hard learned advocates for the parties and having considered the facts of the case, it is not in dispute that the petitioner offered to tax the sale consideration received in cash amounting to Rs.2,40,14,000/- of property situated at 13, Sahajanand Bangalow, Thaltje Ahmedabad and it is also not disputed by the respondents that the petitioner has

purchased the property at Sahajanand Villa and claimed exemption for deduction under Section 54 for investment made on the basis of the cash received under Section 54 of the Act.

9. Respondent no.1 has rejected the claim of the deduction under Section 54 of the Act on following grounds:

*"Thus the applicant has claimed deduction u/s 54 not only on the cheque portion but also on the cash portion on the basis that the same has been invested in the purchase and construction of New Bungalow in Sahajanand Villa. The claim of the applicant in respect of cash portion i.e Rs 2,40,14,000/- under section 54 of the I. T. Act is not allowable since the following conditions are pre-requisite for the claim of exemption u/s 54 which have not been fulfilled by the applicant:-.*



1. The first and foremost condition is that the said claim should be made in the return of income, which has not been fulfilled by the applicant.

2. Secondly, such claim of exemption can be allowed only to the extent of disclosed amounts and not on concealed transactions and the applicant has not disclosed the said amount in his return of income/books of accounts.

3. The applicant has also failed to fulfill the condition of depositing the said amount in the Capital Gains Accounts Scheme before the due date of filing the return of income which is a mandatory condition as per the provisions of the section 54(2) of the Act. This has not been fulfilled by the applicant.

*In view of the above, the exemption u/s 54 of the I.T. Act 1961, for Rs 2,40,14,000/- is not allowable to the applicant. The same is therefore added to the taxable income in AY 2016-17."*

10. Therefore it would be germane to refer to provisions of Section 54 of the Act which reads as under:

*"54. Profit on sale of property used for residence.— [(1)][4 [Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of [one year before or two years after the date on which the transfer took place purchased], or has within a period of three years after that date [constructed, one residential house in India], then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

*(i) if the amount of the capital gain [is greater than the cost of [the residential house] so purchased or*

constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

[Provided that where the amount of the capital gain does not exceed two crore rupees, the assessee, may at his option, purchase or construct two residential houses in India, and where such an option has been exercised,--

(a) the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India"

*had been substituted;*

*(b) any reference in this sub-section and sub-section(2) to "new asset" shall be construed as a reference to the two residential houses in India: Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.]*

*[(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the*

*purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:*

*Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—*

*(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and*

*(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."*

11. On perusal of the above provisions of Section 54 of the Act, which does not stipulate that the petitioner is required to disclose the amount of sale consideration received in cash while claiming exemption under Section 54 of the

Act, in the return of income filed by the petitioner. The very basis of such reason denying deduction under Section 54 of the Act is contrary to the application filed by the petitioner for settlement of the tax dues vis-a-vis the undisclosed income. Section 245D(4) of the Act provides for deciding the application filed by the petitioner in accordance with the provisions of the Act, reads as under:

*"245D(4) After examination of the records and the report of the [Principal Commissioner or Commissioner], if any, received under—*

*(i) sub-section (2B) or sub-section (3), or*

*(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,*

*and after giving an opportunity*

*to the applicant and to the [Principal Commissioner or Commissioner] to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the 1 [Principal Commissioner or Commissioner].*

12. On bare perusal of the above provisions, the Settlement Commission/ Board is required to pass order in accordance with the provisions of the Act. Therefore, the grounds for rejection given by the board for denying the deduction under Section 54 of the Act apparently are not in accordance with the provisions of

Section 54 of the Act.

13. Therefore, exercising the scope of judicial review against the order of the Board as held by the Hon'ble Supreme Court in case of **Jyotendrasinhji (Supra)** wherein it is held that writ jurisdiction of the High Court is not barred and the Hon'ble Supreme Court has further observed that the judicial review flowing from the exercise of such powers should be restricted to considering whether the order of Settlement Commission is contrary to the provisions of Income Tax Act. It was observed as under:

*"Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be*



*paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the commission to make a particular order, unless of course the commission itself chooses to, give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is, contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (and alteram partem) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears, to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same whether the order of the Commission is contrary to any of the*

*provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud & malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in Sri Ram Durga Prasad v. Settlement Commission 176 I.T.R. 169, which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is "concerned with the legality of procedure followed and not with the validity of the order." The learned Judge added 'judicial review is concerned not with the decision but with the decision-making process.' Reliance was placed upon the decision of the House of Lords in Chief Constable of the N.W. Police v. Evans, [1982] 1 W.L.R.1155. Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders' of the Settlement*

*Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds though it is true, some contentions of law are also raised. The commission has interpreted the trust deeds in a particular manner, Even if the interpretation placed by the commission the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be said to be a violation of the provisions of the Income Tax Act. it is equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years."*

14. Regarding contentions of Mr. Patel learned advocate for the respondent on the issue of denying deduction under Section 54 of the Act, we find that the respondent no.1-Board has committed serious error in law in disallowing the claim of the petitioner inasmuch as the petitioner is entitled to the deduction under Section 54 of the Act considering the claim made by the petitioner in respect of cash portion of Rs.2,40,14,000/- also as the petitioner has already disclosed such sale consideration as part of the undisclosed income and it is not in dispute that the petitioner has made investment for purchase of the property at Sahajanand Bungalows.

15. In view of above, the contention raised on behalf of the respondent no.2

that there is no cash flow available on record to demonstrate that the amount of cash received by petitioner for sale consideration of the property at Sahajanand Villa is utilized for the purpose of investment by payment of cash for purchase of property at Sahajanand Bungalow, the details provided by the respondent no.2 in the report under Rule 9 of the Rules shows as under:

### **Sale of Sahajanand Bungalow**

This fact is also gets amply clear from the dates mentioned in 1st column of the said sheet which is mentioned as 15/05/2014, 15/07/2014, 15/09/2014, 15/11/2014, 15/01/2015, 15/03/2015, 15/05/2015 against the receipts of - payments of on money of various amounts which was subsequently transferred to M/s Himalaya Darashan Developers Gujarat Private 5 Limited(seller of Sahajanand

Villa Plots). As per ledger account of the 5 applicant in the books of M/s Shaligram Infraprojects LLP, no payments of accounted portion of consideration has been made by them to the applicant on such dates.

### **Purchase of Sahajanand Villa Plot**

Similar trend is also observed in the transaction recorded in 2nd part of Page No 58 of Annexure A/1 which gives the details of payment of on-money on purchase of plot numbers 12,27,29 of Sahajanand Villa from M/s Himlaya Darshan Developers(Gujarat) Pvt Ltd. As per the above sheet, it is clear that an amount of Rs.3,90,76,640/-,Rs.9,76,916/-, Rs.1,10,14,360/-,Rs.1,10,14,360/-, Rs.1,10,14,360/-,Rs.1,10,14,360/- & Rs.1,10,14,360/- have been paid on 15/05/2014, 15/07/2014, 15/09/2014, 15/11/2014, 15/01/2015, 15/03/2015 and 15/05/2015 respectively whereas copy of ledger account of Shri Ashwin B Dudhat in the books of M/s Himalaya Darashan

Developers(Gujarat) Pvt Ltd, which is only in respect of Plot No 27, states that Shri Ashwin 8 Dudhat had paid Rs 45,00,000/-, Rs 45,455/-(TDS, Rs 33,266/-(TDS), Rs 25,00,000/- & Rs 7,93,279/- on 22/09/2014, 30/12/2014, 30/12/2014, 24/04/2015 & 24/04/2015 respectively.

16. From perusal of the above details, which was derived from the seized material by the respondent no.2, it is apparent that the dates on which sale consideration is received is reflected in the seized documents in the first column of the seized documents at Annexure A/1 and the dates of the payment for purchase of plots are compared, the transaction of the sale and purchase is almost carried out on the same date on 15.04.2014, 15.07.2014, 15.09.2014, 15.11.2014, 15.01.2015, 15.03.2015 and 15.05.2015 respectively.

17. It is not in dispute that the transactions reflected in excel sheet are pertaining to the cash portion received by the petitioner on sale of Sahajanand Bungalow and payment of cash for purchase of Sahajanand Villa. Therefore, the contention raised on behalf of respondent that there is no correlation between the receipt and payment of cash for sale and purchase of the property is without any basis. The petitioner is accordingly entitled to the benefit of deduction under Section 54 of the Act with regard to the cash transaction of sale and purchase of the property even if the petitioner did not disclose such cash portion of transaction in the return of income filed or that the petitioner did not deposit the



said amount in the bank account when it is apparent from the seized materials that the cash transaction has been carried out of sale and purchase of the properties by receipt and payment of cash is carried out on the same dates as stated herein above.

18. Therefore the grounds on which the deduction under Section 54 of the Act is denied by the board are not tenable, as none of the three grounds on which the deduction under Section 54 of the Act is denied can be said to be contrary to the provisions of the Act and that such contravention has prejudiced the appellant and the petitioner is entitled to get the deduction under Section 54 of the Act also qua the amount paid in cash to purchase the property as amount received in cash by the petitioner is considered as part of

undisclosed income of the petitioner, then once the same is considered as undisclosed income, the petitioner is also entitled to deduction under Section 54 of the Act when it is also not in the dispute that the such amount has been invested for purchase of the property by payment of cash. Therefore even within very narrow scope of judicial review, the order of the Settlement Commission on the issue of denial of deduction under Section 54 of the Act is required to be interfered with being not in accordance with the provisions of section 54 of the Act and accordingly the order of the Settlement Commission to the extent of denial of deduction under Section 54 of the Act in respect of cash portion of Rs.2,40,14,000/- is quashed and set aside

and the impugned order passed by the Settlement Commission under Section 245D(4) of the Act is accordingly ordered to be modified to such extent by directing respondent Authority to accept the amount of Rs.15,50,432/- offered by the petitioner as taxable long term capital gains after granting deduction under Section 54 of the Act as claimed by the petitioner. Rule is made absolute to the aforesaid extent. No order as to costs.

**Sd/-**  
**(BHARGAV D. KARIA, J)**

**Sd/-**  
**(NIRAL R. MEHTA, J)**

URIL RANA