

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER**

**ITA No.133/Hyd/2016
Assessment Year: 2012-13**

ITO,
Ward-6(4),
Hyderabad.

vs. Smt. Gunjan Sindhi,
Hyderabad.

PAN – AGQPS3601M

(Appellant)

(Respondent)

Revenue by : Shri D. Prasad Rao
Assessee by : Shri C.P Ramaswamy

Date of hearing : 30-05-2018
Date of pronouncement : 06-06-2018

ORDER

PER SHRI B. RAMAKOTIAH, AM:

This is an appeal by Revenue against the order of CIT(A)-6, Hyderabad dated 06.11.2015. The issue in this appeal is with reference to allowance of deduction u/s 54F of the IT Act, which was denied by A.O on the reason that Assessee owned more than two houses by the time Assessee claimed the deduction.

2. During the year under consideration, Assessee earned capital gains of Rs. 92,47,779/- and claimed exemption of the above amount u/s 54F of the IT Act for acquiring new residential house for Rs. 93,18,427/-. Even though the quantification of investment was disputed by A.O and Ld. CIT(A) has given findings on that issue which is not in appeal before us, but entire claim u/s 54F was disallowed

by A.O on the reason that Assessee has owned two residential houses which have purchased during F.Y 2006-07, vide sale deeds Nos. 3348 and 3349 of 2006 dated 23.06.2006.

3. Before the Ld. CIT(A), it was submitted that Assessee has purchased a property during the F.Y 2006-07 in which two houses were there, which were actually dilapidated buildings, the structures had been demolished immediately after acquisition. The property has been lying in the form of vacant plot since then. Assessee submitted additional evidence before Ld. CIT(A) in the form of photographs, bills etc which was sent to A.O for verification and A.O has submitted the report after considering the same. Ld. CIT(A) agreed with the Assessee contentions by holding as under:

“5.0 The rival submissions have been considered. The assessee does not dispute that the properties, at the time of their purchase on 23 June 2006, were in the nature of residential houses in the sense that they had been used as such by the previous owners. Her case is that they contained dilapidated superstructures and were never intended to be used as residential houses by her. According to her, she had entered into an agreement with Mr. Amanullah Khan for sale of those properties and has furnished a copy of the said agreement. It is on a non-judicial stamp paper of Rs. 100 and is not registered. According to the agreement, she had agreed to sell the property consisting of the two houses for total consideration of Rs. 45 lakh and had also received an amount of Rs. 1 lakh as token advance. Possession had not been given and, hence, there was no transfer to the same within the meaning of the term ‘transfer’ for purposes of the Income tax Act. According to the agreement, she had however, allowed Mr. Amnullah Khan to demolish the structures before the registration and for showing the property to prospective buyers at his own cost. Further, according to her, Mr. Amanullah Khan had actually demolished the superstructure immediately thereafter and the property had been lying in the shape of vacant plot/s ever since.

05.1 As the agreement with Mr. Amanullah Khan is not registered, its genuineness or contemporaneity is not established. The photographs suggest that the superstructure was demolished cannot be ascertained on the basis of the photographs. It is theoretically possible that the superstructures existed at the material time and the assessee herself got the same demolished when she found that her claim for exemption of capital gains was to be disallowed because of the superstructures. But there is no positive evidence to conclude so. On the other hand, the assessee has furnished a reasonable explanation supported with an agreement with Mr. Amanullah Khan suggesting that the superstructure could be demolished and the photographs suggesting that they actually stand demolished. It also stands to reason that a person would not demolish his residential houses simply in order to gain exemption of capital gains. In view of this, her contention that the demolition had taken place before the transfer of the original asset took place may not be fit to be rejected outright. Copies of the power bills show that no payment for electricity had been made since July, 2006 and minimum billing of around Rs. 100 per month (which appears to be compulsory) was being done. It is also noticed that the meter reading of 105 remained unchanged since August, 2007. No consumption of electricity has been shown in respect of the two units since September, 2007 and December, 2006 respectively. Similarly, even though the water connection was disconnected in August, 2017, the opening balance of the amount of Rs. 8,240/- remained unchanged since 01.05.2009. This suggest that, after 01.05.2009, there was no consumption of power.

6.0 Considering that totality of the facts and circumstances discussed above, it is held that benefit of doubt may be given and the assessee's explanation that the two houses purchased by her during the F.Y 2006-07 were not residential houses when the transfer of the original asset, i.e. the shares took place. Consequently, she is eligible for exemption u/s 54F of the IT Act in view of the investment in the new residential house made by her. The quantum of the exemption, however, needs to be discussed.

4. It was the submission of Ld. DR that Assessee purchased two buildings and by the time the investment was made in the third building, these were existing and relied on the electricity and power connections.

5. Ld. Counsel for Assessee however submitted that Ld. CIT(A) has given factual finding that there was no power

consumption after the purchase of that property and the Metro Water Department also certified that there is no water consumption also and the plot was vacant plot. He relied on the documents placed in the paper book and the findings by CIT(A).

6. After considering the rival contentions, we are of the opinion that Assessee has purchased the property mainly for value of the land. It is true that those properties were purchased on the same day on which as per the document, there existed two dilapidated houses. Since there is no power consumption nor water consumption and Assessee is able to establish that a structure was demolished, we agree with the findings of CIT(A) that Assessee does not own two houses and has accordingly eligible for deduction u/s 54F of the IT Act or the new investment made. We find there is no merit in Revenue contentions, accordingly the grounds are rejected.

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

Pronounced in the open court on 06th June, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 06th June, 2018.

KRK

- 1) *Smt. Gunjan Sindhi, 8-3-326, plot No. 108, Akarshan Banjara, Road No. 3, Banjara Hills, Hyderabad.*
- 2) *ITO, Ward-6 (4), Hyderabad.*
- 3) *CIT(A) -6, Hyderabad.*
- 4) *The Addl. CIT, Range-6, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*