

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 6768/Del/2014
Assessment Year: 2011-12

ANIRUDDHA YADAV,
P-500, SECTOR-21,
JALVAYU VIHAR,
NOIDA
(PAN: ACJPY9604M)

VS.

ACIT, CIRCLE-1,
NOIDA

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Satyen Sethi, Adv.
Revenue by : Sh. Janardan Das, Sr. DR.

ORDER

PER H.S. SIDHU, JM

The Assessee has filed the Appeal against the Order dated 4.8.2014 of the Ld. CIT(A), Noida pertaining to assessment year 2011-12 on the following grounds:-

1. That on the facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals), Noida [briefly 'the CIT(A)'] has erred in "directing" the Assessing Officer that the capital gains on sale of immovable property situate at Nagpur be assessed to tax in the assessment year 2008-09.

1.1 That on the facts and circumstances of the case and in law, the direction issued by the CIT(A) to assess the capital gains in the assessment year 2008-09 was unwarranted, unnecessary and was not required for the disposal of appeal.

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in recording the finding that the capital gains on sale of land had arisen during the previous year relevant to the assessment year 2008-09.

2.1 That on the facts and circumstances of the case and in law, the CIT(A) failed to appreciate that the proceedings initiated by the Additional Collector Urban Land Ceiling Holding, Nagpur had clouded the entire transaction of sale and the cloud was lifted only on 20.4.2010, when the writ petition challenging the order passed under the Urban Land Ceiling Act was allowed and the transaction of sale was completed only during the previous year relevant to the assessment year 2008-09.

3. That on the facts and circumstances of the case and in law, the CIT(A) has erred in holding that the Appellant assessee was not entitled to the deduction of Rs.59,56,561/- under section 54F of the Income tax Act, 1961 (briefly "the Act") on account of investment in residential house property.

That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.

2. The brief facts of the case are that the assessee being an individual filed his return of income for A.Y. 2011-12 declaring taxable income of Rs.10,25,46,114/- on 29/7/2011. The return of the assessee was processed u/s. 143(1)(a) of the Income Tax Act, 1961 (in short "Act") and was subsequently selected for scrutiny. The assessment u/s. 143(3) of the Act was completed vide order dated 30/12/2013 after disallowing deduction amounting to Rs. 59,56,561/- claimed by the assessee u/s. 54F of the I.T. Act. Accordingly taxable income was assessed at Rs.10,85,02,675/- as against the returned income of Rs.10,25,46,114/-. Aggrieved with above disallowance the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 4.8.2014 has dismissed the appeal of the assessee. Against the impugned order dated 4.8.2014, assessee is in appeal before us.

3. During the hearing, Ld. counsel for the assessee has stated that the Ld. CIT(A) has erred in directing the Assessing Officer that the capital gains on sale of immovable property situate at Nagpur be assessed to tax in the assessment year 2008-09. He further submitted that the direction issued by the Ld. CIT(A) to assess the capital gains in the assessment year 2008-09 was unwarranted, unnecessary and was not required for the disposal of appeal. It was also submitted that Ld. CIT(A) has wrongly recorded the finding that the capital gains on sale of land had arisen during the previous year relevant to the assessment year 2008-09. He further submitted that Ld. CIT(A) has ignored the fact that the proceedings initiated by the Additional Collector Urban Land Ceiling

Holding, Nagpur had clouded the entire transaction of sale and the cloud was lifted only on 20.4.2010, when the writ petition challenging the order passed under the Urban Land Ceiling Act was allowed and the transaction of sale was completed only during the previous year relevant to the assessment year 2008-09. It was further submitted that Ld. CIT(A) has wrongly held that the assessee was not entitled to the deduction of Rs.59,56,561/- under section 54F of the Income tax Act, 1961 on account of investment in residential house property. He further submitted that capital gain cannot arise in the assessment year 2008-09 because the assessee was not owner of the said property. Hence, the question of the said property by the assessee does not arise. It is on record that the assessee was not one of the vendors in the agreement for sale dated 30.4.2017. It was further submitted that in case it is held that capital gain had arisen in the assessment year 2008-09, then the income offered cannot be taxed in the hands of the assessee, for as on 30.4.2007, the assessee was not the owner of the said property and he could not have passed any title to the buyer M/s Hagwood Commercial Developers Pvt. Ltd. It was further submitted that capital gain was rightly offered to tax in the assessment year 2010-11, for the assessee became one half of 20% share of the said property on 3.1.2009 i.e. after demise of her mother and transferred his share in the property as a vendor only by the rectification cum confirmation agreement. In view of above, he stated that it is well settled that if a particular income was not taxable under the Act, it cannot be taxed merely because the same was declared as income

and Doctrine of Estoppel is not applicable to tax the income, which is otherwise not taxable and in support of this view he relied upon the decision of GKW Ltd. Vs. CIT 92012) 347 ITR 429 (Cal.) at page 438 and Dy. CIT vs. Sanmukhdas Wadhvani (2003) 85 ITD 734 (Nag.) at page 743.

4. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that they have passed well reasoned orders, which do not need any interference and needs to be upheld.

5. We have heard both the parties and perused the records especially the impugned order and the rival submissions, we note that during the assessment year 2011-12 the total income as declared by the assessee was Rs. Rs. 9,71,37,248/- on account of Income from capital gain and Rs. 54,08,866/- on account of income from other sources. In the return the assessee has declared long term capital gains arising from sale of land bearing Khasra Nos.,,25,29 & 30, Patwari Halka No.43, Mouza Chichbavan Tehsil, and Dist, Nagpur being 50% share of 1/5th share of Rs.105 Crores as per agreement for sale registered vide serial No. as per 2548/2007 dated 30/4/2007 before Joint Sub-Registrar, Nagpur. Out of total sale consideration of Rs. 105.0 Crores the appellant received Rs. 10.5 Crores as his share and declared Long Term Capital Gains amounting Rs. 10,30,93,809/- out of which an amount of Rs. 59,56,561/- was claimed as deduction u/s. 54F with respect to investment made in residential house in Bhopal on 7/1/2011. We further note that as per provisions of

section 54F the deduction is admissible in respect of capital gains arising from transfer of long term capital asset provided the assessee has within the period of one year before or two years after the "date of such transfer" purchased a residential house. On perusal of relevant material available on record it is noticed that the agreement for sale between the vendors (including assessee) and the buyers got registered on 30/4/2007 by which date the vendor received Rs. 90 Crores (out of total consideration of Rs. 105 Crores) by way of DD whereas against balance amount of Rs. 15 Crores the buyer furnished bank guarantee to the vendor by virtue of which the bank was supposed to unconditionally pay the said amount of Rs. 15 Crores at any time on/or after 1-1-2008 against the demand made by the vendor. In consideration of above payment of Rs. 90 Crores by way of DD and furnishing of bank guarantee of Rs. 15 Crores, the vendor put the purchaser in quiet, vacant, and peaceful possession of the said property on or before the date of registration of agreement for sale (i.e. 30/4/2007) and the purchaser became entitled to its sole, exclusive and absolute use, occupation and possession without any hindrance/objection/ obstruction from the vendor. From above it is clear that in consideration of payment of substantial part of total consideration and furnishing of bank guarantee the vacant and peaceful possession was handed over to the purchaser by virtue of which the purchaser had started enjoying substantial domain over the said property. Further the vendors also represented before the buyer that they are not restricted/restrained under Income Tax Act, Gift Tax Act, Urban

Land (Ceiling and Regulation Act) and any other Acts etc. On careful examination of above facts and in the light of provisions of section 2(47)(v) of Income Tax Act, in the present case transfer of land has taken place on 30/4/2007 when "agreement for sale" got registered and capital gains on sale of property has also arisen during the F.Y. 2007-08 to be taxed in A.Y. 2008-09 only. Further in the light of provisions of section 54F the deduction could have been claimed only when the purchase of new house was made between the period from 30/4/2006 to 30/4/2009 in this case. Since the assessee has purchased new residential house at Bhopal only on 7/1/2011, the Ld. CIT(A) has rightly held that assessee was not entitled to deduction u/s. 54F since the investment was not made within the aforesaid time period. Regarding dispute raised by the Urban Land Ceiling Authority, we find that as on the date of transfer i.e. 30/4/2007 there was no dispute regarding entitlement of seller to sale the property and that vendors (including assessee) were not restricted/restrained under Income Tax Act, Gift Tax Act or Urban land (Ceiling and Regulation Act.) etc. This fact also got recorded at page 23 of "agreement for sell". However subsequently dispute was raised by Urban land Ceiling Authority regarding applicability of provisions of Urban Land Ceiling Act against which the assessee filed writ petition before Hon'ble High Court, Mumbai which decided the issue in favour of the assessee. As such, the agreement for sale dated 31/4/2007 stands completely valid for the purpose of deciding the taxability of capital gains and claim for deduction u/s. 54F of the I.T Act. The time period between raising of

dispute by Urban Land Ceiling Authority and decision of Hon'ble High Court of Mumbai did not appear to have any bearing on the assessment proceedings initiated by the AO according to relevant provisions of I.T. Act. In this regard it is also relevant to notice the fact that neither the buyers of the property nor the AO were made parties to the writ petition decided by the Hon'ble High Court of Mumbai and there was no stay on AO against initiating assessment proceeding so as to assess and tax capital gain arising on transfer of above land as per relevant provisions of Income Tax Act, 1961 in the hands of seller. Similarly the Hon'ble Mumbai High Court also did not put any restriction on the buyers against absolute use, occupation and possession of the said property without any hindrance. Taking into the consideration the above facts, the subsequent dispute between the vendor (including my assessee) and Urban Land Ceiling Authority did not have bearing on assessment proceeding initiated by the AO. Therefore, Ld. CIT(A) has rightly held that the date of "transfer" has to be taken as 30/4/2007 and accordingly the claim for deduction u/s. 54F made by the assessee was rightly rejected by the AO. Since the "transfer" has been held by the Ld. CIT(A) have taken place within the meaning of the term "transfer" as defined in section 2(47)(v) of the I.T. Act on 30.4.2007, the Long Term Capital Gains arising from sale of property has to be taxed in AY 2008-09 and not in assessment year 2011-12 as has been wrongly done by the AO in this case. Hence, the AO was rightly directed to take necessary action for taxing the Long Term Capital Gains in assessee's hand in A.Y. 2008-09 as per relevant

provisions of the Act and to deal with the claim for deduction u/s. 54F of the I.T. Act, which does not need any interference on our part, therefore, we uphold the order of the Ld. CIT(A) on the issues in dispute and reject the grounds raised by the Assessee. Also the case laws cited by the Ld. Counsel for the assessee are on distinguished facts.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 19-03-2019.

Sd/-

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 19/03/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches