

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BENGALURU**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
and  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.685/Bang/2019  
(Assessment year: 2015-16)

Shri Muppala Kiran Kumar,  
180, HMTR Layout, 6<sup>th</sup> C Main Road,  
R.T.Nagar,  
Bengaluru-560032.  
*PAN:ACUPK 6119 J*

... Appellant

Vs.

Asst. Commissioner of Income-tax,  
Circle 6(3)(1),  
Bengaluru.

... Respondent

Appellant by : Shri V.Srinivasan, Advocate.  
Respondent by : Dr. P.V.Pradeep Kumar, Addl.CIT(DR).

Date of hearing: 10/07/2019  
Date of pronouncement: 06/9/2019

**ORDER**

**Per PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the CIT(A), Bengaluru, passed u/ss. 143(3) and 250 of the Income-tax Act,1961 ['the Act' for short]. The assessee has raised the following grounds of appeal:

1. "The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

**Page 2 of 7**

2. The learned CIT[A] is not justified in partially sustaining the denial of exemption claimed u/s. 54F of the Act with regard to a sum of Rs. 20,00,000/-from out of the construction expenses of Rs.1,32,10,506/- incurred by the appellant on the ground that there were cash expenses incurred by cash and the same could not be completely verified in the absence of bills and vouchers under the facts and in the circumstances of the appellant's case.
3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.
4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. Brief facts of the case are that the assessee derives income from salary, capital gains and other sources and filed the Return of income for the assessment year 2015-16 electronically on 31/3/2015 with total income of Rs.3,34,449/-. Subsequently the case was selected for scrutiny under CASS under limited scrutiny category. Notice u/s 143(2) was issued. The learned AR of the assessee appeared on 12/10/2017 and 26/10/2017 and furnished the details. The Assessing Officer observed that the assessee has claimed exemption u/s 54 of the Act to the extent of Rs.1,13,10,506/- and also filed details in respect of payments made in cheques and cash and the said information was at pages 3 to 5 of the

assessment order. The Assessing Officer, after verifying the information has sent e-mail dated 18/11/2017 to furnish evidence of construction cost and cash expenses. Since there was no response, AO sent reminder mail on 30/11/2017 whereas the assessee, on receipt of e-mail, communicated through e-mail on 14/12/2017 that details will be filed within 10 days referred at page 7 of the order. AO found no response from the assessee in submitting the information/details. Hence, disallowed the claim of exemption u/s 54 of Rs.1,32,10,506/- and Assessed the total income at Rs.1,65,55,000/- and passed the order u/s 143(3) dated 13/12/2017.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). The CIT(A), considering the grounds of appeal, submissions of the assessee has dealt on the disputed issues whereas the assessee, in the appellate proceedings submitted valuation report which could not be submitted in the assessment proceedings and the same was filed as additional evidence and also made written submissions. The CIT(A) has forwarded the valuation report in respect of construction expenses to the AO and remand report was received on 27/2/2019. The assessee also filed rejoinder and submitted various evidences in support of the construction of house property whereas the CIT(A) observed at para. 7.2.1 of the

order that out of total construction expenses of Rs.1,31,10,506/-, Rs.83,28,254/- was incurred in cash and Rs.48,82,254/-by way of cheques. The CIT(A) observed that in the appellate proceedings, the assessee has filed valuation report disclosing total construction expenses up to 30/4/2012 Rs.2,19,00,000/-The CIT(A), having considered the remand report, supporting evidence, sanction plan and figures, has observed at para 7.2..2 at page 7 as under:

“7.2.2 As regards the quantum of exemption to be allowed u/s 54F, two aspects merit consideration. The first is the nature of payments and the second being the date of incurring the expenses claimed. The AO has disallowed the entire cheque payments amounting to Rs.48,82,252/- on the grounds that details were not available. This stand is, in my considered opinion, not correct, particularly in light of the fact that some of the cheques were stated to have been made for Plan Sanction and to S.S. Design Consultants. The other payments made by cheque also need to be allowed to the appellant as the payments have been made through banking channels. Hence the amount of Rs.48,82,252/- is allowed to the appellant. As regards the balance of Rs.83,28,254/- incurred by the appellant in cash, neither during assessment nor during appellate proceedings has the appellant furnished a single bill or invoice in support of his claim. The valuation report evidences the total cost of construction but does not give details of when the expenses were incurred. The appellant has claimed to have spent more than Rs.2 crores on construction of his house but has not maintained any records thereof. This claim goes against the test of human probabilities and it would be reasonable to disallow a part of the construction expenses claimed to have been incurred in cash, both for the absence of supporting evidence as well as uncertainty over the date of incurring such expenses. Hence a sum of Rs.20 lakhs is disallowed out of the total expenses claimed in cash. Thus the total expenses to be considered for exemption u/s 54F is restricted to Rs. 1.12,10,506/- (Rs.48,82,252/- plus Rs.63728,254/-). The AO is directed to recompute the

exemption u/s 54F accordingly. These grounds of appeal are partly allowed.”

Finally, the CIT(A) has granted exemption u/s 54F of the Act restricting to Rs.1,12,10,506/- and Rs.20 lakhs disallowance was confirmed as the payments were made in cash and partly allowed the appeal.

4. Aggrieved by the order, the assessee has filed appeal with the Tribunal. The learned AR argued that the CIT(A) has erred in restricting exemption u/s 54 and disallowing Rs.20 lakhs of expenditure incurred in cash. The contention of the learned AR that sources of cash expenses have been disclosed and the assessee has filed valuation report in the appellate proceedings and submitted with paper book. Contra, the learned DR relied on the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is in respect of disallowance of claim of exemption u/s 54 of the Act to the extent of Rs.20 lakhs as the expenses were incurred in cash. The learned AR's contention that cash expenses are duly supported and were referred in the financial statements of the assessee. Further the assessee has obtained loans and advances for the purpose of construction and supporting evidences in the form of bank statements, certificates were

filed in the assessment proceedings are referred at Page 66 of the paper book containing remand report. We consider it proper to refer to para 3 and 4 of the remand report which read as under:

3. "The assessee claims of having spent an amount of Rs.63,58,254, out of expenses of Rs.1,12,40,506. The nature of cash payments itself presents an inability to determine to whom or towards what purpose the expenses have been incurred. The description of these payments as it appears in the assessee's Cash Abstract is "Construction Expenses". This serves as no supporting evidence for the claims made, in fact, the same documents had been furnished before this office and consequent to those submissions itself, the deduction u/s.54F was disallowed.
4. With regards to the Valuation report submitted by the assessee, the exact date of completion needs to be ascertained as the Date of Sale of the original capital asset was 25.4.2014, thus construction of the new asset needs to be completed by 25.4.2017. The valuation report states that it was completed in April, 2017. The exact date of completion needs to be ascertained to allow the deduction claimed u/s.54F."

Based on the assessee's submissions and remand report, the CIT(A) has restricted the disallowance to the extent of Rs.20 lakhs of construction cost which is not properly supported with evidence except the valuation report filed by the assessee. The learned AR has emphasized that the assessee has incurred the above expenditure and supported with valuation report whereas the CIT(A) has granted relief to the extent of Rs.112 lakhs. For the remaining balance, the learned AR mentioned that the assessee can substantiate with evidence and prayed

for an opportunity. Accordingly, to meet the ends of justice, we restore this disputed issue of Rs.20 lakhs to the file of the CIT(A) to consider afresh and the assessee should support with evidence for claim and the assessee shall be provided with opportunity of hearing and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the assessee's appeal is treated allowed for statistical purposes.

*Order pronounced in the open court on 06<sup>th</sup> September, 2019.*

*Sd/-*  
**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru  
Dated : 06/09/2019  
*srinivasulu, sps*

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

*Sd/-*  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore