

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD**

**BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER**

	ITA No.1597/Hyd/2017		
	Assessment Year: 2012-13		
Kamlesh Ranka, Hyderabad. PAN: ACBPR 3953 N	Vs.	Income Tax Officer, Intl. Taxation-II, Hyderabad.	
(Appellant)		(Respondent)	
Assessee by:	Sri D. Satyanarayana		
Revenue by:	Sri Nilanjan Dey		
Date of hearing:	22/07/2019		
Date of pronouncement:	12/09/2019		

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-10, Hyderabad dated 24/05/2017 in appeal No.0010/CIT(A)-10/2015-16 passed U/s. 143(3) r.w.s 250(6) of the Act for the assessment year 2012-13.

2. In this appeal, assessee has raised the following grounds: -

- “1. *The appellate order of Ld. CIT(A) confirming the assessment order of Assessing Officer making addition of Rs. 21,66,244/- on account of long-term capital gains is against the facts of the case and provisions of Income Tax Act.*
2. *The Ld. CIT(A) erred in sustaining the addition of Rs. 21,66,244/- under the head long term capital gain.*

3. *The Ld. CIT(A) has not properly appreciated the reply filed by the appellant in detail before the Assessing Officer objecting to the adoption of sale consideration as per provisions of section 50(c), cost of acquisition of land, investment in properties with regard to claim under section 54 and on other facts and circumstances.*
4. *The CIT(A) has not provide sufficient opportunity to represent as the appellant is non-resident and was out of station on 15/05/2017.*
5. *The appellant therefore in view of above and detailed grounds to be urged at the time of hearing Hon'ble ITAT may be pleased to delete the addition of Rs. 21,66,244/- made on account of long-term capital gain."*

3. Brief facts of the case are that the assessee is a non-resident individual filed his return of income for the relevant assessment year on 31/7/2012. Subsequently, the assessee's case was selected for scrutiny through CASS and assessment was completed U/s. 143(3) of the Act on 30/3/2015 wherein amongst certain other addition the Ld. AO also made addition towards LTCG for Rs. 21,66,244/- by invoking the provisions of section 50C of the Act and further disallowing the benefit of section 54 of the Act to the extent of Rs. 22,09,968/- [Rs. 28,67,455 + Rs. 46, 53,666 (being the aggregate amount of investment made in two residential flats within the period of due date of filing the return of income U/s. 139(4) of the Act) = Rs. 75,21,121/- (-) Rs. 53,11,153/- (being the aggregate of investment made in two residential flats within the period of due date of filing the return of income U/s. 139(1) of the Act)].

4. During the course of assessment proceedings, it was observed by the Ld. AO that the assessee has sold along with his brothers their inherited residential property on 08/12/2011 for Rs. 3 Crs the market value of which was Rs. 3,27,09,452/-. The assessee in his computation of income had arrived at his LTCG as follows:

Sale consideration (Rs. 3,00,00,000 ÷ 4)	=	Rs. 75,00,000
Less Indexed cost of acquisition		
(F.Y. 1981-82 Rs. 66,54,115 ÷ 100 X 785)	=	<u>Rs. 51,34,803</u>
	=	Rs. 23,65,197
Less deduction U/s. 54	=	<u>Rs. 23,65,197</u>
LTCG	=	<u>NIL</u>

(Investment in House Property U/s. 54 of the Act Rs. 1,03,36,000)

5. Thereafter, the Ld. AO after examining the case of the assessee computed the LTCG of the assessee by adopting the assessee's share of cost of construction at Rs. 6,89,557/-, invoking the provisions of section 50C of the Act and disallowing the investment made subsequent to the due date of filing of the return U/s. 139(1) of the Act for the purpose of granting deduction U/s. 54 of the Act. While doing so, the Ld AO made the following observation: -

"Cost of Acquisition:

The assessee could not produce any documentary evidence in support of his claim of cost of acquisition of land. The burden of proof lies with the assessee only with regard to his claims made. The assessee could not duly discharged his burden of proof in respect of payment of consideration other than the licence fee payable to the

City Improvement Trust. He produced only two affidavits one from his brother Sri Mahender Kumar Ranka and another from his mother Smt. Sukhi Bai. In any parlance an affidavit is only a support for any primary evidence. Further, affidavits are not included in the definition of evidence under Section 3 of the Indian Evidence Act. In view of this the assessee's claim of payment of Rs.16,50,000/- to the original allottee of the land is not accepted.

However, the cost of licence fee paid to City Improvement Trust (Nagar Sudhar Nyas) Jodhpur of Rs.5,304/- paid by the assessee only is taken as fair market value of the property as on 1.4.1981 and the benefit of indexation has to be given. Accordingly, the Indexed cost is worked out to Rs.41,636/-.

The lease deed is annexed to this order which forms part of the assessment order.

The cost of construction as claimed at Rs.4,07,585/- as on 1.4.1983 is also to be given the benefit of indexation. Accordingly the Indexed cost comes to Rs.27,58,226 CII 116 is taken as on 1.4.1983.

Claim U/s.54:

It is seen from the information available on record that the assessee has invested an amount of Rs.75,21,121/- in two residential flats. The details are as under:

Residential flat at Globevilla, Mumbakkam Village, Sriperumbudur Taluk, Kanchipuram, Tamil Nadu				
Sl No.	Date	Ch. / DD No.	Amount Rs.	Bank
1	10/08/2011	52568	3,13,525	Citi
2	11/11/2011	471236	4,57,532	Citi
3	12/11/2011	471317	4,57,532	Citi
4	14/11/2011	471417	4,57,532	Citi
5	15/11/2011	471544	4,57,532	Citi
6	22/09/2012	974650	2,92,935	Citi
7	21/06/2013	382369	1,49,000	Citi
8	30/09/2013	449086	2,81,867	Citi
		Total	28,67,455	

Flat at Noida				
Sl No.	Date	Ch. / DD No.	Amount Rs.	Bank
1	3/4/2012	662187	5,00,000	Citi
2	24/7/2012	817488	10,00,000	Citi
3	23/7/2012	817488	10,00,000	Citi
4	25/7/2012	817586	6,67,500	Citi
5	22/9/2012	828964	9,85,439	Citi
6	20/11/2013	463483	5,00,727	Citi
		Total	46,53,666	

It is seen from the above, that the assessee has invested in the above properties only Rs.53,11,153/- before filing of the Return of Income U/s.139(l) for the assessment year 2012-13 i.e. on or before 31.7.2012. It is seen that the assessee has not complied with the provisions of Section 54(2) of the I.T. Act. The unutilised capital gain is not deposited in the Capital Gains A/c., before furnishing of the return of income U/s.139(1) of the I.T. Act. Therefore, the claim of the assessee U/s.54 is allowed only in respect of Rs.53,11,153/-.

By taking into consideration the above facts the taxable capital gains are computed as under:

COMPUTATION OF CAPITAL GAINS		
Assessee's 1/4 th share of sale consideration as per 50C value		Rs. 81,77,363
Less: Assessee's share in indexed cost of acquisition of land of Rs. 41,636/-	Rs.10,409	
Less: Assessee's share indexed cost of construction of House Rs. 27,58,226/-	<u>Rs. 6,89,557</u>	Rs. 6,99,966
LTCG		Rs. 74,77,397
Less: Allowable U/s. 54 towards investment in residential house	Rs. 53,11,153	Rs. 53,11,153
	Taxable LTCG	21,66,244

8. The assessee admitted interest income of Rs. 2,07,359/-. It is seen from the records the assessee has not offered the interest received U/s. 244A of Rs. 83, for the A.Y. 2010-11. The same is added to the interest income admitted. Total interest income received Rs. 2,07,442/-."

6. On appeal, the Ld. CIT (A) confirmed the order of the AO by agreeing with his view.

7. Aggrieved by the order of the Ld. CIT (A), the assessee is on appeal before us.

8. At the outset, on examining the relevant portion of the Assessment order extracted hereinabove, we find that the assessee has invested the aggregate amount of Rs. 75,21,121/- (Rs. 28,67,455 + Rs. 46,56,666) within the period of due date of filing of return U/s. 139(4) of the Act. The Hon'ble Gouhati High Court in the case of CIT vs. Rajesh Kumar Jalan reported in 286 ITR 274 has categorically held as follows: -

“.....that from a reading of sub-section (2) of section 54 of the Act it is clear that only section 139 has been mentioned therein in the context that the unutilised portion of the capital gains on the sale of property used for residence should be deposited before the date of furnishing the return of income under section 139 of the Income Tax Act, 1961. Section 139 cannot mean only section 139(1) but it means all sub-sections of section 139. Under sub-section (4) of section 139 any person who has not furnished a return within the time allowed to him under sub-section (1) of section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier. The assessee's case was that since the return for the assessment year 1996-97 could be furnished before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier, under sub-section (4), he was entitled to fulfil the conditions for exemption U/s. 54 up to March 30, 1998. The assessee was entitled to exemption U/s. 54 on the entire capital gains on the sale of his house property.

9. In the case of the assessee it is apparent from the date of investment made by the assessee which is extracted hereinabove from the order of the Ld. AO that, the entire investment on the two flats are made within the due date of filing of the return U/s. 139(4) of the Act. Therefore as per the Ratio laid down by the Hon'ble High Court Supra,

the assessee is eligible for deduction U/s. 54 of the Act for the entire amount of investment towards purchase of his residential house property for Rs. 75,21,121/-. Accordingly, when deduction U/s. 54 of the Act is granted to the assessee, the LTCG of the assessee will be NIL. Therefore, we hereby direct the Ld. AO to delete the LTCG of Rs. 21,66,244/- assessed in the hands of the assessee.

10. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 12th Sept, 2019.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 12th Sept, 2019

OKK

Copy to:-

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- 2) ITO (International Taxation)-II, I.T. Towers, 'B' Block, Hyderabad.
- 3) The CIT(A)-10, Hyderabad
- 4) The Pr. CIT-10, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File