

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.1897/Bang/2019</b>
<b>Assessment year : 2014-15</b>

Shri K. R. Vijaya Raghava Reddy (HUF), No.108, New No.67, HAL 2 <sup>nd</sup> Stage, Kodihalli, Bengaluru – 560 008. <b>PAN : AAFHK 7378 Q</b>	Vs.	The Assistant Commissioner of Income Tax, Circle - 1(2)(1), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Suman Lunkar, CA
Revenue by	:	Shri. Manjeet Singh, Addl. CIT (DR)(ITAT), Bengaluru
Date of hearing	:	19.12.2019
Date of Pronouncement	:	07.02.2020

**ORDER**

***Per A.K. Garodia, Accountant Member***

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-1, Bengaluru, dated 27.06.2019 for the Assessment Year 2014-15. The grounds raised by the assessee are as under:-

1. The learned Assessing Officer had erred in passing the impugned assessment order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has instead of quashing the order erred in dismissing the appeal filed by the appellant in limine. The orders passed by the Assessing Officer and Commissioner of Income tax (Appeals) are bad in law is liable to be quashed

2. In any case and without prejudice, the learned Commissioner of Income tax (Appeals) has erred in dismissing the appeal in limine for want of prosecution. Such an order passed by Commissioner of Income tax (Appeals) is not tenable in law and is liable to be quashed.

3.1 In any case the learned Assessing Officer had erred in denying Exemption U/s. 54F of the I.T. Act, 1961 and the Commissioner of Income tax (Appeals) has erred in holding that the issue of deduction U/s. 54F cannot be decided in the absence of information.

3.2. On the fact and circumstances and law applicable, the appellant is entitled to deduction U/s. 54F of the I.T. Act, 1961 and the same is to be allowed to the appellant.

4. The appellant denies the liability to pay Interest U/s. 234A, 234B and 234C of the I.T. Act, 1961. The interest having been levied erroneously is to be deleted.

5. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the impugned orders passed by Commissioner of Income tax (Appeals) and Assessing Officer be quashed or in the alternative, the appellant be held entitled to deduction U/s. 54F of the I.T. Act, 1961 as claimed and interest levied be also deleted.

2. In the course of hearing, it was submitted by learned AR of the assessee that it is true that several dates were fixed by the learned CIT(A) for hearing and the assessee could not make any effective compliance before him. She submitted that even in that situation, learned CIT(A) should have decided the issue on merit instead of dismissing the appeal of the assessee *in limine* by following the Tribunal order rendered in the case of CIT Vs. Multiplan India Ltd., reported in 38 ITD 320. She submitted that under these facts and in the interest of justice, the matter should be restored back to the file of CIT(A) for a fresh decision after providing reasonable opportunity of being heard to the assessee. She submitted that she gives an undertaking that if the matter is restored back to the CIT(A), proper compliance will be made before CIT(A). Learned DR of the Revenue supported the order of CIT(A).

3. We have considered the rival submissions. We find that as per the Assessment Order, it is noted by the AO in para 3.1 that the assessee had filed a letter dated 30.11.2016 contents of which are reproduced by the AO in that para of the Assessment Order in which it has been submitted by the assessee before the AO that the assessee has completed the construction of the building in May 2014 itself and the assessee had utilized the entire sale proceeds for

construction of the said residential building but since assessee had not preserved the bills, for estimating the cost of construction, the assessee engaged a valuer and although the valuer had visited the place and taken the measurement, valuation report was not received till that point of time and the assessee wanted more time to file the valuation report. The AO passed the Assessment Order on 06.12.2016 without granting any further time. In the impugned order of the CIT(A), there is no discussion on this aspect and CIT(A) had decided the issue by following the Tribunal order rendered in the case of CIT Vs. Multiplan India Ltd. (supra) and he has also observed in para 4 of his order that in the absence of written submissions, he had considered the grounds of appeal filed by the assessee and also gone through the Assessment Order passed by the AO and he has observed that the issue regarding deduction under section 54F of the Act cannot be disposed without having recourse to the additional evidence to establish the fact that the assessee is eligible for such deduction and ultimately, he held that the appeal is dismissed for want of prosecution. After considering the facts in entirety and in the interest of justice, the matter is restored back to the file of CIT(A) for fresh decision after providing reasonable opportunity of being heard to both sides. We want to make it clear that assessee should make proper compliance before CIT(A) without any delay. In view of this decision, no adjudication on merit is called for at this present state and we make no comment on merit.

4. In the result, appeal of the assessee is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(BEENA PILLAI)**  
**Judicial Member**

Sd/-  
**(A.K. GARODIA)**  
**Accountant Member**

Bangalore,

Dated: 07<sup>th</sup> February, 2020.

/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.