

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B-SMC' BENCH : Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 809/Hyd./2019
Assessment Year: 2010-11**

Shri Srinivas Bejgam
8-43/8/S/3, Balaji Hills
Boduppall
Hyderabad 500 013

vs. ACIT, Circle 15 (1)
Hyderabad

PAN: AAJPB2833L
(Appellant)

(Respondent)

For Assessee: Smt. S. Sandhya, AR.
For Revenue: Sh. A.C. Rout, D.R.

Date of Hearing : 27/02/2020
Date of Pronouncement : 29/04 /2020

ORDER

This is assessee's appeal for A.Y. 2010-11 against the order of Ld.CIT(A)-8, Hyderabad dated 15.02.2019.

2. Brief facts of the case are that the assessee, an individual, running a provisional store by name M/s Sri Parameshwara Kirana & General Stores had derived income from business and capital gains. During the Previous Year 2009-10, the assessee along with another person sold a house property bearing H.No.2-2-94 and 2-2-95, consisting of ground floor and first floor, on a total admeasuring and comprising area of 115 sq. yards situated at Ameerpet, Hyderabad for a consideration of Rs.20,00,000/- vide registered sale deed with document no. 1557/2009, dated 24.06.2009. The AO observed that the Market Value of the property as per the sale deed as determined by SRO for the purpose of payment of stamp duty was Rs.41,85,800/-. Therefore, he was of the opinion that provisions of S.50C of the Income Tax Act, 1961 (the Act) were applicable in assessee's case. Since the assessee has filed return of income for A.Y. 2010-11 admitting total income from business amounting to Rs.1,53,500/- after Chapter-VIA deduction, but the assessee

had not offered the said capital gain to tax, the AO re-opened the assessment u/s 147 of the Act by issuance of a notice u/s 148 of the Act. In response to the notice u/s 148 of the Act, the assessee submitted a letter stating that on account of sale of house property, his share was only Rs.10,00,000/- and the remaining share was with his brother, and out of sale consideration received, he has constructed first floor on the existing ground floor at house bearing H.No.8-43/8/S/3, Balaji Hills, Boduppall, Hyderabad, for which the assessee had claimed exemption from payment of tax on long term capital gain as he was holding only one house property apart from the one house he has sold. Since the assessee failed to disclose capital gain on the original return of income and as there was no claim of deduction u/s 54F of the Act in the original return, and the assessee failed to file the revised return of income, the AO held that the claim of exemption u/s 54F is not acceptable. The AO, accordingly, brought the long term capital gain of Rs.15,47,244/- to tax.

3. Aggrieved, assessee preferred an appeal before the CIT(A) and filed written submissions in support of his appeal. The CIT(A) considered the written submissions of the assessee and observed that the assessee has not filed any proof or evidence in support of the deduction claimed and that the assessee or his Representative did not appear before the CIT(A) in spite of several notices issued and opportunities given. Therefore, the CIT(A) has dismissed assessee's appeal.

4. Aggrieved, the assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

- 1) *The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*
- 2) *The learned Commissioner of Income-Tax (Appeals) erred in initiating proceedings u/s 147 of the I.T. Act for the purpose of invoking the provisions of Sec.50C of the I.T. Act.*

- 3) *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in not allowing deduction u/s 54 F of the I.T.Act.*
- 4) *The learned Commissioner of Income-Tax (Appeals) is not justified in mentioning that the appellant did not furnish the details for claiming deduction u/s 54 of the I.T.Act.*
- 5) *The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the appellant filed detailed written submissions and claimed deduction u/s 54 of the I.T. Act.*
- 6) *The learned Commissioner of Income-Tax (Appeals) ought to have decided the question as to whether the appellant is entitled for deduction u/s 54 of the I.T. Act.*
- 7) *The learned Commissioner of Income-Tax (Appeals) erred in confirming levy of interest u/s 234A and 234B of the I.T.Act.*
- 8) *Any other ground that may be urged at the time of hearing.*

5. The Ld.Counsel for the assessee, while reiterating the submissions made before the authorities below, submitted that the assessee had all the required information to substantiate his claim of deduction u/s 54F of the Act in his possession and prayed for an opportunity to produce the same. Ld.Counsel submitted that though the assessee had not claimed deduction u/s 54F of the Act before the AO, but since the capital gain has been brought to tax, he raised the claim u/s 54F before the AO but it was disallowed on the ground that it was not raised in his return of income. Therefore, he prayed that such claim may be treated as an additional ground before the Tribunal and prayed that the matter be remanded to the file of AO for consideration of such claim on merits.

6. The Ld.DR, however, opposed the contentions of the assessee and submitted that unless and until the assessee had made a claim u/s 54F of the Act in his return of income, it cannot be entertained at this stage.

7. Having regard to rival contentions and material placed on record, I find that in the original return of income, the assessee has not offered the capital gain to tax nor has he claimed deduction u/s 54F of the Act. In view of the

same, the assessment order, disallowing the claim of deduction u/s 54F is justified. However, the assessee had filed written submissions before the CIT(A) and had submitted before the Tribunal that he had all the relevant evidence to substantiate the claim u/s 54F of the Act. Since S.54F of the Act is a beneficial provision and the Hon'ble Courts have held that the beneficial provision should be construed liberally, I deem it fit and proper to admit assessee's claim of deduction u/s 54F of the Act and remand the issue to the file of the AO with a direction to consider the eligibility of the assessee for deduction u/s 54F of the Act and allow the same if the assessee satisfies the conditions. Needless to mention that the assessee shall be given a fair opportunity of hearing. The assessee is directed to produce all the necessary evidence before the AO and cooperate with the AO for early completion of the assessment.

8. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in Open Court on 29th April, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 29th April, 2020.

G.M.V

Copy forwarded to:

1. Sh. Srinivas Bejgam, H.No. 8-43/8/S/3, Balaji Hills, Hyderabad 500
2. 013.
3. ACIT, Circle 15 (1), Hyderabad
4. CIT(A)-8, Hyderabad.
5. Pr.CIT-7, Hyderabad.
6. D.R. ITAT Hyderabad.
7. Guard file

1.	Draft dictated on	17/03/2020
2.	Draft placed before the author	19/03/2020 23/04/2020
3.	Draft placed before the second Member	
4.	Draft approved by second Member	
5.	Approved Draft comes to SrPS	
6.	Kept for Pronouncement	29/04/2020
7.	File sent to Bench Clerk	