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

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

	ITA No.504/Hyd/2020		
	Assessment Year: 2010-11		
Satya Prakash Reddy Aedudodla, Hyderabad. PAN: ACPPR 9805 B		Vs.	Income Tax Officer, Ward-14(2), Hyderabad.
(Appellant)			(Respondent)
Assessee by:	Shri K.A. Sai Prasad		
Revenue by:	Shri Aluru Venkata Rao, DR		
Date of hearing:	18/03/2021		
Date of pronouncement:	22/06/2021		

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-3, Hyderabad in appeal no. 10217/2017-18, dated 14/02/2020 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the AY 2010-11.

2. The assessee has raised six grounds in his appeal and they are extracted herein below for reference:-

> "*1. The order of the Ld. First Appellate Authority confirming the order U/s. 143(3) r.w.s 147 of the IT Act is arbitrary and contrary to the provisions of law and facts of the case.*
>
> *2. The Ld. First appellate Authority is not justified in confirming the adoption of Rs. 1500/- claimed by the appellant for arriving at the taxable capital gain.*

3. *The Ld. First Appellate Authority is not justified in confirming the adoption of Rs. 400/- per s ft per construction as against Rs. 500/- claimed by the appellant for arriving at the taxable capital gain.*

4. *The Ld. First appellate Authority is not justified in confirming the disallowance of Rs. 20 lakhs out of Rs. 30 lakhs claimed as deduction U/s. 54 of the IT Act.*

5. *a) The Ld. First appellate Authority failed to appreciate the fact that the AO considered the bank withdrawals upto 30/07/2009 only. Whereas the due date for the assessment year under consideration is 30/07/2010.*

   (b) The Learned First Appellate Authority failed to appreciate the fact that the partial disallowance b the AO of deduction U/s. 54 is on wrong appreciation of facts.

6. *The appellant prays leave to add or amend or alter any of the grounds at the time of hearing of appeal."*

3. At the outset, the Ld. AR submitted before me that there is a delay of 136 days in filing the appeal before the Tribunal. In this regard, the assessee's Counsel had submitted a petition for condonation of delay wherein the reasons for filing the appeal beyond the prescribed time limit was explained. For reference, the relevant portion from the affidavit is extracted herein below: -

".....In the present case, in view of the Apex Court judgment in the suo motto Writ Petition (Civil) No.3 of 2020 taking cognizance of extension of limitation where it has mentioned in para 2(1) & 2(2) that the period between 15/03/2020 and 14/3/2021 shall stand excluded. The relevant observations are reproduced as under:

1. *In computing the period of limitation for any suit, appel, application or proceeding, the period from 15/03/2020 till 14/3/2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15/3/2020, if any, shall become available with effect from 15/3/2021.*
2. *In cases where the limitation would have expired during the period between 15/03/2020 till 14/3/2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15/3/2021. In the event the actual balance period of limitation remaining, with effect from 15/3/2021, is*

greater than 90 days, that longer period shall apply." (emphasis supplied).

In view of the aforementioned guidelines of the Apex Court, it is prayed that the delay of 136 days in filing the appeal is condoned."

4. On perusal of the delay condonation petition filed by the assessee's Counsel, I find that the delay of 136 days in filing of the assessee's appeal before the Tribunal has occurred due to the lockdown caused by the Pandemic which is beyond the control of the assessee. Therefore, in the interest of Justice I hereby condone the delay of 136 days in filing the appeal before the Tribunal and proceed to adjudicate the matter on merits.

5. The brief facts of the case are that the assessee is an individual engaged in business filed his return of income on 20/08/2011 declaring total income of Rs. 41,370/-. Initially the return was processed U/s. 143(1) of the Act and thereafter the case was taken up for scrutiny and the assessment was completed vide order dated 28/10/2017 u/s. 143(3) r.w.s 147 of the Act wherein the Ld AO computed the capital gains of the assessee at Rs. 13,79,397/-. On appeal, the Ld. CIT (A) dismissed the appeal of the assessee.

6. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee had arrived at a loss of Rs. 3,26,797/- towards the sale of his long-term capital asset. It was also

observed by the Ld. AO that the assessee had claimed deduction U/s. 54 of the Act for Rs. 30 lakhs. The assessee had disputed with the Ld. AO towards adopting the cost of the land sold as on 1/4/1981 and cost of construction for the purpose of computing his Long Term Capital Gain. However, the assessee could not produce any evidence to substantiate his claim before the Ld. AO. Therefore, the Ld. AO adopted SRO rate and determined the LTCG at Rs. 23,79,397/- by observing as follows:-

> *"7. After going through the submissions of the assessee and considering the values mentioned by the SRO, Doodh Bowli, Hyderabad along with the facts of the case, I am of the view that the values adopted by the assessee is without any basis in the absence of corroborative evidences in support of the claim except a registered valuer's report and the same is on higher side. Therefore, the value pertaining to land admeasuring 170.8 sq yds as on 1/4/1981 is adopted at Rs. 500/- per sq yds as against the value of Rs. 1,500/- per sq yd taken by the assessee. Similarly, the cost of construction for the building constructed during the FYs 1991-92 and 1992-93 admeasuring Rs. 4,050/- sq ft is valued at Rs. 400/- per sft as claimed by the assessee in his original return of income filed, so as to meet the ends of justice. The details working of the indexed cost of construction and the capital gains are worked out as under:*

	Sale consideration		76,95,000
Less	Indexed cost of acquisition of land 170.8 sq yds as on 1/4/1981 @ Rs. 500 sa yd, 170.83 X 500 = 85,415 X 632/100	5,39,822	
	Cost of construction of Bldg in 1991-92 @ Rs. 400/- per sft, 1350 sft X 400 = 5,40,000 X 632/199	17,14,974	
	Cost of construction of Bldg in 1992-93 @ Rs. 400 per sft, 2700 sft X Rs. 400 = 10,80,000 X 632/ 223	30,60,807	53,15,603
		Capital Gains	23,79,397

7. The assessee had also claimed deduction U/s. 54F of the Act for Rs. 30 lakhs against which the Ld. AO granted deduction only to the extent of Rs. 10 lakhs because assessee has utilised only Rs. 10 lakhs for the construction of his new residential house within the due date of filing of the return of income ie on 31/7/2009 and had failed to remit the balance amount in the capital gain account scheme in a National Bank as provided under the Act. Accordingly, the Ld. AO computed the taxable LTCG at Rs. 13,79,379/-. On appeal the Ld CIT (A) confirmed the order of the Ld. AO as the assessee could not produce any further materials to justify his claim.

8. The Ld. AR vehemently argued before me to adopt the cost of acquisition and cost of construction stated by the assessee but however, he could not produce any evidence to justify his stand. The Ld AR further argued that the exemption claimed by the assessee U/s. 54F may be granted as the assessee has utilised the entire amount for the acquisition of the new asset. The Ld. DR on the other hand prayed for confirming the order of the Ld. Revenue Authorities.

9. I have heard the rival submissions and carefully perused the materials on record. Since the assessee is unable to produce any evidence with respect to his cost of land as on 1/4/1981 and cost of construction, I do not have any other option but to confirm the order of

the Ld. Revenue Authorities who had relied on the SRO valuation and fairly estimated the cost of construction. Therefore, the grounds raised by the assessee on these regards are devoid of merit.

10. However, with respect to the claim of deduction U/s. 54F of the Act for Rs. 30 lakhs the Chennai Bench of the Tribunal in ITA No. 2455/Chny/2017 dated 30/01/2018 in the case of ACIT vs. Justice T.S. Arunachalam it was held that if the sale proceeds are deposited in Nationalised Bank it would suffice to claim the benefit of deduction U/s. 54F of the Act. Relevant portion from the said Tribunal's order is reproduced herein below for reference:

> *"7. We have heard the rival submissions and carefully perused the material on record. At the outset we find this issue squarely covered by the decision of the Chennai Bench of the Tribunal in ITA No.1167/Mds/2016 vide order dated 15.09.2016 wherein on the identical situation it was held that such small technical breach will not disentitle the assessee the benefit of Section 54 of the Act. The gist of the decision is reproduced herein below for reference:-*
>
> *"8. We have heard the rival submissions and carefully perused the materials available on record. In the decision of Shri Madhuvan Prasad Vs. ITO, supra the Chennai Bench of the Tribunal has allowed the benefit of section 54 of the Act because the assessee had fulfilled all the conditions prescribed under section 54 of the Act barring the deposit of the sale proceeds in the "capital gain scheme account" as prescribed under section 54(2) of the Act. In that decision reliance was also placed in the decision of Hon'ble Apex Court in the case of Motilal Padampat Sugarmill Co.Ltd. Vs. State of Uttar Pradesh & Ors wherein it was held, that 'thus there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement there is no such Maxim known to the law. In the given case before us also, it is not disputed that the assessee had not fulfilled the conditions prescribed under section 54 of the Act barring the deposit of the sale proceeds in the "capital gain scheme account". Moreover, the facts reveal that the assessee had deposited the entire sale proceeds in his savings bank account maintained with nationalized bank out of which he has constructed his house. The only small lacuna assessee had made is that the assessee though had placed the entire sale proceeds in the*

nationalized bank he has not transferred the same in the "Capital gain scheme account". Considering these facts of the case and the decisions of the Tribunal and the Hon'ble Apex Court cited above, we are of the considered view that for this small technical lapse of the assessee, the benefit of section 54 should not be denied. Section 54 of the Act is a beneficial provision and a beneficial interpretation has to be made as far as possible for giving benefit to the assessee. The assessee had proceeded to comply with the provisions of section 54 of the Act but has only made a small technical breach which we are of the considered view should not disentitle the assessee for the benefit of section 54 of the Act. Therefore, we hereby direct the learned Assessing Officer to grant the benefit of section 54 of the Act to the assessee and accordingly delete the addition made by him which was further sustained by the learned Commissioner of Income Tax (Appeals)."

7.1 Further the Ld.CIT(A) has also followed the decisions of various higher Judiciary wherein the issued is held in favour of the assessee in similar circumstances. Therefore we do not find it necessary to interfere with the order of the Ld.CIT(A) on this issue."

Now, Since the assessee has claimed before me that the entire amount was deposited in Nationalised Bank and thereafter fully utilised the same for the purpose of acquiring the New asset within the period specified under the Act, in the interest of justice, I hereby remit back the matter to the file of the ld. AO in order to verify the claim of the assessee and decide the matter in accordance with law and merit and in the light of the Tribunal decision cited herein above.

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

12. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, I find it appropriate, taking into consideration of the

extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, I have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

Pronounced in the open Court on the 22nd June, 2021.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 22nd June, 2021.

OKK

Copy to:-

1) Satya Prakash Reddy Aedudodla, C/o. Katrapati & Associates, 1-1-298/2/B/3, 1st Floor, Ashok Nagar, Hyderabad – 500 020.
2) Income Tax officer, Ward-14(2), IT Towers, Masab Tank, Opp. AC Guards, Hyderabad-500 004.
3) CIT(A)-3, Hyderabad.
4) Pr. CIT-3, Hyderabad.
5) The DR, ITAT, Hyderabad
6) Guard File