IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH : Hyderabad

(Through Video Conference)

Before Smt. P. MADHAVI DEVI, Judicial Member
and
Shri L.P. SAHU, Accountant Member

ITA No. 1779/Hyd./2019
Assessment Year: 2016-17

ITO, Ward - 4 Warangal	vs.	Smt. Gyana Kumari Rojanala Warangal [PAN: AMHPR2269M]
(Appellant)		**(Respondent)**

For Revenue: Dr. R. Deepak, D.R.
For Assessee: Shri A.V. Raghuram, AR.

Date of Hearing : 02/08/2021
Date of Pronouncement : 30/08/2021

O R D E R

PER L.P. SAHU, A.M.

This appeal of Revenue is directed against the order of the CIT(A)-3, Hyderabad dated 04.09.2019 pertaining to A.Y. 2016-17.

2. Facts of the case in brief are that the assessee filed return of income on 06th Feb, 2017 declaring total income of Rs.1,57,900/- and income from long term capital gain at Rs. 1,40,454/-. On perusal of the documents, it has been observed that the assessee has entered into agreement-cum- general power of attorney with M/s Prakruthi Infrastructure and Developers vide registered document no. 6174 of 2013 executed on 6.11.2013 for development of open land admeasuring 7254 sq.yards situated in survey no.

104, 161, Manchirevula village, Rajendra Nagar Mandal, R.R.Dt., united Andhra Pradesh into residential apartments and duplex houses.

2.1. As per the development agreement the developed area is agreed to be shared by the assessee and the developer as under:

- Sharing of duplex houses – 47.53; and
- Sharing of residential apartments – 365 : 63.5

On the date of executing the assessee has received only 2 flats and 1 duplex, therefore the AO construed that sec. 2(47) will apply. Accordingly the capital gain shall be computed as per sec.45 of the Income Tax Act, 1961. The AO after analysis of the documents computed capital gain of Rs.6,16,52,201/- and disallowed the claim made by the assessee u/s 54 of the Act. Being aggrieved assessee went in appeal before the CIT(A) who granted partial relief to the assessee.

3. Aggrieved by the order of CIT(A), the Revenue is in appeal before us by raising the following grounds :

"1. That the ld.CIT(A)'s action in allowing the appeal without hearing the AO is illegal, arbitrary and not in consonance with the principles of natural justice.

2. That on the facts and in the circumstances of the case, the Ld.CIT(A) is not justified in allowing the appeal.

3. That on the facts and in the circumstances of the case, the Ld.CIT(A) is not justified in deleting the addition made by the AO on account of wrong claim of deduction u/s 54F."

3.1. Ld.DR relied on the order of the AO and further submitted that the AO has rightly calculated the capital gain in the hands of the assessee during the AY, therefore, the order of the AO should be restored.

3.2. On the other hand, Ld.AR relied on the order of the CIT(|A) and submitted that the AO has himself accepted that the capital gain tax will arise in the AY 2014-15, therefore, there is no occasion to take action in this AY

and the CIT(A) also allowed the appeal of the assessee on this count which is extracted here under.

"IX) Ground Nos.2, 3, 4 and 5 in appeal relate to the determination under the head 'Capital Gain' and denying the claim of exemption u/s.54F of Income Tax Act, 1961. It was further submitted by the appellant that the liability of capital gain arises during the A.Y.2014-15 was accepted by the Assessing Officer and also relied on the decisions of courts which were said to be applied to the facts and circumstances of the case. The appellant also submitted in the Grounds that the denial of exemption u/s.54F of the Act by the Assessing Officer was erroneous. Facts of the case, grounds of appeal, assessment order and submissions of the appellant were perused.

It is seen that the Assessing Officer had accepted on page 4 of the assessment order as follows:-

In the facts of the instant case, all the conditions envisaged u/s.53A of the TP Act, ate satisfied in the previous year ending 31-3-2014 whet! the development agreement was registered. Thus there is a transfer within the meaning of sec.2(47) of the Act read with section 53A of TP Act in the previous year ending 31-3-2014 relevant to the asst. year 2014-15.

Therefore, the capital gains arising on the development agreement accrues in the previous year ending 31-3-2014 relevant to the A.Y.2014-15 would have been disclosed the capital gains in the Asst. Year 2014-15 only not in the A.Y.2016-17. Hence, the deduction claimed by assessee u/s 54 of the Act, is not allowable, as held by the jurisdictional high court decision in the case of Potla Nageswara Rao (2013) 365 ITR 249.

This has been brought out in the submissions of the appellant. The appellant also placed reliance on the decisions of the Hon'ble AP High Court in the case of CIT vs Syed Ali Adil (352 ITR 418)(AP), CIT Vs Anand Basappa (309 ITR 329)(Karnataka), CIT Vs K.G. Rukminiamma (196 taxmann 87)(Karnataka).

As brought out in the appellant's submissions earlier, the land owned by the appellant was 7254 Sq.Yds. This was given for development to My s. Prakruti Infra Structure and Developers for construction of 22 apartments and 8 duplex houses with total constructed area of 63417 sq. ft. Out of this the appellant's share was 47% for duplex houses and 36.5% for residential apartments.

The Hon'ble High Court of Karnataka in the case of CIT Vs Anand Basappa [2009] 309 ITR 329 1180 Taxman 4(Kar.), held that Section 54 makes it apparent that the proceeds should be invested in a residential house. However,

it being a beneficial provision, it should be construed liberally and the deduction cannot be restricted. In this context, the appellant during the course of appellate proceedings placed reliance on the following decisions and also made submissions:-

(a) The Hon'ble High Court of Karnataka in the case of CIT vs Smt. K.G. Rukminamma [2011] (196 Taxman 87)(331 ITR 211)(Kar.) held that wherein a residential house were transferred and 4 flats in a single residential complex were purchased by the appellant, and it was held that all four residential flats constitute a residential house for the purpose of Section 54 and that the four residential flats cannot be construed as four residential houses for the purpose of Section 54 of the Income Tax Act, 1961.

(b) From reading of the decisions of the Hon'ble Karnataka High Court in the cases of CIT Vs Anand Basappa [2009] 309 ITR 329 1180 Taxman 4(Kar.) and CIT vs Smt. K.G. Rukminamma [2011] (196 Taxman 87)(331 ITR 211)(Kar.), it is clear that the phrase 'a residential house' indicates the nature of property to be acquired and not a number of properties. The appellant also placed reliance on the decisions of jurisdictional High Court in the case of Potla Nageswara Rao [365 ITR 249](2013) wherein it was held that the elements of the factual position and the year in which agreement was entered into were relevant for the purpose of assessment of capital gain on development agreement ix] s.2(4 7) of the Income Tax Act, 1961.

c) It is seen that the jurisdictional High Court had accepted the decision of the Karnataka High Court in the case of CIT vs Syed Ali Adil [2013](352 ITR 418)(AP). In this decision the Hon'ble AP High Court had held as follows:-

"5. Aggrieved thereby, the assessee filed an appeal to the CIT (Appeals), Guntur. He allowed the appeal by order dt.13-1 0-201 0 holding that the Assessing Officer had acted too technically and had erroneously denied the assessee the deduction to the extent of 50% and that since the assessee had purchased two flats having adjacent kitchens and toilets which have a common meeting point, he is entitled to 100% deduction under section 54 for both the flats purchased by him.

6. Challenging the same, the Revenue filed 1. T.A. No. 284/ Hyd/ 20 11 to the Income Tax Appellate Tribunal. By order dt.09-09-2011, the Tribunal dismissed the appeal of the Revenue on the ground that it had consistently taken the view that even though flats are located at different floors, when they could be combined, it should be construed as a single residential accommodation only; that the said view is supported by the decisions of the Tribunal reported in K. G. Vyas v. Seventh ITO [1986] 16 ITD 195 (Bom.), ITO v. P. C. Ramakrishna, (HUF) [2007] 108 ITD 251 (Chennai) and Prem Prakash Bhutani v. Asstt. CIT [2009] 31 SOT 38 (Delhi) (URO)

7. Challenging the same, the Revenue has filed the present appeal.

8. Heard Sri B. Narasimha Sarma, learned Standing Counsel for the Income Tax Department at the stage of admission.

9. He contended that the deduction under section 54 of the Act is allowable only for one residential house and not for more than one residential house and that the Tribunal erred in holding that the deduction under section 54 of the Act is allowable for two independent residential flats in the same complex. He also placed reliance on the decision of the Special Bench of the Tribunal in ITO v. Ms. Sushila M. Jhaveri [2007] 107 ITD 327 (Mum.)

10. We see no force in the said contention. As held in D. Ananda Basappa's case (supra) by the Karnataka High Court, the expression "a residential house" in section 54 (1) of the Act has to be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number and where an assessee had purchased two residential flats, he is entitled to exemption under section 54 in respect of capital gains on sale of its property on purchase of both the flats, more so, when the flats are situated side by side and the builder has effected modification of the flats to make it as one unit, despite the fact that the flats were purchased by separate sale deeds. This decision was followed by the Karnataka High Court in CIT v. Smt. K. G. Rukminiamma [2011] 196 Taxman 87[2010] 8 taxmann. com 121 (Kar.) where a residential house was transferred and four flats in a single residential complex were purchased by the assessee, it was held that all four residential flats constituted "a residential house" for the purpose of section 54 and that the four residential flats cannot be construed as four residential houses for the purpose of section 54. Admittedly the two flats purchased by the assessee are adjacent to one another and have a common meeting point. In the impugned order, the Tribunal has also relied upon the decisions in K.G. Vyas's case (supra), P. e. Ramakrishna, HUF's case (supra) and PremPrakash Bhutani's case (supra) wherein it was held that exemption under section 54 only requires that the property should be of residential nature and the fact that the residential house consists of several independent units cannot be an impediment to grant relief under section 54 even if such independent units were on different floors. The decision in Ms.Suseela M.Jhaveri's case (supra) holding that only one residential house should be given the relief under section 54 does not appear to be correct and we disapprove of it. We agree with the interpretation placed on section 54 by the High Court of Kamataka in D. Ananda Basappa's case (supra) and Smt. K. G. Rukminiamma's case (supra) and the decisions of the Mumbai, Chennai and Delhi Benches of the Tribunal in K.G. Vyas (supra), P.e. Ramakrishna, HUF (supra) and Prakash Bhutani (supra). We therefore hold that the CIT (Appeals) was correct in setting aside the order of the Assessing Officer and the Tribunal rightly confirmed the decision of the CIT (Appeals).

11. We hold that no substantial question of law arises for consideration in this appeal and the same is accordingly dismissed. No costs."

d*) Further, the Hon'ble Madras High Court in the case of CIT vs Gumanmal Jain [2017](394 ITR 666)(Madras) had reviewed various judgements related to Section 54 and 54F of various Courts including subsequent amendments brought to section 54 and 54F* and *the non-applicability to the pre-amendment scenario. It is also noted that thee facts and circumstances of the issue in the* appellant's case are similar to those in the case of Syed Ali Adil which had been decided by the jurisdictional High Court.

Considering the various facts and circumstances of the instant case, it is held that the addition made in the assessment for A.Y.2016-17 is not warranted and hence deleted and the issues relate to A.Y.2014-15 as has been brought to note by the Assessing Officer on page 4 of the assessment order. Accordingly, the Assessing Officer is directed to take suitable remedial action for A.Y.2014-15. Ground nos. 2, 3, 4 and 5 are partly allowed.

In the context of the judicial decisions of the AP High Court which have been respectfully followed, the canons of judicial discipline which have been adhered to. The Hon'ble Supreme Court in Jain Exports (P) Ltd., and Others vs. Union of India &. Others [3 SCC 579], Union of India & Others vs Kamlakshi Finance Corporation [55 ELT 433](SC) and the Hon'ble AP High Court in the case of State of Andhra Pradesh vs. CTO (169 ITR 564) are respectfully followed. The Hon'ble AP High Court in the case of State of Andhra Pradesh vs. CTO (169 ITR 564) while adjudicating a contempt of court case held:

"It is clear from the judicial pronouncements above referred to that the authorities and the tribunals functioning within the jurisdiction of the court in respect of whom this court has the power of superintendence under article 227 are bound to follow the decisions of this court. on an appeal, the operation of the judgment is suspended: It is not permissible for the authorities and the Tribunals to ignore the decisions of this court or to refuse to follow the decisions of this court on the pretext that an appeal is filed in the Supreme Court which is pending or that steps are being taken to file an appeal. If any authority or the tribunal refuses to follow any decision of this court on the above grounds, it would be clearly guilty of committing contempt of this court and is liable to be proceeded against.

We have come across innumerable instances where the authorities below, especially authorities entrusted with the collection of taxes and excise duties, refused to follow the decisions of this court on the around that appeals were either filed or steps were being taken to file appeals, and raised fantastic tax demand and initiated proceedings for recovery of such taxes. The result was that this court was flooded with innumerable writ petitions. We need hardly

observe that all this is totally irregular and should have been avoided. "We cannot help putting on notice all the authorities concerned that this court would not hesitate to take stern action for contempt if decisions of this court are disregarded unless the operation of the judgments of this court is suspended by the Supreme Court.

The ratio of the division bench decision of the Bombay High Court [S.H.Kapadia & V.C. Daga JJ.] in the case of Bank of Baroda vs H.C. Shrivatsava (256 ITR 385) as brought out in Para 16 of the judgement/findings are brought to note as they are on the issue of judicial discipline. Para 16 of the judgement reads as follows:

"At this juncture, we cannot resist from observing that the judgement delivered by the Tribunal was very much binding on the assessing officer. The assessing officer was bound to follow the judgments in its letter and spirit. It was necessary for the judicial unity and discipline that all the authorities below the Tribunal must accept as binding the judgement of the Tribunal. The Assessing Officer being inferior officer vis-a-vis the Tribunal; was bound by the judgment of the Tribunal and the assessing officer should not have tried to distinguish the same on untenable grounds. In this behalf, it will not be out of place to mention that in the hierarchical system of courts which exists in our country, it is necessary for each lower tiers including the High Court, to accept loyally the decisions of the higher tiers. It is inevitable in hierarchical system of courts that there are decisions of the Supreme Appellate Tribunals which do not attract the unanimous approval of all members of the judiciary. But the judicial system only works if someone is allotted to have the last word, and that last word once spoken is loyally accepted. The better wisdom of the court below must yield to the higher wisdom of the court above as held by the Supreme Court in the matter of CCE v. Dunlop India Ltd. AIR 1985 SC 330. "

In the result the appeal is partly allowed."

4. After hearing both the sides and on perusal of material and orders of authorities below, we observe that the joint development agreement was executed on 6.11.2013 and from the assessment order the AO has himself accepted that the transfer took place as per sec.2(47) rws 53A of the Transfer of Property Act which was taken place for the previous year ending only on 31.3.2014 relevant to AY 2014-15, therefore, the capital gain should be arising in the AY 2014-15. The observation of the AO is as under.

"In the facts of the instant case, all the conditions envisaged u/s.53A of the TP Act, are satisfied in the previous year ending 31.3.2014 when the development agreement was registered. Thus there is a transfer within in the meaning of

sec.2(47) of the Act read with section 53A of TP Act in the previous year ending 31-3-2014 relevant to the asst. year 2014-15. Therefore, the capital gains arising on the development agreement accrues in the previous year ending 31.3.2014 relevant to the A.Y. 2014-15 would have been disclosed the capital gains I the AY 2014-15 only not in AY 2016-17 Hence, the deduction claimed by assessee u/s 54 of the Act, is not allowable, as held by the jurisdictional High Court decision in the case of Potla Nageswara Rao (2013) 365 ITR 249.

Accordingly, we uphold the order of CIT(A) and dismiss revenue's appeal.

5. In the result, Revenue's appeal is dismissed.

Order pronounced on 30/08/2021.

Sd/-	**Sd/-**
(P. MADHAVI DEVI) **JUDICIAL MEMBER**	**(L.P. SAHU)** **ACCOUNTANT MEMBER**

Dated: 30th August, 2021

*gmv

Copy of Order forwarded to:

1. Smt Gyana Kumari Rojanala, H.No. 15-2-61/62, Opp. Ramakrishna Talkies, SVP road, Warangal, Telangana
2. ITO, Ward 4, Warangal
3. ACIT, Warangal Range, Warangal.
4. CIT(A)-3, Hyderabad
5. Pr.CIT-3, Hyderabad.
6. D.R. ITAT Hyderabad
7. Guard File