

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 79/Bang/2020
Assessment Year : 2008-09

Shri Philips C Chacko, No. 301, Silver Springs Apts., Bohra Layout, Gottigere, B.G. Road, Bangalore – 560 083. PAN: ACOPC6162F	Vs.	The Income Tax Officer, Ward 4 (3)(5), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Smt. Priyadarshini Besaganni, JCIT (DR)

Date of Hearing	:	09-12-2021
Date of Pronouncement	:	23-12-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 20/11/2019 passed by the Ld.CIT(A)-9, Bangalore on following grounds of appeal:

- “1. The order of CIT-A is opposed to Law and facts of the case.*
- 2. The CIT-A erred in holding that consideration received in excess of consideration recorded in Sale Deed as "Income from Other Sources". Ever after the buyers have confirmed the same is towards sale of property.*
- 3. The CIT —A erred in relying on various decisions for holding sale consideration as Income from Other Sources which is not applicable to the Appellant's fact of the case.*

4. *The CIT — A erred in not allowing deduction U/s 54F even in respect of Investments made before the due date of filing the return of income.*
5. *The CIT-A erred in holding that the appellant was not entitled to deduction U/s 54F on the second house since the appellant purchase both the houses on the same day hence, on the day of purchase he had no house to deny the benefit.*
6. *The CIT-A erred in not dealing with the various jurisdictional High Court decision cited by the appellant for denying deduction u/s 54F of the Act.*
7. *The CIT-A erred in confirming the levy of interest u/s 234A, 234B & 234C of the Act and further calculation of interest u/s 234A, B & C of the Act is not in accordance with Law since the rate, method of calculation is not discenarable from the order of the assessment on the fact and circumstance of the case.*
8. *The appellant craves, lead to add, alter, amend, substitute, change and delete any grounds of appeal*
9. *For the above and other grounds that may urged at the time of hearing, the appellant prays that the appeal may be allowed and Justice rendered.”*

2. Brief facts of the case are as under:

The assessee filed the return of income for the relevant assessment year on 28.3.2009 admitting total income of Rs.1,07,340/-. The assessee included in the return of income long term capital gains on sale of agricultural land and claimed exemption u/s.54F with regard to the investment in the residential property. The Ld.AO observed a discrepancy in the consideration recorded in the sale deed for transfer of the property by the assessee and also the sale deed with regard to the purchase of transferred property. The Ld.AO found that there were deposits in the bank account of the assessee which was submitted to be sale consideration received. The Ld.AO observed that there is difference in the sale consideration claimed and what was recorded in the sale deed. He held the difference in

sale consideration to be unexplained income from other sources, and made addition of Rs.61,48,693/-. The Ld.AO also computed the long term capital gains without allowing exemption claimed u/s.54F by assessee on purchase of two properties.

3. Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

In respect of treating the sale consideration as per registered document by the Ld.AO was up held by the Ld.CIT(A). The Ld.CIT(A) did not accept the evidences filed by assessee in respect of sale consideration received over and above the amount mentioned in the registered sale document. Assessee had raised additional ground in respect of exemption under section 54F, which was rejected by the Ld.CIT(A).

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

4. We note that the dispute in respect of actual sale consideration has not been decided based on evidences filed by assessee. We note that the Ld.CIT(A) rejected additional evidences. It is noted that the Ld.CIT(A) held the sale proceeds received by assessee over and above the sum mentioned in the registered sale deed as Income from other sources. In our view, the Ld.CIT(A) should have admitted the additional evidences and considered the claim in the light of additional evidences filed by assessee.

5. On the issue of claim u/s. 54F, in our view assessee is entitled to make fresh claim for deduction or relief before the appellate authorities, during the course of the appellate proceedings, irrespective of whether claim not being made before Ld.AO by

revising the return of income or during the course of the assessment proceedings. The decision by *Hon'ble Supreme Court* in *Goetze (India) Ltd. vs. CIT* reported in 284 ITR 323 does not prohibit such claim before the appellate authorities.

6. We therefore remand both these issues to the Ld.AO to consider it afresh. The Ld.AO shall first decide the actual amount of sale consideration received by assessee based on the agreement entered into by the parties towards sale of property, followed by the claim under section 54F by assessee based on the principles laid down by *Hon'ble Supreme Court* in case of *Comm. Of Customs vs. M/s. Dilip Kumar & Co.* in *Civil appeal no. 3327 of 2007*. Ld.AO shall verify if assessee satisfies basic requirement to claim the benefit as available to assessee for year under consideration and consider the claim under section 54 in accordance with law. Assessee is directed to file all necessary evidences/documents in support of its argument and claim.

Accordingly the grounds raised by assessee stands allowed for statistical purposes.

In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in open court on 23rd December, 2021.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 23rd December, 2021.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore