IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad
(Through Video Conferencing)

Before Shri S.S. Godara, Judicial Member
AND
Shri Inturi Rama Rao, Accountant Member

ITA Nos.215 & 216/Hyd/2019		
Assessment Year: 2008-09 & 2010-11		
Smt. Kambam Rajeswari, Hyderabad. PAN : ADOPK5794N.	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(2), Hyderabad.
(Appellant)		(Respondent / Cross-Appellant)
ITA Nos.217 & 218/Hyd/2019		
Assessment Year: 2008-09 & 2010-11		
The Deputy Commissioner of Income Tax, Central Circle – 1(2), Hyderabad.		Smt. Kambam Rajeswari, Hyderabad. PAN : ADOPK5794N
(Appellant)		(Respondent / Cross-Appellant)
Assessee by:	Shri B.G. Reddy.	
Revenue by:	Shri T. Sunil Goutam	
Date of hearing:	03.03.2022	
Date of pronouncement:	04.03.2022	

O R D E R

PER BENCH :

These assessee's and Revenue's twin cross-appeals each for A.Y. 2008-09 (ITA Nos.215 and 217/Hyd/2019) and A.Y. 2010-11 (ITA Nos.216 and 218/Hyd/2019) arise from the CIT(A)'s separate orders; both dated 30.10.2018 passed in case Nos.88 & 87/15-16/DCIT CC-1(2)/CIT(A)-11 Hyd, assessment

year wise, respectively; in proceedings u/s 143(3) r.w.s. 147 of the Act.

Heard both the parties. Case files perused.

2. Learned authorized representative appearing at the assessee's behest states that he pressed for her identical sole substantive grounds in A.Y. 2008-09 on merits that both the lower authorities have erred in law and on facts in treating the corresponding Joint Development Agreement dt.14.09.2017; followed by supplementary agreement dt.19.07.2008 as an instance of transfer within the meaning of section 2(47)(v) of the Act. We note in this factual backdrop that the learned lower authorities have treated the assessee's foregoing joint development agreement as part-performance u/s 2(47)(v) r.w.s. 53A of the Transfer of Property Act giving rise to long term capital gains as against the taxpayer's stand that her liability to be assessed for the consequential capital gains only for the year of sale of the corresponding developed housing units. It is in this backdrop that we have gone through the foregoing twin development agreements and more particularly, the former one dated 14.09.2017, indicating the assessee to have merely admitted her developer in joint possession only as per clause 18 without conferring any right or title or share or claim or interest therein as per clause 7(i) thereof. Learned departmental representative could not rebut this clinching aspect. His only case is that once the assessee has shared her possession, it amounts to part-performance u/s 2(47)(v) r.w.s. 53A of the

Transfer of Property Act in light of hon'ble jurisdiction high court's judgment in Potla Nageswara Rao Vs. DCIT 365 ITR 249 (A.P).

3. We have given our thoughtful consideration to the foregoing rival pleadings and find no substance in the Revenue's stand. This is in light of the clinching fact that the assessee had nowhere surrendered or transferred her right or title or claim in favour of the developer since she had herself made it clear that the same could not be treated as an instance of part-performance in light of the foregoing statutory provisions. We thus hold that the learned lower authorities have erred in law and on facts in treating the former assessment year herein 2008-09 as the year of chargeability of the consequential capital gains arising from the joint development agreement dt.14.09.2017. The assessee succeeds in her latter substantive grounds as well as in main appeal ITA No.215/Hyd/2019 to this effect. All other pleadings therein are rendered academic.

Coming to the assessee's latter appeal ITA No.216/Hyd/2019, learned counsel states very fairly that the same stands rendered academic in light of our findings in her former appeal hereinabove. Ordered accordingly.

4. We now advert to the Revenue's cross appeals ITA Nos.217 and 218/Hyd/2019 seeking to reverse the CIT(A)'s findings holding the assessee as entitled for section 54F deduction vide following detailed discussion:

4.3 The additional Ground No.(iv) is alternative ground taken that, if the capital gains is chargeable, the assessee is eligible for deduction u/s. 54F. In this regard, the assessee submitted as under:

"05."In course of assessment and appeal proceedings, the appellant claimed that no income is assessable as there was no 'transfer' on the date of development agreement. Without prejudice to the same, it was contended that in the event of assessing the capital gain in AY 2009-10 on the basis of CIT(A)'s order, the appellant is entitled to deduction under section 54F in respect of ht entire constructed area (flats falling to his share and share of his sons (38.5%) as decided by various High Courts and ITATs. This claim was supported by the decisions of various High Courts in the cases of CIT v Syed Ali Adil [2013] 352 ITR 418 AP, CIT v Gita Duggal [2013] 30 taxmann 230 Delhi, (SLP rejected by SC), ITO v Smt. Rohini Reddy[2010] 122 ITD 1 (Hyd), Vithal Krishna conjeevaram 2013, 36 Taxmann.com 542 Hyd) CIT v Smt. K.G. Rukmini Amma [2011 331 ITR 211 Kar] (SLP rejected by SC). It was urged that since this was the predominant view of all High Courts on this issue including that of jurisdictional High Court/ITAT in respect of eligibility of deduction under section 54F, the same is binding on the Assessing Officer. It was submitted that although there was an amendment section 54 and 54F substituting the word "a" with 'one' with effect from 01/04/2015, the same is prospective as held in the case of CIT v Karpagam 226 Taxman 197 (Mad). In this regard, the appellant submits as under:

- This is a case in which the AO was of the opinion that capital gain is assessable in the year of development agreement taking into account the notional value as deemed consideration for working out 'full value of consideration for computing capital gain under section 45 read with section 48. He was of the view that capital gain accrued during the assessment year 2008-09 which was the year of 'transfer' took place. He was also of the view that receipt of consideration is not material and a notional/deemed consideration would suffice. It is submitted that in the same logic he should have allowed deduction under section 54F on a notional basis since house were in the process of construction. It is submitted that two divergent interpretations cannot be adopted; one for the purpose of 'transfer' treating a notional consideration as full value of consideration and another for the purpose of allowing deduction under section 54F.
- It is principle in law that in completing assessment, the Assessing Officer should follow the doctrine of 'parity of reasoning' or 'parity principle' to compute income and deduction. Therefore at the same breath, the AO cannot hold that the income can be assessed in the year of development agreement by deeming 'full value of consideration' which lies in the womb of future on a notional basis and at the same time adopting a different approach to give deduction under section 54F. It is submitted that once an income is computed adopting full value of consideration of all the flats on a notional/deeming basis, deduction should be allowed in respect to of entire constructed area (flats). To do otherwise would result in a lopsided assessment and the process of computation of income as mandated by the Act would fail.
- At this stage it is profitable to refer to the interpretation of a deeming provision as reported in ITR 129 440 (SC). In this judgment the court followed the observation of Lord Asquith in East End Dwellings Co Ltd v Finsbury Borough Council [1952] AC 109 at p.132 observed as under: "If you are bidden to treat an imaginary state of affairs as real, you must also imagine as real the consequences and incidents which, if the putative stat of affairs had in fact existed, must inevitably have flowed from or accompanied it; and if the statute says that you must imagine a certain state of affairs, it cannot be interpreted to mean that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

Following this principle, it can be safely concluded that a deemed provision should be applied and followed to its logical conclusion. When the full value of consideration is fictionally determined under section 45 read with 48, the same should be extended to allowing the deduction

under section 54F as otherwise the computation of income as contemplated in the Act would fail.

- *In the case of ITO v P A Sarala [2015] 58 taxmann.com 290 (Chennai), the development agreement was entered into on 08/02/2006. It was held "Therefore, the assesee, from the date on which the transfer was made by entering into agreement for joint development, is in the process of constructing the residential house. Therefore, the assesse is entitled for exemption under section 54F.*
- *In the case of Narasimha Raju 35 taxmann.com 90(Hyderabad), it was held as a principle that - If the assessee has invested the money in construction of residential house merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated that would not disentitle the assessee from claiming the benefit u/s. 54F of the Act." In the case of the appellant, the investment is in the form of land.*
- *In the case of CIT v Gita Duggal [2013] 30 taxmann 230 Delhi, (SLP rejected by SC), the assessee entered into a development agreement on 08/05/2006 relevant to assessment year 2007-08. Although the assessee was to get the constructed houses, the Hon'ble Court allowed deduction under section 54F in respect of all flats.*
- *In the case of Vishal Dutta v ITO (2016) 68 taxmann.com 337 (Bombay), it was held that completion of construction or occupation is not requirement of law, and, therefore, exemption cannot be denied merely because house is not yet complete.*

In view of the above judicial precedents, completion of construction is not a requirement to claim deduction under section 54F. Even otherwise, these views being favourable to the appellant, the same may be adopted as decided by Supreme Court in the case of CIT v Vegetable Products Ltd {1973] 88 ITR 192 318."

4.3.1 I have considered the ground revised and the submissions of the assessee. The adjudication of above issue does not require any new facts and the same can be done based on assessment records and legal submissions. On consideration of ratio laid down by various judicial fora relied on by the assessee, it is seen that the assessee is eligible for deduction u/s. 54F. The balance sheet filed by the assessee along with return of income shows that the assessee does not own more than one residential house on the date of 'transfer'. Accordingly, it is held that the assessee is eligible for deduction u/s. 54F for the entire consideration receivable/assessed by the AO. The above additional ground raised by the assessee is allowed.

5. It is clear that the instant issue of allowability of section 54F deduction arising from assessee's joint development agreement involving receipt of developed area as sale consideration has already been held eligible for section 54F deduction in hon'ble jurisdictional high court's decision in CIT Vs. Syed Ali Adil (2013) 352 ITR 418 (supra). We thus see no merit in the Revenue's instant sole substantive grievance in both of its appeals Nos.217 and 218/Hyd/2019 which are dismissed.

6. To sum up, the assessee's former appeal ITA No.215/Hyd/2019 is partly allowed and latter appeal ITA No.216/Hyd/2019 is dismissed as rendered infructuous. Both the Revenue's cross-appeals ITA Nos.217 and 218/Hyd/2019 are dismissed in above terms. A copy of this order may be placed in respective case files.

Order pronounced in the Open Court on 04th March, 2022.

Sd/-	**Sd/-**
(INTURI RAMA RAO) **ACCOUNTANT MEMBER**	**(S.S. GODARA)** **JUDICIAL MEMBER**

Hyderabad, dated 04th March, 2022.
TYNM/sps

Copy to:

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2	The Deputy Commissioner of Income Tax, Central Circle – 1(2), Hyderabad.
3	The CIT(A)-11, Hyderabad.
4	The Pr.CIT(Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order