

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.326/Hyd/2018		
Assessment Year: 2010-11		
Shri Surendra Babu Sabbineni Hyderabad PAN:ADQPS3461E (Appellant)	Vs.	Dy.C.I.T. Central Circle 2(2) Hyderabad (Respondent)
Assessee by:	Advocate Kotha Hari Prasad	
Revenue by:	Shri Rajendra Kumar CIT(DR)	
Date of hearing:	11/01/2023	
Date of pronouncement:	25/01/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 7.12.2017 of the learned CIT (A)-12, Hyderabad relating to A.Y.2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and had filed his original return of income for the A.Y 2010-11 on 1.2.2011 declaring total income of Rs.10,98,93,550/- and agricultural income of Rs.6,53,800/-. A search and seizure operation was conducted in the case of the assessee on 25.11.2011. The assessee filed a revised return of income on 25.11.2011 admitting income of Rs.22,31,37,160/-. The Assessing Officer completed the assessment u/s 143(3) r.w.s.

153A of the Act on 31.3.2014 accepting the returned income. Subsequently, the Pr. CIT, Central, Hyderabad initiated proceedings u/s 263 of the I.T. Act on the ground that the Assessing Officer has allowed the claim of deduction u/s 54F without proper verification of the facts in the wake of assessee's contention that some of the properties were given on rent and hence commercial in nature. He further observed that the contentions were not raised during the course of assessment proceedings. He, therefore, set aside the order passed by the Assessing Officer u/s 143(3) r.w.s. 153A of the Act with a direction to examine all the issues as per his order and redo the assessment after making detailed inquiry and investigation and examining the claim of the assessee.

3. Subsequently, in the light of the above direction, the Assessing Officer issued notice u/s 143(2) of the I.T. Act and asked the assessee to furnish certain details which were furnished by the assessee. From the details furnished by the assessee, the Assessing Officer noted that during the impugned A.Y, the assessee has earned capital gain income of Rs.19,61,62,476/- and after reducing the claim of deduction u/s 54F of Rs.9,54,10,035/- had offered the net taxable gain at Rs.10,57,52,441/-. From the various details furnished by the assessee, he noted that the assessee has the following property other than the new asset:

1. Flat at Sai Nivas, Shaikpet Village, Hyderabad
2. House at Sai Praveen Kuteer
3. Flat No.1, First Floor, Sai Lakshmi Nilayam, Serilingampally, Hyderabad
4. Flat No.4, First Floor, Sai Lakshmi Nilayam, Serilingampally, Hyderabad
5. Flat No.204, Sai Lakshmi Nilayam, Serilingampally, Hyderabad
6. Swastik Apartment, Siliguri

7. House No.A-102, Noida, U.P

3.1 The AO asked the assessee to explain as to why deduction claimed u/s 54F should not be disallowed, since the assessee owns more than one residential house other than the new assets. The assessee in response to the same filed detailed written submission justifying the claim, the contents of which has been summarized by the Assessing Officer and which read as under:

1. Sai Nivas, Shaikpet Village, Hyderabad: The assessee has purchased a Flat in the year 2000 and the same was demolished by Municipal Corporation of Hyderabad during the year 2002-03 due to unauthorized construction. At present this is vacant site. Photograph is enclosed for your reference.

2. Sai Praveen Kuteer: 500 Sqft of one guest room which is not a residential house. There is no kitchen. Only one single room

3. Flat No.1, Sai Lakshmi Nilayam, Serilingampally, Hyderabad: property was given on rent for commercial purpose. This property is not used for residential purpose. Copy of rental agreement and Municipal tax receipts are enclosed.

4. Flat No.4, Sai Lakshmi Nilayam, Serilingampally, Hyderabad: This property was given on rent for commercial purpose. This property is not used for residential purpose. Copy of rental agreement and Municipal tax receipt enclosed.

5. Flat No.204, Sai Lakshmi Nilayam, Serilingampally, Hyderabad: This property was given on rent for commercial purpose. This property is not used for residential purpose. Copy of rental agreement and Municipal tax receipt enclosed.

6. Swastik Apartment: 2075 Sq.ft of commercial property situated at Siliguri, West Bengal which is not residential property. This property given for let out to Coastal Projects (P) Ltd for commercial purpose for their Branch Office.

7. House No.A-102, Noida, Uttar Pradesh: This is industrial property purchased at Noida. This is not residential property. Copy of sale deed enclosed. In the sale deed clearly mentioned as industrial property".

4. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He accepted the contention of the assessee in respect of property at Sai Nivas, Shaikpet

Village, Hyderabad which is a vacant site(S.No.1) and, the House No.A-102, Noida, Uttar Pradesh (S.No.7) which is an industrial property and therefore, not to be reckoned while considering the claim of deduction u/s 54F.

5. However, so far as properties situated at Sai Pavan Kuteer (S. No.2), Flat No.1, Flat No.4, Flat No.204 of Sai Lakshmi Nilayam, Hyderabad (S.Nos.3 to 5) and Swastik Apartment at Siliguri (S.No.6) are concerned, he observed from verification of the agreements that the same are in the nature of residential units only and the assessee has shown the income from these units under the head "Income from House Property" only. According to the Assessing Officer, though the assessee claims that these properties are used for commercial purposes, however, assessee failed to show with proper evidences that the properties are commercial in nature and any distinction between rental income from a residential property and rental income from a commercial property. In absence of any such detail, the Assessing Officer held that these properties are residential units only and hence to be reckoned while considering the claim of deduction u/s 54F. In view of the above, the Assessing Officer held that the properties at S.No.2 to 6 fall under the category of residential houses and therefore, the case of the assessee is hit by proviso (a)(i) of section 54F of the I.T. Act. He therefore, disallowed the claim of deduction u/s 54F at Rs. 9,54,10,035/- and determined the taxable income at Rs.31,92,00,995/- and agricultural income of Rs.6,53,800/-.

6. Before the learned CIT (A), the assessee reiterated the same arguments as made before the Assessing Officer. So far as the property at Siliguri is concerned, it was argued that an

Agreement of lease executed on 10.10.2008 between the assessee and Coastal Projects Limited, a company. The purpose of lease for six years is for the purposes of carrying on the business therein and according to the terms and conditions the premises was given on lease to use for the purpose of business. Secondly, the A.O has agreed that the Act does not create any distinction between rental income from a residential property and rental income from a commercial property, that is to say the income is assessable under the Head "House Property" whether it is put to use as residential or put to commercial use. It was argued that provisions of sec. 54F deny exemption only if the property earlier owned is a residential house. Therefore, the fact that income is assessable under the Head "House Property" is not determinative of the nature of impugned properties, whether residential or not. On the other hand, the user of the properties for commercial purposes is supported by contemporaneous lease agreements specifying the business user by the lessee.

7. So far as the property situated at Sai Praveen Kuteer is concerned, it was argued that the same is a guest accommodation of 500- s.ft for use by occasional guests. No income from house property has been derived or admitted. It is an accommodation used purely for accommodating guests visiting on business purposes and this is also not a residential house. Relying on various decisions, it was argued that the AO is not justified in denying the claim of deduction u/s. 54F of the I.T.Act,1961.

8. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer in denying deduction u/s 54F of the Act by observing as under:

“6.0 I have carefully considered the submissions made by the appellant as the as well observations of the AO in the impugned order. It is the contention of the appellant's AR that the exemption u/s.54F has been wrongly denied, since the properties in question i.e., three flats in Nos.010, 104 & 204 at 1-63/126/B, Kavuri Hills, Hyderabad, and one property at Siliguri, are leased to a limited company, and further that merely showing the income from such properties under the head 'Income from House Property' does not prove that the units are residential units. This contention of the appellant's AR, however, does not hold any water, since as accepted by the appellant's AR himself, the properties in question are 3 flats which are clearly in the nature of residential units, and merely the fact that they have been leased out to a limited company, does not change the character or nature of the said units. As rightly pointed out by the Assessing Officer, the onus is upon the assessee to prove that the properties are commercial in nature, and merely furnishing the lease deed of the properties does not absolve the appellant of the said onus, more so when the lease deed are with Coastal Realty Limited and Coastal Projects Limited, both being companies where the appellant himself is Chairman/Director. Also, the contention of the appellant's AR that the Assessing Officer has considered the said properties as residential merely because the income has been offered under the head 'Income from House Property' is incorrect. This is not the only reason for denial of the exemption, as discussed above, but it is an important reason, which further proves that the said properties are residential in nature. Neither do the case laws relied upon help the case of the appellant in any manner, since the facts are entirely different in the case at hand. Moreover, for the property at Sai Praveen Kuteer (Sr.No.2), the appellant has no explanation/evidence to offer whatsoever, except stating that it is a guest accommodation. I therefore find no infirmity in the order of the Assessing Officer in denying the claim of the assessee u/s.54F. The addition made on this account is therefore confirmed.

7.0 In the result, the appeal of the appellant for the AY 2010-11 is DISMISSED”.

9. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

“1. The Learned Commissioner of Income Tax (Appeals 12 [CITA]) has erred on facts and in law while passing the appellate order.

2. The Learned CIT(A) is not justified in holding that the lease income admitted under the Head House Property is conclusive of the house property being residential and not commercial and that exemption u/s. 54F is not allowable.

3. Learned CIT(A) & A.O are not correct in holding that the onus of proof is on the assessee and it is not discharged. Evidence produced by the assessee in support of the leasing and user for commercial purposes of the accommodation has not been rebutted by the A.O or the CIT(A).

4. Learned CIT(A) based her finding on suspicion surmise and conjecture that as the user for commercial purposes is by the companies in which the assessee is a Chairman/Director, the accommodation is not commercial but residential.

5. Learned CIT(A) is not correct in stating that the case law cited is not applicable without considering the same.

6. For these any other grounds that may be raised at/before hearing, it is prayed that the exemption claimed u/s 54F be allowed”.

10. The learned Counsel for the assessee strongly challenged the order of the Id.CIT(A) in confirming the denial of deduction u/s. 54F of the I.T.Act. He submitted that the assessee has conclusively proved that the property situated at Sai Praveen Kuteer(S.No.2), Flats at Sai Lakshmi Nilayam being Flats No, 1,4 & 204 and the Flat at Swastik Apartment at Siliguri(S.No.6) are let out for commercial purpose and therefore are not residential units. The assessee does not own any house property other than the new asset purchased. Referring to the decision of the Delhi Bench of the Tribunal in the case of Sanjeev Puri vs DCIT reported in 2016 (72 taxmann.com 147), he submitted that the Tribunal in the said decision has held that it does not make any difference as to whether the property has been shown as residential house on the record of the government authority but actual user thereof by the assessee will be considered while adjudicating upon the eligibility of the deduction u/s. 54F of the I.T.Act claimed by the assessee. Referring to the decision of

Hon'ble High Court of Karnataka in the case of Navin Jolly vs ITO reported in 117 taxmann.com 323, he submitted that the Hon'ble Karnataka High Court in the said decision has held that the usage of the property has to be considered for determining whether the property in question is a residential property or a commercial property. Since in that case there was no dispute that the two apartments are being put to commercial use, therefore, the aforesaid apartments were not treated as a residential apartment. He submitted that the companies who have taken the flats on lease from the assessee were using the premises for conducting their business operations. This fact is also stated in the lease agreement and the assessee has not received any adverse notice from the Municipal Authorities regarding the functioning of the office of the companies.

11. He submitted that the Hyderabad Municipal Authorities had levied taxes as per the schedule rates for the Flats bearing Flat No.01,04 & 204 at Sai Lakshmi Nilayam, Kavuri Hills, Hyderabad based on the valuation fixed by the Corporation. The Municipal Authorities, however levied a differential tax for commercial use of the above premises and revised the taxes w.e.f. 2015. Referring to various pages of the paper book, he submitted that the taxes so levied at commercial rates are duly paid by the assessee. So far as the property at Siliguri is concerned, he submitted that the Municipal Authorities at Siliguri has not levied any differential taxes for commercial use. He accordingly submitted that since the flats situated at Sai Praveen Kuteer, Sai Lakshmi Nilayam and at Siliguri are let out for commercial use, therefore, these are not residential in nature and therefore, the deduction u/s. 54F of the I.T.Act could not have been denied to the assessee.

12. The ld.DR on the other hand strongly supported the order of the AO and the ld.CIT(A). He submitted that out of the seven properties owned by the assessee two properties are not residential but the remaining five properties are in the nature of residential units. Referring to the provisions of section 54F, he submitted that as per the said provisions if a person owns more than one residential house on the date of transfer process of the long term asset, the request of tax exemption on capital gain is not valid. Since the case of the assessee in the instant case is hit by the proviso (a)(i) of section 54F of the I.T. Act, therefore, the assessee is not entitled to get the benefit of deduction u/s. 54F of the I.T.Act.

12.1 So far as the various decisions relied on by the ld.counsel for the assessee are concerned, he submitted that these decisions are distinguishable and not applicable to the facts of the present case. So far as the decision in the case of Sanjeev Puri(supra) is concerned, the ld.DR submitted that the Flat in that case was used by the assessee for his profession as a Lawyer. Similarly, in the case of Navin Jolly(supra), which was decided by the Hon'ble Karnataka High Court, these Flats were let out to be used for commercial use which are in the nature of service apartments. However, in the instant case, the assessee has let out the properties to a company which are situated in residential societies and there is no evidence on record to show that the properties are being used for commercial purposes by paying the requisite taxes levied by the Municipal Authorities for commercial use of the properties. Therefore, it cannot be said that the flats are let out for commercial purposes. Referring to the statement of facts, the ld.DR submitted that the assessee himself is the Managing Director of the Coastal Projects Ltd. which is a Private Limited

Company and the properties are let out to Coastal Projects Ltd. Thus, the assessee has not given the properties to any outsider and therefore, the transaction is between two interested parties. He accordingly submitted that since the order passed by the Id.CIT(A) is a reasoned one, therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

13. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case is an individual and the Managing Director of Coastal Projects Ltd, a Private Ltd Company. On the basis of notice issued u/s. 153A, the assessee filed the revised return of income on 25.11.2011 declaring total income of Rs.22,31,37,160/- and the AO had accepted the returned income. Subsequently, the Id.PCIT invoked the provisions of section 263 on the ground that assessee has claimed deduction u/s. 54F of the I.T.Act and the AO without considering the number of flats owned by the assessee had erroneously allowed the claim of deduction u/s. 54F of the I.T.Act without making due enquiries and therefore, the order has become erroneous and prejudicial to the interest of the revenue. We find subsequent to the section 263 proceedings, the AO obtained details of properties owned by the assessee and noticed that out of seven properties, two properties are not residential but the remaining five properties namely the house at Sai Praveen Kuteer, Flat No.1,4 and 204 at Sai Lakshmi Nilayam, Sherilingampalli at Hyderabad and Swastik Apartment at Siliguri are residential units and therefore, the assessee on the date of transfer of the capital asset, was owning more than one residential unit other than the new asset acquired and therefore,

he is not entitled to deduction u/s. 54F of the I.T.Act. We find the ld.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld.counsel for the assessee that all these five properties above are let out for commercial use and therefore, does not fall under the purview of a residential unit and therefore, assessee cannot be denied the benefit of deduction u/s. 54F of the I.T.Act.

14. We do not find any merit in the above arguments of the ld.counsel for the assessee. A perusal of the details furnished by the assessee shows that although, the property at Siliguri, West Bengal is let out to Coastal Project Ltd. and the flats No.101, 104 & 204 at Hyderabad to M/s. Coastal Reality Ltd, however, all these properties are situated in residential societies and the ld.counsel for the assessee could not prove with evidence that these flats situated in the residential societies are in fact used for commercial purposes. On being a pointed query raised by the Bench as to whether the local authorities are charging taxes applicable to commercial properties for the flats which have been let out for commercial use, the ld.counsel for the assessee could not prove the same. In fact the ld.counsel for the assessee in his written submission has admitted that the Municipal Authorities levied the taxes applicable for commercial use of the premises only w.e.f 2015 for the property situated at Flat No.1, 4 & 204 at Sai Lakshmi Nilayam, Hyderabad. Similarly, there is no levy of tax for commercial use of the property by the Municipal Authority for the property situated at Siliguri. There is also no evidence that the electricity department has charged the electricity charges applicable to commercial properties. Under these circumstances, we are unable to accept the contention of the ld.counsel for the

assessee that since the flats are utilized for commercial use, they are not residential in nature and therefore, the assessee is eligible to get the benefit of deduction u/s. 54F of the I.T.Act. Even though, the properties situated at Flat No.505 Begumpet is accepted to be used for business purpose of the assessee being used for conducting meetings with the clients relating to his construction projects undertaken, however, the flats at Swastik Apartments, Siliguri and the three flats at Lakshmi Nilayam, Kavuri Hills in Hyderabad cannot be accepted to be commercial in nature in absence of any satisfactory evidence. Under these circumstances, we are of the considered opinion that the benefit of deduction u/s. 54F was rightly denied to the assessee on the ground that the assessee owns more than one residential property on the date of transfer of the capital asset other than the new asset acquired.

15. So far as the various decisions relied on by the ld.counsel for the assessee are concerned, the same in our opinion are distinguishable and not applicable to the facts of the case of the assessee. In the case of Sanjeev Puri(supra) decided by the Delhi Bench of the Tribunal, the flat was utilized by the assessee for his professional purpose being a Senior Lawyer. Similarly, in the case of Navin Jolly(supra) decided by the Hon'ble Karnataka High Court, the flats were let out for commercial use being service apartments. However, in the instant case as mentioned earlier, the flats are situated in residential societies and there is no evidence on record to show that local authorities have charged the taxes applicable for commercial use of the property or the electricity department levied the charges applicable for commercial properties. Therefore, the decisions relied on by the ld.counsel for the assessee, in our opinion, are not applicable to

the facts of the present case. In this view of the matter and in view of the detailed reasoning given by the Id.CIT(A) on this issue, we do not find any infirmity in his order denying the benefit of deduction u/s. 54F of the I.T.Act. We, therefore uphold the order of the Id.CIT(A) on this issue and the grounds raised by the assessee are dismissed.

16. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 25th January, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
--	--

Hyderabad, dated 25th January, 2023
Vinodan & Thirumalesh /sps

Copy to:

S.No	Addresses
1	Shri Surendra Babu Sabbineni, Plot No.512/R, Road No.29, Jubilee Hills, Hyderabad 500033
2	Dy.CIT, Central Circle 2(2) Aaykar Bhavan, Basheerbagh, Hyderabad 500001
3	CIT (A)-12 ,Hyderabad
4	Pr. CIT- Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order