

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.420/Hyd/2022		
Assessment Year: 2015-16		
Rachit V Shah, 15-6-519, Begum Bazar, Hyderabad. PAN : AOCPS1898E	Vs.	ITO-7(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri Sunil Kumar Jain, CA
Revenue by:		Shri Kumar Adithya for Shri K.P.R.R.Murthy, Sr.AR
Date of hearing:		23.02.2023
Date of pronouncement:		15.03.2023

ORDER

Per Shri Laliet Kumar, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 06.07.2022 for the A.Y 2015-16, on the following grounds :

"1. In computing the total income, the CIT(A) has wrongly upheld the order of the learned Assessing Officer in disallowing exemption u/s. 54F of Income tax Act, 1961 claimed by the assessee amounting to Rs.2,63,67,705/- by stating that the assessee has used a colourable device to claim exemption u/s. 54F of the Income tax Act, 1961.

2. For that, your petitioner craves the right to put additional grounds at the time of appeal."

2. Brief facts of the case are that the assessee is an individual and has filed his return of income for the A.Y 2015-16 on 13.11.2015. A revised return in response to notice issued u/s 142(1) on 10.11.2017 declaring an income of Rs.7,80,890/- under the head House Property, Business, Capital Gains and Income from Other Sources. The return of income was processed u/s 143(1) of Income Tax Act, 1961 and the case was selected for limited scrutiny under CASS. The assessee produced relevant record and information before the Assessing Authority and the Assessing Authority ultimately passed the impugned assessment order for the said Assessment Year 2015-16 u/s 143(3) dated 29.12.2017 by disallowing exemption u/s 54F of Rs.2,63,67,705/- and assessed the total income at Rs.2,71,48,595/-.

3. It is the contention of the Ld. AR before us that the Ld. assessing officer and the Ld. CIT(A) had wrongly concluded that the gift deed executed by the assessee in favour of his father was a colourable device and it was executed only with a view to evade the due taxes and that assessee had wrongly claimed the exemption under section 54F of the Income Tax Act, 1961.

4. The ld. AR had drawn our attention to the order passed by the Assessing Officer and particularly paragraph 11.2 and 12 of the order wherein the following conclusion was recorded by the AO.

“11.2. In the course of hearing the AR was asked as to why it should not be construed that the assessee made a colourable device in the form of gift settlement to his father only to evade payment of tax on capital gains. To this, the AR said that the

father Is free to gift that property to any other person and not necessarily to his own son. If his submission were to be true that the father will be so charitable to gift the property to any other person than his son, then why would the gift settlement happen only within a week before the transfer of old property? If the father were to be so charitable, he would have rather refused any gift from his son or would have instructed him to gift it to any needy/poor person or rather would have instructed his son to pay taxes on capital gains (which will be only 20% of the gains) than losing 100% of the property to any other person in the form of further gift. Thus it is proved that a family arrangement has been made by the assessee to evade payment of due taxes to the State

12. In the light of the above it is clearly established that the assessee was effectively the owner of the two house properties viz., i) one at D.No. 3-6-305/43, 431L, Avanthi Nagar, Basheerbagh, Hyderabad and, ii another flat bearing number 171, 7" floor, Block-A, Srila Heights, St. Johns Road, East Maredpally, secunderabad as on the date of transfer of old asset, besides the third house property at Plot No.5, sy. No. 52 & 53, Saheb Nagar, Khurd Village, LB Nagar, Hyderabad, which the assessee himself claimed as house property in his return of income. In respect of the third property, the assessee claimed it is a commercial property but even failed to establish that It is a commercial property and the electricity bills (to prove non- domestic consumption) submitted by the assessee do not pertain to this third property at all. Notwithstanding the nature (i.e., whether commercial or residential) of the third property at Plot No.5, Sy. No. 52 & 53, Saheb Nagar, Khurd Village, LB Nagar, Hyderabad, it is already established that the assessee made colourable device in the form of gift settlement to his father in the absence of which the assessee would be technically in possession of two properties viz., one at D.No. 3-6-305/43, 431L, Avanthi Nagar, Basheerbagh, Hyderabad and another flat D.NO. 171, 7th floor, Block-A, Srila Heights, St. Johns Road, East Maredpally, Secunderabad) on the date of transfer of the old asset.

In view of the foregoing discussion, the exemption claimed by the assessee u/s.54F is denied."

5. Feeling aggrieved by the order of the AO, assessee preferred the appeal before ld.CIT(A), who had partly granted the relief to the assessee. The findings of the Ld. CIT(A) mentioned in the impugned order in paragraphs 5.7 and 5.8 of the order are to the following effect:

“5.7 The fact that he appellant owned another residential property at 171, 7th floor, Block-A, Srila Heights, St.Johns Road, East Maredpally, Secunderabad (till 26-10-2014) is not disputed by the appellant. The assessee gifted this house property to his father, Sri Vijay kumar shah by way of gift settlement deed in doc.No.107 of 2014 executed on 27-10-2014. Immediately after this gift settlement i.e, within a gap of 7 days, the assessee sold one land property jointly held with his mother in Survey Nos.114 and 115 situated at Gaganpahad village, Rajendernagar Mandal, Rangareddy District on 3-11-2014 for a total consideration of Rs.4,41,98,880/-, out of which the share of the assessee is Rs 2,28,38,880/-. Subsequently on 30-01-2015, the assessee purchased a new residential property for a consideration of Rs.3,39,66,000/-. The assessee used the sale proceeds of Rs.2,28,38,880/- of the previously sold property partly for the payment towards the acquisition of the new property. Thus, the assessee claimed exemption u/s.54F of the entire amount of capital gains arising from the sale proceeds of Rs.2,28,38,880/-.

5.8 From the nature of the transaction, it is quite clear that the intention of the assessee was to keep the property with him. That is why it was gifted to his father and not to any member outside the family. The idea was not to part with the property and at the same time avail benefit of exemption available u/s 54 of the Act. Therefore, the gift has been designed in a manner to avail the benefit of exemption under section 54F of the I T Act. Thus, I find that the whole "substance" of the gift transaction is to avail the exemption under section 54F of the I T Act. During the relevant period the assessee was not the owner of the residential property although he had full control over the property. Before the AO, the appellant has stated that his father is free to gift this property to any other person. Thus, I find that that the assessee has hypothetically attempted to justify the transfer of residential property to father in the garb of gift to avail exemption u/s 54 of the Act. At the appellate stage also, the assessee has not produced any evidence to fully substantiate his action to show that the main substance of the gift transaction is not to avail the exemption u/s 54 of the Act. The assessee has merely stated that his father Sri Vijay Kumar Shah is separately assessed under Income Tax Act with PAN: AMFPS4199D and therefore the gift transaction cannot be covered under the ambit of colourable device. The real intent of the gift transaction is to ensure that the appellant has only one self-occupied property in his books and can claim exemption u/s 54 of the Act without alienating himself from the property gifted. This action of the assessee is clearly a colourable device as envisaged in the case of the Mc Dowell and company Limited Vs commercial Tax officer (1985), 3 SCC 230, decided by Hon'ble supreme Court of India. This is elaborately discussed by the AO at para 11.1 of the Assessment order. Accordingly, I fully agree with the AO that the assessee has used

a colourable device to claim exemption u/s 54F of the Act. Therefore, the ground of the appellant is dismissed.

6. Feeling aggrieved by the order of the Id.CIT(A), the assessee is in appeal before us on the grounds mentioned hereinabove.

7. The Ld.AR had made the following submissions before us. Firstly, it was submitted that it is not impermissible under the law to gift the property on account of love and affection by the assessee to his father, therefore, the allegation of the Revenue that the gift deed is a 'colourable device' was incorrect. Secondly, assessee had gifted the property in the year 2014-15, before agreement of the sale of the property and thirdly, the father of the assessee had sold the same property in the year 2019-20 and therefore, the hunch of the Assessing Officer that the property will revert back to the assessee was unfounded, incorrect and imaginary. Lastly, assessee along with his father were paying income taxes and are high-net-worth individuals, therefore, there was no occasion to the Assessing Officer to conclude that the assessee was involved in tax avoidance by the 'colourable device'.

8. It was submitted that the tax planning under the law is permissible and there is no bar for the assessee to arrange his affair to pay minimum taxes. Merely, because the assessee had judiciously placed his financial affairs to reduce the tax liability, then assessee cannot be labelled as indulging in tax evasion by using a "colourable device". Ld.AR relied upon various decisions and filled the written submissions, which are to the following effect :

"The petitioner assessee Sri Rachit V Shah is an individual and has filed his return of income for the A Y 2015-16 on 13.11.2015 and a revised return in response to notice issued u/s 142(1) on 20.12.2017 declaring an income of Rs.7,80,890/-. The return of income was processed u/s 143(1) of Income Tax Act, 1961 and the case was selected for Limited scrutiny under Computer Assisted Scrutiny Selection (CASS). The assessee produced relevant record and information before the Assessing Authority and the Assessing Authority ultimately passed the impugned assessment order for the said Assessment Year 2015-16 u/s 143(3) dated 29.12.2017 by disallowing exemption u/s 54F of Rs.2,63,67,705/- and wrongly considering the property at Shaheb Nagar Kurd, as a residential property. The total income assessed by the Assessing Authority was Rs.2,71,48,595/- thereby making an addition of Rs. 2,63,67,705/- to the returned income. The nature of the addition to the returned income is as follows:

<i>Particulars</i>	<i>Amount(in Rs.)</i>
<i>Income as declared in the return</i>	<i>7,80,890/-</i>
<i>Add: Disallowance of exemption sec 54F I.T.Act, 1961</i>	<i>2,63,67,705/-</i>
<i>Total Income assessed</i>	<i>2,71,48,595/-</i>

Aggrieved by the order of the learned assessing officer, the assessee preferred an appeal before the First Appellate Authority (CIT(A)). The CIT(A) had partly allowed the appeal of the assessee by clearly specifying that the property mentioned above is a plot and not a residential property. However, the CIT(A) has wrongly upheld the order of the learned assessing officer by disallowing exemption u/s 54F of the Income Tax Act, 1961 amounting to Rs. 2,63,67,705/- For this ground, the assessee is preferring an appeal before the Hon'ble Income Tax Appellate Tribunal (ITAT).

Ground No. 1:-

"In computing the total income, the CIT(A) has wrongly upheld the order of the learned Assessing Officer in disallowing exemption u/s 54F of Income Tax Act, 1961 claimed by the assessee amounting to Rs. 2,63,67,705/- by stating that the assessee has used a colourable device to claim exemption u/s 54F of the Income Tax Act, 1961."

It is mentioned in the order of the CIT (A) that "The real intent of the gift transaction is to ensure that the appellant has only one self-occupied property in his books and can claim exemption u/s 54 of the Act without alienating himself from the property gifted. This action of the assessee is clearly a colourable device as

envisaged in the case of the Me Dowell and company Limited Vs commercial Tax officer (1985),3 SCC 230, decided by Hon'ble supreme Court of India. "

With respect to the above, we would like to inform that the CIT(A) has wrongly agreed with the learned assessing officer by stating that the whole gift transaction of the assessee is a colourable device.

Firstly, we would like to state that as on the date of transfer of capital asset, the assessee was holding the following properties:

1. House Property at D.No. 3-6-305/43, 431 L, Avanthi Nagar, Basheerbagh, Hyderabad.

2. Plot at Saheb Nagar, Kurd Village, LB Nagar, Hyderabad.

It is clear that the assessee had fulfilled the condition of Section 54F of the Income Tax Act, 1961 as the assessee had only one residential property (S. No. 1 above) on the date of transfer of capital asset and the proceeds of the sale of asset has been invested by the assessee in another residential property (new asset).

Now, the CIT (A) wrongly agreed with the learned assessing officer stating that the gift settlement deed executed by the assessee is a colourable device to evade taxes.

In this regard, we would like to state that the happening of both the transactions, i.e., gifting of the property by the assessee to his father and selling the capital asset, within a gap of 7 days was purely a coincidence.

The order of the CIT (A) states that "Gift settlement deed is clearly a colourable device .

Whereas, if the property is gifted to the father, being a lineal ascendant, the gifted property would come back to the son (assessee) as an inherited property or the father would even gift back the same property to his son during father's lifetime. Gifting the house property to his father is like throwing a ball tied with rubber band and the ball would come back to the thrower's hands after lapse of certain time. "

With respect to the above, it is to be noted that the learned assessing officer has wrongly stated that the gifted property would come back to the assessee only.

Firstly, it is to be noted that the property was gifted to father out of natural love and affection.

Why does the learned assessing officer think that the property gifted to father would come back to assessee only? The father could sell the property or even if inherited it would be divided among all the children and not just the assessee. The assessing officer is just quoting the proverb in his order without understanding the actual case, intention behind the purpose of gifting the property. Moreover, we would like to inform that the gifted property was sold by the assessee's father in AY 2019-20 and was considered in his Income Tax Return. Also, the total sale proceeds out of the gifted property were used by the assessee's father for his own purpose and nothing was given by him to the assessee. Therefore, this point that the assessee will only get back the gifted property is purely illogical.

Now, with respect to the case of the "Me Dowell and company Limited Vs commercial Tax officer (1985), 3 SCC 230" as quoted by the learned assessing officer and agreed by CIT(A) "that tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by [19721 861. T.R. 2 (3) 25 T.C. 107 resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. "

Firstly, it may be noted that even if it is assumed that the assessee has done tax planning to avail the benefit of section 54F, it is still legitimate as the assessee has fulfilled the conditions mentioned in 54F to avail exemption. So, the assessee cannot be denied the exemption of section 54F.

Secondly, with respect to the point that "it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax ". It is astonishing that the assessing officer is quoting this point upon such an assessee who along with his father is partner in the firm Swastik Mirch Store which is constantly paying income tax of Rs. 2,00,00,000/- approximately (Rupees Two Crores approximately). Both the assessee are High Net Worth Individuals paying taxes honestly all these years down the line and the words used against them are Colourable Device, Bogus Evidence, A voiding Payment of Taxes. It was better for the learned assessing officer to go through the files of the above mentioned assessee(s) before using such terms.

Thirdly, we would like to draw your honours kind attention to the following case laws:

A. The Apex Court in Union of India vs. Azadi Bachao Andolan (2003) 177 Taxation 775 has approved a decision of Madras High Court in M. V. Vallipappan vs. ITO (1988) 170 ITR 238, where the Madras HC has held that "the decision in Me Dowell case (supra) cannot be read as laying down that every attempt at tax planning is illegitimate and must be ignored, or that every transaction or arrangement which is perfectly permissible under

law, which has the effect of reducing the tax burden of the assessee, must be looked upon with disfavour."

*B. The Gujarat High Court while deciding the case *Banyan & Berry v. CIT* (supra), has observed that "what has been depreciated as tax planning for avoidance of tax are those acts which have doubtful or questionable character as to their bonafide and righteousness. Not all legitimate acts of a tax payer which in ordinary course of conducting his affairs a person does and are under law he entitled to do, can be branded of questionable character on the anvil of *Mc Dowell & Co. Ltd V. CTO* (supra) case, in which distinction between the methods of tax evasion and avoidance of tax through tax planning has been found to the effect [he tax planning may be legitimate provided it is within the framework of law. The learned Judges of Gujarat High Court delivered, "we are unable to read in the aforesaid decision that any act of an assessee which results in reduction of his tax liability or expectation of tax benefit in future amounts to colorable device a dubious method or method of subterfuge to avoid tax and can be ignored if the acts are unambiguous and bonafide. The principle cannot be read as laying down the law that the person is to arrange his affairs so as to attract maximum tax liability" .*

*C. The Gauhati HC has held in *CIT vs. George Williamson (Assam) Ltd. & ors.* (2004) 178 Taxation 597 (Gau): (2004) 265 ITR 626 (Gau), that "it is open for the assesseees to arrange its affairs in such a manner that it would not attract the tax-liabilities, so far, it can be managed within in the permissible limits of law. The assesseees can very well manage its tax affairs so that the tax attracted in the transaction is less and would not fall outside the four corners of the law applicable at the relevant time. The tax-management is permissible, if the law authorises so."*

*The CIT (A) and the learned assessing officer have only extracted the point of Colourable Device from the case of *Mc Dowell & Co. Ltd* without understanding the facts of the current case and also have not gone through the above mentioned case laws wherein the Apex Court itself has approved the decision of the Madras High Court where it held that the decision in *Me Dowell* case (supra) cannot be read laying down that every attempt at tax planning is illegitimate and must be ignored, or that every transaction or arrangement which is perfectly permissible under law, which has the effect of reducing the tax burden of the assessee, must be looked upon with disfavour.*

Even if the assessee has gifted the property to his father for tax planning what wrong has the assessee done? The assessee has completely fulfilled the requirements of section 54F to avail the exemption benefit. As per the above case laws, it is open for the assessee to arrange his affairs in such a manner that it would not attract tax liabilities within the permissible limits of law.

Therefore, it is clear that the officers have overlooked the case of the assessee and just tried to stick on a single point that the gift settlement deed is a colourable device and connected the same with the case of Me Dowell & Co. Ltd.

We again reiterate that happening of the two transactions, i.e., gifting of property and transfer of capital asset, within a gap of 7 days is purely a coincidence.

Moreover, as the learned assessing officer and the CIT (A) have stuck upon the case of Me Dowell and alleged that the gift settlement deed is a colourable device. it is clear from the above case laws that every legitimate act of the tax payer cannot be questioned on the anvil of Me Dowell & Co. Ltd V. CTO (supra) case. Even if the same is considered as tax planning as pointed by the officers, the same has to be allowed as it is within the four corners of law and :: legitimate act of the assessee.

From all of the above, it is clear that on the date of transfer of Capital Asset the assessee owned only one residential house (@ Avanthi Nagar). The assessee sold the capital asset and invested the proceeds in a new residential house property and thereby fulfilled the conditions of section 54F of the Income Tax Act, 1961 to claim exemption.

Hence, the intention of the CIT (A) is totally wrong, bad & illegal.

The Appellant prays that the addition of Rs.2,63,67,705/-made in respect of section 54F be deleted.

As such, Your Honor is requested to consider the above-mentioned facts and allow the appeal of the assessee.

9. On the other hand, the Ld. DR had submitted that the Ld. CIT(A) had passed the detailed elaborate order dealing with the assessee's contention, and there is no scope for interference at the level of second appellate authority i.e., the Tribunal. The ld. DR had submitted that it is not the case of the assessee before the Tribunal that the assessee was not aware of the applicable income tax law and its intricacies. The assessee's conduct must be seen from prevailing circumstances before or after sale of the property. The DR had submitted that the assessee gifted the property to his own father just before entering into agreement of sale. The

intention and mensrea are to be inferred and understood after appreciating the sequence of events which led to gifting the property. It is quite unnatural to gift the property just before the sale and seek exemption under section 54F of the Income Tax Act 1961, alleging he does not own more than one house at the time of claiming the deduction. He had strongly relied upon the lower authorities' order to support the case of the revenue.

10. We have considered the rival contentions of the parties and perused the material available on record, including the judgments cited during the course of the hearing by both the parties.

11. In the present case, the assessee entered into an Agreement of Sale cum General Power of Attorney on 03.11.2014. By virtue of the said document, the assessee had agreed to sell the land measuring Ac. 1-39.4 guntas in survey Nos. 114 and 115 situated at Ganganpahad Village. At page 4 of the agreement of sale, it is mentioned as under :

“2. That the Purchaser have paid a sum of Rs.4,41,98,880/- (Rupees Four Crores Forty One Lakhs Ninety Eight Thousand Eight Hundred and Eight only) in the following manner.

The purchaser have already paid a sum of Rs.2,18,880—(Rupees TWO LAKHS EIGHTEEN THOUSAND EIGHT HUNDRED AND EIGHTY ONLY) by way of cash to the Vendor No.1

a. The Purchaser has paid the balance amount of Rs.2,28,38,880/-(RUPEES TWO CRORES TWENTY HUNDRED AND EIGHTY ONLY) by way of DD bearing No.00340/, dt.3-11-2014, issued by HDFC Bank, Santosh Nagar Branch, Hyderabad to the Vendor NO.1 favoring SRI RACHIT SHAH S/o VIJAY SHAH.

b. A sum of Rs.2,11,41,120/- (Rupees TWO CRORES ELEVEN LAKHS FORTY ONE THOUSAND ONE HUNDRED AND TWENTY only) is paid by way of D.D. No.003402, dt 3-11-2014, issued by HDFC Bank, Santosh Nagar Branch, Hyderabad to the Vendor no.2 favouring SMT. HARSHA SHAH W/o VIJAY SHAH."

12. From the reading of the above said, it is clear that the assessee had already received a sum of ₹ 2,18,880/- by way of cash from the purchaser. The word "already" mentioned in the clause 2 clearly shows that it was paid prior to entering into agreement of sale. Normally, in the case of sale of immovable property, firstly, the seller identifies the buyer and thereafter, buyer conducts due diligence of title and thereafter, the parties negotiate the price of the property and lastly, buyer may apply for a loan, if any, and makes the payment and enters into an agreement of sale. In the present case, the two demand drafts of Rs.2,28,38,880/- dated 03.11.2014 and Rs.2,11,41,120/- dated 03.11.2014 were issued by HDFC bank in favour of Shri Rachit Shah and Smt. Harsha Shah, mother of Rachit Shah, i.e on the date of agreement of sale. The above said transaction of agreement of sale of the property happened on 03.11.2014 and the stamp papers were said to have been purchased on 01.11.2014. In the agreement, it was clearly mentioned that cash payment of Rs Rs.2,18,880/- already made to the assessee, prior to entering into an agreement of sale. No evidence has been filed before us as to when this cash amount was received by the assessee i.e. whether it is prior to executing the gift deed or at the time of execution of the agreement of sale. In both cases, the cash payment was paid prior to the agreement of sale which raises the doubt of the Bench as to the assessee's conduct. In our view, gift

deed dt.27.10.2014 was merely a paper gift deed as it was not covered with the transfer of possession and it was not executed on account of love and affection but was executed only for the purpose of taking undue benefit of the provision of law. Admittedly, even after executing the gift deed, the assessee continued to live on the same property with his father.

13. The Assessing Officer in the paragraph reproduced above have concluded that the gift deed though executed on 27.10.2014, was a colourable device as it was executed by the assessee just three days prior to entering into an agreement of sale. The conduct of the assessee, to gift the property to his father, just prior to entering into an agreement of sale raises doubt about the intention of the assessee. A perusal of clause 11 of the Gift Deed, copy of which is placed at Pages 23-28 of the paper book shows that Rs.2,20,000/- towards stamp duty and registration fee had been paid by the assessee vide Demand Draft No.317588 dt.12.01.2015 of Canara Bank, M.J. Market Branch, Hyderabad after execution of Agreement of Sale dt.03.11.2014 and just prior to purchase of asset on 30.01.2015. Quiet clearly, assessee was aware of the Income Tax provisions and was also aware that the assessee would not be entitled to the benefit of section 54F of the Act, if he had more than one residential house in his name before investing. In the present case, the assessee has shown the house property income from two houses, namely, oneself occupied (at Door No.3-6-305/43,43/1, Avanthi Nagar, Basheerbagh, Hyderabad) and one let out (at Sy.No.52 & 53, Saheb Nagar, Khurd Village, LB Nagar, Hyderabad). However, the assessee has gifted the house at Door No.3-6-305/43,43/1, Avanthi Nagar, Basheerbagh, Hyderabad by virtue of the gift deed

to his father, just before entering into an agreement of sale and had claimed the deduction u/s. 54F, after investing the proceeds received by him in respect to property in survey Nos.114 & 115 situated at Gagan Pahad village in buying the residential house property at Road No. 47, Plot no.946, Jubilee Hills, Hyderabad. The Assessing Officer had brought on record that the assessee had two residential properties before purchasing the residential house property at Road No.47, Plot no.946, Jubilee Hills, Hyderabad.

14. From the conduct of the assessee and in view of the circumstances prevailing at the time of the agreement of sale, more particularly giving gift to his father just before the date of agreement, it is clear that the act of the assessee to gift the house is nothing but a concerted effort to avoid the due payment of taxes to the Government. With a view to avoid the payment of taxes, the assessee surreptitiously gifted the house at Door No.3-6-305/43,43/1, Avanthi Nagar, Basheerbagh, Hyderabad to his father just before entering into agreement of sale and received the consideration of Rs.2,28,38,880/- on 03.11.2014 and Rs.2,11,41,120/- on 03.11.2014. Though, gift deed, on a standalone basis seems to be a natural act on the part of son to gift home to his father, but when the gift deed is to be examined in the light of the prior and subsequent acts and prevailing circumstances, then it is clear that the real intention of the assessee, was to claim the deduction u/s. 54F of the Act. Further, the assessee before and subsequent to gifting the property, continued to live with his father in the same property, which clearly shows that the gift deed executed by the assessee was merely a camouflage to claim the deduction u/s. 54F of the Act

and to avoid due payment of taxes to the Government. Undoubtedly, tax evasion connotes illegally suppressing facts, falsifying records, fraud or collusion to evade tax liability with the help of such unfair means. Whereas abusive tax avoidance involves 'contrived' or 'artificial' schemes. In the present case, the assessee was engaged in the artificial transfer of one house by way of gift deed just prior to the effective date. Further, under sections 23 and 24 of the Indian Contract Act, 1872, when the object is to defeat any provisions of law, and when consideration is of such nature that, if permitted, it would defeat the provisions of any law, the contract will be void. In the present case, per se gift deed was not executed on account of natural love and affection but was executed by the assessee to artificially avail the deduction u/s 54F of the Income Tax Act 1961.

15. We cannot countenance the assessee's conduct and allow the assessee to misuse and exploit the beneficial provisions of section 54F of the Act. Undoubtedly, as per the assessee, he is an individual having a high net worth and paying huge taxes. The assessee artificially created a gift deed of the property with a view to fit into the provisions of section 54F, so that he can claim the deduction against the sale of capital asset. The act of the assessee was prearranged step for execution, and it served no commercial purpose but was motivated to avoid paying taxes.

16. In view of the above, the orders passed by the assessing officer and Id.CIT(A) were within the four corners of law and do not require any interference. The decisions relied upon by the assessee are distinguishable on facts and do not apply to the facts

of the present case. Accordingly, the appeal of the assessee is dismissed.

17. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 15th March, 2023

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 15th March, 2023

Thirumalesh/sps

Copy to:

S.No	Addresses
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By Order