

**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.325/Hyd/2022		
Assessment Year: 2019-20		
The Dy. Commissioner of Income Tax – 1, (International Taxation), Hyderabad.	Vs.	Smt. Syama Reddy Malireddy, Hyderabad. PAN : AEYPM9330D.
(Appellant)		(Respondent)
Assessee by:		Sri K.C. Devdas, C.A.
Revenue by:		Sri K.P.R.R. Murthy
Date of hearing:		15.02.2023
Date of pronouncement:		20.03.2023

ORDER

Per Shri Laliet Kumar, J.M.

The captioned appeal is filed by the Revenue, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-10, Hyderabad dated 12.05.2022 for the A.Y. 2019-20 on the following grounds :

“1. Whether on the facts and in the circumstances of the case and in law, the Learned CIT(A) was correct in allowing an additional evidence i.e. Certificate of SRO submitted by the assessee before the Learned CIT(A) during the appellate proceedings without allowing reasonable opportunity to the Assessing Officer to examine/rebut the additional evidence under Rule 46A of Income Tax Rules, 1962.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in allowing deduction u/s. 54F of the I.T. Act, even though the legal formalities of getting the property in the appellant's name did not take place within the stipulated time u/s. 54F of the Act.

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in allowing the claim of 54F holding that the 09 independent properties are commercial units but not residential units in absence of the evidence in support of so as to categorize the properties as commercial units. Whether the CIT(A) was justified in admitting the additional evidence without disposing off the objections raised by the TPO on the admission of the same.”*

2. The brief facts of the case are that assessee is a Non-Resident Individual, who filed her Return of Income on 22.07.2019 for the A.Y. 2019-20 admitting the total income of Rs. 5,25,81,858/-. The case of assessee was selected for scrutiny through CASS, for which notice u/s 143(2) of the I. T. Act was issued and served on the assessee. Subsequently, notices were issued to the assessee from time to time and the assessee has submitted her reply through ITBA Module. In the present case, assessee had claimed deduction u/s 54F of Rs.3,63,73,330/- towards purchase of residential property at Hyderabad. However, the claim of assessee was not allowed by the Assessing Officer after examining the submissions of the assessee, as she failed to fulfill the conditions prescribed under section 54F of the Act. Thereafter, the Assessing Officer had passed draft assessment order u/s 143(3) r.w.s. 144C(3) of the Act on 30.11.2021 disallowing the claim of the assessee u/s 54F, thereby determining the long term capital gains at Rs.7,58,13,772/-

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who granted part relief to the assessee.

4. Feeling aggrieved by the order passed by the Ld. CIT(A), the Revenue is in appeal before us on the grounds mentioned herein above.

5. Before us, ld. DR had submitted that the assessee had not purchased any residential property within a period of two years from the date of sale of capital asset and as such, the assessee is not entitled to the relief u/s 54F of the Act. It was submitted that though it is the claim of the assessee that he has entered into an agreement of sale for the purpose of purchasing an apartment at Raidurg, Gachibowli, Hyderabad and paid the first installment by way of cheque on 23.04.2019 and thereafter, entered into an agreement of sale with the builder on 06.06.2019. Further, the assessee had paid the instalments total aggregating to Rs.4,10,85,000/- upto the date of filing of the return of income. However, the possession was not handedover by the builder upto the date of filing of the return of income. As per the stipulation, the builder has to handover the possession of the property on 24.08.2020. The assessee upto the date of passing of the assessment order was not able to get the possession of the property. During the assessment proceedings, the Inspector of Income Tax had submitted a spot enquiry report on 23.04.2021 and it was mentioned (pointing order of the ld.CIT(A) in Para 9.2 at page 16) that the residential apartment was under construction and was not capable of any shifting in the premises. He relied on Paras 9.2 and 9.3 of the order of ld.CIT(A).

"9.2 Further during the course of assessment proceedings the Inspector of Income Tax has submitted his enquiry report on 23.09.2021, which reads as under:

"As directed by the assessing officer, I went on enquiry in the case of Smt. Syama Reddy mallireddy (PAN : AEYPM9330D) on 23.09.2021 at under construction Residential apartment bearing flat no. 1102, Eleventh floor, situated at survey no. 66/2, RAidurg, Panmaktha village, Gachibowli, Serilingampally mandal, R. R. District to verify construction status of the flat/Apartment, as claimed by the assessee in her submissions, in connection with the pending scrutiny assessment case for the A.Y. 2019-20.

As observed at the location site, the said apartment is under construction. There is no proper lift/elevator is present, only a makeshift elevator is fixed through which construction workers/labourers. construction material are elevated. There is no Tiles/Marble flooring present in the corridor/lobby. As there is no name plate present for the flat no. 1102, Sri Praneet, Site manager, ascertained the flat no. 1102 and shown to me, one iron door(looks like temporary arrangement) is fixed at the entrance of the flat, which was locked. From outside it appears, that, no interior works are undergoing inside the said flat. The pictures taken at the site is attached in the enclosure."

9.3 Documentary evidence in the form of photographic evidence is available on record. On 25/09/2021, in response to the show-cause notice issued u/s 142(1), the appellant's A.R. has replied as under, along with photographic evidence which is also available on record:

"The Assessee is in receipt of Show cause Notice referred to above and under authorization we make the following representation:

The Assessee claimed deduction u/s. 54F in the AY 2019-20 towards purchase of Residential property at Flat No. 1102. 11th Floor. situated at Raidurg, Panmakhta Village. Gachibowli.

It is stated in Show cause notice that in this connection a local enquiry through spot verification was conducted by the inspector of your office at the said premises. to verify the construction status of the Apartment and noticed that the said apartment is under construction and to show cause as to under what circumstances the builder has transferred the possession to the Assessee and applicability of this property for claim u/s 54F.

We wish to bring to your kind consideration that the building under construction is a 30 storied building and the Apartment bought by the assessee is on the 11th floor which was completed long back and the possession handed over for taking up interior works. It may be mentioned here that the apartment is a large apartment of 5000 plus square feet, the interiors of which would take 6 plus months and the builder has handed over the possession to the Assessee with power and water supply.

However in view of the problems faced by the assessee in travel to India due to the pandemic. the interior works are yet to be taken up.

The elevators are under erection and for the present material lifts are available for people to move up and down. To summarise, the flat purchased by the assessee is ready for occupation.

We are enclosing some pictures of the premises for your perusal.

Kindly take the above information on record and allow the exemption claimed under Section 54F as the Assessee has completed her part of the responsibility of paying in full for the flat and the builder has completed the work within the time agreed and handed over the possession to the Assessee."

6. It was the submission by the ld. DR that till date neither the possession nor the title documents of the property were submitted by the assessee to the Revenue Authorities or to the Tribunal. It was further submitted that the builder namely, DSR Builders and Developers is a related party to the assessee and neither registration of property nor its possession was given to assessee. Therefore, assessee is not entitled to any relief u/s 54F of the Act. Ld. DR further submitted that assessee was owning 7 properties and the Assessing Officer had rightly denied the claim of the assessee as the assessee owned more than one residential property. It was also submitted by the ld. DR that there is a violation of principles of natural justice and Rule 46 of I.T. Rules, 1962 as the assessee had relied upon certain documents and ld.CIT(A) decided the case after relying upon the said documents. He had drawn our attention to Para 13.5 and 13.6 of the order of ld.CIT(A) which was to the following effect :

13.5 The appellant has submitted SRO certificate as well as documents in support of municipal taxes and GST paid during the course of appellate proceedings. The same were admitted by me as they are "Public documents" and could have as well been obtained by the Assessing Officer.

13.6 As the above documents are obtained from a Government authority the same cannot be considered as additional evidence under section 74 of the Indian Evidence Act, 1872. The relevant section reads as under :

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7. In support of Revenue, ld. DR had relied on the decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company and others (Civil Appeal No.3327 of 2017 dt.30.07.2018.). It was the contention of the ld. DR that section 54F is a deduction provision, hence, it is essential for the assessee, to fulfill all the conditions strictly provided in the said section for claiming the deduction. It was the case of the Revenue that neither the possession nor registration of flat happened in two years from the date of transfer of capital assets and hence, assessee is not entitled for claim u/s 54 of the Act.

8. On the other hand, ld. AR had submitted that the assessee had paid substantial amount to the builder within the time granted under the Act and the assessee had no control over the builder after making the payment and the assessee was at mercy of the builder for seeking the possession. In support of his case, ld. AR had relied on the following case laws :

- i. Sanjeev Lal Vs. CIT – 365 ITR 389 (SC).
- ii. Mysore Minerals Ltd. Vs. CIT – 239 ITR 775 (SC).
- iii. Smt. Shashi Varma Vs. CIT – 224 ITR 106 (Madhya Pradesh High Court).
- iv. CIT Vs. Mrs. Hilla J.B. Wadia – 216 ITR 376 (Bombay High Court).
- v. CIT Vs. R.L. Sood – 245 ITR 727 (Delhi High Court)
- vi. Balraj Vs. CIT – 254 ITR 22 (Delhi High Court).
- vii. CIT Vs. Smt. Bharati C. Kothari – 244 ITR 352 (Calcutta High Court).
- viii. Andhra Networks Vs. DCIT – 167 TTJ 496 (ITAT Hyderabad Bench).
- ix. CIT Vs. Shahajada Begam – 173 ITR 397 (Andhra Pradesh High Court).
- x. CIT Vs. Smt. G. Venkata Laxmi – 373 ITR 572 (A.P and Telangana High Court.)
- xi. CIT Vs. A Suresh Rao – 417/2013 of Karnataka High Court.
- xii. CIT. Vs. Shakuntala Devi – 389 ITR 366 (Karnataka High Court)

9. Id. AR for the assessee mainly relied on the decision of Hon'ble Karnataka High Court in the case of CIT Vs. A. Suresh Rao (supra) placed at page 25 of paper book.

10. Id. AR further submitted that the assessee had not filed any new document before the Id.CIT(A). In fact, our attention was drawn to page 86 of the paper book, wherein the assessee had furnished the details of the properties hold by her and our attention was drawn to para 5 of page 87 of the paper book, which reads as under :

“5. Rental agreements in relation to commercial properties let out are attached herewith. Also submitting the copies of Municipal tax paid receipts in relation to the said commercial properties.

Sl.No.	Property Details	House tax paid (Rs.)
1	1st Floor Krishe Sapphire Building	52,691
2	2nd and 3rd Floors Krishe Sapphire Building	4,31,003
3	4th Floor Krishe Sapphire Building	1,74,771
4	6th Floor Krishe Sapphire Building	1,74,771
5	7th Floor Krishe Sapphire Building	1,00,000
6	10th Floor Krishe Sapphire Building	2,36,469
7	Rasoolpura Godown	4,747
8	Uppal Factory	40,607

11. On the basis of the above, it was submitted that there is no violation of conditions under section 54F of the Act in as much as not having one residential house in the city at the time of filing of the return of income. Further, there was no violation of Rule 46A of the I.T Rules, 1962.

11.1 Further, Id. AR also filed a letter dt.24.08.2020 addressed to the assessee by the builder informing that they completed the construction of apartment and that they are handing over the possession to the assessee on the said date. The contents of said letter reads as under :

“We are pleased to inform you that we have completed the construction of the apartment bearing No.1102 in the 11th Floor of the Tower “The First” being built by us in Sy.No.66/2 at Raidurg Panmaktha Village, Serilingampally Mandal, R.R. District, Telangana State booked by you.

As per your letter dt.25.02.2020, we have completed the construction of the apartment and we are on this day handing over the same to you so that you will carry out the balance internal jobs and the interior work. Please note that registration of the apartment may be done by you at your convenience and request you to inform us the likely date on which the registration will be carried out by you so that we will book the slot for registration.”

11.2. During the course of arguments, the Bench had enquired from the ld. AR whether the possession and registration of property had taken place or not ? In response thereof, the assessee had filed the copy of registered sale deed dt.01.12.2021 with respect to flat No.1102 situated at Raidurg, Panmaktha Village, Serilingampally Mandal, R.R. District. It was the case of the assessee that possession and registration had taken place during the appellate proceedings and hence, the order of ld.CIT(A) was in accordance with law.

13. We have heard the rival submissions and perused the material on record. It is the case of the assessee before the Assessing Officer that the assessee had sold various properties in the F.Y. 2018-19 relating to A.Y. 2019-20 and had claimed the deduction u/s 54F of the Act. It is the case of the assessee that the assessee had made the payment of Rs.4,10,85,000/- upto the date of filing of return of income to M/s. DSR Builders and Developers. The receipts of those are reproduced in the order of the ld.CIT(A). As mentioned hereinabove, on pointed query by the Bench, the ld. AR had produced the copy of sale deed dt.01.12.2021 in respect of the flat bearing No.1102 consisting 6666 sq.ft in survey no.66/2, situated at Raidurg, Panmktha Village, Serilingampally Mandal, R.R. District. From the perusal

of the contents of the sale deed, it is abundantly clear that the payments referred by the Assessing Officer and also referred by the assessee in her reply at page 86, were duly accounted for in the said sale deed. However, the assessee over and above the said payment of Rs.4,10,85,000/- had also paid a sum of Rs.47,50,000/- on 01.09.2020, Rs.42,05,000/- on 01.12.2021 and an amount of Rs.5,45,000/- towards TDS to the builder. Referring these transactions, the assessee had submitted before us that the substantial amount had already paid by the assessee to the builder and therefore, the assessee was entitled for the benefit u/s 54F of the Act. He relied upon various decisions cited hereinabove. In our considered opinion, for the purposes of claiming deduction u/s 54F of the Act, it is essential that the assessee within a period of 2 years on which the transfer took place purchased residential house in India.

14. In the present case, though the assessee had paid more than 80% of the payment to the builder, yet a substantial amount of more than rupees Rs.1 crore was to be paid by the assessee to the builder, the balance payments were made beyond the time provided by the Act. In the light of the above, it has to be decided on the facts whether the assessee had purchased the residential house within four corners of section 54F of the Act or not. Though there are various decisions which are mentioned hereinabove in the submissions of the assessee, however, those are required to be examined by the lower authorities in the light of new facts namely, registration of sale deed dt.01.12.2021.

15. In view of the above, we are of the opinion that the matter is required to be remanded back to the file of the Assessing Officer for examining afresh.

15.1. Dehors the above said finding for the purpose of claiming deduction u/s 54F of the Act, it is essential for the assessee to prove that she does not have more than a residential house at the time of claiming deduction u/s 54F of the Act. The documents produced before us clearly mentions the address of the assessee as 133A, Road No.15, Jubilee Hills, Hyderabad, Telangana – 500003. This aspect has not been brought to the notice of the Assessing Officer by the assessee. Further, as per the contention of the ld. DR, the ld.CIT(A) while deciding the issue had relied upon various documents produced before him at the time of appellate proceedings. For the above said purposes, we may fruitfully refer to Para 13.5 and 13.6 of the order of ld.CIT(A) wherein the ld.CIT(A) had mentioned that the assessee had produced SRO Certificate, Municipal Taxes and GST receipts to show that the property mentioned in the return of income filed by the assessee were in the nature of commercial property and was not in the nature of residential property. As the case may be, without giving any finding on the above said facts, in the interests of justice, the case is required to be remanded back to the file of Assessing Officer with a direction to examine afresh having regard to the SRO Certificate, GST and Municipal Tax Receipts and to record a categorical finding as to for what purposes the facts were approved by municipal authorities. In the light of the above, the case is remanded back to the file of Assessing Officer for the above said two limited purposes. The Assessing Officer shall decide the issue in accordance with law after affording due opportunity of hearing to the assessee in accordance with law. The assessee shall be at liberty to file documents, if any, as required for proving her case and the Assessing Officer shall consider the evidences, if any, filed by the assessee. Needless to say the Assessing Officer shall examine those documents / evidence filed by the assessee

and also the other documents available on record. After considering all the submissions and the documents filed by the assessee and the submissions made by the assessee, the Assessing Officer shall pass a detailed speaking order dealing with the contentions of the assessee. Thus, the appeal of the Revenue is allowed for statistical purposes.

16. In the result, the appeal of Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 20th March, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 20th March, 2023.

TYNM /sps

Copy to:

S.No	Addresses
1	Smt. Syama Reddy Malireddy, Plot No.133A, Road No.15, Jubilee Hills, Hyderabad – 500033.
2	DCIT – 1, (International Taxation), Hyderabad
3	CIT(IT & TP), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order