

**आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.8/Viz/2023

(निर्धारण वर्ष / Assessment Year :2013-14)

Sri Sathi Trinatha Reddy,  
D.No.5-117/1, Railway Station  
Road, Anaparthi Mandal,  
East Godavari Dist-533342.  
PAN: ALHPS9420N

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

Vs. The Principal Commissioner  
of Income Tax (Central),  
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri MV Prasad, CA

Sri MN Murthy Naik, CIT-DR

08/03/2023

31/03/2023

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal filed by the assessee is against the order passed  
U/s. 263 of the Income Tax Act, 1961 [the Act] by the Ld.  
Principal Commissioner of Income Tax, Visakhapatnam [Pr. CIT]

vide F.No. Pr. CIT(C)/263/STR/2022-23, dated 28/11/2022 for the AY 2013-14.

2. Brief facts of the case are that the assessee being an individual deriving income from Real Estate Business filed his return of income for the AY 2013-14 admitting the total income of Rs. 17,40,030/- belatedly on 04/12/2014. Subsequently, a search and seizure operation U/s. 132 was conducted in this case on 28/03/2018 wherein certain incriminating material was found and seized. The Ld. AO issued a notice U/s. 153A of the Act on 04/01/2021. In response to the said notice, the assessee filed the return of income on 06/02/2021 admitting the same income as admitted in his original return of income. The assessment was completed U/s. 143(3) r.w.s 153A of the Act on 21/09/2021 accepting the income returned by the assessee. The Ld. Pr. CIT in exercise of powers vested in him U/s. 263 of the Act found that the order of the Ld. AO is *prima facie* erroneous and prejudicial to the interests of the Revenue for the reason that the assessee has sold a property and arrived at a capital gain of Rs. 59,86,744/-. The Ld. Pr. CIT observed that out of the capital gains, assessee claimed exemption U/s. 54F of the Act but the assessee has failed to file the details / documentary evidence of

the property purchased for claiming the exemption U/s. 54F of the Act. The Ld. Pr. CIT also observed that the Ld. AO issued notice U/s. 142(1) of the Act on 17/03/2021 calling for certain information including the details of the property purchased and sold and details of computation capital gains. Since the assessee did not furnish the relevant details, the Ld. Pr. CIT observed that the assessment was completed accepting the income returned. The Ld. Pr. CIT therefore issued a show cause notice dated 19/10/2022 to the assessee through ITBA. Replying to the show cause notice the assessee filed submissions vide letter dated 2/11/2022. The Ld. Pr. CIT while considering the submissions made by the assessee concluded that the assessee has not deposited the net sale consideration in Capital Gains Accounts Scheme before the due date of filing of return of income for the AY 2013-14 ie., on or before the 31/7/2013. The Ld. Pr. CIT however observed that the assessee has purchased a flat for Rs. 66,25,000/- on 15/11/2014 which is within a period of two years from the date of sale of the original property on 11/12/2012. The Ld. Pr. CIT found that the assessee has failed to comply with the provisions of section 54F(4) of the Act and therefore set-aside the assessment order and directed the Ld. AO to re-do the assessment after examining the claim made by the assessee by

providing proper opportunity to the assessee of being heard. Aggrieved by the order of the Ld. Pr. CIT(A), the assessee is in appeal before Tribunal.

3. The assessee has raised 07 grounds in his grounds of appeal however, the crux of the issue is with respect to:

*“The disallowance of capital gains claimed U/s. 54F of the Act due to failure of the assessee to deposit the amount in the Capital Gain Account Scheme on or before the due date of filing of return of income U/s. 139(1) of the Act.”*

4. Before us, at the outset, the Ld. Authorized Representative [Ld. AR] submitted that the assessee has provided the copy of documents before the Ld. AO and the Ld. AO after considering the same, accepted the return of income filed by the assessee. The Ld. AR further submitted that where the assessee was in a position to satisfy that the amount sought for deduction U/s. 54F of the Act was utilized for purchasing or constructing residential house within the time prescribed U/s. 54F(1) of the Act, the assessee could not be denied the benefit of section 54F of the

Act. For this proposition and in support of his argument, the Ld. AR relied on the following case laws:

- (i) Hon'ble Bombay High Court judgment in the case of CIT (Central), Nagpur vs. Murli Agro Products Ltd [2014] 49 taxmann.com 172 (Bombay);
- (ii) Hon'ble Karnataka High Court judgment in the case of CIT, Bangalore vs. K. Ramachandra Rao [2015] 56 taxmann.com 163 (Karnataka);
- (iii) Hon'ble Madras High Court judgment in the case of Venkata Dilip Kumar vs. CIT, Chennai [2019] 111 taxmann.com 180 (Madras) and
- (iv) Order of the ITAT, Bangalore "B" Bench in the case of Ramaiah Dorairaj vs. ITO, Ward-4(2)(2), Bangalore dated 09/12/2020.

Per contra, the Ld. DR submitted that as per section 54F(4) of the Act, the assessee should have deposited the net sale consideration under the Capital Gain Account Scheme in order to claim benefit U/s. 54F of the Act for the impugned assessment year. The Ld. DR further submitted that the Ld. Pr. CIT has rightly directed the Ld. AO and the assessee is not entitled for

deduction U/s. 54F of the Act. Therefore, the Ld. DR pleaded that the order of the Ld. Pr. CIT be upheld.

5. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. It is not disputed by the Ld. Revenue Authorities that the assessee has made investment in a residential property on 15/11/2014 which is well within the period of two years as mandated U/s. 54F of the Act. The main contention of the Ld. Pr. CIT is that the assessee has not complied with the conditions laid down U/s. 54F(4) of the Act where the assessee should deposit the net sale consideration on or before the due date of filing of return of income U/s.139(1) of the Act. Section 54F(4) of the Act mandates that in the intermediary period of buying the residential house, the assessee shall deposit the amount under Capital Gain Account Scheme to avail the benefit of deduction U/s. 54F of the Act. In the instant case, the assessee has not deposited the net sale consideration under the Capital Gain Account Scheme however, as stipulated by the time frame U/s. 54F(1) of the Act, the assessee has utilized the entire net sale consideration for the purpose of buying the residential property. In our considered opinion, section 54F is a beneficial provision and should be interpreted

liberally and the Ld. Revenue Authorities have to see the end utilization of the net sale consideration in the way prescribed in section 54F of the Act. Respectfully following the judicial precedents and the case-laws relied on by the Ld. AR, we have no hesitation to quash the order of the Ld. Pr. CIT passed U/s. 263 of the Act.

6. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 31<sup>st</sup> March, 2023.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated :31.03.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sri Sathi Trinatha Reddy, D.No.5-117/1, Railway Station Road, Anaparthi Mandal, East Godavari District-533342.
2. राजस्व/The Revenue – The Principal Commissioner of Income Tax (Central), Office of the Pr. CIT (Central), Direct Tax Building, MVP Colony, Visakhapatnam, Andhra Pradesh – 530017.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam