

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष**

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

आयकरअपीलसं./ I.T.A. No.154/Viz/2019

(निर्धारणवर्ष/ Assessment Year : 2011-12)

The Deputy Commissioner of  
Income Tax (International  
Taxation), Visakhapatnam.  
(अपीलार्थी/ Appellant)

Vs. Sri Babu Rajendra Prasad  
Vadlamudi,  
Guntur.

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by

:

Sri A. Chaitanya, AR

प्रत्यर्थीकीओरसे/ Revenue by

:

Sri ON Hari Prasada Rao,  
Sr. AR

सुनवाईकीतारीख/ Date of Hearing

:

30/03/2023

घोषणाकीतारीख/Date of

:

23/05/2023

Pronouncement

**ORDER**

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

This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-10, Hyderabad [Ld. CIT(A)] in ITA No. 0042/CIT(A)-10/2016-17/CIT(A), Hyd-10/10040/2017-18, dated 23/01/2019 arising out of the order passed U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 [the Act] for the AY 2011-12.

2. Briefly stated the facts are that the assessee, a resident of USA, sold certain immovable properties during the assessment year 2011-12 and claimed exemption U/s. 54F of the Act. Since the assessee has not filed any income tax returns for the AY 2011-12, notice U/s. 148 was issued on 19/03/2015 and served on 17/4/2015 to Sri Tummala Kishore Kumar, GPA holder of the assessee. Since there was no response from the assessee, notice U/s. 142(1) of the Act dated 14/7/2015; 18/08/2015 and 20/10/2015 was issued and served on the assessee. In response to the above notices, the assessee's Representative Mr. M. Venu Gopal, Income Tax Practitioner [ITP], after requesting some time, filed the return of income on 25/02/2016 admitting an income of Rs. 13,30,560/- for the AY 2011-12. Subsequently, notices U/s. 143(2) and 142(1) of the Act along with the questionnaire were issued on 2/3/2016. The Assessee's Representative appeared before the Ld. AO from time to time and furnished the information called for by the Ld. AO. Not satisfied with the submissions made by the Ld. AR, the Ld. AO made the following additions:

SI no	Nature of Addition	Amount (in Rs.)
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1.	Difference in pre-construction Interest	79,422
2.	Land Development expenses	1,40,575
3.	Disallowance of exemption U/s. 54F	2,47,43,894
	Total	2,49,63,891

Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee made written submissions on 13/12/2018 & 14/12/2018. Considering the assessee's written submissions, the Ld. CIT(A) allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. The Revenue has raised the following grounds of appeal:

1. *The CIT(A) erred in holding that the appellant is entitled to the relief claimed U/s. 54F of the Act, from the payment of Capital Gain Tax.*
2. *The CIT(A) erred in omitting to note that the Legislature in its wisdom has quantified some cut off time beyond which investments made shall not be liable for exemption U/s. 54F. Thus, if the explanation of the assessee is accepted then the time limit / cut off mentioned in the statute will be redundant.*
3. *The CIT(A) should have held that the condition, imposed U/s. 54F of the Act, is that the new building should have been constructed within three years from the date of sale."*

5. At the outset, the Ld. DR submitted that the assessee owns one residential house in USA. The Ld. DR further submitted that since the assessee owns one residential house at USA, exemption U/s. 54F cannot be claimed by the assessee. The Ld. DR further pleaded that since the assessee has not invested in the property within a period of three as mandated in section 54F of the Act, the benefit of exemption U/s. 54F cannot be allowed to the assessee on this ground also. Therefore, the Ld. DR pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. Authorized Representative [AR] submitted that the assessee only owns a Farm House and not a residential house in USA. Further, the Ld. AR submitted that the assessee has invested substantial amount in the property to be purchased for claiming exemption U/s. 54F of the Act whereas the builder has delayed the construction which is beyond the control of the assessee. The Ld. AR also further submitted that the assessee has issued a legal notice to the builder in this connection. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld. Countering the arguments of the Ld. AR, the Ld. DR submitted that the property owned by the assessee is not a Farm House but the assessee habitually resides in that

address which is also mentioned as a residential address in the assessee's Passport. Since the condition prescribed U/s. 54F of the Act that the assessee should not own more than one residential house is not satisfied in this case, the benefit of section 54F of the Act cannot be granted to the assessee.

6. We have heard both the sides and perused the material placed on record as well as the orders of the Ld. Revenue Authorities. We find it relevant to extract the provisions of section 54F of the Act herein below:

***“Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.***

**54F.** (1) *Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;*
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

**Provided** *that nothing contained in this sub-section shall apply where—*

(a) *the assessee,—*

**(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or**

*(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or*

*(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and*

*(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".*

.....

....."

7. From the plain reading of the provisos (a) & (b) to section 54F of the Act, it is clear that if the assessee owns more than one residential house other than the new asset on the date of transfer of original asset, the benefit of deduction U/s. 54F of the Act cannot be availed by the assessee. The Act is also silent on the fact whether the property should be situated in India or outside India.

8. The submission of the Ld. DR also holds merit on the ground that the assessee is a co-owner of the property situated in USA which was evidenced by the property record details submitted by the Ld. DR. Further, there is also merit in the argument of the Ld. DR that the assessee habitually resides in the property situated in USA and has disclosed the address of that property in the assessee's Passport. Under

these circumstances, the contention of the Ld. AR that the property at USA is a Farm House cannot be accepted. Therefore, we are of the considered view that since the assessee owned one more residential house at the time of transfer of original asset, the assessee is not entitled to claim the benefit of deduction U/s. 54F of the Act. Hence, the Ground No.1 raised by the Revenue is allowed.

9. Grounds No. 2 & 3 are with respect to the investment made by the assessee in the property beyond the period of three years. Since the Ground No.1 raised by the Revenue is adjudicated against the assessee by denying the benefit of exemption U/s. 54F of the Act as the assessee became ineligible to claim such exemption on the fact that the assessee owns more than one residential house at the time of transfer of original asset, the adjudication of Grounds No. 2 & 3 becomes infructuous and hence dismissed.

10. In the result, appeal of the Revenue is allowed.

Pronounced in the open Court on the 23<sup>rd</sup> May, 2023.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :23.05.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Sri Babu Rajendra Prasad Vadlamudi, GPA Holder – Sri Thummala Kishore Kumar, 6/60A, Library Centre, Kuchipudi (Post), Amruthaluru Mandal, Guntur District, Andhra Pradesh – 522313.
2. राजस्व/The Revenue –Deputy Commissioner of Income Tax (International Taxation), D.No. 5-92-34/1, Ground Floor, Infinity Tower, Shantipuram, Shankaramattam Road, Visakhapatnam – 530016.
3. (i) The Principal Commissioner of Income Tax,  
(ii) Commissioner of Income Tax (IT & TP), Hyderabad.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam