

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 212/Bang/2023</b>
<b>Assessment Year : 2016-17</b>

The Income Tax Officer, Ward 4(3)(2), Bangalore.	<b>Vs.</b>	Shri Indrajeet Ghodpade, No. 314, 7 <sup>th</sup> B Main, 4 <sup>th</sup> Block, Koramangala, Bangalore – 560 034. <b>PAN: ADDPG7761N</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri H. Guruswamy, ITP
Revenue by	:	Smt. Priyadarshini Besaganni, Addl. CIT (DR)

Date of Hearing	:	22-06-2023
Date of Pronouncement	:	27-06-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by revenue against order dated 24.11.2022 passed by the NFAC, Delhi on following grounds of appeal:

*“1. The Order of the Ld.CIT(A) in so far as it is prejudicial to the interest of the Revenue is opposed to the law and the fact and circumstances of the case.*

*2. The Ld.CIT(A) in the para 4.2 of his appellate order has mentioned "from perusal of records it would appear that assessee had a residential house by registration No.BK-*

*1/5690/17-18 dated 9.2.2018 for purchase of residential house No.421-B-25 in RMV Extension, Bangalore which would fulfill the requirement of law". Reason for non submission of sale deed dated 9/2/2018 during the assessment proceedings was not explained by the assessee. The Ld.CIT(A) has not discussed in the appellate order about the reason for non submission of sale deed.*

*3. The Ld.CIT(A) has not discussed in its order with regard to whether the amount claimed u/s 54F was deposited in the Capital Gain Account or not. The assessee sold the property on 10/02/2016 and invested for purchase of residential house on 9/2/2018. The assessee was required to produce the documentary evidence with regard to the deposit of LTCG into the Capital Gain Account. However, there is no such detail available on record.*

*4. On the facts of the case, in the ROI filed by the assessee on 15/03/2017 for the AY 2016-17, the assessee offered LTCG at Rs.10,24,12,285/-, out of which he claimed deduction u/s 54F at Rs.5,03,89,327/- and offered the income of Rs.5,20,22,958/-under the head Income from Capital Gain. After the appeal order of the CIT(A) dated 24/11/2022, the assessee vide his letter dated 12/01/2023, is claiming that the LTCG of Rs.10,24,12,285/- does not belong to him and out of this amount his share is only Rs.5,51,62,980/- only. This issue was neither discussed during the assessment proceedings nor before the appeal proceedings before the CIT(A), hence, the assessee's this claim appears baseless.*

*5. The appellant craves, leaves to add, alter, amend and or delete any of the grounds that may be urged."*

2. At the outset, the Ld.DR submitted that there is a delay of 51 days in filing the present appeal. The Revenue has filed the application seeking condonation of delay submitted as under:

**Request for condonation of delay**

This is an old matter and the file was not traceable. It took a considerable time in searching of the file. The assessee submitted a letter dated 12/01/2023 requesting therein to consider the allowance of entire amount of long term capital gain. In taking decision on the assessee's request dated 12/01/2023 it took time. Further, there were time barring matters pending in this office and due to engagement in attending the time barring matters, the scrutiny report on the appellate order of the CIT(A) dated 24/11/2022 in this case got delayed and was submitted on 16/2/2023 and the subsequently in obtaining approval of the competent authority also took time.

It is humbly submitted that the delay was not intentional and caused due to some unavoidable circumstances. The appeal was required to be filed before 24/01/2023, however, it got delayed for 51 days due to the reasons mentioned above. Therefore, it is requested that the delay may kindly be condoned and the appeal may please be accepted.

  
(ओम प्रकाश)  
(OM PRAKASH)  
अवकाश अधिकारी  
Income Tax Officer  
वार्ड / Ward-4(3)(2), बेंगलूरु / Bengaluru

3. The Ld.AR did not object for the delay to be condoned. Considering the submissions by both sides, we condone the delay of 51 days in filing the present appeal by the revenue.

4. Coming to the merit of the case, the only issue that is alleged by the revenue is in respect of the claim of deduction u/s. 54F allowed by the Ld.CIT(A) amounting to Rs. 4.70 Crores.

5. The Ld.DR submitted that the assessee's appeal in *ITA No. 61/Bang/2023* pronounced on 27.03.2023 is remanded to the Ld.AO for quantification of capital. The Ld.DR thus submitted that as a consequence of the quantification being remanded, the claim of section 54F also may vary proportionately. She thus submitted that this issue also needs to be remanded to the Ld.AO to be decided along with the appeal of the assessee. She further submitted that, the circumstances required for allowing the claim u/s. 54F also needs verification as the same has not been considered by the Ld.CIT(A) while deciding the issue.

6. On the contrary, the Ld.AR submitted that the Ld.CIT(A) has already computed and allowed the claim u/s. 54F. He also submitted that the investments have been made by the assessee that has been considered by the Ld.CIT(A) while allowing the claim.

6.1. The Ld.AR submitted that Rule 46A cannot be invoked as no new documents has been filed by the assessee.

We have perused the submissions advanced by both sides in the light of records placed before us.

7. We note that, the Ld.CIT(A) in para 4, granted the benefit u/s. 54F at Rs. 4.70 crores on a capital gain declared at Rs. 5.20 crores in a cryptic manner. The conditions as per section 54F has not been verified by the Ld.CIT(A).

7.1. We accordingly remand this issue to the Ld.AO for necessary verification of the conditions stipulated u/s. 54F for granting benefit to the assessee. This issue is directed be decided along with the quantum appeal that is already remanded in assessee's case vide orders dated 27.03.2023 in *ITA No. 61/Bang/2023* and

26.05.2023 in *M.P. No. 105/Bang/2023*. The claim u/s. 54F should be computed based on the quantification of Capital Gains that arises in the hands of the assessee.

**In the result, the appeal filed by the revenue stands partly allowed for statistical purposes.**

Order pronounced in the open court on 27<sup>th</sup> June, 2023.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 27<sup>th</sup> June, 2023.  
/MS /

**Copy to:**

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore