

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, VICE PRESIDENT  
&  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1560/Hyd/2018	2013-14	Smt. Indumati Chintakuntala L/R of Late Diwakar Reddy Chintakuntala Hyderabad [PAN No. ABBPC4708P]	Income Tax Officer, Ward-4(3), Hyderabad
2033/Hyd/2018	2013-14	Smt. Indumati Chintakuntala Hyderabad [PAN No. AELPC9844B]	

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR  
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 09/08/2023  
घोषणा की तारीख/Pronouncement on: 17/08/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the orders passed by the learned Commissioner of Income Tax (Appeals)-1, Hyderabad ("Ld. CIT(A)"), in the cases of Shri Diwakar Reddy Chintakuntala and Smt. Indumati Chintakuntala ("the assessees") for the assessment year 2013-14, Smt. Indumati preferred these appeals.

2. Substantive question that arises in these appeals is whether the assessee is entitled to claim exemptions under section 54 of the Income Tax Act, 1961 (for short "the Act"), when the assessee invests the sale consideration of the original asset sold, for purchase of a residential house within three years from the sale of the original asset, but the house was not ready for occupation.

3. On this aspect, briefly stated facts are that the assesseees are wife and husband, sold some immoveable properties under the registered Sale Deeds in October, 2012 for a consideration of Rs. 2,63,32,000/-, purchased an open plot for Rs. 2,40,80,000/- and claimed exemption under section 54 of the Act.

4. Learned Assessing Officer on verification through the Inspector, found that the construction of the house was not complete and it was started recently. The photographs that were taken on the scheduled plot also show the same. Since more than three years have elapsed since the sale of original properties and no construction of the new house took place within the time schedule and provisions of section 54 were not complied with, learned Assessing Officer added the capital gains on the sale of old property to the income of the assesseees.

5. In the case of Shri Diwakar Reddy, on verification of his bank accounts, learned Assessing Officer found that there were deposits to the tune of Rs. 43,35,500/- and the assessee explained that during the year the turnover of contracts was Rs. 26,30,720/- and most of the civil works were done individual parties in respect of which cash was received and deposited into bank, stating that the assessee could not produce any substantive evidence, the learned Assessing Officer observed that since all such deposits were made in the month of August, 2012, the same had to be added to the income of the assessee.

6. Assesseees preferred appeals before the learned CIT(A) and contended that the assesseees invested capital gains in purchase of plot and

even according to the report of the Inspector, the construction of residential building was in progress. Assessee further contended that section 54 of the Act is a benevolent provision and has to be construed liberally. They further pleaded that an application for construction was made before the GHMC and for the reasons beyond the control of the assessee, the construction permission was issued with delay.

7. Learned CIT(A) recorded that apart from the Inspector's report, no evidence is produced before her to show that the residential house property was constructed and completed. Since the property was sold in financial year 2012-13 and the assessee could not complete the construction of residential house within the time stipulated by law, they are not entitled to claim deduction under section 54 of the Act.

8. In respect of the unexplained deposits, learned CIT(A) observed that the parties, who paid the amounts to the assessee, though filed the stereo typed confirmations, do not have Adhar Card or Voter ID or PAN card and they could not give the dates of payments or the purpose for which such payments were made like giving the nature of work etc. Learned CIT(A), therefore, did not believe the version of the assessee and upheld the finding of the learned Assessing Officer.

9. Smt. Indumati is, therefore, before us in these appeals (as an LR in one of the appeals). On the common ground of deduction under section 54 of the Act, learned AR submitted that there was substantial compliance with the requirement of section 54 of the Act inasmuch as they have invested the sale proceeds of the old asset in purchase of a plot for construction of a residential house and it is only because of the delay occurred in sanction of building permission from the municipal authorities, the construction could not be completed within the time stipulated. Learned AR submitted that the capital gains were only to the tune of Rs. 78,60,991/- to each of the assessee, whereas each assessee invested Rs. 1,23,41,000/- in the plot. In these circumstances, learned AR

submitted that because of the substantial compliance with the provisions under section 54 of the Act, the deduction may not be denied.

10. Learned AR placed reliance on the decisions of Co-ordinate Benches in the case of ITO vs. Akepati Manogna in ITA No. 993/Hyd/ 2015 for the assessment year 2011-12 by order dated 05/08/2016, Sh. Hasmukh N Gala vs. ITO in ITA No. 7512/Mum/2013 for the assessment year 2010-11 by order dated 19/08/2015 and Sh. Pradeep Kumar vs. DCIT in ITA No. 1520/Hyd/ 2013 for the assessment year 2009-10 by order dated 31/12/2014. He submits that though the construction of the residential house was not complete within the specified period and when it is also quite apparent that the new property was still under construction, still the assessee would be entitled to the benefit of deduction under section 54 of the Act.

11. On this aspect, it is contended by the learned DR that even as on the date of the receipt of the Inspector to the scheduled premises, the construction of the residential house was not complete and since such construction was expected to be completed by 31/10/2015, for non-compliance with such a stipulation, the assesseees are not entitled to claim deduction under section 54 of the Act.

12. We have gone through the record in the light of the submissions made on either side. Facts are not in dispute. Assesseees sold the immovable property, there are capital gains and invested such capital gains for purchase of a plot for construction of residential house, the construction of such residential house was not complete within the time stipulated due to the delay in granting permission by the Greater Hyderabad Municipal Corporation, but the assesseees claimed the benefit of deduction under section 54 of the Act stating that there was substantial compliance with the requirement of law. Revenue does not dispute that the assesseees purchased a piece of plot by using the sale proceeds of the old asset.

13. As stated above, the question is whether the assessee could be disentitled to claim the benefit under section 54 of the Act on the ground that the construction of the residential house was not complete within the time is depleted by law? This issue is no longer res integra. While placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kuldeep Singh 270 CTR 561 (Del), a Co-ordinate Bench of the Tribunal held the issue in favour of the assessee in the case of Sri Hasmukh (supra). For the sake of ready reference we deem it just and necessary to extract the relevant portions of the order in the case of Sh. Hasmukh (supra), hereunder:-

*7.1. The controversy is as to whether under these facts assessee can be said to have purchased the new property so as to entitle him for exemption in relation to the amount spent towards the new property under section 54 of the Act. It is not disputed by the Revenue that the sum of Rs. 1 crore has been invested by the assessee towards acquiring new property. Of course, the legal title in the said property has not passed or transferred to the assessee within the specified period and it is also quite apparent that the new property was still under construction. So however, the allotment letter by the builder mentions the flat number and gives specific details of the property.*

*7.2 In this context, the Hon'ble Delhi High Court in the case of Kuldeep Singh (supra) has explained the meaning of the expression 'purchased' in the context of section 54 of the Act in following words:-*

*"8.The word 'purchase' can be given both restrictive and wider meaning. A restrictive meaning would mean transactions by which legal title is finally transferred, like execution of the sale deed or any other document of title. 'Purchase' can also refer to payment of consideration or part consideration alongwith transfer of possession under Section 53A of the Transfer of Property Act, 1882. Supreme Court way back in 1979 in CIT v. T.N Aravinda Reddy [1979] 120 ITR 46/2 Taxman 541, however, gave it a wider meaning and it was held that the payment made for execution of release deed by the brother thereby joint ownership became separate ownership for price paid would be covered by the word 'purchase'. It was observed that the word 'purchase' used in Section 54 of the Act should be interpreted*

*pragmatically. In a practical manner and legalism shall not be allowed to play and create confusion or linguistic distortion. The argument that 'purchase' primarily meant acquisition for money paid and not adjustment, was rejected observing that it need not be restricted to conveyance of land for a price consisting wholly or partly of money's worth. The word 'purchase', it was observed was of a plural semantic shades and would include buying for a price or equivalent of price by payment of kind or adjustment of old debt or other monetary considerations. It was observed that if you sell a house and make profit, pay Caesar (State) but if you buy a house or build another and thereby satisfy the conditions of Section 54, you were exempt. The purpose was plain; the symmetry was simple; the language was plain.*

*9. Recently Supreme Court in Civil Appeal Nos. 5899-5900/2014 titled Sanjeev Lal v. CIT [2014] 46 taxmann.com 300 again examined Section 54 in a case where the assessee had entered into an agreement to sell a house to a third party on 27th December, 2002 and had received RS.15 lacs by way of earnest money and subsequently received the balance sale consideration of Rs.1.17 crores (total being Rs.1.32 crores) when the sale deed was executed on 24th September, 2004. In the meanwhile, the assessee had purchased another house on 30th April, 2003. Benefit under Section 54 was denied] by the High Court observing that the new house had been purchased prior to execution of the sale and not within one year prior to sale of original asset i.e. new house has been purchased on 30th April, 2003 whereas the earlier asset was sold only on 24th September, 2004. The Supreme Court allowing the appeal noticed that the agreement to sell was executed on 27th December, 2002 but the sale deed could not be executed because of inter-se litigation between the legal heirs, as one of them had challenged the will under which the assessee had inherited the property. The agreement to sell, it was held had given some rights to the vendor and reduced or extinguished rights of the assessee. This, it was observed was sufficient the purpose of Section 2(47), which defines the term transfer in relation to a capital asset. In the light of the factual matrix, it was observed that the intention behind Section 54 was to give relief to a person who had transferred his residential house and had purchased another residential house within two years of transfer or had purchased a residential house one year before transfer. It*

*was only the excess amount not used for making purchase or construction of the property within the stipulated period, which was taxable as long term capital gain while on the amount spent, relief should be granted. Principle of purposive interpretation should be applied to subserve the object and more particularly when one was concerned with exemption from payment of tax. The assessee, therefore, succeeded. The observations made in the said decision are also relevant on the question whether the payments made by the assessee to the person with whom he had entered into an earlier agreement to sell should be allowed to be set off as expenses incurred in relation to the sale deed which was executed.”*

*The Hon’ble Delhi High Court further referred to the decision of Hon’ble Madhya Pradesh High Court in the case of Smt. Shashi Varma vs. CIT, 224 ITR 106 (M.P) and that of the Hon’ble Calcutta High Court in the case of CIT vs. Smt. Bharati C. Kothari (Cal) 244 ITR 352 and opined that when substantial investment was made in the new property, it should be deemed that sufficient steps had been taken and it would satisfy the requirements of section 54 of the Act. As per the Hon’ble High Court, the basic purpose behind section 54 of the Act is to ensure that the assessee is not taxed on the capital gain, if he replaces his house and spend money earned on the capital gain within the stipulated period. The parity of reasoning explained by the Hon’ble Delhi High Court in the case of Kuldeep Singh (supra) squarely covers the controversy in the present case in favour of the assertions made by the assessee. Therefore, we are inclined to uphold the plea of the assessee for exemption under section 54 of the Act qua the impugned investment in acquisition of the new residential house.*

*7.3 The plea of the Revenue is that no purchase deed was executed by the builder and that there was only an allotment letter issued. As per the Revenue the advance could be returned at any time and, therefore, the assessee may lose the exemption under section 54 of the Act. In our considered opinion, the aforesaid does not militate against assessee’s claim for exemption in the instant assessment year, as there is no evidence that the advance has been returned. In case, if it is found that the advance has been returned, it would certainly call for forfeiture of the assessee’s claim under section 54 of the Act. In such a situation, the proviso below section 54(2) of the Act would apply whereby it is prescribed that such amount shall be charged under section 45 of the Act as income of the previous year, in which the period of three years from the date*

*of the transfer of the original asset expires. The aforesaid provisions also does not justify the action of the Assessing Officer in denying the claim of exemption under section 54 in the instant assessment year.*

*7.4 In view of the aforesaid discussion and on the basis of material and evidence on record, we find that the assessee can be said to have complied with the requirement of section 54 of the Act; and, the exemption has been incorrectly denied by the lower authorities. As a matter of passing, we may also mention here the reliance placed by Ld. Representative of the assessee on the decision of our Co-ordinate Bench in the case of Shri Khemchand Fagwani vs. ITO, ITA No.7876/M/10 order dated 10/09/2014, wherein also claim of exemption under section 54 of the Act was allowed under similar circumstances. In the light of the precedent, we find no reason to deny the claim under section 54 of the Act. We direct accordingly.*

14. Similar view is taken by a Co-ordinate Bench of the Tribunal in the case of Akepati Manogna (supra), and also in the case of Pradeep Kumar (supra). This view is applicable to the facts of the case on all fours. Assessee sold the old property for Rs. 2.40 crores getting each Rs. 1.2 crores, capital gains derived by each of the assessee are at Rs. 78.61 lakhs, whereas the assessee made investment in the plot for residential house at Rs. 1.23 crores each. Assessee invested the total sale consideration derived on the sale of the old asset in the plot for construction of residential house, and there is no reason for us not to believe the statement of the assessee that the delay in commencement of the construction of the house was caused due to the late grant of permission by the Greater Hyderabad Municipal Corporation, which is beyond the control of the assessee. Respectfully following the same, we allow this ground of appeal and direct the authorities to allow the deduction under section 54 of the Act.

15. Coming to the second issue relating to the un-explained cash deposits in the case of Shri Diwakar Reddy, learned Assessing Officer added the entire amount of Rs. 43,35,500/- to the income of the assessee as un-explained cash deposit. However, it could be seen that the assessee explained to the learned Assessing Officer during the assessment

proceedings that during the year, his turnover from contract was Rs. 26,30,720/- and the net profit @8% was admitted as business income to the tune of Rs. 2,10,458/-, which the learned Assessing Officer accepted. In respect of the balance of Rs. 17,04,780/-, case of the assessee was that these are the amounts received from petty works. Since the assessee did not maintain books, he declared the income on presumptive basis.

16. Having regard to the facts and circumstances of the case, we are satisfied that out of this Rs. 43,35,500/-, a sum of Rs. 26,30,720/- is properly accounted for inasmuch as 8% thereof, namely, Rs. 2,10,458/- is admitted as business income and accepted by the learned Assessing Officer. In respect of the balance amount, neither any evidence is produced nor any net profit is calculated in respect of the works covered by such an amount. Since the fact of assessee being a contractor is beyond doubt, there is nothing suspicious about his deriving Rs. 43,35,500/- from out of contracts. However, since the net profit is calculated in respect of Rs. 26,30,720/-, rest of the amount must also be considered for such purpose and, therefore, 8% of Rs. 17,04,780/- must also be added to the business income of the assessee. To that extent, the addition is sustained and the rest of the amount is directed to be deleted.

17. In the result, appeal in ITA No. 1560/Hyd/2018 is allowed in part, and ITA No. 2033/Hyd/2018 is allowed.

Order pronounced in the open court on this the 17<sup>th</sup> day of August, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 17/08/2023

TNMM

Copy forwarded to:

1. Smt. Indumati Chintakuntala L/R. of Late Diwakar Reddy Chintakuntala,  
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3. Pr.CIT-1, Hyderabad
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD