

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “SMC”, HYDERABAD**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.612/Hyd/2023		
Assessment Year: 2013-14		
Venkata Reddy Challa, Flat No.401, Block – A, Vivek Nagar, RV Laxmi Apartments, Kukatpally, Telangana – 500072.  PAN : AGWPC6863H.	Vs.	The Income Tax Officer, Ward 4(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri S. Ramarao, Advocate.	
Revenue by:	Ms. Harshita Chouhan, SR.AR	
Date of hearing:	27/12/2023	
Date of pronouncement:	02/01/2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2013-14 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.20.09.2023 invoking proceedings under section 147 r.w.s. 144 of the Income Tax Act, 1961 (in short, “the Act”).

2. The appeal filed by the assessee is barred by limitation by 24 days. Assessee has moved a condonation petition explaining reasons thereof. I have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, I condone the delay and admit the appeal for hearing.

3. The grounds raised by the assessee read as under :

*“ 1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on face and in law.*

*2. The learned Commissioner of Income-Tax (Appeals) did not consider various submissions made by the appellant during the appellate proceedings.*

*3. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in adopting the sale consideration of the property at Rs.1,53,00,000/- and the share of the appellant at RS.29,07,000/-.*

*4. The learned Commissioner of Income-Tax(Appeals) ought to have seen that the value fixed by the Sub Registrar includes the value of the land which has to be excluded and cost of the constructed area only has to be taken into consideration.*

*5. The learned Commissioner of Income-Tax (Appeals) erred in reducing the indexed cost of acquisition to Rs.42,633/-. The learned Commissioner of Income-Tax (Appeals) ought to have accepted the claim made by the appellant.*

*6. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in rejecting the claim for deduction u/s 54F of the I.T. Act.”*

4. The brief facts of the case are that assessee is an individual, who entered into a Development Agreement cum GPA with M/s.Bhavani Shankar Constructions for a total project cost of Rs.1,80,99,000/-. On verification of the details with regard to the assessee in ITBA Portal, it was noticed that assessee has not filed any return of income for A.Y. 2013-14 by admitting the consideration so received. As there are reasons to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Notice u/s 148 was issued to the assessee. As the assessee failed to respond to the same, a show cause notice was issued on 04.12.2018 calling for information and asking the assessee to show cause why the assessment in his case should not be completed ex-parte u/ s 144 of the I.T. Act. Again on 21.12.2018 another show cause notice was issued requesting him to show cause why the capital gain arising to him on account of the development agreement should not be assessed to tax, for which also the assessee has not submitted any reply. Finally, as there is no other go but to complete the assessment which is getting barred by limitation of time by 31.12.2018, Assessing Officer completed the assessment based on the information available on record and passed order on 28.12.2018 u/s 144 r.w.s. 147 of the I.T. Act.

5. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

6. Before me, Id. AR for the assessee submitted that himself and T. Sathi Reddy entered into Development Agreement with M/s. Bhavani Shaker Constructions, Hyderabad and that he was entitled for 40% share of the constructed area upto 3<sup>rd</sup> floor and 35% share of the constructed area in 4<sup>th</sup> and 5<sup>th</sup> floor. The assessee further submitted that he had no other income except the capital gain. Assessee also submitted that has had surrendered the land and received the constructed area and hence, as the same just an exchange of land for residential house, and has not received any consideration and therefore, he contended that it has to be treated as investment in the constructed area as per Section 54F of the Act. In support of the case of assessee, the Id. AR submitted detailed written submissions which are to the following effect:

*“2. The Chronological events that have taken place which are relevant for the assessment are as under :*

*24.03.1995 - The appellant acquired 311 sq. yds of land situated at Sy.No56 at Meerpet Village, Saroornagar, Ranga Reddy District vide document No.4868/1995.*

*09.11.2012 - The appellant and T. Sathi Reddy entered into Development Agreement with M/s Bhavani Shanker Constructions, Saroornagar, Hyderabad. The owners i.e., the appellant is entitled for 40% share of the constructed area upto 3<sup>rd</sup> floor and 35% share of the constructed area in 4<sup>th</sup> & 5<sup>th</sup> floor. The developer completed the construction and handed over the appellant's share.*

*3. The Assessing Officer issued a show cause notice u/s 142(1) of the I.T Act calling for the information. The Assessing officer completed the assessment u/s 144 r.w.s. 147 determining the total income at Rs.28,64,367/- which includes Long Term Capital Gain on entering into Development Agreement.*

*4. At the time of registration of the Development Agreement the total project cost is estimated by the SRO at Rs.1,80,99,000/- including the cost of land.*

5. As per the Assessing Officer, the land is valued at Rs.4,500/- per sq. yd and the total cost for 622 sq. yards worked out to Rs.27,99,000/-. Therefore, the cost of construction of the entire project is Rs.1,53,00,000/- for the entire 22,500 sft. Which gives a rate of Rs.680/- per sq. ft. Accordingly, the value of the constructed area falling to the share of the assessee worked out to Rs.29,07,000/- (4275 sft x Rs.680/-).

6. From the above details, the appellant is liable to pay capital gain tax as he entered into a Development Agreement on 9.11.2022.

7. For the assessment year under consideration, the assessment was completed within 24 days from the date of issue of notice u/s 142(1). The assessee had no other income except the capital gain. Therefore, he was not earlier assessed to tax and, therefore, the appellant could not respond to the notices immediately. The Assessing officer concluded the assessment ex parte. The appellant submits that the Assessing officer should have provided opportunity before finalizing the assessment. The Assessing officer should not have concluded the assessment ex parte particularly when the assessee was not earlier liable to pay tax.

8. The Assessing Officer determined the cost of construction at Rs.27,99,000/- as relating to the assessee. In this regard the appellant submits that:

a) The market value of the cost of construction cannot be taken into consideration as the construction did not start and was not complete by the time of entering into Development Agreement. It was only an estimated figure. The cost of construction is subject to several contingencies. Therefore, the provisions of Sec.50D of the LT Act would apply as the market value of the land is known and all others are uncertain. According to Sec.50D, which the market value of the land transferred can only be taken. In the alternate, the Assessing Officer ought to have adopted the cost of construction as per the Sub Registrar. The Assessing officer should not have attributed the residual value to the constructed area. Further, as on the date of agreement, the construction did not exist and therefore, the discounted value of cost of construction only should have been adopted.

b) The next question is whether the assessee is entitled for deduction u/s 54F or not. The appellant has surrendered the land and received constructed area. In such circumstances, it is an exchange of land for residential house. Therefore, the assessee having transferred the land acquired the constructed area. No consideration is received in cash and consideration is received only by way of constructed area.

*Therefore, it has to be treated as investment in the constructed area within the meaning of the provisions of Sec.54F of the I.T. Act. In this regard, the appellant relies on the following judgments.*

*i) The decision of the A.P. High Court in the case of CIT Vs Syed All Adil reported in 352 ITR 418 accordingly to which all the flats allotted are to be considered as one house.*

*ii) The decision of the ITAT, Hyderabad Bench-A in the case of Vittal Krishna Conjeevaram Vs ITO reported in 36 taxmann.com 542.*

*iii) The decision of the Karnataka High Court in the case of CIT & Another Vs Smt. Rukmini Amma reported in 331 ITR 211.*

*iv) The decision of the ITAT, Hyderabad Bench-B in the case of ACIT Vs Smt. Faziunnisa Begum, Hyderabad in ITA No.66/Hyd/2017 dated 9.1.2018.(copy submitted)  
Therefore, the assessee is entitled for deduction u/s 54F of the I.T.Act.*

*9. The Assessing officer and the CIT (Appeals) held that no claim was made and, therefore, the assessee is not entitled for deduction u/s 54F. For this proposition, the authorities relied on the decision of the Supreme Court in the case of Goetze (India) Ltd. Vs CIT reported in 284 ITR 323*

*10. It is humbly submitted that the said decision is not applicable as the claim was made before the appellate authorities. A copy of the said decision is annexed. The concluding paragraph of the said decision indicates that the decision is applicable only for the claims made before the Assessing officer and not for the claims made before the appellate authorities. Therefore, claim can be made before the appellate authorities. The assessee relies on the following decisions:*

*1) The decision of the Supreme Court in the case of National Thermal Power Corporation Vs CIT reported in 229 ITR 383 wherein it is held by the apex court that a claim can be made even before the Income-Tax Appellate Tribunal.*

*2) The decision of the Supreme Court in the case of Jute Corporation of India reported in 187 ITR 685 wherein the Hon'ble apex court held that a claim can be made before the CIT (Appeals).*

*3) The circular No.14 dated 11.4.1955 issued by the CBDT wherein it is made clear that the Assessing officer himself has to suggest the assessee to make claim.*

7. Per contra, the ld. DR submitted that the claim of section 54F by the assessee is not sustainable as the assessee has not filed any ITR or made any claim for benefit of section 54F therein and in this regard, ld. DR relied on the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT reported in 284 ITR 323 and the ld. DR further submitted that assessee has merely made a sale for which consideration has been received by the assessee in kind (being constructed area). The act of further investment in terms of purchase or construction has not been made by the assessee and hence, the provisions of section 54F cannot be invoked. In support of its case, ld. DR also filed the written submissions. The relevant portion of said written submissions are as under :

3. *Now the assessee is before the Hon'ble ITAT with a plea to recompute the LTCG and to claim benefit of section 54F. With respect to the first claim of assessee, it is noteworthy that the AO has taken the value of the project at Rs. 1,80,99,000/- from a government registered document being the registered Joint Development Agreement of Sub Registrar. Further, the AO has clearly ascertained the value accruing only to the assessee out of the same and apportioned the said profit at Rs. 29,07,000/- being 19% of the total value of Rs. 1,53,00,000/- (arrived after reducing the cost of land of JDA being 622 sq yards \* 4500/- from Rs. 1,80,99,000/-).*

*Hence, the AO has already considered the cost of land from the value and excluded the cost of land from the project value. Therefore Ground 4 of the assessee is incorrect and without factual basis.*

*Further, as mentioned in the order of Id. CIT(A) at Para 4.3 (to quote) 'the argument put forth by the appellant to charge capital gains otherwise is not tenable as the character of the land got changed due to development activity...'. Therefore, the argument of the assessee is both belated and without basis.*

4. *The claim of the assessee in claiming benefit of section 54F is not sustainable due to the following prime reasons. Firstly, the assessee did not file any ITR or made any claim for benefit of section 54F therein and hence the same is not admissible as per the ratio of Supreme Court in the case of Goetze (India) Ltd. Vs CIT: 284 ITR 323. Secondly, the assessee in the instant case has claimed to sell his*

*land and received the consideration for same in kind in the form of the constructed' area. Hence, it is merely a receipt in his hands being his income and is required to be treated as such. The provisions of section 54F are attracted (to quote from the section) '...the capital gain arises from the transfer of any long term capital asset not being a residential house, and the assessee has, within a period of one year before or two years after that date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house....'*

*In the instant case the assessee has merely made a sale for which consideration has been received by the assessee in kind (being constructed area). The act of further investment in terms of purchase or construction has not been made by the assessee. Hence, the provisions of section 54F are not invoked in the instant case as no investment has been made by the assessee for purchase or construction of house. Hence, the claim of assessee is unsustainable on legal grounds.*

8. Ground is 1 is general in nature and requires no adjudication.

8.1. **GROUND 2 TO 5 :**

I have considered the rival submissions and perused the material available on record. The first argument raised by the ld.AR for the assessee is that the Revenue had wrongly worked out the cost of construction at Rs.29,07,000/- for the purpose of computing the capital gain. In this regard, the Assessing Officer had mentioned that pursuant to the Joint Development Agreement (JDA) entered by the assessee with M/s. Bhavani Shankar Construction, the assessee was entitled for 40% share of the constructed area upto 3<sup>rd</sup> floor and 35% share of the constructed area in 4<sup>th</sup> & 5<sup>th</sup> floor. The Assessing Officer on the basis of details of construction, its extent and its valuation mentioned in the registered JDA, had worked out the prorate profit share of the assessee to a tune of

Rs.29,07,000/- . In fact, at running page 35 of the paper book, vide Annexure 1-A, had given the break-up of the built up area and also “partly own estimate value of the property” at Rs.1,80,99,000/-. The Assessing Officer had calculated the share of the assessee based on the receivable share of the assessee in the built-up area for an amount of Rs.29,07,000/- after reducing the prorata land value.

9. In my view, the Assessing Officer was required to compute the capital gains on the date of transfer based on the registered JDA, which is in accordance with the decision of the Hon’ble jurisdictional High Court in the case of Potla Nageswara Rao Vs. DCIT reported in 50 taxmann.com 137 A.P 2014. The Hon’ble Supreme Court in the case of CIT Vs. Balbir Singh Maini reported in [2017] 86 taxmann.com 94 (SC) had also mentioned that in case the JDA is registered, the date of transfer would be the date of registration of the JDA and the capital gain would arise on the said date of registration.

10. In the present case, the registered JDA had not only provided the share of the assessee in the built-up area but also provided the estimate value of the property for Rs.1,80,99,000/-. Therefore, in my opinion, the order passed by the Assessing Officer taking the value mentioned in the registered JDA is in accordance with law. The law is fairly settled that the contents of registered documents are required to be given precedence over the oral evidence unless the contents of the registered documents are rebutted by other contemporaneous evidence. In the present case, no evidence has been brought to my notice showing that the value mentioned in the

registered JDA was incorrect. In view of the above, I do not find any merit in the grounds raised by the assessee. Accordingly, ground nos. 2 to 5 of the assessee's appeal are dismissed.

### **GROUND NO.6**

11. With respect to ground no.6 of assessee's appeal, I found that the assessee has not claimed deduction u/s 54F at the time of filing return of income. Similarly, the assessee, during the appellate proceedings, has not filed the revised return before the Id.CIT(A) and only by way of arguments, he had submitted that he may be permitted to take the benefit of section 54F of the Act. In the present case, the money received by the assessee pursuant to the JDA, was the income of the assessee. For claiming deduction under Section 54F, what is required is, there should be an application of income by the assessee in acquiring the residential house or raising the construction. The sole grievance of the assessee before me is that the constructed portion falling in the share of the assessee be considered as acquiring the house for the purpose of claiming deduction under section 54F and that purpose, assessee relied upon the decision of co-ordinate Bench of the Tribunal in the case of ACIT Vs. Smt. Fazlunnisa Begum (ITA 66/Hyd/2017 dt.09.01.2018). Undoubtedly, the assessee has raised the claim before the Id.CIT(A) and mentioned that he was entitled to claim deduction u/s 54F.

12. However, the Id.CIT(A) had rejected the claim of the assessee after relying upon the decision in the case of Goetze (India) Ltd. Vs CIT: 284 ITR 323. In my opinion, the impediment to entertain the claim of the assessee is on the power of the Assessing Officer and there is no such impediment on the power of the Tribunal u/s 254 of the Act. In view of the above, I deem it appropriate to remand back the issue of entitlement of the claim u/s 54F of the Act to the file of Assessing Officer with a direction to examine the claim of the assessee within the four corners of section 54F and if the Assessing Officer found that the assessee has fulfilled all the conditions, then grant the claim of deduction u/s 54F of the Act to the assessee. Accordingly, the appeal of the assessee is remanded back to the file of Assessing Officer with a direction to pass a fresh speaking order after deciding the issue of entitlement of the claim u/s 54F of the Act after giving 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 his case and the Assessing Officer shall consider such 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. Accordingly, the appeal of assessee is allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 2<sup>nd</sup> January, 2024.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Hyderabad, dated 2<sup>nd</sup> January, 2024.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Venkata Reddy Challa, Flat No.401, Block – A, Vivek Nagar, RV Laxmi Apartments, Kukatpally, Telangana – 500072.
2	The Income Tax Officer, Ward 4(4), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*