

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1403/PUN/2023

निर्धारण वर्ष / Assessment Year: 2016-17

Deepak Hari Kotalwar HUF, Laxmi Builders, Saraswati Colony, Old Ausa Road, Latur- 413512. PAN : AAGHD2454K	Vs.	ITO, Ward-1, Nanded.
Appellant		Respondent

Assessee by : Shri Sharad A. Shah
Revenue by : Shri Ramnath P. Murkunde
Date of hearing : 18.04.2024
Date of pronouncement : 24.04.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 24.11.2023 passed by Ld CIT(A) in National Faceless Appeal Centre, Delhi (NFAC) for the assessment year 2016-17.

2. The appellant has raised the following grounds of appeal :-

- "1. The Ld AO erred and Ld CIT(A) erred in not allowing the exemption claimed u/s 54F of Rs. 31,64,393/-*
- 2. The Ld AO and Ld CIT(A) ought to have considered the following:*
 - i. Reinvestment in new residential house of Rs. 31,64,393/-*
 - ii. Deposited into eligible capital gain account scheme of Rs.30,00,000/-*

3. *The Ld AO and Ld CIT(A) ought to have relied on fact that this is only house owned by assessee Shri Deepak Hari Kotalwar (HUF)*
4. *The Ld AO and Ld CIT(A) erred in giving unnecessary weightage to certain anomalies by approving authorities.*
5. *The appellant craves its right to add to or alter the Grounds of Appeal at any time before or during the course of hearing of the case.”*

3. Briefly, the facts of the case are that the assessee is an HUF and Deepak Hari Kotalwar is the Karta. During the period under consideration the above assessee sold four plots for total consideration of Rs.35,04,000/-. After deducting the indexed cost of acquisition of all the four plots at Rs.3,39,607/-, the assessee disclosed Long Term Capital Gain of Rs.31,64,393/- and simultaneously claimed deduction u/s.54F of the Income-tax Act, 1961 (hereinafter also called ‘The Act’) in the return of income. The assessee deposited Rs 30,00,000/- in the Capital Gains Tax Saving Scheme account of State Bank of Hyderabad on 29-09-2016 & simultaneously started construction of residential house wherein he has invested Rs.31,64,393/- upto 31-03-2016.

4. The AO in the order passed u/s.143(3) of the Act denied the claim of Rs.31,64,393/- made u/s.54F of the Act and added the same as income of the assessee by recording the following :

“(a) From the sale deeds, furnished by the assessee that capital assets sold were held by the Individual, i.e. Shri Deepak Hari Kotalwar;

(b) Whereas house is constructed by this HUF and the claim of exemption is also made by the HUF;

(c) The properties sold by the Individual were never blended to the HUF properties, as it is evident from the balance sheet of the present HUF assessee;

(d) Further the assessee did not furnish the commencement certificate of any other evidences in support of the expenditure incurred on construction of the house. The assessee has merely furnished the completion certificate and it is not possible to verify the correctness of the claim of exemption made by the assessee u/s.54 of the I.T. Act, 1961;

(e) Assessee has furnished the receipt of Capital Gain Deposit Scheme to the tune of Rs.30,00,000/-, whereas the claim of exemption is of Rs.31,64,393.”

5. In appeal, the Id. CIT(A) held that the sale of four plots was made by the HUF assessee and not by individual assessee. But at the same time claim of deduction u/s.54F of Rs.31,64,393/- was denied on the ground that the date of commencement of construction mentioned in the certificate is 11-01-2017 whereas the construction was started from 12-05-2015. Secondly, it was also observed by the CIT(A) that it was not proved that the appellant assessee was having only one residential house other than the new constructed house during F.Y.2015-16 relevant to Assessment Year 2016-17, and therefore he confirmed the order of

the AO disallowing the claim u/s.54F of the Act. It was further observed by the CIT(A) that the appellant ought to have invested the whole of the sale proceeds of Rs.35,04,000/- to be entitled to claim deduction u/s.54F of the Act, and therefore the disallowance made by the AO of Rs.31,64,393/- was upheld.

6. Aggrieved with such order of Id. CIT(A)/NFAC the assessee is in appeal before the Tribunal.

7. We have heard the rival arguments made by both the sides and perused the record. Although the Id. Counsel for the assessee vehemently argued for allowability of deduction u/s.54F on account of investment in construction of house property, however, he made an alternate argument for proportionate deduction u/s.54F on account of deposit in the Capital Gain Tax Saving scheme. We find merit in this alternate argument of the Id. Counsel for the assessee. We find the AO disallowed the benefit of deduction u/s.54F on account of deposit in Capital Gain Tax Saving account Scheme on the ground that the properties were sold by the Individual and investment is made by the HUF. Now it is evident that the CIT(A) has already allowed this ground of the appellant by accepting that the four plots were sold by the HUF and the

Revenue is not in appeal before us on this finding of the Id. CIT(A). In our opinion, the Id. CIT(A) himself ought to have allowed the benefit of proportionate deduction u/s.54F of the Act on account of the investment made by the assessee HUF in Capital Gains Tax Savings account Scheme of State Bank of Hyderabad, because in the deposit slip issued by State Bank of Hyderabad it has been clearly mentioned that the investment is made by HUF. Regarding existence of other house, it has been made clear by the Id.AR that there is no other house in the name of assessee HUF and we also find that there is no averment in the assessment order itself about existence of any other house by the AO. Therefore, we are of the considered view that the assessee is entitled for deduction u/s.54F of the Act on account of deposit made in the Capital Gains Tax Saving account Scheme of State Bank of Hyderabad. As per provisions of section 54F, the assessee is entitled only for proportionate deduction as the sale proceeds are Rs.35,04,000/- whereas the deposit made in Capital Gains Tax Saving account Scheme is only Rs.30,00,000/-.

8. In the light of above discussion, we are of the considered view that the appellant assessee is entitled to claim proportionate

deduction u/s.54F of the Act towards the investment of Rs.30,00,000/- made in Capital Gains Tax Saving account Scheme. Therefore, we restore the issue to the file of the AO with the direction to allow proportionate deduction u/s.54F of the Act on account of deposit of Rs.30,00,000/- made on 29-09-2016 with State Bank of Hyderabad in Capital Gains Tax Savings Account Scheme. The grounds raised by the assessee are accordingly partly allowed.

9. In the result the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 24th April, 2024.

Sd/-

(R. K. PANDA)

VICE PRESIDENT

पुणे / Pune; दिनांक / Dated : 24th April, 2024.

Sujeet / Satish

Sd/-

(VINAY BHAMORE)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.