

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A' Bench, Hyderabad**

**Before Shri K. Narasimha Chary, Judicial Member**  
**And**  
**Shri Madhusudan Sawdia, Accountant Member**

आ.अपी.सं / **ITA No.594/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2021-22)

Shri Narendra Balusu, Hyderabad PAN:ACXPB4000E (Appellant)	Vs.	Income Tax Officer Ward 14(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri K.A. Sai Prasad, CA		
राजस्व द्वारा / Revenue by: Shri Shakeer Ahmed, DR		
सुनवाई की तारीख / Date of hearing: 08/05/2024		
घोषणा की तारीख / Pronouncement: 20/05/2024		

**आदेश/ORDER**

**Per Madhusudan Sawdia, A.M**

This appeal is filed by Shri Narendra Balusu ("the assessee"), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Id. CIT(A)", dated 31/10/2023 for the AY 2021-22.

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

1. The order of the Commissioner of Income Tax (Appeals) is not correct both in facts and in law
2. The Commissioner of Income Tax (Appeals) erred in denying the Appellant, the deduction under Sec. 54F of the Act.
3. In the facts and circumstances of the case, whether the Commissioner of Income Tax (Appeals), ought to have appreciated that the 1<sup>st</sup> proviso to sec. 54F of the Act, does not apply to the Appellant.
4. Without prejudice to the above,
  - a. the Commissioner of Income Tax (Appeals) ought to have granted the Appellant, the deduction under Sec. 54 of the Act, to the extent of capital gains on the sale of residential flats.
  - b. The Ld. Commissioner of Income Tax (Appeals) should have appreciated and held that, the Appellant is eligible for a deduction of Rs. 2,04,81,789/- under Sec. 54 of the Act, to the extent of the sale of residential flats, and Rs. 50,00,000/- under Sec. 54EC towards sale of plots.
5. The Appellant craves leave to add, amend, alter or rescind any of the above grounds of appeal before or at the time of hearing.

3. Brief facts of the case are that the assessee is an individual and Director in M/s. Ocean Pharma Coat (P) Ltd and KRS Pharmaceuticals (P) Ltd and deriving income from salary, house property, capital gain and other sources, filed his return of income on 31.12.2021 declaring total income of Rs.67,17,470/- after claiming deduction of Rs.3,69,34,545/- u/s 54F of the income tax Act,1961 (“ the Act”) and deduction of Rs.50.00 lakhs

u/s 54EC of the Act. The case of the assessee was selected for scrutiny and notice u/s 143(2) of the Act was issued by the learned assessing officer (ld.AO) on 28<sup>th</sup> June, 2022 on the reason that large amount of deduction were claimed u/s 54F and 54EC of the Act. Notices u/s 142(1) of the Act were issued to the assessee and the assessee met the compliance towards the same. On the basis of the reply of the assessee, the ld. AO issued show cause notice on 28.11.2022 to which the assessee did not comply within the given time. As no compliance were received from the assessee within the given time, the ld. AO completed the assessment u/s 143(3) r.w.s. 144B of the Act by allowing deduction of Rs.25,42,055/- u/s 54EC and disallowing the deduction of Rs.3,88,83,000/- claimed u/s 54F vide order dated 30.12.2022.

3. Aggrieved by the order of the ld. AO the assessee filed appeal before the ld. CIT(A), who confirmed the disallowances made by the Assessing Officer and dismissed the appeal of the assessee by observing as under:

13. I have considered the written submission of the appellant and the order of AO. The appellant submitted that during assessment he was given less time but as seen from the order several opportunities were provided right since July and the order was passed in December but now appellant has made a detailed submission as per para 4 above. The AO observed that during assessment proceedings, the appellant submitted that during the year, the appellant sold (i) residential properties i.e. Flats No. 103, 104, 305, 307, 401 and 505 and 3 open plots in Saipriyas's Basil, Madhuraveda, Village.

14. Further, in the ITR the appellant has shown capital gain on sale of flats for all above flats and plots. The appellant claims to have only one flat No. 101 but as per Schedule AL of the ITR, he was having more than one residential houses . Now the appellant states that he did not own more than one house in the year of sale of property and in the ITR, there was a clerical mistake of mentioning four flats instead of one flat. The appellant's contention that previous year's working by auditor was copied and filed in the ITR is of no consequence as the development agreement is dated 15.10.2016 and if he transferred open land and not enjoyed possession of flats, then why he was disclosing the flats as his own in his ITR. He has also stated in the reply that he was owner of the said above flats in earlier years but retained only one flat and now saying that he gifted other flats to his heirs prior to the sale of the assets offered to capital gains. Now when confronted with justifying the claim of deduction u/s 54F, he is submitting this while at the same time mentioning such flats/ properties in his own ITR and that too without substantiating his claim with any supporting documentary evidence. Reliance is placed on rationale held in the cases of:-

1. Surendra Babu Sabbineni vs. DCIT 147 taxmann.com 560 (Hyd-ITAT) (2023)
2. Neville J. Pereira vs. ITO 8 taxmann.com 68 (Mumbai) (2010).

15. As per section 54F, the asset transferred should necessarily not be a residential house, whereas appellant has claimed deduction against LTCG arising out of transfer of 06 flats also, thereby violating the provisions of section 54F. Accordingly, the deduction of Rs.3,88,83,000/- claimed u/s 54F has rightly been denied by the AO. Hence, the grounds are dismissed.

4. Aggrieved by the order of the ld. CIT (A) the assessee is in appeal before us.

5. The learned AR for the assessee consolidating all the grounds raised by the assessee submitted that the main issue in this appeal is with regard to the admissibility of deduction u/s 54 and u/s 54EC of the Act to the assessee. He further submitted that the assessee has shown in the return of income, Long-Term Capital Gain("LTCG") of Rs.2,04,81,789/- from sale of 6 flats("flats") and LTCG of Rs.2,09,43,266/- from sale of 3 plots("plots") during the year under consideration.

5.1 The learned AR also submitted that the assessee has deposited an amount of Rs.3,88,83,000/- in the specified bank account in accordance with section 54(2) of the Act and against the said deposit of Rs.3,88,83,000/-, claimed deduction of Rs.2,04,81,789/- u/s 54F from the LTCG on the sale of flats and Rs.1,84,01,211/- u/s 54F from the LTCG on the sale of plots. The ld.AO disallowed the deduction of Rs.2,04,81,789/- claimed u/s 54F from the LTCG on the sale of flats contending that the deduction u/s 54F is not available from sale of residential property. The Ld.AO also disallowed the deduction of Rs.1,84,01,211/- claimed u/s 54F from the LTCG on the sale of plots contending that the deduction u/s 54F is not available to the assessee, as the assessee is the owner of more than one residential property as on the date of transfer of plots.

5.2 The learned AR submitted that inadvertently the LTCG of Rs.2,04,81,789/- on the sale of flats have been claimed u/s 54F instead of section 54 of the Act. Hence the assessee is eligible for a deduction Rs.2,04,81,789/- on the sale of flats u/s 54 of the Act. However, both the revenue authorities have not allowed any deduction u/s 54 of the Act. Further with regards to disallowance Rs.1,84,01,211/- on account the LTCG on the sale of plots, the assessee did not file any appeal before the ITAT. The learned AR also submitted that there was calculation mistake in the working of the LTCG on the sale of flats. The actual LTCG on the sale of flats is Rs. 2,07,79,789/- instead of Rs.2,04,81,789/-. Hence the learned AR prayed before the ITAT for allowance of the deduction of Rs. 2,07,79,789/- on the sale of flats u/s 54 of the Act.

5.3 The learned AR also submitted that the assessee has invested Rs.50 lakhs in the specified long term specified assets in accordance with the provisions of section 54EC of the Act and is eligible for a deduction of Rs.50.00 lakhs u/s 54EC of the Act from the LTCG on the sale of plots. However, the ld.AO allowed only deduction of Rs.25,42,055/- instead of Rs.50.00 lakhs. Hence the learned AR prayed before the ITAT for allowance of the deduction Rs.50.00 lakhs u/s 54EC from the LTCG on the sale of plots.

6. The ld. DR, on the other hand, submitted that in principle, the Department has no objection on the claim of the

assessee . However, he submitted that from the Bank statement of SBI, it is confirmed that the assessee has deposited an amount of Rs.3,88,83,000/- on 30.12.2021. But it is not clear from the Bank statement that whether the account is a specified bank account in accordance with section 54(2) of the Act or not. Therefore, he submitted that suitable direction may be given to the AO to verify the nature of the account before allowing any deduction u/s 54 to the assessee.

7. We have heard the rival arguments made by both the sides and perused the available material on record. There is no dispute about the fact that there is a capital gain of Rs.2,07,79,789/- from the sale of flats and Rs.2,09,43,266/- from the sale of plots. Two issues are involved in the appeal of the assessee i.e. a) claim of deduction u/s 54EC of the Act and b) claim of deduction u/s 54 of the Act .

7.1 As far as the claim of deduction u/s 54 of the Act is concerned, the assessee has not raised such claim before the revenue authorities. The claimed is raised for the first time before us. Hence in our opinion the claim with regards to deduction u/s 54 has not been verified by the revenue authorities. Hence we restore the issue to the file of the ld. AO to verify the allowability of the claim of the assessee u/s 54 of the Act on merits after affording the opportunity of hearing to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purpose.

7.2 As far as the claim of the assessee on account of deduction u/s 54EC of the Act is concerned, there is no dispute with regards to amount invested u/s 54EC of the Act amounting to Rs.50.00 lakhs . It is also not in dispute that the Id.AO have already allowed a deduction of Rs.25,42,055/- u/s 54EC of the Act. In our opinion for the balance amount of Rs. 24,57,945/- the assessee is eligible for the deduction u/s 54EC of the Act. Hence, we direct the Id.AO to allow the difference amount of Rs. 24,57,945/- ( Rs. 50.00 Lakhs minus Rs.25,42,055/- ) as deduction u/s 54EC of the Act from LTCG on the sale of plots. Accordingly, the ground of the assessee in this regard is treated as allowed .

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 20<sup>th</sup> May, 2024.

Sd/- <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	Sd/- <b>(MADHUSUDAN SAWDIA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 20<sup>th</sup> May, 2024

***Vinodan/sps***

Copy to:

S.No	Addresses
1	Shri Narendra Balusu C/o Katrapati & Associates, 1-1-298/2/B/3 Sowbhagya Avenue Apartments, 1 <sup>st</sup> Floor Ashoknagar, Street No.1 Hyderabad, Telangana 500020
2	ITO Ward 14(1) IT Towers, AC Guards, Masab Tank, Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*