

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

Before Shri Laliet Kumar, Judicial Member
AND
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.231/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Smt. Lekha Reddy Mettu USA/Hyderabad PAN:BNHPM0166N (Appellant)	Vs.	ACIT (International Taxation-1) Hyderabad (Respondent)
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आ.अपी.सं / **ITA No.232/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Sudhakar Reddy Mettu, USA/ Hyderabad PAN:BNHPM0447G (Appellant)	Vs.	ACIT (International Taxation-1) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:		CA Akshay Surana
राजस्व द्वारा/Revenue by::		Shri Jeeval Lal Lavidiya, CIT(DR)
सुनवाई की तारीख/Date of hearing:		27/05/2024
घोषणा की तारीख/Pronouncement:		29/05/2024

आदेश/ORDER

Per Laliet Kumar, J.M

These two appeals filed by the respective assessee are directed against the common order dated 09.01.2024 of the learned ACIT (International Taxation)-1, Hyderabad relating to A.Y.2017-18. Since common issues are involved in both these

appeals, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. The common grounds raised by the assesseees in ITA No.231 and 232/Hyd/2024 reads as under:

1	1) The order passed by the Ld. ACIT, Int. Taxation – 1, Hyderabad (“AO”) u/s 147 r.w.s 144C (13) of the Income Tax Act, 1961 (“Act”) on 9th January 2024 for the assessment year 2017-18 is erroneous insofar as it relates to the denial of exemption u/s 54F of the act
2	2) The Ld. A.O erred in denial of exemption of Rs. 44,72,000/- u/s 54F of the act without appreciating the beneficial nature of the provisions of section 54F and the intent of legislature for introduction of an exemption
3	3) The Ld. AO ought to have appreciated the fact that the assessee entered into a Joint Development Agreement (“JDA”) on 31st May 2016 pursuant to which she was to receive a residential villa in exchange of her plot of land ,the construction was to completed within a period of 30 months based on which covenant the assessee has claimed exemption u/s 54F
4	4) The Ld. AO ought to have appreciated that when the JDA is the instrument of transfer of capital asset and accrual of Capital Gains, the same JDA is also an instrument of creation of Title of new asset eligible for claiming exemption u/s 54F of the Act.
5	5) The Ld. AO ought to have appreciated that when taxation of JDA is on the basis of deemed consideration accruing to the assessee, it is the same consideration which is already invested in the new asset as no monetary consideration has flown to the assessee.
6	6) The Ld. AO ought to have appreciated the fact that the entire sale consideration was parted with by
	the assessee at the time of entering the JDA itself and the delay in completion of construction within a period of three years was due to circumstances beyond the control of assessee.
7	7) The Ld. AO ought to have considered various judicial pronouncements and circulars submitted in favour of assessee’s claim of exemption u/s 54F of the Act.

3. Facts of the case, in brief, are that the assessee is an individual and Non-Resident, has not filed return of income for the A.Y 2017-18. As per the immovable property transaction information disseminated by the I&CI wing for the F.Y 2016-17 relevant A.Y 2017-19, the Assessing Officer noted that the assessee along with 45 others have entered into DAGPA for Development and sale of immovable property all the land admeasuring acrs 4.505 in Survey No.14 of Guttala Begumpet Village, Serlingampally Mandal Rangareddy District(21806 Sq.Yds with approximate built up area of 2,75,00,000 sft) registered vide DAGPA document No.6418/2016 dated 31-05-2016, for a total sale consideration of Rs.43,61,20,000/- as against SRO value of Rs.62,86,20,000/-. As per the DAGPA the owners and developer shares are 47.25% and 52.75%. As the assessee is one amongst the 46 owners the share of the assessee is 1/46th of the share of the owners. The assessee's share in chargeable sale consideration as per section 50C of the IT Act, 1961 for computation of Long Term Capital Gain is Rs.64,57,000/- and the assessee will get the benefit of deduction of indexed cost of acquisition and construction/improvement when the details become available.

4. During the FY 2016-17 relevant to AY 2017-18, income chargeable to tax in the hands of assessee accrued in the form of Long Term Capital Gains to the extent of Rs.64,57,000/- but the assessee did not file return of income and he did not offer this income to tax. Therefore, income of Rs.64,57,000/- has escaped assessment in the hands of assessee for AY 2017-18.

Hence, the Assessing Officer reopened the assessment with the prior administrative approval and a notice U/s 148 of the Income Tax act, 1961 was issued to the assessee. Notices u/s 142(1) of the Income Tax act, 1961 and Show cause notice was issued to the assessee in response to which the AR of the assessee appeared before the Assessing Officer and accepted the deemed sale consideration at Rs.50,00,000/- and claimed indexed cost of acquisition of Rs.5,28,000/- and submitted that the assessee is eligible for claiming exemption u/s 54F of Income Tax Act, 1961.


5. However, the explanation of assessee was not acceptable to the Assessing Officer on the ground that the assessee was yet to receive the Villa/residential house and has not acquired legal title on such residential house/villa as on the date of JDA. Further, the assessee has not got legal title/registered the residential house/villa in her name till date while the section 54F stipulates that the assessee shall purchase house within two years or construct new house within three years. So, it is a violation of the section 54F of the Income Tax Act, 1961. The assessee herself admitted that the construction of villa was not completed till date and occupancy certificate was also not received. The Assessing Officer rejected the explanation offered by the assessee and completed the assessment u/s 147 r.w.s. 144C(13) of the I.T. Act and initiated penalty proceedings u/s 270A of the I.T. Act, 1961.

6. The learned Counsel for the assessee drew the attention of the Bench to the direction of the DRP which are mentioned at

page 5 of the DRP in para 2.2.3.1 to 2.3.4 which is reproduced below:

2.2.3.1 **Having considered the submissions,** the Panel opines that the AO is right in denying the exemption u/s 54F. The Assessee's contention that the non-completion of house is due to developer and not under her control, will not rescue the assessee from denial of exemption u/s 54F. The section 54F clearly stipulates that capital gains not to be charged when in case of investment in a residential house if the house is constructed within period of three years. As per the records, it is clearly evident that construction was incomplete and the Assessee has not got legal title/registered the residential house/villa in her name till date. Moreover, the Assessee herself has admitted in his submission before the Panel that the construction of the impugned villa is not completed within the three years period.

2.2.3.2 The Assessee is trying to take advantage of CBDT Circulars No. 471 of 1986 and No. 672 of 1993 and has emphasized and tried to draw parallels with schemes like DDA, indicating that completion or occupation isn't mandatory for claiming exemption u/s. 54F. The Panel has perused both the circulars. The first Circular No. 471 of 1986 is with respect to DDA only and not applicable to the case of the assessee. The second Circular No. 672 of 1993 is also on a different footing than the case of the assessee. For the sake of convenience, the circular is being reproduced here as under:

"429. Whether allotment of flats/houses by co-operative societies and other institutions, whose schemes of allotment and construction are similar to those of DDA, should be treated as cases of construction for purposes of sections 54 and 54F
1. Attention is invited to Board's Circular No. 471, dated 15-10-1986. It was clarified therein that cases of allotment of flats under the Self-Financing Scheme of the Delhi Development Authority (DDA) should be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act. The Board has since received

representations that even in respect of allotment of flats/houses by co-operative

societies and other institutions, whose schemes of allotment and construction are similar to those of Delhi Development Authority, a similar view should be taken.

2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No. 471, dated 15-10-1986 (Sl. No. 428), such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act.

Further, as mentioned in the aforesaid circular, para 2 of Board's Circular No. 471, dated 15-10-1986, is as under:

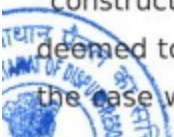
428. Capital gains from long-term capital asset - Investment in a flat under the self-financing scheme of the Delhi Development Authority - Whether to be treated as construction for the purposes of capital gains

.....

- 2. The Board had occasion to examine as to whether the acquisition of a flat by an allottee under the Self-Financing Scheme (SFS) of the D.D.A. amounts to purchase or is construction by the D.D.A. on behalf of the allottee. Under the SFS of the D.D.A., the allotment letter is issued on payment of the first instalment of the cost of construction. The allotment is final unless it is cancelled or the allottee withdraws from the scheme. The allotment is cancelled only under exceptional circumstances. The allottee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking the delivery of possession is only a formality. If there is a failure on the part of the D.D.A. to deliver the possession of the flat after completing the construction, the remedy for the allottee is to file a suit for recovery of possession.*

.....

2.2.3.3 Thus, herein it is quite clear that only in the cases where-in the terms of the schemes of allotment of flats or houses by the allotting authorities are similar to the Self-Financing Schemes of DDA inter-alia, then only the exemption from "construction within the three years' period" is applicable or the property will be deemed to be constructed in terms of Section 54F of the Act. However, this is not the case with the assessee as the assessee is due for a property in lieu of parting



her land ownership as per a Development Agreement Cum General Power of Attorney (DAGPA) as discussed earlier, which is clearly not at par with any Self-Financing Schemes of DDA or of any co-operative societies or of any other institutions.

2.2.3.4 In view of the above, the claim of the assessee for construction of house in terms of Section 54F of the Act is misplaced and accordingly, the Assessee is not eligible for the exemption u/s 54F. Thus, this ground of the Assessee is hereby rejected.

7. It was the contention of the learned AR that pursuant to the direction of the DRP, the Assessing Officer disallowed exemption u/s 54F of the Act and the reasonings are given in para No.9 at page 6 of the assessment order which to the following effect:

9. Vide the above reply, the assessee is claiming exemption u/s 54F of Income Tax Act 1961. However, the explanation of assessee is not acceptable for the following reasons:-

- A) However, it is noticed that the assessee is yet to receive the Villa/residential house and has not acquired legal title on such residential house/villa as on the date of JDA. Further, the assessee has not got legal title/registered the residential house/villa in his name till date while the section 54F stipulates that the assessee shall purchase house within two years or construct new house within three years. So, it is a violation of the section 54F of the Income Tax Act, 1961.
- B) The assessee himself admitted that the construction of villa was not completed till date and occupancy certificate was also not received. The relevant portion of reply of assessee is reproduced as under:-

While it is a fact that the construction of Villa has not been completed till date and occupancy certificate not received, it is also a fact that delay in construction is for reasons which are beyond my control. Initially the project could not be completed as there was a disagreement between the partners of the developer and thereafter delayed due to the Covid Pandemic. Also, I would like to impress upon the fact that I have not any consideration in monetary terms on entering the JDA or at any point of time after that. I am to receive only the residential Villa in lieu of the land.

Hence, the assessee has not satisfied the conditions stipulated in section 54F of the Act.

- C) Further, the case laws/judgements referred by the assessee are not applicable to the assessee's case as the facts of the case are distinguishable.

In view of above reasons, the claim of assessee is rejected.

8. The contention of the learned AR is that as per JDA agreement entered between the assessee along with others on

31.05.2016, the assessee is eligible to get one villa of 250 sq. yards within 36 months of the JDA i.e. 31.05.2016. It was the contention of the assessee that because of the dispute between the partners of the developer, the construction has not been completed and the possession of the property has not been handed over to the assessee. For the above said purposes, the learned AR drew our attention to the order passed by the Hon'ble High Court dated 28.7.2022 which shows for the assessee that there was a dispute between the partners of the Developer and therefore, the construction could not have completed by the Developer within the stipulated period of 36 months.

9. The learned AR further submitted that construction has not been completed within the time granted by section 54F of the I.T. Act, for no fault of the assessee, therefore, the benefit of beneficial provision should be extended to the assessee.

10. Per contra, the learned DR submitted that the JDA was dated 31.05.2016 and as per this, the construction was to be completed within 30 months upto 1.12.2018. However, it is the case of the Revenue that the construction was only completed in Nov. 2023 and no registration has taken place in the name of the assessee. It was submitted that since the construction was not completed within a period of 3 years as contemplated u/s 54F of the I.T. Act, 1961, the benefit of section 54 cannot be granted to the assessee.

11. We have heard both the parties and perused the material available on record. The important dates which are relevant for adjudication of the appeal are:

- i) JDA was entered into by the assessee and others on 31.5.2016
- ii) The plans were approved on 17.04.2017
- iii) Construction was to be completed within 36 months i.e. by 31.05.2019.
- iv) Construction was completed on Nov. 2023
- v) The litigation filed by the Partners of the Developers against each other as clear from the order was 21.10.2021.

12. From the reading of the above said relevant dates, it is abundantly clear that the dispute among the partners of the developers arose only after 25.10.2021 which is beyond the period of 3 years from the date of transfer of the capital assets which happens pursuant to the JDA on 31.5.2016. Admittedly, there is a delay of more than 7 years in completing the construction as against the period of years u/s 54F of the I.T. Act, 1961. The explanation given by the assessee that there was dispute among the Partners is not substantiated and rather it shows that the dispute arose only in the month of October, 2021 i.e. after a lapse of 5 years. Furthermore, no evidence has been filed to prove that some steps were taken to enforce his/her right pursuant to the agreement dated 31.05.2016 by the assessee for a period of more than 7 years. No email or correspondence has been brought to our notice demonstrating that serious efforts were made by the

assessee to ensure due completion of the construction within the time granted by the statute. In our view, the assessee should be careful and vigilant in enforcing his right which are missing, in the present case. In the light of the above, we do not find any reason to interfere in the findings given by the Assessing Officer/DRP and accordingly both the appeals of the assessee are dismissed.

13. In the result, appeals filed by both the assesseees are dismissed.

Order pronounced in the Open Court on 29th May, 2024.

Sd/- (MANJUNATHA, G) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th May, 2024

Vinodan/SPS

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order