

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH, CHENNAI**

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND**  
**SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./**ITA No.: 999/Chny/2023**

निर्धारणवर्ष / Assessment Year: 2016-17

Deputy Commissioner of  
Income Tax,  
Non-Corporate Circle -7(1),  
Chennai.

Kumarasamy Pillai Aparna,  
v. No. 43, Kannadasan Salai,  
T.Nagar, SRDS,  
Chennai – 600 017.

**[PAN:AFZPA-9359-N]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. R. Vikneswaran, JCIT

प्रत्यर्थीकीओरसे/Respondent by : Shri. T. Vasudevan, Advocate

सुनवाई की तारीख/Date of Hearing : 03.06.2024

घोषणा की तारीख/Date of Pronouncement : 31.07.2024

**आदेश /ORDER**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal instituted by the revenue is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2016-17, vide order dated 09.06.2023.

2. The revenue has raised the following grounds of appeal:

"1. *The order of the CIT(A) is contrary to law, facts and circumstances of the case.*

2. *The Ld. CIT(A) without appreciating the facts and circumstances of the cases relied just on two case laws and*

*allowed appeal of the assessee without much discussion on how these case laws apply to the facts of the assessee.*

3. *The learned CIT(A) erred in not considering the case of **CIT vs. Balbir Singh Maini (2017) 86 taxmann.com 94 (SC)**, wherein the Hon'ble Supreme Court has held that no rights are transferred in respect of an immovable property, if the document purportedly conveying such a transfer is not registered.*

4. *The Ld. CIT(A) erred. in appreciating the fact, that the assessee had failed to deposit the sale consideration in the Capital gains account scheme as mandated by law.*

5. *The Ld. CIT(A) erred in considering the fact, that the re-investment in the front portion was not evidenced by registered purchase document and only a sale agreement was entered into.*

6. *The Ld. CIT(A) has failed to explain how he was satisfied regarding the source of cash deposits made to the tune of Rs.52,19,200/-.*

7. *The Ld. CIT(A) erred in considering the fact, that the assessee had failed to prove that the cash deposited in various accounts were in fact from the cash withdrawn earlier from different accounts.*

8. *For these and other grounds that may be adduced at the time of hearing, it is' prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."*

3. The assessee is an individual filed her return of income on 17.04.2017 and reported the taxable income of Rs.24,65,370/-. The case was selected for scrutiny on issuance of notice u/s. 143(2) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 28.08.2018 and the Assessing Officer made two additions of Rs.4,01,74,215/-

under the head long term capital gains and Rs.52,19,200/- of cash deposits under the head income from other sources as unexplained cash and completed the assessment u/s. 143(3) of the Act dated 26.12.2018 in determination of the taxable income at Rs.4,78,58,789/-.

4. The ground no. 2 to 5 are against the action of the Id.CIT(A) deleting the addition of Rs.4,01,74,215/-. The brief facts as note by the AO are as under:

*"11. As detailed in para 7 supra, the Assessee's claim for the purchase of property at Annanagar on 16-10-2015 for Rs.3,40,00,000/- is acceptable as the Trichy property is treated as commercial one not as residential one in relation to para 8 supra. As the Assessee has given only an agreement to the sale dated 16-08-2016 which cannot be taken as proper/satisfactory evidence for the purchase of property. Since immovable property can be purchased only through registered sale deed and the sale agreement now produced by the Assessee is not registered AS per Transfer u/s 2(47) of Income Tax clearly say that there should be sale, exchange or relinquishment of the asset or extinguishment of any rights therein. In absence of proper evidence that sale has been taken place is not proved correctly., Assessee cannot be considered to be owner of property mentioned at item No. 2 above.*

*Further, the amount has not been invested property in capital gains account with bank for claiming exemption u/s 54 F. Therefore this claim considered null and void as per the income tax act and the exemption claimed is not allowed. Considering the-above details, finally Long Term Capital Gain is calculated as under:*

*Long Term Capital Gains as calculated in para 9 above  
Rs.6,80,89,384*

*Less: 54 Exemption: Investment in the Anna Nagar Property  
Vide deed No.5243/2015 dated 16-08-2015*

<i>Sale Consideration</i>	<i>Rs.3,40,00,000</i>
<i>ADD: Stamp Value</i>	<i>Rs.23,80,000</i>
<i>TOTAL:</i>	<i>Rs.3.63.80,000</i>

*Amount of exemption available on pro-rate basis.*

*Long Term Capital Gain x Amount invested in new Asset*  
*Net consideration*

<i>6,80,89,384x 3,63,80,000 / 8,87,36,400</i>	<i>Rs. 2,79,15,169</i>
<i>LONG TERM CAPITAL GAINS (A)</i>	<i>Rs. <b><u>4,01,74,215</u></b></i>

Aggrieved by the impugned order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

5. Before the Id.CIT(A), the assessee assailed the action of AO and stated that the reinvestment made in the house property has been disallowed without considering the sale agreement entered between the assessee and the vendor for remaining 50% of the land and building which is erroneous. Even though, the house property was acquired by the assessee by entering into an agreement to sale, subsequently the title of the property had been transferred in favour of the assessee by way of registered sale deeds. Considering the details and documents furnished by the assessee, the Id.CIT(A) passed an order on 09.06.2023 by allowing the claim of the assessee u/s. 54/54F of the Act holding as under:

*"3.1 What are the basic facts in this case which require to be seen? The appellant had sold some properties and had bought a residential house and hence claimed deduction u/s 54 of the Act. The same was doubted by the AO, who disallowed the claim of deduction in part.*

*3.2 The appellant had purchased residential house property at Anna Nagar, Chennai in two parts first purchasing the back portion of the property on 16.10.2015 for Rs.3.40cr. vide document No. 5254/2015, and then the front portion of the same for Rs.5.50 Cr, by sales agreement dated 16/8/2016. The AO allowed reinvestment claimed only for the back portion evidenced by the sale deed and not for the front portion which was as per the sale agreement, which had been acted upon by the appellant and part payment also made for that.*

*3.3 Appellant in her written reply pleads that in 2015 there was traffic disruption in Anna Nagar & hence she had renegotiated the purchase, which was finally done by two registered documents 5297/2017 and 4843/2018. The basic details have been seen. The appellant had drawn attention to the case of ITO Ward 32(4) Vs. Smt. Swathi Oberoi ITA 4150/Del/2018 to plead that sale agreement must be treated as transfer and hence the benefit of section 54/54F be allowed to the appellant. We may also refer to the case of Sh. Sanjeev Lal Vs, CIT- (Sc) which is given as under:-*

*"As regards as the question, whether agreement of sale can be said to be a purchase due to which assessee can be extended benefit of section 54 capital F of income tax act, 1961 we may refer to the Supreme Court judgement in the case of Sh. Sanjeev Lal Etc. Vs. Commissioner of Income Tax, Chandigarh & Anr, CIVIL APPEAL Nos.5899-5900 of 2014,*

*"In the light of the afore stated facts and in view of the definition of the term "transfer, one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in personam had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs.15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the*

*parties through subsequent contract or conduct leading to no transfer of the property to the proposed vendee but that is not the case a hand.*

*22. In addition to the fact that the term "transfer" has been defined under, Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention, of the Legislature, is to give him relief in the, matter of payment of tax on the long term capital gain. If a person, who gets some excess amount upon, transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income Tax Act and it is also said that equity and tax are strangers to each other, still this Court has often observed that purposive interpretation should be given to the provisions of the Act.*

*In the case of Oxford University Press v. Commissioner of Income Tax [(2001) 3 SCC 359] this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. Considering the aforesaid observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e., definition of "transfer, which would enable the appellants to get the benefit under Section 54 of the Act.*

*23. Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an*

*agreement to sell an immovable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.*

*24. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated."*

*3.4 Following the above, it would be clear that a agreement to sale and acted upon under which payments have been made and hence the portion fructified, are to be treated as transfer of property u/s 2(47) of the Act. It would be seen that appellant had made substantial compliance of the requirement for reinvestment and hence becomes allowable for the deduction claimed.*

*3.5 In the view of the above, the GoA Nos. 1 to 6 related to deduction claimed u/s54/54F are allowed.*

Aggrieved by the order of the Id.CIT(A), the revenue challenged the order of Ld.CIT(A) before us.

6. The Id.DR, assailed the action of the Id.CIT(A) and stated that Id.CIT(A) has erred in allowing the deduction u/s. 54/54F of the Act to the assessee based on the 'agreement to sell' entered by the assessee for immovable property as reinvestment made, without considering the decision in the

case of "CIT vs. Balbir Singh Maina" [2017] 86 Taxmann.com 94 (SC). The Id.CIT(A) ought to have confirmed the denial of deduction u/s. 54/54F of the Act made by the Assessing Officer. Further, the Id.DR stated that the Id.CIT(A) has erred in deleting the additions made of Rs.52,19,200/- as unexplained cash deposits without having explained the proper source for the cash deposits. Hence, the Id.DR prayed for setting aside the order of the Id.CIT(A) to uphold the order of the Assessing Officer by setting aside the order of the Ld.CIT(A).

7. Per contra, the Id.AR supported the action of the Id.CIT(A) and drew our attention to the paper book filed (consisting of 78 pages) to page No.3, wherein the assessee had furnished complete details of the capital assets sold during the assessment year 2016-17 and corresponding computation of long term capital gain thereon before the AO during the assessment proceedings. In response to show cause notice issued, the assessee had also furnished the details and documents of the immovable residential property acquired to claim the deduction u/s. 54/54F of the Act. The Id.AR, stated that the registered sale deeds (3 nos.) have been furnished

before the Assessing Officer during the assessment proceedings.

7.1 The assessee got the rear portion of the property registered in her name vide document no.5254/2015 dated 16.10.2015 for a sum of Rs.3,40,00,000/- and spent 27,20,365/- towards stamp and registration charges (23,80,000/-+3,40,365/-) and the possession of the entire property was handed over by the seller to the assessee. Subsequently, the assessee re-negotiated with the seller of property due to various disadvantage like destruction of traffic, metro rail work and other limitation, the balance portion of the property is registered for a sum of Rs.3,24,10,000 in two documents vide sale deed 5297/2017 and 4843/2018 and spent towards registration and stamp duty of Rs.35,65,235/- (1<sup>st</sup> document –stamp duty Rs.15,40,000+registration charges of Rs.8,80,290/-, (2<sup>nd</sup> documents stamp duty of Rs.7,28,200/- and registration charges of Rs.4,16,745/- totaling to Rs.35,65,235/-).

7.2 The amount reinvested in house property was at Rs.726,95,600/- and spent Rs.63,40,800/- towards the

commission under the expenditure total investment claimed for exemption u/s. 54F of the Act on account of investment in residential property was Rs.7,90,36,400/-.

7.3 The Id.AR brought to our notice that the document no. 2 & 3 was registered in favour of the assessee by way of sale deed in the year 2017-18 consisting of 50% of the front portion of the residential building was acquired by the assessee through the 'agreement to sale' dated 16.08.2016. Therefore, the claim of the assessee for deduction u/s. 54/54F of the Act against the long term capital gains earned during the year as reinvestment for the residential house property is allowed as per the provisions of the Act by the Id.CIT(A) after satisfying with the relevant documents filed by the assessee. To support the claim, the Ld.AR relied on the decision of the ITAT Delhi, in the case of ITO, Ward 32(4) Vs. Smt. Swati Oberoi, 2021(7) TMI 1240- ITA No.4150/Del/2018, wherein similar issue has been decided in favour of the assessee by dismissing the appeal of the revenue, and hence, prayed for dismissal of the grounds raised by the revenue.

8. We have heard both the parties, perused materials available on record and gone through decisions of the courts and orders of the authorities below. The facts are not repeated for the sake of brevity. It is admitted fact that the assessee has earned long term capital gain by selling various capital assets held in her name and declared capital gains in her return of income. Further, the assessee has acquired the residential property as reinvestment of long term capital gain to claim the deduction u/s. 54/54F of the Act.

8.1 The assessee had acquired the rear portion of the residential house, which was owned by the vendors jointly by way of sales and the balance 50% (front portion) of the residential property was purchased/acquired by the assessee by way of an agreement to sale dated 16.08.2016 and the same were conveyed by way of registered sale deed (2 documents) on 12.10.2017 and 16.08.2018. It is noted that the total reinvestment made by the assessee in the entire residential house property was Rs.7,90,36,400/-. The corresponding agreement to sale, registered sale deeds are given in paper book page no. 8 to 72, the same were noted by the Id.CIT(A). The registered sale deed in favour of the

assessee by way of conveying the title for the balance 50% of the residential house was delayed due to re-negotiation of the sale consideration with the vendors on account of traffic disruption in Anna Nagar. However, there is no change in purchase of residential property in the hands of the assessee for claiming the deduction u/s. 54 of the Act against long term capital gains earned as per the agreement to sale entered on 16.08.2016.

8.2 The revenue's ground that the Ld.CIT(A) has erred in not considering the case of CIT vs. Balbir Singh Maina (2017) 86 taxmann.com 94 (SC) is not correct because in that case, since the document purportedly conveying such a transfer is not registered, the Hon'ble Supreme Court held that no rights were transferred in respect of the immovable property. Thus, we note that the facts of the present case is distinguishable because in this case the assessee got into an agreement with the vendor to purchase the immovable property and thus made reinvestment in the house property which was subsequently registered by way of sale deed in favour of the assessee. Hence, the ratio in Balbir Singh Maina (Supra) is not applicable to the facts of the assessee's case.

8.3 Considering the facts and circumstances of the case as discussed (supra), we find that, the claim of the assessee u/s. 54/54F of the Act by reinvesting the sale consideration on the capital asset in a residential house property is in consonance with the provisions of applicable law and therefore, we do not find any reason to interfere with the reasoned order of the Id.CIT(A) and dismiss this ground of the revenue.

## **9. Addition on cash deposits of Rs.52,19,200/-:**

9.1 The revenue has raised ground no. 6 & 7 against the action of the Id.CIT(A) deleting the addition of Rs.52,19,200/-.

The brief facts as note by the AO are as under:

*"12. Another reason for selection of this case is large cash deposits in Bank account. Accordingly Assessee's Bank accounts are verified. A show cause notice dated 18-12-2018 was issued to the Assessee through e-mail and speed post, giving the details of credits appearing in the 3 banks i.e Bank of Baroda - Rs.17,29,000/-, H.D.F.C. Bank -Rs.23,10,300, Indian Bank Rs.11,79,900 as the sales amount are rooted through Bank only. The Assessee was expected explain about the source or these cash deposit , but noting was heard till date from the Assessee. In absence of proper evidence, the same is added to the total income in the head income from other Sources Rs.52,19,200/-."*

9.2 The impugned action of the AO in making an addition of cash deposits of Rs.52,19,200/- as unexplained income, the preferred an appeal before the Id.CIT(A). After perusal of

assessee's detailed submission of bank accounts, extracts of cash withdrawals from bank accounts and subsequent deposits made along with the cash flow statements, the Id.CIT(A) deleted the additions holding as under:

*"4.0 As regards, addition of Rs.52,19,200/- being the cash deposited by appellant. The AO has held that these was not properly explained. Appellant in her reply dated 21.12.2018, pleads that for the period 01.04.2015 – 31.03.2016 she had already furnished details to show that there was cash deposit of Rs.38,90,800/- in the Bank of Baroda & deposit of Rs.28,02,600/- to HDFC Bank, all evidenced by earlier withdrawals. She pleads that conclusions reached by the AO are not sustainable. The perusal of cash flow statement would show that the claims so made are justified from the evidence attached it would be clear that GoA Nos. from 6 to 9 dealing with cash deposit are allowed."*

Aggrieved by the impugned action of the Id.CIT(A), the revenue challenged the same before us.

10. The Id.DR assailing the action of the Id.CIT(A) stated that the Id.CIT(A) has failed to explain how he was satisfied regarding the source of cash deposits made to the tune of Rs.52,19,200/-. Further, he stated that the assessee had failed to prove that the cash deposited in various accounts were in fact from the cash withdrawn earlier from different bank accounts and hence, prayed for setting aside the order of the Id.CIT(A).

11. The Ld.AR argued that the assessee had furnished the complete details of cash flow statement before the lower authorities to prove the source of cash deposited into various accounts of the assessee. Before, us the Ld.AR filed a paper book consisting of 38 pages, of bank statements of the following bank accounts along with the extracts of bank deposits and withdrawals made during the financial year 2014-15 and 2015-16.

(a) Bank of Baroda, A/c. No.052010008028 (01/04/2014 to 31/03/2016),

(b) HDFC Bank A/c. No.02061930004239 (01/04/2014 to 31/03/2016)

(c) Indian Bank A/c. No.830964539 (01/04/2014 to 31/03/2016)

11.1 Further, the Id.AR furnished the cash flow statements showing the details of cash withdrawals made and subsequent deposits of the same to the bank accounts which is extracted below:

a. Bank of Baroda	
Cash drawn FY 2014-15	71,65,000.00
Cash deposits FY 2014-15	11,75,400.00
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	59,89,600.00
Cash drawn FY 2015-16	48,72,000.00

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	1,08,61,600.00
Cash deposit FY 2015-16	38,90,800.00
	-----
	69,70,800.00
<b>b. HDFC BANK</b>	
Cash drawn FY 2014-15	1,08,300.00
	-----
	70,79,100.00
Cash deposit FY 2014-15	20,70,300.00
	-----
	50,08,800.00
Cash drawn FY 2015-16	Nil
	-----
	50,08,800.00
Cash deposit FY 2015-16	28,02,600.00
	-----
	22,06,200.00
<b>c. INDIAN BANK</b>	
Cash drawn FY 2015-16	4,02,700.00
	-----
	26,08,900.00
Cash deposit FY 2015-16	12,09,600.00
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Cash Balance as on 31.03.2016	13,99,300.00
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11.2 The extract of the cash withdrawals and deposits of all the above said bank accounts were consolidated to arrive at the net cash flow, which is having positive closing balance of Rs.13,99,300/- after considering all the deposits made to all the bank accounts shown above. The Ld.AR stated that, the

source has been completely explained before the Id.CIT(A) and on perusal of cash flow and satisfaction, the Id.CIT(A) has deleted the addition of cash deposits of Rs.52,19,200/- as unexplained made by the AO by invoking the provisions of section 69 and hence prayed for dismissal of this ground of the revenue without interfering in the order of the Ld.CIT(A) in this issue.

12. We have heard the rival contentions and noted that, the assessee has filed the bank statements of 3 bank accounts held by her (supra). Further, on perusal of the cash flow statement reveals that withdrawals and deposits from the bank accounts to prove the sufficient cash balance was held during the period under consideration. It is noted that, the Id.CIT(A) was convinced with the cash flow statements filed by the assessee, wherein the earlier withdrawals from the bank accounts were evidenced for the cash deposits made to the bank accounts to the tune of Rs.52,19,200/- and hence, deleted the additions made by the AO. On perusal of cash flow statement, it is further noted that even after reducing the cash deposits out of the earlier cash withdrawals the assessee held a net cash balance of Rs.13.99 lakhs as on 31.03.2016.

Therefore, considering the facts and circumstances of the case and the cash flow statement furnished, we are of the considered view that the source of cash deposited to the bank accounts is justified by the assessee and hence we dismiss this ground of the revenue and uphold the order of the Id. CIT (A) in this issue.

13. In the result the appeal of the revenue is dismissed.

Order pronounced in the open court on 31<sup>st</sup> July, 2024 at Chennai.

**Sd/-**

(एबी टी वर्की)

**(ABY T VARKEY)**

न्यायिक सदस्य/**Judicial Member**

**Sd/-**

(एस.आर.रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> July, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF