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

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

MA No.15/Hyd/2024
आ.अपी.सं /**ITA No.505/Hyd/2020**
(निर्धारण वर्ष/Assessment Year: 2013-14)

Dy. CIT Circle 6(1) Hyderabad	Vs.	Shri Iqbal Ali Khan Hyderabad PAN:AALPI895P
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Mohd. Afzal, Advocate	
राजस्व द्वारा/Revenue by::	Shri Madan Mohan Meena,DR	
सुनवाई की तारीख/Date of hearing:	23/08/2024	
घोषणा की तारीख/Pronouncement:	29/08/2024	

आदेश/ORDER

Per Laliet Kumar, J.M

This miscellaneous application filed by the Revenue is directed against the order dated 12/01/2024 passed by the Tribunal in ITA No.505/Hyd/2020 relating to A.Y.2013-14. The revenue raised the following mistakes apparent on record in the order of the Tribunal dated 12.01.2014:

> *"1. In Para 2 of the order, the grounds raised by the Revenue mentioned at not the grounds of appeal filed with Form No.36 on the basis of authorization issued*

by the Pr.CIT-6 Hyderabad cited in reference above. It appears that inadvertently, the grounds of appeal raised by the assessee before CIT (A) are mentioned in the order against eh grounds raised by the Revenue.

2. In Para 4.7 and 8 of the order, it is mentioned as 'deduction u/s 54' and 'relief u/s 54' whereas the same are to be "deduction u/s u/s 54F and 'relief u/s 54F".

2. The learned AR for the assessee fairly conceded that there is an error in the order passed by the Tribunal.

3. We have heard both the parties and perused the material on record. In para No.2, the Tribunal had inadvertently had mentioned the incorrect grounds. The correct grounds raised by the Revenue are as under:

"1. The learned CIT (A) erred in not appreciating the fact that the ratio of the judgment of the Hon'ble ITAT in the case of N Revathi vs. ITO Ward-6(4) Hyderabad (ITA No.67/Hyd/2013 dated 2.9.2016) relied upon by the assessee was not applicable to the facts of the present case.

2. The learned CIT (A) erred in allowing the deduction u/s 54F of the I.T. Act, 1961 to the assessee even though the assessee had not furnished any reliable information regarding the period of construction which is very vital for deciding the deduction u/s 54F.

3. The learned CIT (A) erred in ignoring the fact that the report of the registered valuer dt. 22.01.2017 cannot be treated as a valuation report as the same is only an estimation of the proposed building without mentioning the period of construction.

4. The learned CIT (A) erred in allowing the assessee's claim of u/s 54F without discussing the approval of

municipal authorities or GHMC plan sanction with respect to residential/commercial building nor regarding the regularization of the illegal construction.

5. The learned CIT (A) erred in allowing the claim of the assessee based on the report of the Inspector attached to CIT (A) ignoring contradictory findings of the o/o DIT(I&CI).

6. Without prejudice to the above, the learned CIT (A) erred in holding that quantum of investment in the new asset is Rs.4,48,08,500/- as claimed by the assessee and not Rs.2,39,08,932/- as per the estimation report of the engineer.

7. Any other ground that may be urged at the time of hearing"

4. Besides that, the Revenue had also raised additional ground which reads as under:

"1. Whether the learned CIT (A) misinterpreted the concept of residential house as appealing in section 54F?.

2. Whether the learned CIT (A) erred in permitting a proportionate disallowance u/s 54F, which is not provided for in the statute?.

5. In view of the above, the paragraph 2 of the Tribunal order is correct.

6. Further, we have gone through the paragraphs 4, 7 and 8 of the order of the Tribunal in ITA No.505/Hyd/2020 dated 12.01.2024 wherein the Tribunal instead of mentioning 54F

wrongly mentioned section 54. In view of the above and in view of the objection of the parties, we hereby modify Para 4,7 & 8 of the order and substitute section 54 with Section 54F. After rectifying the corrected paragraphs 4, 7 and 8 of the Tribunal order as under:

> *"4. The contention of the learned DR that the Assessing Officer vide order dated 31.3.2016 disallowed the deduction claimed u/s* ***54F*** *of the I.T. Act for the reasons mentioned in his order vide para 5.1 to 5.1.3 which are to the following effect:*
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> 5.1 The assessee has claimed exemption of Rs. 5,47,20,000 u/s 54F of IT Act. The assessee has said to have constructed a building in sultan shahi, Moghalpura area of Hyderabad. The assessee was asked to submit the details of land holding and the evidence for municipal approval for construction of the building and submit evidence for expenditure details for the above amount claimed. In response, the assessee has submitted a copy of will said to have given by his mother in the year 2003 which was not registered nor the title deeds of the land are in the name of the assessee. Further, the assessee has submitted a plan which was not approved by the Municipal authorities. The above facts goes to understand that the assessee has not taken any municipal permission but said to have constructed Ground plus three floors buildings in the above area before the due date for filing the return of income. This contention of the assessee is also doubtful that a building with an area of 9692 sq ft of Ground plus three floors
>
> *7. The contention of the learned DR is that the assessee had claimed deduction u/s 54F of the Act in respect of the property which is in the nature of Mosque and therefore, the assessee is not entitled to the relief u/s 54F of the I.T. Act. The learned DR also drew the attention of the bench to the detailed written submissions filed in this regard which read as under:*

1. Most respectfully submitted that the issue concerns the allowablity of claim of deduction u/s 54F of the I.T. Act. The facts in brief are that the assessee during the year sold two properties for a total consideration of Rs.8.91 cr. The capital gains was computed at Rs.7.21 cr. Out of which a sum of Rs.5.47 cr was shown as investment and deduction to that extent was claimed u/s 54F. Balance of Rs.1.74 cr was offered as LTCG. The AO noticed that

- the properties sold are not registered in the assessee's name but were only received by way of unregistered will.

- the plan of newly constructed property was not approved by the Municipal Authorities. The new property was G+3 consisting of 9692 sft was constructed within 10 months from September, 2012 to July, 2013.

- the assessee has received Rs.1.95 cr by way of DD and the balance was received by way of cash.

- out of the sum of Rs.1.95 cr only Rs.70 lacs only was spent towards GHMC.

- there was no evidence of spending the money by way of cash as no bills etc were submitted.

Based on the above findings the AO disallowed the claim of deduction u/s 54F to the tune of Rs.5.47 cr.

2. The assessee filed appeal before the CIT(A). During the pendency of the appeal, a remand report was called for from the AO. in the remand report the AO reiterated his stand. Also a report from DIT(I&CI), Hyderabad was received by the CIT(A) which stated that the constructed property was being used by the assessee for running a Madarasa on the ground floor and the prayer hall on the first floor. The Municipal plan approval was taken for Mosque and not for residential unit. However, the CIT(A) disregarded the report and deputed her Inspector for verifying the premises and submit a factual report. The

3. The order of CIT(A) suffers from infirmities as under –

- the CIT(A) did not contovert the finding that there is no Municipal Approval for a residential unit as against the findings of DIT(I&CI) that the plan approved was for a Mosque.

- the property constructed was an unauthorized and whether it is a residential one is merely a self serving statement.

- the only competent authority to state whether the property is residential or no is the Municipal Authorities viz. GHMC.

- the letter written by the assessee dated 29/12/2015 to the Dy. Commissioner, Circle No.4A, GHMC, Khairatabad requesting to assess the property and fix the tax contains the description of the property as – Mosque, school, orphanage & staff quarter with graves of ancestors.

- the CIT(A) did not appreciate that the Mosque is not akin to a residential house.

- the CIT(A) did not consider the plan of the property which clearly showed that it was never planned for residential purpose.

- the CIT(A) did not consider the fact that the estimation given by the licensed structural engineer was for a property like a charity building, activity such as residential, institutional, mosque and graves. It is never categorically stated at a residential unit.

- the photograph shows that there is prayer hall.

- the CIT(A) did not appreciate that the decision in the case of N. Revathi was on the fact that it was a residential unit, later used as a school, unlike the case of assessee, where the property is a Madrasa, but stated to be used as residential premises.

- it is not correct to arrive at a conclusion that part of the property is residential and part non-residential. The property has to necessarily fall under a single definition of 'a residential' property to be eligible for deduction u/s 54F.

- strict interpretation of law is required in the cases of exemption and deduction as laid down by the Hon;ble SC in the case of Dilip Kumar & Ors in [2018] CA No 3327 of 2007 which states that exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue

- in the original return the claim of 54F was at Rs.5.47 cr. The assessee subsequently revised the claim at Rs.3.62 cr based on the valuer's report which showed the value at Rs.3.44 cr.

- the CIT(A) could not have disregarded the report of the DIT(I&CI) and carried out independent enquiries in the absence of the AO.

4. In view of the above submission, it is respectfully prayed that the order of AO may be restored.

8. The learned DR further submitted that the Municipal application filed by the assessee for the purposes of regularization was for the Mosque only and for those purposes, the learned DR drew our attention to the application filed before the GHMC and at page 5 of the application filed by the assessee, dated 31.12.2015, the nature of the usage of the property being used for "Madrasa activities and Mosque" only. The learned DR also submitted that the assessee filed an application with the Property Tax Department of the State and as per the same document the property is not assessed to tax being the exempt property. On the basis of the above, it was submitted that the property being constructed by the assessee was in the nature of Mosque and therefore, the assessee has not fulfilled the condition/criteria laid down for grant of deduction u/s 54F of the Act and therefore, the assessee is not entitled to deduction u/s 54F of the Act. Additionally, it was submitted that there is no provision for grant of pro-rata deduction under section 54F of the Act, hence the learned CIT (A) was wrong in granting pro-rata deduction for 1st, 2nd and 3rd floors of the property.

7. In the result, M.A filed by the Revenue is allowed.

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

Sd/-	Sd/-
(MANJUNATHA, G.) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 29th August, 2024

Vinodan/sps

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3	Pr. CIT – 1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order