

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" , HYDERABAD**

**BEFORE**

**SHRI MAHAVIR SINGH, VICE-PRESIDENT  
AND  
SHRI MANJUNATHA G. ACCOUNTANT MEMBER**

ITA No.587/Hyd/2024		
Assessment Year – 2018-19		
Income Tax Officer, Ward 6(1), Hyderabad.		Late Indira Vengala, Hyderabad.  Represented by Legal Heir Vengala Sanjeev Kumar, Hyderabad.  PAN : BBOPV2537D
(Appellant)		(Respondent)
C.O.No.10/Hyd/2024 Arising out of ITA No.587/Hyd/2024		
Assessment Year – 2018-19		
Late Indira Vengala, Hyderabad.  Represented by Legal Heir Vengala Sanjeev Kumar, Hyderabad.  PAN : BBOPV2537D		Income Tax Officer, Ward6(1), Hyderabad.
(Cross Objector)		(Respondent)
Assessee by:	Shri Pavan Kumar Gorti, CA.	
Revenue by:	Shri Srinath Sadanala, Sr.A.R.	
Date of hearing:	23.09.2024	
Date of pronouncement:	25.09.2024	

**ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the Revenue and Cross-Objection by assessee, both, are arising out of the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2024-25/1063856432(1) dated 02.04.2024 for the relevant assessment year 2018-19. Assessment was completed by the Income Tax Officer, Ward 6(1), Hyderabad u/s 147 r.w.s 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) vide order dt.30.03.2023.

2. At the outset, the learned counsel for the assessee filed affidavit stating the fact that the assessee Smt. Indira Vengala passed away on 22.07.2023 and the relevant affidavit reads as under :

*“I. Vengala Sanjeev Kumar, S/o. Late Indira Vengala, the Appellant aged 49 years resident of H.No.8-7-116/1/9, Bowenapally, S.O., Tirumalagiri, Hyderabad, 500011, Telangana, INDIA (Aadhar No.987210168610), has to state as under :*

- 1. The Late Indira Vengala has passed away on 22.07.2023.*
- 2. The an appellate order was passed by the Commissioner of Income Tax (Appeals) on 02 April 2024 in the case of Late Indira Vengala for assessment year 2018-19.*
- 3. Subsequently, an appeal was filed by the Assessing Officer before the Hon’ble Income Tax Appellate Tribunal, Hyderabad vide ITA No.587/Hyd/2024.*
- 4. Therefore, under the given circumstances where respondent in the above ITAT appeal, Late Indira Vengala is no more alive, I am responding on her behalf in filing the objections, documents and other*

*material in support of the arguments filed before the Commissioner of Income Tax (Appeals).”*

3. The learned counsel for the assessee stated that the assessment order framed by the Assessing Officer on 30.03.2023 and the appeal before the CIT(A)-NFAC was filed on 15.05.2023. At that point of time, assessee was alive but subsequently, she passed away on 22.07.2023. This fact was informed to the CIT(A)-NFAC and he recorded this fact in his order vide para as under :

*“During the faceless appellate proceedings, the NFAC issued an enablement of communication window notice on 01.06.2023. The Legal Heir of the appellant responded on 09.03.2024 stated that “the appellant Mrs. Indira Vengala was undergoing medical treatment at the time of filing this appeal and has passed away on 22.07.2023” and submitted a copy of death certificate of the appellant. Further, hearing notice was issued on 19.03.2024 and the Legal Heir of the appellant made compliance on 23.03.2024 by filing written submission along with relevant details/documents. Hence, the appeal is decided as per the materials available on record.”*

4. The learned counsel for the assessee stated that order is passed in the name of the deceased Smt. Indira Vengala and even Revenue has filed appeal in the name of the deceased assessee. The learned counsel for the assessee stated that now the assessee’s son Vengala Sanjeev Kumar can be taken as legal heir. At this point of time, Senior Id.DR Shri Srinath Sadanala has not objected to the same. Hence, this order is being passed on the assessee’s legal heir / legal representative namely, Shri Vengala Sanjeev Kumar. The only dispute in this appeal of Revenue is against the order of the CIT(A)-NFAC allowing the

claim of deduction u/s 54(1) of the Act. For this Revenue has raised following grounds :

*"1. The Ld.CIT(A) has not appreciated the fact that the assessee is a non-filer.*

*2. The assessment was completed ex-parte by the AO as there was no compliance from the assessee. During the appellate proceedings, the assessee has made submissions including the claim on sale of old asset and purchase of new asset etc., Since these detailed documents were not produced during the assessment proceedings, the CIT(A) ought to have given an opportunity to the AO to verify the claims made by the assessee. However, the CIT (A) has not called for any such report from the AO, which is violation of Rule 46A of the I.T.Rules, 1962."*

5. The brief facts are that the assessee is a house-wife and not engaged in any business activity. She received income from bank interest and capital gain from sale of house property during the year under consideration. The assessee sold immovable property i.e., house property at Dharam Karan Road, Ameerpet, Hyderabad for a total sale consideration of Rs.70,00,000/-. She claimed to have invested Rs.69,00,000/- out of Rs.70,00,000/- for acquiring another house property during the same financial year. The assessee claimed exemption u/s 54 of the Act, but Assessing Officer denied the claim of deduction for the reason that the assessee has not filed any return of income in response to notice u/s 148 of the Act and moreover, the assessee has not offered any explanation with regard to source of such unexplained investment made in

purchase of immovable property. Hence, the Assessing Officer denied the claim of deduction u/s 54 of the Act.

6. Aggrieved, assessee preferred appeal before the Id.CIT(A).

7. The CIT(A)-NFAC allowed the claim of deduction u/s 54(1) of the Act by going through the facts of the case and noting that the Assessing Officer has wrongfully treated both the sales and purchase transactions separately and taxed both the transactions as addition in respect of immovable property transaction being long term capital gain and similarly made addition on account of unexplained investment u/s 69 of the Act. The CIT(A)-NFAC after considering the facts and documents, noted that the assessee has earned long term capital gains on transfer of residential house at Rs.42,10,368/- as against the sale consideration received at Rs.70,00,000/-. The CIT(A)-NFAC noted that the cost of acquisition of new residential house property is at Rs.69,00,000/-. According to the CIT(A)-NFAC, since whole capital gain amount was utilized for purchase of property within the specified period prescribed u/s 54(1) of the Act, he allowed the claim of assessee.

8. Aggrieved, Revenue is now in appeal before the Tribunal.

9. We have heard the rival submissions and gone through the facts and circumstances of the case. We noted that the assessee sold her residential house No.7-1-71/A/2, Dharam Karan Road, Ameerpet, Hyderabad for a sum of Rs.70,00,000/- vide sale deed dt.17.08.2017. This property was purchased by

assessee from one Smt. Mahaboob Bee through a registered sale deed dt.20.01.1982 registered with Joint Sub-Registrar, Hyderabad. The assessee also purchased another house property, after sale of the above property, being house No.8-7-116/1/19, Plot No.19, Sy.No.68, admeasuring 195 square yards situated at Old Bowenpally Village, Balanagar Mandal, Kukatpally Municipality, Medchal Malakajigiri District for a sum of Rs.69,00,000/- during the same financial year 2017-18. The assessee filed copy of sale deed bearing document no.5456/2017 dt.04.09.2017 and invested the entire consideration / capital gains arising out of the sale of house. It means that the assessee has sold her residential house at Dharam Karan Road, Ameerpet, Hyderabad and purchased another house at Old Bowenpally Village and invested the entire sale consideration. Hence, there is no question of assessing any capital gains because the assessee is entitled for exemption from taxation of capital gain under Section 54(1) of the Act. We find no infirmity in the order of CIT(A)-NFAC and hence, the appeal of Revenue is dismissed.

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10. Coming to the Cross Objection of the assessee, which is supportive of the order of CIT(A)-NFAC, and hence, the same is dismissed as academic.

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11. In the result, both the appeal of the Revenue as well as the Cross Objection of the assessee are dismissed.

Order pronounced in the Open Court on 25<sup>th</sup> September, 2024.

**Sd/-**

**Sd/-**

<b>(MANJUNATHA G.) ACCOUNTANT MEMBER</b>	<b>(MAHAVIR SINGH) VICE PRESIDENT</b>
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Hyderabad, dated 25.09.2024.

**TYNM/sps**

Copy to:

S.No	Addresses
1	Vengala Sanjeev Kumar, S/o. Late Indira Vengala, R/o. H.No.8-7-116/1/9, Bowenapally, S.O., Tirumalagiri, Hyderabad, 500011, Telangana, INDIA
2	The Income Tax Officer, Ward-6(1), Hyderabad.
3	Pr.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*