

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

Before Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No. 989/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Venkata Subba Reddy Sankepally Hyderabad PAN:AJRPS3577Q	Vs.	Income Tax Officer Ward 13(4) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A.V. Raghuram, Advocate	
राजस्व द्वारा / Revenue by::	Shri Sashi Kant, DR	
सुनवाई की तारीख / Date of hearing:	29/10/2024	
घोषणा की तारीख / Pronouncement:	29/10/2024	

आदेश/ORDER

This appeal filed by the assessee is directed against the order dated 13/08/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2009-10.

2. The assessee raised the following grounds:

"1. The order passed by the learned CIT (A) dismissing the appeal is contrary to the facts and in law.

2. The learned CIT (A) erred in sustaining the action of the Assessing Officer in initiating proceedings u/s 147 of the Act, without there being any fresh information on the same.

3. The learned CIT (A) erred in upholding that the capital gain on account of entering into development arose to the individual and not to the HUF.

4. *The learned CIT (A) erred in upholding that the capital gains arose in this A.Y on account of entering into fresh GPAS contrary to the decision of A.P High Court in the case of Mr. P. Nageswara Rao wherein it was held that the capital gains arise in the year of entering into development agreement.*

5. *Without prejudice, the learned CIT (A) erred in not allowing the claim of deduction u/s 54 of the Act, on the ground that the appellant has not claimed the same in the return of income filed.*

(Tax Effect: Rs.7,47,268/-).

6. *Any other ground that may be urged at the time of hearing”.*

3. The brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y 2009-10 on 26/09/2009 declaring total income of Rs.1,77,320/-. The appellant had entered into a Joint Development Agreement (JDA) with M/s. Cauveri Builders on 29/03/2004 for development of a property and received 4 flats admeasuring 7264 sft and 50% of parking area as his share for surrender of undivided land in pursuant to JDA. The appellant had executed a General Power of Attorney (GPA) in favour of M/s Cauveri Builders on 21/06/2007 and said GPA has been cancelled and further GPA was executed on 21/05/2008. The assessee has not admitted any capital gain in pursuant to JDA either for the A.Y 2004-05 or for the A.Y 2009-10. Therefore, assessment has been reopened u/s 147 of the I.T. Act, 1961 and after considering the relevant submissions of the assessee, the Assessing Officer completed the assessment u/s 147 r.w.s. 143(3) of the Act, on 30/03/2015 and determined the total income at Rs.34,74,742/-by making addition of Rs.32,97,440/-towards Long-Term Capital Gain derived from transfer of property in pursuant to JDA.

4. Being aggrieved, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee has challenged reopening of the assessment u/s 147 of the Act, and also computation of Long-Term Capital Gain in pursuant to JDA for the A.Y in question and argued that, if we go by the JDA dated 29/03/2004, the capital gain needs to be assessed for the A.Y 2004-05 but not for this A.Y. The assessee had also made a fresh claim for deduction u/s 54F of the I.T. Act, 1961 on the ground that the consideration received for transfer of property has been fully reinvested for acquiring new asset. The learned CIT (A) after considering the relevant submissions of the assessee and also taken note of various facts dismissed the appeal filed by the assessee and upheld the addition made by the Assessing Officer towards computation of Long-Term Capital Gain on the ground that, if we go by the subsequent GPA dated 21/05/2008 which satisfies the conditions for transfer of land, and thus, the capital gain is assessable for the A.Y 2009-10. The learned CIT (A) had also rejected the fresh claim of deduction u/s 54 on the ground that in order to entertain the claim of deduction, the assessee needs to claim the said deduction in the return of income filed for the relevant A.Y. Since, the assessee has not made any claim in the return of income, in view of the decision of the Hon'ble Apex Court in the case of Goetze (India) Ltd vs. CIT in Civil Appeal No.1761 of 2006, claim of deduction u/s 54 of the Act, cannot be allowed. Thus, dismissed the appeal filed by the assessee.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee, referring to the dates and events submitted that the appellant had entered into JDA on 29/03/2004 and executed GPA on 21/06/2007 and the same has been modified on 21/05/2008. If we go by the date of GPA in view of the decision of the Hon'ble jurisdictional High Court of A.P in the case of Shri Potla Nageswara Rao vs. DCIT in ITTA No.245/2014, capital gain is chargeable for taxation in the year of JDA but not in the subsequent financial year. The learned Counsel for the assessee further made an alternative submission and claimed that if at all the capital is taxable for the A.Y 2009-10, then deduction u/s 54 of the Act, may be allowed.

7. The learned DR, on the other hand, referring to the JDA, GPA and modified GPA, submitted that if we go by terms & conditions of the JDA agreement, the Developer needs to complete the project within 24 months from the date of JDA with a grace period of 6 months. The appellant has modified the GPA dated 21/05/2008 and as per GPA, the appellant allowed the builder to take possession of the land which satisfied the provisions of section 2(47)(v) r.w.s. 53A of the Transfer of Property Act,, 1882. Therefore, the Assessing Officer has rightly computed Long-Term Capital Gain for the impugned A.Y and their orders should be upheld. In so far as the claim of deduction u/s 54, the matter may be remitted back to the file of the Assessing Officer for verification of facts and allow the deduction as per law.

8. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that although

the JDA was entered into on 29/03/2004, but no action has been taken by the Developer and thus, it cannot be said that transfer as defined u/s 2(47)(v) r.w.s. 53A of the Transfer of Property Act, is applicable for the A.Y 2004-05. Further, the appellant has given GPA to the Developer on 21/06/2007 and the same has been subsequently modified vide GPA dated 21/05/2008. If we go by the GPA dated 21/05/2008, the transfer as defined as per section 2(47)(v) r.w.s. 53A of the Transfer of Property Act,, satisfied and thus, in our considered view, there is no error in the reasons given by the Assessing Officer to assessee Long-Term Capital Gain for the A.Y 2009-10. In so far as the claim of deduction u/s 54 of the Act, the law is very clear before the amendment to provisions, where the appellant can claim deduction towards more than one house received in pursuant to JDA. In the present case, the appellant has received 2 flats in pursuant to JDA and in our considered view, if other conditions provided u/s 54 are satisfied, then the appellant is entitled for deduction u/s 54 of the Act. In so far as the reasons given by the learned CIT (A) that the appellant can only make a claim by filing a revised return in light of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd vs. CIT (Supra), in our considered view, the ration laid down by the Hon'ble Supreme Court is on the powers of the Assessing Officer for entertaining fresh claim with a valid revised return, but it does not infringe the powers of the appellate authorities. Therefore, in our considered view, when the appellant made a claim of deduction u/s 54, the learned CIT (A) ought to have examined the claim of the assessee and allowed relief as per law. Therefore, we are of the considered view that the issue with regard to deduction u/s 54 of the Act, needs to be set aside to the

file of the Assessing Officer for verification of the facts. Thus, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee in light of section 54/54F of the I.T. Act, 1961 and allow the deduction in terms of my observations given herein above.

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

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

Sd/-

**(MANJUNATHA, G.)
ACCOUNTANT MEMBER**

Hyderabad, dated 29th October, 2024.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 13(4) Aayakar Bhavan, Basheerbagh, Hyderabad 500004
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order