

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 725/Bang/2024
Assessment Year: 2017-18

Jagadish Gangappa, No. 548, 9 th Cross, VII Main Road, Sadashivanagar, Bengaluru – 560 080. PAN – ACO PJ 3177 D	Vs.	The Income Tax Officer, Ward – 2(2)(8), Bengaluru. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravishankar, Advocate
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	05.09.2024
Date of Pronouncement	:	15.10.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 28/02/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1061667568(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the order of the AO by sustaining the addition of Rs. 1,54,14,200/- by denying the deduction claimed u/s 54 of the Act.

3. The assessee in the present case on the transfer of land has claimed deduction u/s 54 of the Act. However, the assessee failed to justify the claim made u/s 54 of the Act based on the documentary evidence. Therefore, the AO disallowed the same and added to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal to the Id. CIT(A). The assessee before the Id. CIT(A) filed the valuation report amounting to Rs. 1,31,96,250/- to justify the investment made in the new house. The valuation report was dated 13/12/2019. The assessee also submitted that the deduction claimed u/s 54 of the Act was wrong but the same can be considered under the provisions of sec. 54F of the Act. However, the Id. CIT(A) denied the claim of the assessee by observing as under:

"However, appellant neither submitted any bills/invoices for construction of house, agreement for purchase of land, details of payments made towards construction alongwith bank statements highlighting therein the payments made etc. In other words, the appellant was not able to substantiate the new house with complete documentary evidences and a mere valuation report is submitted which cannot be taken as conclusive evidence, wherein the provisions of the Act requires that the new house must be purchased or constructed within the time limit_ as stipulated. Accordingly, the deduction claimed u/s 54 is rejected and appellant's LTCG is worked out at Rs.1,54,14,200/- "

5. Being aggrieved by the order of the Id. CIT-A/ NFAC, the assessee is in appeal before us.

6. The Id. AR before us filed a paper book running from pages 1 to 50 and contended that the valuation report submitted by the assessee cannot be rejected by the revenue authorities. If the revenue authorities had any sort of doubt about the accuracy and authenticity of the valuation report, the same can be referred to the DVO but the revenue

authorities instead of making the reference to the DVO for the purpose of valuation has rejected the contention of the assessee, which is contrary to the provisions of law.

7. The Id. AR further submitted that as far as construction of new building is concern, the revenue authorities have not doubted. This is also evident from the photograph of the new building placed on pages 43 of paper book.

8. The Id. AR further fairly agreed that the assessee in the given case is not eligible for deduction u/s 54 of the Act but the revenue authorities could have considered the same u/s 54F of the Act. The Id. AR further prayed to set aside the issue to the file of the AO and refer the matter for DVO for the purpose of valuation, so as to quantify the amount of investment made in the new property.

9. On the other hand, the Id. DR vehemently supported the orders of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. Undeniably the properties in dispute were the pieces of land and on the sale of such properties, the gain if any cannot be claimed as deduction u/s 54 of the Act. However, there is no provisions prohibiting to allow the deduction to the assessee on the transfer of such piece of land under the provisions of sec. 54F of the Act subject to the provisions contained therein.

10.1 Admittedly, the onus lies on the assessee to justify the investment made in the construction or purchase of new house in claiming the deduction u/s 54F of the Act. Generally, such claim is made by the assessee based on the investment made in the construction of new house and such construction generally includes investment in land and construction of the building to assessee. Accordingly, it is the onus upon the assessee to furnish the necessary details to justify the claim but the assessee failed to furnish such details.

10.2 Now the controversy arises where the claim made by the assessee can be considered u/s 54F of the Act in the given facts and circumstances. In this regard, we note that the existence of the investment in the form of building has nowhere been doubted by the revenue authorities, which is also evident from the photograph placed on page 43 of the paper book. The controversy arises how to quantify the investment, which the assessee failed to do so.

10.3 In our considered view, in the absence of the supporting documents by the assessee, the valuation report can be considered so as to quantify the investment made in the new property. Admittedly, the valuation report submitted by the assessee has been rejected by the revenue authorities without pointing out any defect therein. However, the valuation report submitted by the assessee cannot be accepted on its face value. Thus, the only option available with the revenue authorities to refer the matter to the DVO for ascertaining the amount of investment made by the assessee in the impugned property.

10.4 It is not out of place to mention that the revenue authorities have nowhere been doubted about the source of investment in the impugned property, therefore, to avoid any ambiguity at later stage, we hold that the revenue authorities cannot expand the scope of assessment in the set aside proceedings. With these observations, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law and in the light of the discussion stated above. Hence, ground of appeal of the assessee is hereby allowed for statistical purposes.

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

Order pronounced in court on 15th day of October, 2024

Sd/-
(KESHAV DUBEY)
Judicial Member

Sd/-
(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 15th October, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore