

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1375/Bang/2024
Assessment year : 2012-13

Late Grace Mary Dolores Saldanha, By L/R Louise Mary Josephine Desouza, Kayakatina Pedmale Post, Padavu House, Neermarga, Mangalore – 575 029. <b>PAN: CQUPS 5024E</b>	Vs.	The Income Tax Officer, Ward 2(1), Mangalore.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Shri V. Partithivel, Jt. CIT(DR)(ITAT), Bangalore.

Date of hearing	:	11.11.2024
Date of Pronouncement	:	18.11.2024

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by Louise Mary Josephine Desouza, L/R of Late Grace Mary Dolores Saldanha, (the assessee/appellant) for the assessment year 2012-13 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(Appeals)] dated 24.05.2024 wherein the appeal filed by the assessee against the assessment order passed by ITO, Ward 1(3), Mangalore dated 16.02.2015 passed u/s. 143(3) of the Act was partly allowed.

2. The assessee is aggrieved with the above appellate order and has raised a solitary ground that the amount paid by her for the purchase of new asset was not accepted by the Id. CIT(A) and therefore the claim made for deduction u/s. 54 was not considered to that extent.
3. The brief facts of the case are that assessee is an individual, filed her return of income on 31.8.2012 declaring total income of Rs.18,38,407/- which included long term capital gain of Rs.18,02,195/-. The return was selected for scrutiny and thereafter resulted into an assessment order wherein the total income of the assessee was assessed at Rs.94,54,207. The taxable long term capital gain was assessed at Rs.92,61,516.
4. On appeal before the Id. CIT(A), the only issue that was left out was a payment of Rs.35 lakhs made by the assessee for purchase of new property was not considered by the Id. CIT(A). The assessee sold a property on 15.3.2012 and the buyer was insisting on immediate possession of above property. Therefore, the assessee purchased new property along with her sister by Sale Deed dated 31.3.2012. The sale consideration as per Sale Deed of the property was Rs.90 lakhs. However, the assessee submitted that over and above the sum of Rs.90 lakhs, she has paid further Rs.35 lakhs to the seller. She submitted that the sale price of the property was negotiated with Mrs. Vinutha R. Malli, who insisted that the amount in respect of constructed part

should be paid in cash. Such sum is Rs.35 lakhs. She gave a cheque of Rs.35 lakhs to Mr. Gregory Soly, who actively negotiated for purchase of above property. The cheque to Mr Gregory was also paid on the same date on which other consideration were directly paid to the seller. However, this Rs.35 lakhs by Cheque No.699628 was paid on 26.3.2022 to Mr. Gregory Soly, who paid the same in cash to the seller. An affidavit of Mr. Soly was filed on 6.2.2020. Further, letter dated 22.8.2013 was filed before the DDIT wherein also it was stated that the value of land was paid by the assessee through cheque directly to the seller and value of construction part was made by the assessee to Mr. Gregory Soly by cheque who in turn paid to the seller in cash.

5. The Id. CIT(A) categorically held that there is no confirmation from the seller with regard to the receipt of additional payment in cash of Rs.35 lakhs. Therefore, while granting deduction u/s. 54, he held that claim of assessee cannot be accepted to the extent of Rs.35 lakhs. Therefore, the assessee is in appeal before us.
6. Vide letter dated 21.8.2024, assessee has submitted that she is 70 years old and therefore on the basis of written submissions her case may be decided. According to her submission, when the assessee has given complete details of payment of Rs.35 lakhs through Mr. Gregory Soly, the revenue authorities have neither

examined Mr. Soly nor the seller. The AO has merely relied on the letter given by the seller that she has received only the amount which is stated in the Deed and she has not received Rs.35 lakhs in cash towards the sale of the property.

7. The Id. DR vehemently submitted that the seller has confirmed that she did not receive the above sum of Rs.35 lakhs. Even the affidavit of the intermediary, Mr. Gregory does not serve any purpose as the Sale Deed only refers to the sale consideration of Rs.90 lakhs. In the affidavit also there is no averment when and how the cash was paid to the seller. He submits that according to the provisions of section 54 of the Act, the benefit can be given to the amount invested by the assessee for purchase of new house. In this case, there is no evidence available with assessee that she has paid the above sum for the acquisition of new house, there is no infirmity in the orders of the lower authorities.
8. We have carefully considered the rival contentions and perused the orders of lower authorities. According to the provisions of section 54 of the Act, profit on sale of property used for residence is not chargeable to tax in case of this individual, if the capital gain has been used by the assessee for purchase or construction of a new house, subject to certain conditions. The prime issue in this appeal is that assessee has purchased a new property, what is the cost of the new asset? The assessee submits that though the consideration paid as per the Sale Deed

dated 31.3.2012 is Rs.90 lakhs, the assessee has claimed that she has further paid Rs.35 lakhs to one, Mr. Gregory Soly, on 26.3.2012 by account payee cheque from Canara Bank account of the assessee. Mr. Gregory Soly is the nephew of the assessee, who helped the assessee in purchase of this property. It was the claim of the assessee as per affidavit of Mr. Gregory dated 01.2.2017 that the Vendor wanted a sum of Rs.35 lakhs in cash pertaining to the share of the assessee, which was received by him as a cheque from the assessee and withdrawn from his bank account to be paid to the seller. Except this evidence, there is no evidence available with the assessee. On carefully looking at the affidavit also, Mr. Gregory stated that seller of the property Mrs. Malli demanded consideration of Rs.1,60,00,000/- for the property, out of which sum of Rs.70 lakhs to be paid in cash. The share of the assessee is Rs.35 lakhs. However, in the affidavit, he did not say that when did he make the payment or in fact payment was made to the seller of the property. Further, the seller of the property has specifically stated that she has only received whatever is the consideration stated in the Deed by cheque. Thus, the claim of assessee of payment of cash of Rs.35 lakhs to the seller does not qualify for deduction u/s. 54 of the Act, as the assessee has failed to substantiate the payment in cash of Rs.35 lakhs to the seller of the property. The assessee could not produce the seller before the AO or could not also

refute the submission made by the seller of having not received the above sum.

9. In the result, we do not find any reason to reverse the order of Id. CIT(A) and hence the appeal of the assessee is dismissed.

Pronounced in the open court on this 18<sup>th</sup> day of November, 2024.

Sd/-  
( KESHAV DUBEY )  
JUDICIAL MEMBER

Sd/-  
( PRASHANT MAHARISHI )  
VICE PRESIDENT

Bangalore,  
Dated, the 18<sup>th</sup> November 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant      2. Respondent      3. Pr. CIT 4. CIT(A)  
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.