

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1819/Bang/2024
Assessment Year: 2016-17

Prakash Lachmandas Gera 8/309, Prabhath Complex I Floor K.G. Road Bangalore Karnataka 560 009 PAN NO : AEGPP8203A	Vs.	ACIT Circle-5(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Balasubramanyam, A.R.
Respondent by	:	Ms. Neha Sahay, D.R.

Date of Hearing	:	13.11.2024
Date of Pronouncement	:	21.11.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Present appeal of the assessee is arising from the order of Id. CIT(A) dated 22.7.2024 and it relates to assessment year 2016-17 having DIN & Order No.ITBA/NFAC/S/250/2024-25/1066898056(1).

2. The assessee is an individual filed its return of income on 04.08.2016 and filed revised return of income on 20.12.2016. Thereafter, the same was selected for scrutiny and assessment u/s 143(3) of the Income Tax Act, 1961 (in short “The Act”) vide order dated 25.12.2018 has been made. During the course of assessment proceedings, it has been observed by the AO that the assessee has earned long term capital gain. The AO further observed that the assessee has claimed exemption with under section 54F of the Act. The AO denied the claim of the assessee on the ground that the

assessee failed to substantiate the subsequent investments made by the assessee for claiming the benefits of section 54F of the Act. Matter reached to the Id. CIT(A), wherein the assessee submitted certain additional evidences with respect to the subsequent investment made by the assessee. The Id. CIT(A) called for remand report from the AO. However, the AO could not file the remand report and the Id. CIT(A) proceeded to decide the matter against the assessee on the basis of material available with him.

3. Aggrieved with the order of Id. CIT(A), the assessee has come up in appeal before us and contended that the assessee has duly complied with the provisions of section 54F of the Act and hence, the assessee is entitled for deduction u/s 54F of the Act. The assessee also placed reliance on the judgement of Hon'ble jurisdictional High Court in the case of K. Ramachandra Rao Vs. CIT reported in 56 taxmann.com 163 (Karn.)

4. The Id. D.R. appearing on behalf of the revenue pointed out that there is no sale deed in favour of the assessee and the assessee is claiming the benefit of exemption merely on the basis of an agreement of sale with the builder.

5. The Bench while hearing the matter has put specific question to the counsel of the assessee as to whether the assessee has received the possession of the property, where the capital gain is alleged to have been invested, as well as whether any registered sale deed has been executed in favour of the assessee. Answering both these questions, the counsel for the assessee has candidly replied that the assessee has neither received the possession of the property nor any sale deed is executed in his favour.

6. After considering the rival submissions, we observe that it is a case where admittedly, the assessee could not be able to substantiate the claim with the help of any registered sale deed and other supporting documentary evidences. The assessee in order to claim the exemption of deduction u/s 54F of the Act has only filed an agreement for sale dated 5.10.2016 and has also made part payment to the builder as evident from **page 35 of the paper book**. Perusal of page 35 of the paper book would show that an amount of Rs.50 lakhs was paid by the assessee on 14.7.2016 as an advance for the booking of flat, which date is prior to the date of filing of original return i.e. 4.8.2016. The Counsel for the assessee has also contended that there is a dispute between the builder and the owners of the land and that dispute is going on in civil court and because of this bonafide reason, the builder was unable to hand over the possession to the assessee as well as failed to execute any sale deed in favour of the assessee. Ld Counsel for the assessee wanted to place on record the documents vis-à-vis dispute of civil court. However, this aspect of the matter vis-à-vis delay in handing over of the possession on account of default of the builder has not been examined by the lower authorities at all. Therefore, considering the facts and circumstances of the case, we hereby restore this matter to the file of AO for examining it afresh after providing reasonable opportunity of being heard to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21st Nov, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 21st Nov, 2024.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**