

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "SMC" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.223/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2012-13)**

Satyanarayana Viswanadha D.No. 21/411, Bhaskarapuram Machilipatnam – 521001 Krishna District Andhra Pradesh [PAN: AATPV0775E] (अपीलार्थी/ Appellant)	v.	ITO – Ward – 1 Machilipatnam Krishna District - 521001 Andhra Pradesh (प्रत्यर्थी/ Respondent)
---	-----------	---

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Siva Rama Kumar, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna villuri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	04.12.2024
घोषणा की तारीख/Date of Pronouncement	:	19.12.2024

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No.

ITBA/NFAC/S/250/2024-25/1064346301(1) dated 25.04.2024 for the A.Y.2012-13 arising out of order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'Act') dated 18.12.2019.

2. Brief facts of the case are that, assessee is an individual deriving income from pension and during the F.Y 2011-12 executed a development agreement with M/s Sripada Developers, Machilipatnam, for construction of apartment by transferring his land to the said firm vide doc no.42/2012 dated 04.01.2012. Assessee has not filed the return of income for the A.Y 2012-13 admitting the income on LTCG. Accordingly, notice u/s.148 of the Act was issued to the assessee with the prior approval of competent authority and the same was duly served on the assessee. In reply, assessee filed return of income on 30.07.2019 admitting total income of Rs.1,02,280/-. Thereafter, statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee, calling for relevant information. In response, assessee furnished replies vide letters dated 17.09.2019 & 29.10.2019. Further, Ld. Assessing Officer [hereinafter in short "Ld. AO"] issued notice on 03.12.2019 requesting the assessee to show cause as to why the long-term capital gain on transfer of the land should not be assessed tax. In response, assessee vide letter dated 05.12.2019 submitted its explanation and stated that assessee has not received any consideration in the A.Y. 2012-13 and so not liable to tax and assessee can claim the total gain as exemption under section 54F of the Act as the total proceeds

were used for construction/purchase of residential house by getting residential units as per development agreement. Not convinced with the submissions of the assessee, Ld. AO proceeded to complete the assessment and determined the income of the assessee at Rs.29,40,515/- by adding long term capital gain of Rs.28,38,235/-. Further, Ld. AO observed that as there is no claim of exemption under section 54 of the Act in the return, therefore, the same cannot be allowed.

3. Being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A), assessee filed various submissions, after considering the submissions of the assessee, Ld. CIT(A) dismissed the appeal of the assessee.

4. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by rising the following grounds: -

"1. In the facts and circumstances of case, learned CIT (Appeals) erred in observing that the appellant has not made a claim for deduction u/S.54F during the assessment proceedings, but simply submitted that he may be allowed deduction u/S.54F' ,which is erroneous as per the assessment record, as a specific claim was made by way of letter dt.5.12.2019 before the learned AO, with elaborate submissions and supporting case laws in the assessment proceedings' and learned AO replicated the claim in Para.4 of his assessment order.

2. In the facts and circumstances of case, learned CIT (Appeals) ought to have observed that the learned AO erred in not passing" an order after hearing such evidence as the assessee may produce and after taking into account all relevant material which he has gathered [language used in Sec.143(3)]" when the appellant's explanation and computation of deduction u/S.54F was denied on the ground that it was not made in the ITR, which was unjustified in law.

3. In the facts and circumstances of case, learned CIT (Appeals) ought to have observed that the learned AO asked the appellant vide his letter dt.

3.12.2019 to file his response to the proposed assessment of long-term capital gains and the appellant filed explanation and information claiming deduction u/S.54F, but denied the claim on the ground of absence of claim in the return of income.

4. In the facts and circumstances of case, learned CIT (Appeals) ought to have considered the appellant's claim for deduction u/S.54F made with full details of his entitlement before the learned AO and reiterated before the learned CIT (Appeals) as he is empowered to entertain even fresh claims not made in the assessment. With the entitlement of Sec.54F deduction, the income returned of Rs.1,02,280/-and the income recomputed in the assessment proceedings was the same (Rs.1,02,280/-) and it can be considered a case of re-computation of income in the assessment, permissible in law.

5. In the facts and circumstances of case, learned CIT (Appeals)'s reliance on Goetz India Ltd. Vs. CIT (Civil Appeal No.1761/2006, SC) was erroneous as the Hon'ble Apex Court has not debarred/ nor held against an appropriate claim for consideration by the CIT(Appeals).

6. In the facts and circumstances of case, learned CIT (Appeals) ought to have considered the appellant submission that the Hon'ble CBDT's binding Circular dt. 14(XL-35) dt.11.4.1955 as per which the officers of the Income-tax Department were instructed to assist the taxpayers and collect only legitimate taxes; this circular reiterates the Constitution Principle that "No tax shall be levied or collected except by authority of law." (Article.265)

7. Even if for a moment, the appellant has not made a valid claim for sec.54F in the assessment proceedings, learned CIT(Appeals) ought to have considered the claim made in the appellate proceedings and allow the same to the appellant vide his powers u/S.251 to decide fresh claims.

8. In the case of an assessee's claim for an allowable deduction, Hon'ble Tribunal is declared by the Hon'ble Courts and the Hon'ble Supreme Court as empowered u/S.254 to consider the claim and adjudicate upon the same, when all the relevant facts are on record. The appellant prays for consideration and adjudication of his claim.

9. The appellant craves leave to add or amend any ground of Appeal.”

5. The issue raised in the grounds is relating to “whether the higher authorities can entertain a fresh claim of the assessee, where it was not claimed in the ITR, but was claimed before the Ld. CIT(A)”. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted assessee is entitled to deduction

under section 54F on long term capital gains. Further Ld.AR submitted that though assessee has not made the claim in the return of income, the claim was made before the Ld. AO as well as the Ld. CIT(A) and the Ld. CIT(A) is not barred from entertaining the additional claim. Ld.AR relied on the decision of the Co-ordinate Bench of the Tribunal in the case of R.Venkata Dhana Lakshmi v .ITO in ITA No. 121/VIZ/2020 dated 25.06.2021 and he brought to our notice Para No. 9 & 10 of the order. Ld.AR pleaded that the order of the Ld. CIT(A) may be set-aside.

6. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] relied on the orders of the Revenue Authorities.

7. We have heard both the sides and perused the material available on record. We observe that similar issue was considered and adjudicated by the Coordinate Bench of the Tribunal in the case of R.Venkata Dhana Lakshmi v .ITO (supra) and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

“9. We have heard both the parties and perused the material placed on record. There is no doubt that the assessee has entered into development agreement for construction of the flats and sold 4 flats as per the details given in this order and received the sale consideration. There is no dispute with regard to sale of flats and rates adopted by the AO. The Ld.AR did not bring any evidence to controvert the findings of the AO during the appeal hearing. Therefore, we uphold the action of the AO as well as the Ld.CIT(A) in treating the sale consideration received in respect of transfer of land as long-term capital gain and transfer of super structure as short-term capital gain. Thus, computing the income under long term capital gains

@Rs.4,91,800/- and short-term capital gains @ Rs.27,30,000/- is confirmed.

10. With regard to deduction u/s 54F of the Act, it is seen from the assessment proceedings as well as the CIT(A) proceedings that the assessee has made the investment for purchase of new flat or new house within two years from the end of the relevant financial year as specified u/s 54F of the act. Though the assessee has not made the deposit in specified account, it is observed from the order of the AO that the assessee has made the deposit in the bank account and used the said amount only for the purpose of acquiring the new asset. Hon'ble courts in similar circumstances held that, the assessee would be given the benefit of deduction u/s 54F of the Act, since, the deduction u/s 54F is beneficial provision and introduced with an intention to encourage the housing / accommodation across the country. This view is supported by the decision of coordinate bench of ITAT, Bangalore in Ramaiah Dorairaj.v.Income Tax Officer, ward 4(2)(2), Bangalore. [2021] 124 taxmann.com 243 (Bangalore - Trib.) The coordinate bench in the above case held as under:

"6. We have heard both the parties and perused the material on record. The main contention of the ld. DR is that the assessee has not complied with the conditions laid down u/s. 54F(1) or 54F(4) of the Act. U/s. 54F of the Act, when the assessee invests the sale consideration from transfer either purchasing a residential house or constructing a new house within a period stipulated in Section 54F(1) of the Act, then only the assessee entitles for deduction under this section. In the intermediatory period the assessee shall deposit the amount in an account which is duly notified by the Central Government. In this case, the assessee has not deposited the net sale consideration in the Capital Gains Scheme Account notified by the Central Government. However the plea of the assessee is that within the stipulated time, the assessee has utilized the net sale consideration as enumerated in the Section 54F(1) of the Act and the assessee is entitled for exemption Under Section 54F of the Act. This issue has come up for consideration before the Hon'ble Karnataka High Court in the case of K. Ramachandra Rao (supra) wherein the following question was before the Hon'ble High Court :

"When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under section 54F on the ground that he did not deposit the said

amount in capital gains account scheme before the due date prescribed under section 139(1) of the IT Act ? "

This was answered by Hon'ble High Court as follows :

"As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct." 7. Being so, in our opinion, the Section 54F is beneficial provision and should be interpreted liberally and the Assessing Officer has to see the end utilization of net sale consideration in the way prescribed in Section 54F of the Act, the assessee is entitled for exemption Under Section 54F of the Act. With this observation, we remit the issue to the file of Assessing Officer for fresh consideration."

Therefore, we are of the considered opinion, that the assessee is eligible for deduction u/s 54F from the long term capital gains. Though assessee did not make the claim, appellate authorities are not barred from entertaining the fresh claim. This view is supported by the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd Vs. CIT, 284 ITR 323 (SC). Hence, we set aside the order of the lower authorities and direct the AO to verify the facts regarding acquiring the new asset and allow deduction u/s 54F in respect of long term capital gains. Accordingly, the order of Ld.CIT(A) in respect of long term capital gains is set aside and the order of the Ld.CIT(A) in respect of short term capital gains is confirmed."

8. Respectfully following the decision of the coordinate bench of the Visakhapatnam, we are of the considered view that assessee is eligible for deduction under section 54F of the Act from the long-term capital gains, though

assessee has made a claim while filing the return of income in response to notice under section 148 of the Act, Appellate Authorities are not barred from entertaining the fresh claim. Hence, we set aside the order of the lower authorities and direct the Ld.AO to verify the facts regarding acquiring the new asset and allow deduction u/s.54F in respect of long-term capital gains. Accordingly, the grounds raised by the assessee on this issue are allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 19th December, 2024.

Sd/-
(के.नरसिम्हा चारी)
(K. NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 19.12.2024
Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : Satyanarayana Viswanadha
D.No. 21/411, Bhaskarapuram
Machilipatnam – 521001
Krishna District
Andhra Pradesh
2. राजस्व/ The Revenue : ITO – Ward – 1
Machilipatnam
Krishna District - 521001
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam