

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD "A" BENCH, HYDERABAD**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER  
AND  
SRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.67/Hyd/2013  
Asstt. Year 2007-08

N. Revathi,  
Hyderabad.

vs-

ITO, Ward-6(4),  
AC Guards, Hyderabad.

**PAN:ACAPN2728e  
(Appellant)**

**(Respondent)**

**Appellant By: Sri V. Raghavendra Rao  
Respondent by: Sri Solgy Jose T. Kottaram (DR)**

**Date of Hearing: 12-03-2014  
Date of Pronouncement: 02-04-2014.**

**ORDER**

**PER SAKTIJIT DEY, J.M:**

This appeal of the assessee is directed against the order dated 20<sup>th</sup> November, 2012 passed by the CIT (A)-III, Hyderabad pertaining to assessment year 2007-08.

2. The assessee has raised as many as 9 grounds. Ground Nos. 1 and 9 being general in nature, do not require any adjudication.

3. At the outset, the learned AR submitted that he does not want to press ground No.2. Hence, this ground is dismissed as not pressed.

4. The only issue in ground Nos. 3 to 7 is with regard to the denial of claim of exemption u/s 54F of the Act.

5. Briefly the facts are, the assessee an individual originally filed her return of income for the impugned assessment year on 30-7-2007 declaring total income of Rs.3,34,215/-. In the said return of income, the assessee declared long term capital gain from sale of two properties but at the same time claimed exemption u/s 54 of the Act at Rs.1,09,78,307 and Rs.16,24,370/- in respect of both the properties sold. However, subsequently, the assessee filed revised return of income on 31-3-2009 withdrawing her claim of exemption u/s 54F amounting to Rs.16,24,370/- in respect of one of the property sold.. During the scrutiny assessment proceedings, the Assessing Officer called upon the assessee to submit construction account, valuation report from Registered valuer and building approval plan and other information with regard to the newly acquired property against which the assessee claimed exemption u/s 54F of the Act. In response to the query made by the Assessing Officer, the assessee explained that she along with her sister

were owners of a plot of land having 50% share each. They decided to construction of residential building over the said plot of land consisting stilt plus 5 floors. So far as the cost of construction of building is concerned, the assessee submitted a report from a registered valuer who valued the cost of construction of the building at Rs.2,16,50,000/-

6. It was contended by the assessee that till 31/10/2007, the assessee on an estimate has spent an amount of Rs.1,09,78,307 towards construction of the building which has been claimed towards exemption u/s 54 of the Act. From the approved plan, the Assessing Officer noticed that the building consists of two flats in each floor connected by a corridor. Thus, if the building is of five floors, then the total number of flats will be ten i.e. five flats each belonging to the assessee and her sister. The Assessing Officer therefore was of the view that the assessee is eligible for exemption u/s 54F of the Act only for one flat. He therefore deputed the Inspector of Income-tax to make a spot enquiry for verifying the assessee's claim. The Inspector of Income-tax after visiting the premises submitted his report on 23-12-2009 wherein he stated that the structure existing is not a residential house but a commercial building being used for a school by name 'Sanskriti'. He stated that the school is a semi residential one and the assessee and her friend are

running the school in the said premises and the Inspector observed that the building is having class rooms, big hall and a play area for children in the cellar of the premises.

7. The Assessing Officer on the basis of the report of the Inspector concluded that the building constructed by the assessee against which exemption u/s 54F has been claimed is not a residential house and accordingly he completed the assessment by disallowing the claim of exemption u/s 54F of the Act. Being aggrieved of the assessment so made, the assessee preferred an appeal before the CIT (A). It appears from the order of the CIT (A) since even after affording several opportunities given to the assessee, none appeared on behalf of the assessee, he proceeded to decide the appeal ex parte on the basis of the materials available before him. The CIT (A) ultimately disposed of the appeal by confirming the view of the Assessing Officer with following findings:-

“5.2 I have considered carefully the facts and evidence. It is a matter of record that the Inspector of the Assessing Officer visited the building and found that the property in question was actually a commercial building housing a school by the name “Sanskriti”. This very fact clearly indicates that the appellant has deliberately falsified the information and even submitted a wrong valuation report. There is no ambiguity in the Act that only investment in

residential property is covered under section 54F. The term "residential" clearly implies usage as a 'home'. A commercial property consisting of class rooms, play area cannot be acquitted with a residential property. It has clearly been designed and is being used as a school.

5.3 Accordingly, I have no hesitation in confirming the order of the Assessing Officer. He is also directed to make a report on the conduct of the registered valuer and send a report to his senior officer for action."

8. The learned AR strongly contesting the finding of the Assessing Officer as well as the CIT (A) contended that there cannot be any dispute to the fact that the building constructed is a residential building. Referring to the valuation report of the registered valuer a copy of which is at page-2 of the paper book, the learned AR submitted that the registered valuer has clearly mentioned that the property is situated in a residential area. Further, referring to the same valuation report of the registered valuer, it was contended that the registered valuer at page-20 of his report has clearly described the property as a residential building. The learned AR submitted that the construction of the building was completed by March, 2008. Hence the building was completed in all respects by the end of financial ear 2007-08. Referring to the report of Inspector of Income-tax, the learned AR submitted that even the Inspector of Income-tax while submitting his report on 23/12/2009 has categorically stated that the school has started functioning six months

back which makes it clear that no school was functioning in the said residential building during the relevant assessment year. It was therefore contended by the learned AR that denial of exemption u/s 54F on the conclusion that it is not a residential building is without any basis.

9. The learned DR, on the other hand, strongly relying upon the orders of the revenue authorities submitted that the enquiry conducted by the Assessing Officer through the Inspector of Income-tax clearly revealed the fact that the constructed building is not a residential house as envisaged u/s 54F of the Act but is a commercial building. Therefore, assessee is not entitled for exemption u/s 54F of the Act.

10. We have heard the submissions of the parties and perused materials on record as well as orders of the revenue authorities. The sole issue before us is whether the building in question constructed by the assessee on which exemption u/s 54F of the Act has been claimed is a residential building as claimed by the assessee or a building constructed for commercial use. As can be seen from the assessment order the Assessing Officer has come to a conclusion that the building is not a residential building basically for the reason that the building is used for a school. However, only because the building is used as a school cannot change the nature and character of the building from residential to commercial. Even a residential building can be used as a school or for any other commercial

purpose but the relevant factor to judge is whether the construction made is for residential house or for commercial purpose. If the building has been constructed for residential use with all amenities like kitchen, bath room etc., which are necessary for residential accommodation then even if it is used as a school or for any other commercial purpose, it cannot lose its character as a residential building.

11. However, if the construction is made in such a way that it is not normally for residential use but purely commercial use, then it cannot be considered to be a residential house. Therefore, the primary fact which is required to be examined is whether the building has been constructed for residential use or not. This can be verified from the approved plan and architectural design of the building. However, the plan of the constructed building has not been brought on record either before the revenue authorities or before us. Therefore, it is difficult to arrive at a conclusive finding with regard to the nature of the building. In the aforesaid view of the matter, we are inclined to remit the matter back to the file of the Assessing Officer who shall conduct necessary enquiry to find out the exact nature of construction i.e., whether it has been constructed for residential use or for commercial use. If the building has been constructed for residential use with all amenities, which are necessary for a residential accommodation, then exemption u/s 54F cannot be refused only because it is being used as a school subsequently. So far as the view of

the Assessing Officer that exemption u/s 54F of the Act will be available only in respect of one flat is concerned, we do not agree with the same. Law is well settled that ' a residential house' does not mean a single residential house. Even where the assessee constructs or receives a number of flats adjacent to each other or in different floors of the same building then also the assessee would be entitled for exemption u/s 54F of the Act. In this context, we rely on a decision of the Hon'ble Jurisdictional High Court in case of CIT vs. Syed Ali Adil, judgment dated 20-12-2012 in ITTA No.410 of 2012. In view of the above, the matter is remitted to the file of the Assessing Officer who shall decide the issue afresh after affording a reasonable opportunity of being heard to the assessee in the matter.

12. In the result, the appeal is treated as allowed for statistical purposes.

Order pronounced in the court on 02-04-2014.

Sd/-  
(B.RAMAKOTAIAH)  
ACCOUNTANT MEMBER

Sd/-  
(SAKTIJIT DEY )  
JUDICIAL MEMBER

Hyderabad,  
Dated the 2<sup>nd</sup> April, 2014.

**Jmr\***



*Copy to:-*

- 1) *N. Revathi, Plot No.98, Golden Tuip Estates, Kondapur, Hyderabad-500084.*
- 2) *Income-tax Officer, Ward-6(4), IT Towers, AC Guards, Hyderabad.*
- 3) *CIT(A) III, Hyderabad.*
- 4) *CIT-II, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*