

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER and
SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

ITA No. 1520/Hyd/2013
Assessment year 2009-10

Sri Pradeep Kumar vs. The Deputy CIT
Chowdhry, Hyderabad Circle-1(1)
PAN: ACBPC7487L Hyderabad
Appellant Respondent

Appellant by: Sri A.V. Raghuram
Respondent by: Sri Ramakrishna Bandi

Date of hearing: 04.12.2014
Date of pronouncement: 31.12.2014

ORDER

PER ASHA VIJAYARAGHAVAN, JM:

This appeal by the assessee is directed against the order of the CIT(A)-II, Hyderabad dated 17.09.2013 for assessment year 2009-10.

2. Facts of the case are that the assessee is an Individual. In the return of income filed by him on 30-10-2009, he returned an income of Rs. 56,14,776 after claiming an exemption of Rs. 2,29,82,700 u/s 54F of Income-tax Act, 1961. The assessee had sold a property at Bangalore and had a long term capital gain of Rs. 2,29,82,700. He identified another residential flat at Gurgaon, Haryana called "Palm Drive" for a total consideration of Rs. 2,32,00,000. "Palm Drive" is a project promoted by internationally reputed builders called "Emaar". The assessee entered into an agreement with the builder in respect of flat No. A 401 and has paid amounts to the builder towards the fulfilment of the agreement as requisitioned by the builder. While filing the

Return of Income the amounts so paid were claimed as deduction. Subsequently during the course of assessment proceedings the assessee filed a revised working of deductions u/s 54F restricting the deduction to Rs. 89,99,724 being amount paid before the due date for filing the return. As per the provisions of Sec. 54F, if any amount of sale receipts remain unutilised as on the due date for filing the return the same should be deposited in a specific bank account under the Capital Gains Deposit Scheme 1988. As the assessee was not aware of such a provision, he did not deposit the money in the bank account but paid the amount to the builder. Therefore, he has revised the computation and accordingly requested the AO to restrict the deduction.

3. During the course of assessment proceedings it was further submitted that the flat No. A 401 was not in a completely habitable state, though structures etc., were completed. This delay was entirely due to the reasons beyond the control of the assessee. When this was pointed out by the AO and when it was put to him that the new house should have been completed within a period of 3 years the assessee also agreed to the disallowance of the amount of Rs. 89,99,724 which he claimed as per the revised computation as he was under the bona-fide impression that it is a necessary condition that the new house ought to have been completed within 3 years. However, it was pointed out by chartered accountant that section 54F is a beneficial provision and the assessee very honestly and sincerely desiring to avail the benefits conferred by the said section has acquired a new house and has paid monies as per the agreement with the builder and hence he decided to contest the order of the AO. In

view of the judicial opinion brought to the notice of the assessee, the assessee was desirous to avail of the benefit or else he will be put to substantial loss in spite of his bona-fide investment. With a view to avail of the exemption the assessee raised objection to disallowance before the CIT(A).

4. The assessee submitted before the CIT(A):

(a) that the assessee was always a law abiding citizen and has always acted with due discharge of responsibilities and obligations under law and at the same time was also desirous of availing the benefits conferred upon the assessee.

(b) Section 54F is a beneficial provision and the assessee very honestly and sincerely desiring to avail the benefits conferred by the said section has acquired a new house and has paid monies as per the agreement with the builder. However, unfortunately he was not aware of the further conditions in respect of the unutilized money, under section 54 F(4).

(c) In view of the judicial opinion brought to the notice of the assessee, the assessee is desirous to avail of the benefit or else he will be put to substantial loss in spite of his bona-fide investment, with a view to avail of the exemption.

(d) The citation and gist of judicial precedents relied upon by the assessee are as under:

i) Smt. Rajneet Sandhu vs. DCIT (2010) 133 TTJ 0064 (Chandigarh): In this case the construction

of the house was not completed within the prescribed period. It was held that section 54F does not prescribe that the residential house should be completed within the prescribed period and benefit under s. 54F was allowed. It was held that thrust was on investment and not on completion.

ii) **Smt. Shashi Varma vs. CIT 224 ITR 106 (MP):**
In this case the assessee was denied exemption on the investments made with Delhi Development Authority. However, relief was granted by the Hon'ble High Court. It was held that section 54 of the Act of 1961 only says that within two years, the assessee should have constructed the house but that does not mean that the construction of house should necessarily be complete within two years. What it means is that the construction of house should be completed as far as possible within two years. In the modern days, it is not easy to construct a house within the time-limit of two years and under the Government schemes, takes years and years. Therefore, confining to two years' period for construction and handing over possession thereof is impossible and unworkable under section 54 of the Act. If substantial investment is made in the construction of house, then it should be deemed that sufficient steps have been taken and this satisfies the requirements of section 54. Therefore, the view taken by the Tribunal is not correct.

iii) **Satish Chandra Gupta vs. Assessing Officer, 54 ITD 508 (ITAT, Delhi Bench):** The facts of this case were, the assessee had purchased a site and could not complete the construction of the house within the prescribed period of three years. However, the house was constructed and completed subsequently. Relief was given on the ground that the delay had occurred on account of reasons beyond the control of the assessee.

5. The CIT(A) held that the property was sold on 12.09.2008. Accordingly, the investment/purchase should have been completed within two years thereon, i.e., by September, 2010. The CIT(A) observed that by assessee's own admission, even as on date of passing this appellate order, the structure is not complete and the entire project is going through rough phase and it is more than five years since the assessee had entered into contract with the builder.

6. The CIT(A) held that though 54F is a benevolent section and should be construed not too technically and not too strictly. Nevertheless, the status of affairs as on date is such that it is not known when the project is to be completed or it will ever be completed at all. A reasonable delay in construction can always be condoned if it is for the reasons beyond the control of the assessee. However, there is a total uncertainty as to when this project would be finally completed. In these circumstances, the CIT(A) observed that the prescribed time limit of two years cannot be stretched too far. Accordingly, the CIT(A) dismissed appeal of the assessee.

7. Aggrieved, the assessee preferred the present appeal before the Tribunal and filed additional grounds which are as follows:

(1) On the facts and in the circumstances of the case, the learned CIT(A) and the AO have failed to appreciate that the provisions of section 54F of the Income Tax Act, 1961, contemplates 3 years period from the date of sale of original asset for construction of flat and not two years as considered in the assessment and appellate order. The authorities below failed to appreciate that the time limit available for purchase of flat is three years in the case of assessee as the assessee had not purchased readymade flat but was purchasing a flat which was to be constructed and which is equivalent to constructing a residential house.

(2) Without prejudice to above ground or any of the grounds raised in the appeal memorandum, the authorities below failed to appreciate that since the assessee had invested sale proceeds of original asset for construction of new flat, the capital gains in case of violation of any of the provisions of section 54F of the Act could have been taxed in the assessment year corresponding to the previous year in which 3 years period for construction would elapse. The authorities below could not have brought to tax the capital gains in the assessment year under construction.

8. The learned counsel for the assessee submitted before us that the learned CIT(A) ought to have noted that once the investment is made within 2 years, and the delay in construction is beyond the control of the assessee, the same needs to be condoned irrespective of the period and there is no basis to put an artificial restriction on the period of condonation. In any case, the learned CIT(A)

ought to have taken into account the details submitted during the course of appellate proceeding that the construction of flat purchased by the assessee is completed by the builder, except completion of common lift. Therefore, there is no basis to conclude that the project will not be completed at all and consequently the conclusion of the CIT(A), on incorrect assumption of facts, is not sustainable.

9. The learned counsel also relied on the decision of Narasimha Raju Rudra Rao vs. ACIT (35 taxmann.com 90) (Hyderabad-Tribunal) wherein the co-ordinate Bench has decided as follows:

- *Provision contained under section 54F being a beneficial provision has to be construed liberally. In various judicial precedents it has been held that the condition precedent for claiming benefit under section 54F is only that the capital gain realized from the sale of capital asset should be parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If the assessee has invested the money in construction of residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under section 54F.*
- *Once the assessee demonstrates that the consideration received on transfer has been invested either in purchasing a residential house or in constructing a residential house, even though the transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from availing benefit under section 54F. Even*

investment made in purchasing a plot of land for the purpose of construction of a residential house has been held to be an investment satisfying the conditions of section 54F. Though there cannot be any dispute with regard to the above said proposition of law, the assessee is required to prove the actual date of investment and the amount invested towards purchase/construction of the residential house with supporting evidence.

10. The learned counsel also relied on the decision of M. Janardhan Reddy vs. ITO in ITA No. 1238/Hyd/2006 dated 30.3.2009 and circular No. 471 reported in 59 CTR (St.) 19.

11. The learned DR, on the other hand, argued that section 54F clearly laid out as follows:

54F. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or ⁶⁵[two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

- (i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or
- (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
- (iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".]

Explanation.—For the purposes of this section,—

[***]

[***] "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of ⁶⁹[two years] after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains"

relating to long-term capital assets of the previous year in which such new asset is transferred.]

[(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount by which—

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1),

exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

12. The learned DR pointed out that the construction should have been carried out by the assessee himself and not by the flat promoter. The DR also pointed out that only reasonable delay can be condoned and not the delay of more than 5 years as in the present case for completion of construction.

13. We have heard both parties. In the present situation we have to consider the following factors distinguishing a house construction as against flat booked with the construction company in the context of exemption u/s. 54F:

- (a) Real estate prices have soared up and, therefore, very few individual house are being constructed.
- (b) Exemption is available in case of purchase of a flat within two years.
- (c) It has been held by co-ordinate Benches that consideration received on transfer has been invested either in purchasing a residential house or in constructing a residential house, even though the transactions are not complete in all respects and as required under the law would not disentitle the assessee from availing benefit u/s. 54F of the Act.
- (d) The concept of reasonable delay will not apply once we accept the decision of the co-ordinate Bench in the case of Narasimha Raju Rudra Raju (supra).
- (e) Section 54F is a benevolent provision.

14. In this scenario, the only issue is whether the amount of consideration received on transfer invested by the assessee in a flat constructed within three years would amount to construction of a residential house within the time limit of three years. In short, we are of the opinion that a flat which is newly constructed by a builder on

behalf of the assessee is in no way different from a house constructed. Section 54F being a beneficial provision has to be interpreted so as to give the benefit of residential unit viz., flat instead of house in the present state of affairs. Further, as already pointed out even if only advance is given the benefit still will be available for exemption u/s. 54F. In the present case the assessee has given a chart of statement of payment made to M/s. Emaar MGF Land Ltd. which is as follows:

Date of instalment	Amount (Rs.)
08/10/2007	2000000
14/11/2007	899906
16/01/2008	1933274
15/07/2008	1933272
12/03/2009	966636
01/06/2009	1266636
27/08/2009	1266636
23/10/2009	1146636
31/12/2009	1146636
25/01/2010	966636
04/03/2010	966636
21/04/2010	966636
11/08/2010	0
03/07/2010	966636
16/09/2010	966636
17/12/2010	535572
19/03/2012	48204

15. The assessee will get the benefit u/s. 54F for payment made till 12.9.2011. Hence the AO may verify the exact amount invested by the assessee up to 12.9.2011 and allow the claim under sec. 54F, accordingly.

16. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 31st December, 2014.

Sd/-
(P.M. JAGTAP)
ACCOUNTANT MEMBER

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Hyderabad, dated 31st December, 2014
tprao

Copy forwarded to:

1. **Sri Pradeep Kumar Chowdhry, Flat No. S-5, Block-A, 2nd Floor, Stone Valley Apartments, Road No. 4, Banjara Hills, Hyderabad-500 082.**
2. **The Deputy CIT, Circle-1(1), Aayakar Bhavan, Hyderabad.**
3. **The CIT(A)-II, Hyderabad.**
4. **The CIT-I, Hyderabad.**
5. **The DR – 'A' Bench, ITAT, Hyderabad**