

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

**BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER
AND SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No. 579/Hyd/2012
Assessment Year: 2008-09**

Sri M.S. Lakshmana Rao,
Hyderabad.

vs. Dy. Commissioner of Income-
tax, Circle – 3(3), Hyderabad.

PAN – ACUPM0126H

(Appellant)

(Respondent)

Assessee by : Shri V. Siva Kumar
Revenue by : Shri H. Phani Raju

Date of hearing : 26-06-2015
Date of pronouncement : 05-06-2015

ORDER

PER SAKTIJIT DEY, J.M.:

This appeal by assessee is directed against the order dated 31/01/2012 of Id. CIT(A)-IV, Hyderabad for the AY 2008-09.

2. In the grounds of appeal, assessee has raised two issues. First issue relates to disallowance of deduction claimed u/s 54F of the Act whereas the second issue relates to non-consideration of an amount of Rs. 4,32,720 as part of cost of acquisition of immovable property for computing capital gain.

3. Facts in brief relating to the first issue in dispute are, assessee an individual is a director in M/s VBC Ferro Alloys Ltd. For the AY under consideration, he filed his return of income on 31/07/2008 declaring total income of Rs. 8,01,325 besides agricultural income of

Rs. 1,50,000. During the assessment proceeding, AO on verifying the materials on record noticed that though assessee during the year has sold immovable property and derived capital gain but at the same time, he has claimed deduction u/s 54F of the Act for an amount of Rs. 50,37,209. When AO called upon assessee to produce documentary evidence to justify the claim of deduction u/s 54, assessee furnished details relating to long term capital gain as well as deduction claimed u/s 54. AO noticed that during the relevant PY, assessee sold immovable property for consideration of Rs. 76 lakh and deposited the entire sale consideration into his S.B. Account with ICICI Bank. AO observed that as per the provision contained u/s 54(2), assessee has not deposited the sale consideration in capital gain account scheme, 1988. When AO called upon assessee to explain the reason for not doing so, it was submitted by assessee being unaware of the legal position, the sale consideration was deposited in SB account. Assessee further submitted that he has entered into agreement with his father, who is the owner of Plot No. 283 in Sy. Nos. 125 & 126 of Yousufguda village for construction of house. Assessee submitted, as the amount of Rs. 50,37,209 was utilized by assessee towards construction of house, he is eligible for deduction u/s 54. As noted by AO, though, assessee was directed to produce the agreement copy between himself and his father and details of completion of construction of house, but, as assessee failed to produce any evidence, AO proceeded to complete the assessment by disallowing deduction claimed u/s 54 of the Act stating that assessee failed to satisfy the conditions of section 54 and further he has not furnished any evidence regarding construction of house. Being aggrieved of disallowance of deduction u/s 54, assessee preferred appeal before Id. CIT(A).

4. In course of hearing of appeal before Id. CIT(A), reiterating what was stated before AO, assessee submitted that being unaware of the legal position, assessee had deposited the sale consideration

in SB account in stead of capital gain account scheme. He further submitted, since the entire sale proceed was utilized for construction of a house, assessee is eligible for deduction u/s 54. In support of his claim, assessee submitted a copy of the agreement entered into with his father. Ld. CIT(A) after considering the submissions of assessee in the context of facts and materials on record, observed that assessee is not entitled for deduction u/s 54 as he has not fulfilled the conditions of the said provision by depositing the capital gain in capital gain account scheme. Further, as far as the claim that assessee has utilized the capital gain in construction of a house, Id. CIT(A) held, the same is also not tenable as owner of the plot is assessee's father and as per the agreement, assessee has only requested his father for construction of residential house to which his father has agreed. However, the agreement which is an unregistered one, does not make it clear that any legal right has been conferred on assessee as far as ownership of the property is concerned. Ld. CIT(A) observed, as assessee is not having any legal right over the property in which assessee claimed to have constructed house, deduction claimed u/s 54 cannot be allowed.

5. Ld. AR more or less reiterating the submissions made before the departmental authorities, submitted, as far as non-compliance to section 54(2) is concerned, that cannot prevent assessee from getting deduction u/s 54 as assessee has utilized the capital gain in construction of new house within the due date of filing of return u/s 139 of the Act. He submitted, even if the capital gain is not deposited in capital gain account scheme that will not debar assessee from claiming deduction u/s 54, if otherwise, capital gain is utilized in construction of a new house within the prescribed period. In support of such contention, he relied upon a decision of Hon'ble Gauhati High Court in case of CIT Vs. Rajesh Kumar Jalan, 157 Taxman 398, decision of ITAT Bangalore bench in case of Nipun Mehrotra Vs. ACIT, 110 ITD 520 and decision of ITAT Hyderabad Bench in case of

M. Janardhan Reddy Vs. ITO, ITA No. 1238/Hyd/06 dated 30/03/2009. As far as construction of a new house is concerned, Id. AR referring to the agreement submitted, as assessee in terms with the agreement has constructed a house on the plot of land belonging to his father, he is eligible for deduction u/s 54. In this context, he referred to a decision of ITAT, Mumbai Bench in case of JCIT Vs. Smt. Armeda K. Bhaya, 95 ITD 313 (Mum.). Referring to the bank account, Id. AR submitted, withdrawals made were for the purpose of construction of house property.

6. Ld. DR, on the other hand, submitted, as assessee has failed to comply to the conditions imposed u/s 54 of the Act by depositing the capital gain in capital gain account scheme he is not eligible for deduction u/s 54. He further submitted, as far as assessee's claim of utilizing sale proceeds in construction of new house, same cannot be accepted as neither assessee is owner of the property nor there is any evidence to suggest that assessee has utilized the capital gain in construction of house. He submitted, the bank account copy only shows withdrawals but for what purpose they have been utilized has not been substantiated with any documentary evidence, hence, the claim of assessee that the amounts withdrawn were utilized for construction of house cannot be accepted.

7. We have considered the submissions of the parties and perused the orders of revenue authorities as well as other materials on record. Undisputedly, assessee has not deposited the sale proceeds received by him from sale of immovable property in capital gain account scheme as required u/s 54(2) of the Act. However, in our view, non-compliance to such condition will not be so fatal to debar the assessee from getting benefit of section 54. However, the fundamental issue in the present appeal is whether assessee's claim that he has utilized the capital gain in construction of a new house is acceptable. As is evident, assessee has claimed that he has entered into an agreement with his father for construction of house over the

plot of land belonging to his father. However, it is a fact that the so-called agreement is not only unregistered one, but, it does not indicate in clear terms as to whether the ownership rights over the property was transferred to assessee by his father or father has given up his right over the said property in favour of assessee. Moreover, a reference to the bank account copy, which has been filed in the paper book, though reveal that assessee has withdrawn an amount of Rs. 52,75,000 during the PY, but, for what purpose these amounts have been withdrawn is not known. Assessee has not submitted any documentary evidence to establish his claim that the amount withdrawn from the bank account out of the sale proceeds of immovable property were actually utilized for construction of new house. Therefore, in absence of even a single piece of evidence to indicate that assessee has utilized sale proceeds/capital gain in construction of new residential house, the claim of deduction u/s 54 cannot be accepted. As far as decisions relied upon by Id. AR is concerned, there is no dispute to the principles laid down therein. However, as can be seen from the decision of ITAT, Mumbai Bench in case of JCIT Vs. Smt. Armeda K. Bhaya (supra), the property was not only purchased in the name of assessee along with two other persons, namely, his father and mother, but, father and mother in fact submitted affidavits giving up their rights over the said property and also admitting the fact that entire investment in purchase of the property has been made by assessee. Whereas in the facts of the present case, no documentary evidence has been brought on record to establish the fact that assessee's father has given up his right over the property or assessee has actually made investment towards construction of house property. In the aforesaid facts and circumstances, the decision relied upon will be of no help to assessee. Therefore, we do not find merit in the submissions of assessee and accordingly, the order of Id. CIT(A) on this issue is confirmed by dismissing ground raised by assessee.

8. The second issue relates to disallowance of an amount of Rs. 4,32,720 from being considered as part of cost of acquisition.

9. While verifying the computation of capital gain made by assessee, AO noticed that assessee has claimed cost of acquisition at Rs. 8 lakhs and after indexation, the same was adopted at Rs. 25,62,791. AO observing that assessee has not furnished any basis for adoption of cost acquisition at Rs. 8 lakhs, recomputed indexed cost of acquisition at Rs. 7,49,634. Before Id. CIT(A), assessee submitted the details of cost of acquisition as under:

(Rs.)

i)	710/9960 sq.ft. of undivided share in land as per sale deed	2,07,083
ii)	Stamp duty for executing sale deed	26,923
iii)	Cost considered by AO	2,34,006
iv)	Cost of construction paid to Parsn Foundation	4,32,720
v)	Cost of cup boards, interiors etc.	1,31,190
	Regn. Charges as mentioned on the back of page 1 of sale deed	2,084
	Total	8,00,000

To substantiate its claim assessee submitted that the land cost alone cannot be the cost of flat, since construction cost is to be paid separately. It was submitted by assessee that it has paid the amount of Rs. 4,32,720 towards construction cost and in this regard a confirmation letter issued by Parsn Foundation Pvt. Ltd. was submitted. Ld. CIT(A), however, was not convinced with the submissions of assessee. He observed that confirmation letter submitted by assessee is neither in the nature of any receipt nor it establishes as to how the said amount was paid. Accordingly, refusing to take cognizance of the said confirmation letter, Id. CIT(A) rejected assessee's claim of cost of acquisition at Rs. 8 lakhs.

10. We have considered the submissions of the parties and perused materials on record. Ld. AR at the time of hearing has filed a petition

seeking admission of the confirmation letter issued by Parsn Foundation Pvt. Ltd. as additional evidence. Ld. AR submitted that in the confirmation letter, the concerned party has clearly stated of receiving the amount of Rs. 4,32,720 towards cost of construction of flat sold by assessee. Hence, he requested for considering the evidence produced. Ld. DR, though, has no serious objection for admission of additional evidence produced by assessee, but, he submitted that the matter has to be examined and verified by AO.

11. Having considered the submissions of the parties, we are of the view that assessee's claim of incurring an amount of Rs. 4,32,720 as cost of construction, requires to be considered afresh in view of additional evidence submitted by assessee by way of confirmation letter dated 28/01/12 from Parsn Foundation Pvt. Ltd. Accordingly, we set aside the order of Id. CIT(A) on this issue and remit the matter back to the file of AO for deciding the same afresh after due opportunity of hearing to assessee.

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

Pronounced in the open court on 5th June, 2015.

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

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Hyderabad, Dated: 5th June, 2015

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Copy to:-

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- 2) *DCIT, Circle – 3(3), Hyderabad*
- 3) *CIT(A)-IV, Hyderabad*
- 4) *CIT-III, Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*