

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri S.Rifaur Rahman, Accountant Member**

**ITA No.1021/Hyd/2017**  
(Assessment Year: 2014-15)

Shri Mahesh Malneedi Vs ITO Ward 11 ( 3 )  
Hyderabad Hyderabad  
PAN: AWLPM 1058 P  
(Appellant) (Respondent)

For Assessee : Shri D.V. Anjaneyulu  
For Revenue : Shri N. Ravi Babu, DR

Date of Hearing: 06.11.2017  
Date of Pronouncement: 25.01.2018

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2014-15. In this appeal, the assessee is aggrieved by the order of the learned CIT (A)-5, Hyderabad, dated 29.05.2017 confirming the order of the AO disallowing the deduction claimed u/s 54F of the Act and also in sustaining the additions of Rs.20.00 lakhs and Rs.6.00 lakhs u/s 68 of the I.T. Act.

2. Brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y 2014-15 on 25.07.2014 admitting an income of Rs.11,17,920. The case was selected for scrutiny under CASS on the ground that "Large deduction claimed u/s 54 & large cash deposits in Savings Bank

A/c". Hence, notices u/s 143(2) & 142(1) of the Act were issued and duly served on the assessee. The assessee filed the required information and the AO verified the same. The AO found that the assessee has shown "Nil" income under the head "Capital Gains in the return of income after reducing the cost of acquisition and the claiming deduction u/s 54F of the Act as under:

a)	Sale consideration received vide sale deed dated 7.11.2013	Rs.1,01,40,000
b)	Less: Indexed cost of acquisition vide deed dt. 21.8.1996	Rs. 4,66,070
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		Rs. 96,73,930
	Less: reinvested in purchase of Jubilee Hills property for Rs.1.00 crore Vide sale agreement dt. 3.7.2013.	Rs. 96,73,930 N I L

3. The AO, in order to examine the allowability, issued a show-cause notice to the assessee to explain how deduction u/s 54F is allowable. The AO also observed that though the assessee claimed to have paid Rs.1.00 crore for purchase of the property within one year before the transfer of the property, on verification of income statement, it is observed that the assessee has deposited the amount of Rs.1.00 crore on 7.11.2013 into his Bank A/c and therefore, the purchase transaction has not materialized. The assessee was therefore, asked as to how the assessee is eligible for the claim of exemption u/s 54F of the act.

4. Further, the AO also observed that there are cash deposits to the tune of Rs.1,67,80,000 made into the Bank A/cs of the assessee during the financial year 2013-14 and asked the assessee to explain the sources for the deposits of Rs.30.00 lakhs and Rs.20.00 lakhs on 5.11.2013. In reply to the said show cause

notice, the assessee submitted that he had entered into the agreement of sale on 3.7.2013 and has paid Rs.1.00 crores, whereas the assessee had sold the property on 7.11.2013 and has deposited the sale consideration of Rs.1.00 crores into his Bank A/c and that both the transactions are independent and are not related to each other. As regards the claim of exemption u/s 54F, he submitted that the sale agreement for purchase of residential house is well within the one year period before the transfer of the property and therefore, submitted that the capital gains arising out of the sale of the property on 3.7.2013 i.e. Rs.96,73,930, is eligible for exemption u/s 54F of the Act as he had complied with all the necessary conditions. During the course of the assessment proceedings, the copies of the sale deed dated 7.11.2013 and agreement of sale dated 3.7.2013 were filed and verified. The AO observed that the assessee had made payment of Rs.63,83,000 vide cheque No.994653, dated 11.07.2013 and Rs.36,17,000 vide Cheque No.994652, dated 11.07.2013 but that the sale could not be completed and also the vendor of the new property has not come forward for registration. It was observed that the assessee made efforts to conclude the purchase of the above property meant for reinvestment of capital gain on sale of the original asset for availing exemption u/s 54F of the Act but since the assessee has not concluded the sale transaction within the period stipulated u/s 54F of the Act, the AO disallowed the claim of deduction u/s 54F of the Act and added it to the returned income of the assessee and brought it to tax.

5. As regards the cash deposits of Rs.30.00 lakhs into the Bank A/c, the AO observed that the assessee has been able to

explain the source for Rs.24.00 lakhs but has not produced satisfactory explanation to the extent of Rs.6.00 lakhs. As regards the source for deposit of Rs.20.00 lakhs, the AO did not accept the assessee's contention that he had withdrawn this sum earlier for purchase of a property and that he has re-deposited it into the Bank A/c after a period of one year. Therefore, the AO brought to tax the unexplained cash credit of Rs.6.00 lakhs and Rs.20.00 lakhs respectively.

6. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

7. The learned Counsel for the assessee submitted that the assessee had invested the entire capital gains for purchase of a residential property at Jubilee Hills by paying a sum of Rs.1.00 crores to the vendor, but the vendor, with a malafide intention of cheating the assessee, has not come forward to register the property in assessee's name even though the assessee was willing to pay the balance of the sale consideration and the assessee had to resort filing of a suit for specific performance before the Civil Court to get the property registered in his name. He submitted that as far as assessee's claim of exemption u/s 54F of the Act during the relevant A.Y is concerned, the assessee has satisfied the conditions thereof and therefore, should be allowed exemption u/s 54F of the Act. He submitted that even if the property is not registered in his name, the capital gains cannot be brought to tax in his hands for the relevant A.Ys because the assessee has fulfilled the conditions and it can be brought to tax only in the

year in which the assessee fails to get the property registered i.e. after two years of the sale of an original asset. In support of this contention, he placed reliance upon the decision of the Coordinate Bench of the Tribunal (to which both of us are signatory) in the case of Vikas Kumar vs. DCIT reported in (2017) 166 ITD 481. In support of his contention that the law does not compel the assessee to perform the impossible, the learned Counsel for the assessee placed reliance upon the decisions of the Hon'ble Supreme Court in the case of LIC vs. CIT (1996) 219 ITR 410 (S.C), Krishnaswamy S.Pd and Anr. Vs. Union of India & Ors (2006) 281 ITR 313 and Manish Maheshwari vs. ACIT & Anr (2007) 289 ITR 341. Thus, according to the learned Counsel for the assessee, the assessee having made investment in the property bonafidely, cannot be expected to get the document registered when the other party was not cooperating with the assessee with an intention to cheat the assessee.

8. The learned DR, on the other hand, submitted that even if the contentions of the assessee are accepted that his vendor was not cooperating with him and has cheated him and has not registered the property inspite of the receipt of Rs.1.00 crore as advance for sale of the property, the assessee cannot be allowed exemption u/s 54F of the Act as he has failed to comply with the conditions mentioned therein i.e. of having purchased the property within one year before or two years after the sale of the original asset. Therefore, according to him, the exemption u/s 54F has rightly been denied and the capital gain brought to tax in the hands of the assessee for the relevant A.Y.

9. Having regard to the rival contentions and the material on record, we find that the undisputed facts are that the assessee has sold his property and there is no dispute about the quantum of capital gain arising on such sale of property. It is also not in dispute that the assessee has paid a sum of Rs.1.00 crores to the vendor, though the CIT (A) has observed that the assessee has proved the payment of only a sum of Rs.37.00 lakhs by way of cheque and the balance by way of cash is not proved. Therefore, the payment of consideration to the extent of Rs.37.00 lakhs is proved beyond reasonable doubt, whereas the payment of the balance by way of cash after withdrawal from Bank A/c is doubted by the CIT (A). We find that the AO has not doubted the payment of Rs.1.00 crores to the vendor. It is also not in dispute that the total sale consideration for the property is for Rs.4.40 crores and the assessee was required to make the payment of the balance amount. According to the assessee, the sale transaction has not gone through because the vendor intended to cheat him and it is also not in dispute that the assessee has issued a legal notice to the vendor and also filed a civil suit before the Civil Court at Hyderabad for specific performance of the sale agreement.

10. As far as the claim of exemption u/s 54F is concerned, it is on the ground that he has invested the entire capital gain for purchase of the residential house by paying the advance of Rs.1.00 crore within one year before the sale of the original asset. We find that to claim exemption u/s 54F of the Act, the assessee has to invest the capital gains in purchase of a residential house within a period of one year before or within a period of two years

after sale of the original asset or invest in construction of a residential house within a period of three years after the sale of the original asset, the DR has placed much reliance on the words “purchased/constructed” used in the said section to mean that the transaction has to be concluded within the specified period to be eligible for deduction u/s 54F of the Act.

11. Let us therefore, consider the judicial precedents relied upon by the learned Counsel for the assessee on the issue. The Hon'ble Karnataka High Court in the case of CIT vs. Shakuntala Devi (Decd.) & Others reported in (2016) 389 ITR 366 (Kar.) has held that where the capital gains has been invested in either purchase of residential building or spent on construction of residential building, the assessee would be entitled to the benefit flowing from section 54 of the Act irrespective of the fact of the transaction not being complete in all respects. Further, in the case of Pr. CIT v. C. Gopala Swamy (Kar.) reported in (2016) 384 ITR 307 (Kar.), the Hon'ble Karnataka High Court has held that the fact that the builder has not handed over the possession within a period of three years after the sale of the original asset, would not disentitle the assessee from claiming benefit u/s 54F and that the assessee was entitled to the claim of exemption u/s 54F because he had reinvested the entire capital gains by making payment in full to the builder. The decision of the Coordinate Bench in the case of Mrs. Bhavana Cuccria vs. ITO reported in (2017) 165 ITD 124 (Ch.) also has laid down that for the purpose of claiming exemption u/s 54F of the Act, the investment of substantial amount in the new asset is sufficient compliance and in such circumstances, the assessee is entitled to claim

exemption despite the fact that the construction is not completed within three years or the house is not purchased within two years of the sale of the original asset. The Coordinate Bench of this Tribunal in the case of Vikas Kumar vs. DCIT (cited Supra) was considering the case of an assessee who, after purchase of a new residential property had claimed exemption u/s 54F of the Act and thereafter, entered into a development agreement with the builder in the subsequent A.Y, to construct a commercial property and had demolished the new asset. The Tribunal held that in the relevant A.Y, the assessee was eligible to claim exemption u/s 54F as he satisfied the relevant conditions and if the assessee demolished the building subsequently within a period of three years, the assessee loses the benefit u/s 54F and the capital gains so claimed is taxable in the year in which the new asset is transferred.

12. Having regard to the above decisions, we find that the common finding of all the Courts is that if the assessee has invested the long term capital gains in purchase or construction of a new residential house within the period specified in the section, then, the assessee is eligible to claim deduction u/s 54F of the Act. Admittedly, the assessee has paid an advance of Rs.1.00 crore to the vendor, but the property could not be registered because of the vendor's attitude. There is no material on record to attribute the non-registration due to any fault of the assessee. The assessee has also filed a copy of the suit for specific performance in OS No.20094/2015 filed before the Additional Chief Judge, City Civil Court, Hyderabad wherein the assessee has stated that he had paid the advance to the vendor on



3.7.2013 and that the assessee has issued legal notices to the vendor on 5.4.2014 and also on 21.5.2015 for execution of the registered sale deed in favour of the assessee. It is also seen from the said document that on 31.8.2015, the HSBC Bank Ltd has executed a registered sale deed in favour of one Mr. Daggumati Koti Reddy by auctioning the property since the vendor had not cleared the dues to the Bank and committed default. Thus, on 31.8.2015, the agreement of sale has become impossible to be honoured as the property itself has been auctioned and sold to another party. The assessee has filed the return of income on 25.7.2014 i.e. after issuance of the legal notice dt. 5.4.2014 to the vendor calling upon him to execute the registered sale deed in favour of the assessee by clearing the bank loan and receiving the balance sale consideration of Rs. 3.4 crores. Therefore, as far as the assessee is concerned, he was aware of the bank loan and also the default committed by the vendor in repaying the loan. Thus, the property was not without an encumbrance as on the date of filing of the return and there was no certainty of the transaction going through. In a case where the sale is not concluded or the agreement of sale is not certain to be honoured, the assessee could not have claimed to have purchased the residential property within one year before or within two years after the sale of the original asset or to have constructed the property within three years after the sale of the property for the purposes of claiming the deduction u/s 54F(4) of the Act. The decisions relied upon by the assessee are therefore, distinguishable on facts. Thus, the disallowance of assessee's claim u/s 54F is confirmed and the assessee's grounds on this issue are rejected.

13. As regards the unexplained cash deposits with regard to Rs.6.00 lakhs into the Bank A/c of the assessee, the learned Counsel for the assessee submitted that they are out of the assessee's savings over the past three years arising out of rental income and also agricultural income. In support of his contention that the assessee had sufficient income in the earlier A.Y, he has filed the copies of the returns of relevant A.Y and the computation of income in such years. From the details filed by the assessee, it is seen that the assessee had agricultural income and also income from other sources and house property from the A.Ys 2012-13 to 2014-15 sufficient to explain the sources for the deposit of Rs.6.00 lakhs. Therefore, the source for the deposit of Rs.6.00 lakhs is accepted. However, as regards the source for the deposit of Rs.20.00 lakhs, being the amount claimed to be withdrawn for purchase of property in the earlier year and re-deposited the same after the period of one year due to the transaction not materializing, is not acceptable. Therefore, the addition of Rs.20.00 lakhs is confirmed.

14. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 25<sup>th</sup> January, 2018.

**Sd/-**

**(S.Rifaur Rahman)**  
**Accountant Member**

**Sd/-**

**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 25<sup>th</sup> January, 2018

*Vinodan/sps*

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- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*