

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER**

**ITA No.06/Hyd/2016
Assessment Year: 2012-13**

Shri Bolishetty Venkatesh, vs. ITO, Ward 7(2),
Hyderabad. Hyderabad.

PAN – AHXPB1503H

(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao

Revenue by : Smt N. Swapna

Date of hearing : 26-10-2017

Date of pronouncement : 22-11-2017

ORDER

PER P. MADHAVI DEVI, J.M.:

This is an appeal filed by assessee for the A.Y 2012-13 against the order of the CIT(A)-3, Hyderabad, dated 07-09-2015.

2. Brief facts of the case are that the assessee, an individual, carrying on business in the name of M/s Sreedevi General Stores, filed his return of income for the A.Y 2012-13 on 14-03-2013 declaring an income of Rs. 1,90,200/-. He also declared income from capital gains at Rs. Nil with a narration that the sale proceeds will be invested in construction of house property. The A.O issued a notice u/s 148 of the Act on 10-04-2013, against which, the assessee filed necessary information and requested that the return filed originally may be treated as the return filed in response to the notice u/s 148 of the Act.

3. During the reassessment proceedings, the A.O observed that the assessee has sold certain immovable properties and has reported the sale consideration as per the sale deeds, whereas the SRO value of the said properties was much higher. The assessee justified the lower sale price by stating that there were some problems created by local MLA and that assessee had also given complaints to police with regard to his interference, and therefore, the assessee had to sell the properties for lower price. Thus, he requested that the provisions of Sec 50C of the Act may not be applied. However, the A.O observed that the assessee has not sold the property to any of the persons who have created the problems and also that he did not agitate against the value adopted by the SRO at the time of registration of the sale deed. Therefore, he adopted the SRO values as sale consideration. Thereafter, he proceeded to consider the assessee's claim of deduction u/s 54 of the Act. He observed that the assessee has claimed a sum of Rs. 54,29,140/- as deduction u/s 54 of the Act and on considering the investment made by the assessee during the three years subsequent to the sale, he observed that the assessee has expended only a sum of Rs. 7,70,330/- up to the due date for filing of the return and that the assessee did not deposit the remaining amount of the sale consideration in the capital gains scheme account for utilization of the funds for construction thereafter. He, therefore, allowed the expenditure incurred only up to the due date for filing of the return.

4. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the A.O, and the assessee is in second appeal before us by raising grounds only against restricting the claim of exemption u/s 54F to Rs. 7,32,829/- and the consequential levy of interest u/s 234A and 234B of the IT Act.

5. The Ld. Counsel for the assessee submitted that the assessee has invested the entire capital gain for construction of a new house within the period of three years from the date of original asset and therefore should be allowed the deduction u/s 54F of the IT Act. In support of this contention, he placed reliance upon the decision of the Hon'ble High Court of Punjab and Haryana in the case of CIT Vs Ms. Jagriti Aggarwal [2011] 15 taxmann.com 146 (P &H) and also the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs Smt. Vrinda P. Issac [2012] 24 taxmann.com 131 (Karnataka). He also placed reliance upon the decision of 'B' Bench of this Tribunal in ITA No. 1707/Hyd/2016 in the case of Sri Ajeet Kumar Jaiswal Vs. ITO

6. The Ld. DR, on the other hand, supported the order of the authorities below and placed reliance upon the decision of the Hon'ble Bombay High Court in the case of Humayun Suleman Merchant Vs CCIT [2016] 73 taxmann.com 2 (Bombay)

7. Having regard to the rival contentions and the material on record, we find that undisputedly the assessee has invested the entire capital gain in construction of a

new house within the period of three years from the date of sale of the original asset. As per Sec. 54F(4) of the Act, the assessee is required to deposit 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 original asset has taken place or which is not utilized by him for the purchase or construction of the new asset before the due date of furnishing the return of income u/s 139 of the Act, in an account of any such bank or institution as may be specified in, or utilized 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. For the purpose of sub Sec. (1) of Sec. 54F of the Act, the amount if any, already utilized by assessee for the purchase or construction of new asset together with the amounts so deposited shall be deemed to be the cost of the new asset. In this case, undisputedly, the assessee has not deposited the unutilized net consideration into any bank account, leave alone, the capital gain account. Without prejudice to the contention of the assessee that the entire amount of capital gain is to be allowed u/s 54F of the Act, it is the case of the assessee that the assessee has time up to the date of furnishing of the return of income u/s 139(4) of the Act to deposit it into the capital gains account and whatever has been incurred by the assessee till such date should be allowed. In support of this contention, he has placed reliance upon the decision of the Hon'ble High Court of Punjab and Haryana in the case of CIT Vs Ms. Jagriti

Aggarwal (supra) and also the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs Smt. Vrinda P. Issac (supra). We find that in these two decisions the Hon'ble High Courts have held that the reference to Sec. 139 of the Act in Sec 54F of the Act, is also to the period under Sub Sec. 4 of Sec 139 of the Act, and therefore Sec. 54 deduction could be allowed to the assessee on the investment made up to the period u/s 139(4) of the Act. In the case of Sri Ajeet Kumar Jaiswal Vs. ITO (supra), this Tribunal was considering the case of an assessee who had deposited the capital gains into 'term deposit' account and not the capital gains account as required u/s 54(2) of the Act and since the funds were not utilized for any other purpose but for construction of a new asset, this Tribunal had held that the assessee was eligible for deduction u/s 54F of the Act in the said case even though the amount was not deposited into the capital gains account. However, in the case before us, the assessee has not deposited any amount in to any bank account, leave alone the capital gains account. Therefore, in our opinion, the assessee is eligible for deduction u/s 54F of the IT Act only on the amount which is invested up to the time available u/s 139(4) of the Act to file the return of income. In the case before us, the assessee has filed the return of income on 14-02-2013, therefore, the assessee is eligible for deduction u/s 54F of the Act for the amount invested by him till such date. In the case of Humayun Suleman Merchant Vs CCIT (cited supra) the Hon'ble Bombay High Court also has held that the assessee is eligible for deduction u/s 54F of the IT Act on the amounts spent for

construction of a house till the date of filing of the return of income. Hence, the A.O is directed to allow the deduction u/s 54F of the Act accordingly.

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

Pronounced in the open court on 22nd November, 2017.

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated:22nd November, 2017

KRK

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- 2 ITO, Ward- 7(2), Hyderabad.
- 3 CIT(A)-3, Hyderabad
- 4 Pr. CIT-3, Hyderabad.
- 5 The DR, ITAT Hyderabad
- 6 Guard File