

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SMT. P.MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
2224/Hyd/18	2009-10	Ms.Juveria Begum, HYDERABAD [PAN: AHYPB4802C]	Income Tax Officer, Ward-14(2), HYDERABAD
297/Hyd/19	2009-10	Mr.Abdul Arif Baig, HYDERABAD [PAN: ABQPB1797E]	
298/Hyd/19	2009-10	Mr.Mohammed Yasser Sattar Baig, HYDERABAD [PAN: AKHPB8818L]	
340/Hyd/19	2009-10	Mr.Mohd.Saffan Baig, HYDERABAD [PAN: AKHPB8819M]	

For Assessee : Shri Muddu Vijay, AR
For Revenue : Smt. N.Swapna, DR

Date of Hearing : 02-09-2020
Date of Pronouncement : 04-09-2020

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

All these four appeals are filed by the respective assessees for the AY.2009-10, against the separate orders of the Commissioner of Income Tax (Appeals)-6, Hyderabad, dated 29-08-2018 & 29-10-2018 (for ITA Nos.297, 298 & 340/H/19).

2. Since the facts and issues involved in all these appeals are common and identical, except for the amounts mentioned therein, all these appeals were heard together and are being disposed-of by way of this common and consolidated order. For the sake of convenience, appeal in ITA No.297/Hyd/2019 is discussed hereunder in detail:

Brief facts of the case are that, all the assessees being family members and co-owners of a plot of land admeasuring 1885 Sq. Yds., with an AC shed of 2100 sq.ft., located on Road No.3, Banjara Hills, Hyderabad sold the same for a sum of Rs.3,54,40,000/- vide Sale Deed dt.06-03-2006. The sale consideration was shared by the co-owners in proportion to their land holding (Rs.75,20,500/- for his share of 400 Sq. Yds. of land held by the present assessee). The respective assessee's claimed exemption of capital gains on purchase of a residential house collectively in the year 2006 itself to the extent it was incurred for purchase and the balance of the amount was deposited in the Capital Gains Scheme Account. The period of three years in the assessee's case expired in the AY.2009-10 and as per the information available on record for the AY.2006-07, the Assessing Officer (AO) observed that the assessee has claimed to have utilised the amount deposited in Capital Gain Scheme Account to renovate the existing residential unit. The AO, however, observed that the extension of the existing residential unit may not amount to investment (purchase/construction) of a new residential house. Therefore, the AO disallowed the claim of exemption u/s.54F of the Income Tax Act.

3. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of AO by holding that - *any investment made towards extension or modification or renovation of an existing house would not come under the purview of purchase/construction of new asset as envisaged u/s.54 or 54F of the Act.*

4. Aggrieved by this order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following Grounds (which are common for all the assessees, herein):

"1. The order of the CIT(A) is erroneous and contrary to the Judicial Precedents holding the field and binding on all the tribunals and Hon'ble Courts in the country. The impugned order is contrary to the law of precedents.

2. The CIT(A) findings at Para 8.9 of the impugned order is a gross impropriety and a classic example of impropriety and violation of application of Judicial precedents referred by the CIT(A) himself. It is a total misdirection and a perverse order by the CIT(A). Having observed in Para 8.9 that the Hon'ble Karnataka High Court and others are in favour of the Appellant, should not have dismissed the appeal. Wrongly observed that I would like rely upon the decisions which are in the favour of the department.

3. The decisions relayed upon by the CIT(A) pertains to investment made towards extension, modification or renovation for the existing old building but appellant purchased building and made modification and renovation for his use.

4. The CIT(A) wrongly came to conclusion that the appellant made investment towards extension or modification or renovation of existing house, whereas, in fact, the appellant purchased the house and modified the house to make it habitable as per requirement, which clearly comes under 54 or 54F of the Act.

5. The finding of the CIT(A) on the aspect of limitation is patently erroneous and contrary to the law.

6. Such other grounds that may be urged at the time of hearing".

5. All these appeals are taken up for hearing on 02-09-2020 through video conferencing and both the parties were heard.

6. Ld.Counsel for the assessee, while reiterating the submissions made before the authorities below, submitted that all the assessees together had sold the plot of land on 06-03-2006, and thereafter, purchased a residential house on 29-03-2006 for Rs.40 Lakhs and the balance of the capital gain was deposited individually in the Capital Gain Scheme Account. He submitted that the purchased property was re-modified and all the assessees have invested the balance of the capital gain in the re-modification of the house and have thus, claimed the said amounts as 'exempt' u/s.54F of the Act. He further submitted that all the details were submitted before the CIT(A) but the CIT(A) without verifying the same, has confirmed the disallowance only on the ground that the re-modification or renovation of the house is not covered u/s.54F of the Act. Ld.Counsel therefore prayed that the exemption u/s.54F of the Act be granted to the assessee.

7. Ld.DR, on the other hand, supported the orders of the authorities below and submitted that the assessees have to invest the capital gain in a new asset to be eligible for exemption u/s.54F of the Act and since the assessees are seeking the money spent on renovation of the house which is already existing, they are not entitled for exemption u/s.54F of the Act.

8. Having regard to the rival contentions and material on record, we find that the assessees have sold an open plot of

land with an AC shed thereon on 06-03-2006 and therefore Long Term Capital Gain has arisen therefrom. The Ld.Counsel for the assessee has submitted before us that the assessee have purchased another house for a sum of Rs.40 Lakhs on 29-03-2006 and have invested the balance consideration also in renovation of the said house and have claimed expenditure for such renovation also as 'exempt' u/s.54F of the Act. We find that in para 3 of the assessment order, the AO has brought out that during the course of first appellate proceedings of the CIT(A)'s order dt.22-10-2014 for the AY.2006-07, there is a clear finding that the house was purchased by the assessee and that it is already a self-contained residential unit. Thus, it is seen that the assessee's have invested their capital gains for purchase of a residential unit and thereafter, they have renovated/re-modified the said unit. The AO has disallowed the claim mainly on the ground that the house which is purchased itself is a self-contained unit and that the assessee has not given the details of the modifications made by the assessee before us. The assessee has submitted before us that he has submitted the details before the CIT(A) but the same has not been considered by the CIT(A) and he has confirmed the disallowance only on the ground that the amount spent on renovation is not eligible for exemption u/s.54F of the Act.

However, we do not agree with this finding of the CIT(A). Section 54F of the Act only mandates that the capital gain should be invested in 'a residential house' within the stipulated time by way of purchase or construction. Thus, the amount spent on renovation of such residential house by an

assessee according to his requirements is also allowable as exempt u/s.54F of the Act as it would amount to construction of a residential house. The only other requirement is that the construction should be completed within three years from the date of transfer of the original asset. Further, the CIT(A) also agrees that the issue is covered in favour of the assessee by the decisions of the Hon'ble Karnataka and Calcutta High Courts but chooses to follow the decisions against the assessee. The Hon'ble Bombay High Court in the case of CIT Vs. Godavari Devi Saraf (1978) 113 ITR 589 (Bom) has held that - *in the absence of a decision from the jurisdictional High Court, the decision of another High Court which is in favour of the assessee has to be followed*. Hence, the order of the CIT(A) is not sustainable and the assessee's claim of exemption u/s.54F of the Act has to be examined in the light of the details submitted by the assessee and the report of the valuer submitted by the assessee in the absence of sufficient details as the construction was allegedly done in the year 2006. Therefore, we deem it fit and proper to remit the issue back to the file of AO with a direction to allow the exemption u/s.54F of the Act in respect of the cost of the house, which is already purchased by the assessee on 29-03-2006 and also the amount spent on renovation/re-modification of the house. Accordingly, the Grounds raised by the assessee are treated as allowed for statistical purposes. Thus, this appeal of the assessee is treated as allowed for statistical purposes.

ITA Nos.2224/Hyd/18, 298/Hyd/19 & 340/Hyd/19:

9. Since the facts of the present appeals are identical to facts of the case in ITA No.297/Hyd/2019(supra), our findings in the above appeal, *mutatis mutandis*, would apply to all these appeals as well. Accordingly, all these appeals are also treated as allowed for statistical purposes.

10. In the result, all the appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on 4th September,2020

Sd/-
(D.S.SUNDER SINGH)
ACCOUNTANT MEMBER
Hyderabad, Dated: 04-09-2020
TNMM

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Copy to :

1.Ms.Juveria Begum, F.No.101, S.R.Spellbound, Road No.10, Banjara Hills, Hyderabad.

2.Mr.Abdul Arif Baig, #6-2-46/202, Moin Court, A.C.Guards, Hyderabad.

3.Mr.Mohammed Yasser Sattar Baig, ##6-2-46/202, Moin Court, A.C.Guards, Hyderabad.

4.Mr.Mohd. Saffan Baig, #101, S.R.Spell Bound Apartments, Opp:Judges Colony, Road No.10, Banjara Hills, Hyderabad.

5.The Income Tax Officer, Ward-14(2), Hyderabad.

6.CIT(Appeals)-6, Hyderabad.

7.The Pr.CIT-6, Hyderabad.

8.D.R. ITAT, Hyderabad.

9.Guard File.