

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B-SMC' BENCH : Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 466/Hyd./2016
Assessment Year: 2003-04**

Shri I. Seshagiri Rao
Prop. Ramakrishna Engg. Co.,
C/o Sri S.Rama Rao
Advocate
Flat No. 102, Shriya's Elegance
3-6-643, Street No.9
Himayatnagar
Hyderabad 500 029

vs. ITO, Ward 10(4)
Hyderabad

PAN: AAJPI0008H

(Appellant)

(Respondent)

For Assessee: Shri H.Srinivasulu, A.R.

For Revenue: Sh. R.S. Arvindakshan, D.R.

Date of Hearing : 27/02/2020

Date of Pronouncement : 19/05/2020

ORDER

This is assessee's appeal for A.Y. 2003-04 against the order of Ld.CIT(A)-9, Hyderabad dated 08.01.2016.

2. Brief facts of the case are that the assessee, an individual and a dealer in submersible pump sets and GI pipes, filed his return of income for A.Y. 2003-04 on 30.09.2003 admitting total income at Rs.98,740/- being income from business. The assessee also worked out 'nil' income from long term capital gains on sale of shares by claiming that the capital gain has been spent for acquisition of a residential house and the balance which has not been so utilized was deposited in the bank account. Therefore he claimed the entire capital gain

to be exempt from tax u/s.54 of the Act. Meanwhile, there was a survey action u/s 133A of the Income Tax Act, 1961 (the Act) on 09.09.2004, during the course of which, two documents relating to the claim of capital gain were found. The documents were : (i) Copy of sale deed dated 07.04.2003 for purchase of terrace rights of an area of 4000 sq.ft. of Vinita Mansion on plot no.5 survey no.70 & 71, situated at Boosereddyguda, West Maredpally, Secunderabad, for Rs.7,00,000/- from Sri S.Yadaiah. (ii) Receipt dated 7.5.2003 given by Sri S.Yadiah for having received from the assessee Rs.2,50,000/- through DD no.734973 and cash of Rs.50,000/- towards full and final settlement of terrace rights as discussed in the document.

2.1. A statement of the assessee was also recorded during the course of survey, in which, assessee submitted that he held 7000 shares of M/s.Asrani-Inns and Resorts and the same were disposed of in 2002 from which the assessee gained some capital gain. When asked whether assessee has paid tax on such capital gains, the assessee replied that he has invested part of the capital gain in acquiring a pent house having 4000 sq.ft. at Vinila Apartments, West Maredpally, Secunderabad for Rs.7 lakhs, part of which was paid in cash and part of it through DD from his account no.1007 in Indian Bank in 2002 and that the DD was given to Mr.K.Yadiah, builder of the apartment. Assessee submitted that he has constructed the walls, plastering, slab, pipe fitting, electrification, flooring etc. and the work was carried on from end of 2002 till end of 2003 and that he had spent a sum of Rs.65 lakhs for these purposes. The assessee also submitted that he has the bills, but they were misplaced. When asked about credit of the sale consideration, the assessee submitted that he had deposited the same in Sindh Urban Co-Operative Bank Ltd. P.G.Road Branch, in S.B.A/c no.1824. When the assessee was asked to explain the investment in residential house, the assessee, vide letter dated 24.09.2004, stated that an amount of Rs.35,41,967/- was spent on construction of the pent house on Vinila Mansion and this was in addition to the basic cost of Rs.7 lakhs paid to the builder. The assessee also furnished the details of the total sale consideration of Rs.98 lakhs

received on sale of shares and with regard its utilization, the assessee furnished the following details:

| | | |
|----|---|--|
| 1. | Cost of terrace area of 400 sq.ft. | Rs. 7,00,000/- |
| 2. | Cost of construction of pent house on the above Terrace upto 31.3.2003 : Rs. 45,42,000 Rs.35,42,000 Amount spent o or after 1.4.2003 : Rs.10,00,000 | |
| 3. | Amount given to his son Sri I.Krishna Prasad | Rs. 26,33,000 |
| 4. | Amount given to Shri A.Sainath Goud towards advance for development of Kavadiguda property | Rs. 8,00,000 |
| 5. | Hand loans given | Rs. 8,95,000 |
| 6. | Misc. expenses | Rs. 2,30,000 ===== Rs. 98,00,000/- |

The A.O. therefore held that since there is transfer of shares during the relevant previous year, the capital gain has to be brought to tax in the relevant A.Y. and he accordingly arrived at capital gain of Rs.78,56,520/- and allowed deduction u/s 54F to the extent of Rs.23,35,440/- i.e. the proportionate investment made upto the due date of filing the return of income and arrived at the taxable capital gain of Rs.59,84,230/-.

2.2. Aggrieved, the assessee preferred an appeal to the CIT(A) and also filed additional evidences contending that there was no transfer of shares during the F.Y. 2002-03 relevant to the A.Y.2003-04 and therefore no capital gain has arisen which is taxable this year. The CIT(A), however, dismissed assessee's appeal, against which assessee filed an appeal before the Tribunal. The B Bench of the ITAT in ITA no.731/Hyd/2005, vide order dated 11.09.2009, set aside the addition on account of capital gain and restored the matter to the file of AO for fresh adjudication with a direction to consider assessee's additional evidence and whether there was transfer of shares during the P.Y. 2002-03 relevant to A.Y. 2003-04.

2.3. The AO therefore initiated assessment proceedings by issuance of notice u/s 143(2) of the Act on 23.11.2009. The assessee had stated that the shares were not registered in favour of the transferee during the PY 2002-03 and that the transfer of property held by Asrani Inns and Resorts was subject to litigation and the same was settled in 2004 and therefore neither the immovable property nor the shares were transferred during the relevant PY 2002-03. It was also submitted that the assessee has spent Rs.42,42,000/- upto 31.3.2003 but the AO allowed relief u/s 54F proportionately to the extent of Rs.23,35,440/- only. The AO took into consideration, the release deed executed by the assessee and 9 others in favour of M/s Asrani Inns and Resorts Pvt.Ltd. wherein the releasors undertook to release all the rights, title, interest etc. in the property situated at 4-1-898, Boggulkunta, Hyderabad in favour of the transferee i.e. M/s Asrani Inns and Resorts Pvt.Ltd. The AO also considered the affidavit filed by the Director of M/s JM Entertainment Pvt. Ltd. who described himself as the Director of M/s Asrani Inns & Resorts P Ltd. filed before the Hon'ble High Court of AP praying for release of the release deed. AO also considered the Writ Petition Nos.576, 577 and 578 filed by M/s Asrani Inns & Resorts P Ltd. and common order of Hon'ble High Court of AP dismissing the Writ Petitions and MOU executed on 20.11.2002 between assessee and 11 others and M/s JM Entertainment Pvt. Ltd.

2.4. After considering all the documents, the AO held that the assessee individual and others held the investment in immovable property belonging to M/s Asrani Inns and Resorts Pvt.Ltd. by way of shares and since the rights in shares were released by way of release deed and supplementary MOU dated 20.12.2002 and assessee and others have received the sale consideration which has been deposited by the assessee into his bank account, there is a transfer during the PY 2002-03 itself. The AO also observed that the assessee himself has declared the long term capital gain in his return of income and had claimed exemption u/s 54F of the Act. Therefore AO held that there is a transfer during the relevant PY and capital gain arising therefrom is liable to tax during the

relevant AY. With regard to claim of exemption u/s.54F of the Act, the AO held that the assessee is eligible for exemption to the extent of Rs.34,00,750/- and the balance of capital gain of Rs.44,55,770/- was brought to tax.

3. Aggrieved, assessee preferred an appeal before the CIT(A) who confirmed the order of AO.

4. Assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

- 1) *The order of the learned CIT(A) is erroneous both on facts and in law.*
- 2) *The Ld.CIT(A) erred in holding that the transfer of shares was effected during the PY relevant for AY 2003-04 and further erred in confirming the action of the AO in treating the capital gain as arising for AY 2003-04.*
- 3) *The Ld.CIT(A) ought to have considered the fact that the subject matter of transfer is land and that no such transfer took place.*
- 4) *Without prejudice to the above, the Ld.CIT(A) erred in confirming the action of AO in arriving at the deduction u/s 54F at Rs.34,00,750/- without allowing deduction as claimed.*
- 5) *The Ld.CIT(A) erred in confirming the action of AO in levying interest u/s 234B and 234C of the I.T.Act.*
- 6) *Any other ground that may be urged at the time of hearing.*

5. The Ld.Counsel for assessee reiterated the submissions made before the authorities below and submitted that the assessee not only held 7000 shares in M/s Asrani Inns & Resorts P Ltd, but the immovable property at Boggulkunta was also registered in his name and other co-owners. Before the Tribunal, he filed copies of the Encumbrance Certificates dated 15.12.2020 and 27.02.2020 to demonstrate that the property still stood in the name of the assessee and the other co-owners. Therefore, according to him, there is no transfer of property

during the relevant AY and hence the capital gain has not arisen during the relevant AY.

5.1. With regard to the claim of exemption, the Ld.Counsel for assessee has filed additional evidence stating that the amount invested in the purchase/construction of a house till the date of filing of the return of income has to be allowed as a deduction and as per Sec.54F the amount can be invested in construction of a house within a period of 3 years from the date of transfer of original asset and the uninvested capital gain if any can be brought to tax only after the expiry of three years. In support of this contention, he placed reliance on the following case laws.

- i. Sh.K.Ramachandra Rao (ITA no.47/2014 & ITA 46/2014)Karnataka H.C.
- ii. Sh. Vijay Mahipal (ITA 502/Kol/2017 AY 2013-14) ITAT Kolkata
- iii. Sh. Sadarmal Kothari and another (2008) 302 ITR 286 (Mad)Mrs. Seetha Subramaniam (1996) 59 ITD 94 ITAT (Mad)
- iv. Smt.Selvi Venkatsubramani (ITA 1052/Bang/2013) ITAT Bangalore
- v. CBDT Circular no.672 of 16/12/93
- vi. Income Tax Circular 471 of 15/10/1986

5.2. Ld.DR, on the other hand, relied upon orders of the authorities below and submitted that the assessee had entered into a release deed and also a supplementary release deed by which assessee has released his rights in the property and has also received the entire sale consideration. He submitted that there is no litigation with regard to transfer of shares or the property, but the litigation was between the purchaser and the registration authorities. He also drew our attention to the fact that the assessee has received entire sale consideration and in his return of income, assessee has declared the capital gain and has claimed exemption u/s 54F of the Act. Therefore, according to him, the AO and the CIT(A) have rightly decided that there was transfer of shares on which capital gain has arisen during the relevant AY. He thus prayed for dismissal of the appeal. As regards additional evidences, he submitted that the

same may be referred to AO for verification, if the Tribunal was convinced that the capital gain invested upto the date of filing of return is to be allowed.

6. Having regard to rival contentions and material placed on record, I find that the assessee and others have entered into release deed dated December,2002, wherein it is stated that the private company M/s Asrani Inns & Resorts P Ltd. had purchased a property at Boggulkunta and the entire sale consideration was paid by the company and that the names of other purchasers were included and shown as purchasers in the sale deed merely for the sake of convenience and that none of the purchasers have any beneficiary rights, title/interest therein. The assessee and the other persons shown as owners of the property in the sale deed have signed this release deed and therefore, there is no dispute on the ownership of the property lying solely with the company. Further, in the affidavits filed before Hon'ble High Court of AP the Director of the company has mentioned the release deed therein and the dispute was with the Government of A.P. and the Director of Stamps and Registration and not amongst the assessee and others. Further, assessee himself has declared the capital gain in his return of income and has claimed exemption u/s 54F of the Act. Therefore, irrespective of the date when the release deed has been registered, there is a transfer of shares during the PY 2002-03 as far as assessee is concerned. Therefore, I do not find any reason to interfere with the order of the AO and CIT(A) holding that the transfer has taken place during the PY 2002-03 relevant to AY 2003-04. Grounds 2 and 3 are thus rejected.

As regards exemption from long term capital gain u/s.54F of the Act, the decisions relied upon by Ld.Counsel for the assessee are for the proposition that for construction of a house, the assessee has got a period of 3 years and the capital gain to the extent which is not invested can be brought to tax only on the lapse of 3 years. I find that the proviso to Section 54F of the Act reads as under:

“Section 54F.

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”.

Thus, these decisions are applicable to the case on hand. Further, in the case before us, assessee has claimed that he had invested upto Rs.45,42,000/- before filing of the return of income. The assessee has filed details of such expenditure before the Tribunal by way of additional evidence. I therefore deem it fit and proper to admit such additional evidence and remand it to the file of AO for verification of the same. After verification, the AO shall recompute the eligible exemption u/s.54F of the Act and the un-utilized capital gain shall be brought to tax as provided under the proviso to Section 54F of the Act.

7. In the result, ground nos. 2 and 3 are rejected, ground no.4 is partly allowed and ground no.5 is consequential in nature. The AO is therefore directed to allow consequential relief to assessee.

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

Order pronounced in Open Court on 19th May, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 19th May, 2020.

**G.M.V.*

Copy forwarded to:

1. Shri I. Seshagiri Rao, C/o. Shri S. Rama Rao, Advocate, Flat No.102, Shriya's Elegance 3-6-643, Street No.9 Himayatnagar, Hyderabad.
2. The Income Tax Officer, Ward-10(4), Hyderabad.
3. CIT(A)-9, Hyderabad.
4. Pr.CIT-7, Hyderabad.
5. D.R. ITAT Hyderabad.
6. Guard file