

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA No. 981/H/2016 Assessment Year: 2010-11 | | |
| Matcha Venkateswara Rao (HUF), Khammam. PAN - AABMM3491E (Appellant) | Vs. | Income-tax Officer, Ward - 1, Khammam (Respondent) |
| Assessee by: | | Smt. Sandhya |
| Revenue by: | | Shri Rohit Mujumdar |
| Date of hearing: | | 10/05/2021 |
| Date of pronouncement: | | 30/06/2021 |

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against CIT(A) - 7, Hyderabad's order dated 09/02/2016 for AY 2010-11 involving proceedings u/s 143(3) rws 147 of the Income Tax Act, 1961 ; in short "the Act" on the following grounds of appeal:

"1) The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income-Tax (Appeals) erred in confirming determination of the capital gain in the case of the appellant HUF.

3) The learned Commissioner of Income-Tax (Appeals) erred in confirming rejection of the claim u/s 54F of the I.T Act. The learned Commissioner of Income-Tax (Appeals) ought to have been that the residential house was constructed jointly by the individual and the HUF and, therefore, the appellant is entitled for exemption u/s 54F of the I.T. Act.

4) The learned Commissioner of Income-Tax (Appeals) erred in confirming disallowance of development expenditure of Rs.6,50,000/- and the expenditure incurred in the apartment towards interiors of Rs.7,25,500/-.

5) Any other ground that may be urged at the time of hearing.”

2. Briefly, the facts of the case are that the assessee, a HUF, deriving share income, interest and remuneration from partnership firms, filed his return of income for the AY 2010-11 on 31/12/2011 admitting a total income of Rs. 2,03,030/- and agricultural income of Rs. 85,000/-, which was processed u/s 143(1) accepting the income returned. Subsequently, the case was reopened u/s 147 of the Act by issuing notice u/s 148 on 10/10/2011 and the said notice was served on the assessee on 18/10/2011. In response to the notices u/s 143(2) and 142(1), the AR of the assessee furnished the required information as called for.

2.1 The AO observed that the assessee had transferred his plot admeasuring 282.66 sq.yds. which was purchased on 28/10/2005 for a consideration of Rs. 5,33,660/- for development to M/s Ganesh Builders, Khamman vide agreement dated 08/08/2007. As per the development agreement, the assessee was entitled for three flats with specifications as per Schedule III of the agreement of the land owners share. The AO noted that the during the impugned AY, the assessee had offered long term capital gains on transfer of plot by adopting total value of three apartments at Rs. 25,69,000/- by adopting cost of construction @ 700 per sq.ft. While determining long term capital gains, he claimed development expenses of Rs. 6,50,000/-, which were said to have been spent during the FY 2008-09 on the said plot by the assessee before entering to an agreement with the builder and deducted indexed cost of improvement of Rs. 7,05,842/- along with cost of acquisition. The assessee claimed deduction u/s 54F of Rs. 11,84,540/-. The assessee claimed that the reinvestment was made in residential house which is jointly owned by the assessee in HUF & individual capacities. The AO did not allow the claim of developmental expenses in the absence of reliable evidences and disallowed the deduction u/s 54F as the construction of house was already shown to be completed in the individual hands of the assessee. Further, on sale of flats the assessee admitted short term capital gains. In computation of STCG, the assessee claimed to have

spent Rs. 7,27,500/- interior expenses on flats and claimed as expenditure. In the absence of proper/reliable evidences with regard to above expenses, the same was not allowed. The AO brought out the following facts in his assessment order to deny the deduction u/s 54F of the Act:

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

4. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT,

5. Before us, the ld. AR of the assessee filed written submissions on 11/05/2021 after hearing of the case, which are as under:

"The appellant is a Hindu Undivided Family. During the previous year under consideration, the appellant entered into a Development Agreement cum-General Power of Attorney on 14.08.2007 alongwith one Smt.Vemuri Kavitha in favour of Mis Ganesh Builders. According to the Development Agreement, the appellant has to receive 3 flats. The said 3 flats were received during the financial year 2009-10.

2. The appellant did not admit capital gain for the assessment year 2008-09. However, for the assessment year 2010-11, while filing the return of income, the appellant admitted capital gain at Rs.11,84,540/- in respect of the transfer of property effected through the Development Agreement. He also admitted short term capital gain on sale of flats. The Assessing Officer, thereafter, completed the assessment for the assessment year 2010-11 determining the income at

Rs.27,95,960/-. He taxed both the short term capital gain on sale of flats and long term capital gain on entering into development agreement, without allowing deduction U/S 54F of the I.T. Act. The appellant filed an appeal before the CIT (A). The CIT (A) vide order dated 09.02.2016 dismissed the appeal filed by the appellant. The appellant is now before the Hon'ble Income tax Appellate Tribunal contesting the determination of the capital gain; confirming the rejection of the claim U/S 54F and confirming the disallowance of development expenditure of Rs.6,50,000/-.

3. After completion of the assessment for the assessment year 2010-11, the Assessing Officer for the assessment year 2008-09 issued notice U/S 148 read with section 147 on 16.02.2016 to tax the capital gain arising on entering into development agreement. He completed the assessment U/S 143(3) on 07.03.2016 determining the capital gain on entering into development agreement at Rs.19,26,726/-. It was the contention of the appellant before the Assessing Officer that the said amount was already taxed for the assessment year 2010-11. The appellant filed appeal against the order U/S 143(3) rws 147 before the Hon'ble ITAT and the said appeal was numbered as ITA No. 1929/Hyd/2017. It is submitted that the dispute in both the assessment years 2010-11 and 2008-09 is the capital gain arising on entering into the Development Agreement.

4. The appellant for the assessment year 2008-09 accepted the levy of capital gain on entering into Development Agreement and filed Form No.1 under the Vivad Se Vishwas Scheme. Form No.3 was issued by the Principal Commissioner "of Income-Tax, Hyderabad-4 on 16.12.2020. In so far as taxing the capital" gain arising on entering into Development Agreement, the " same has become final and is assessed for the assessment year 2008-09. The same is again assessed

u/s 147 for the assessment year 2010-11 also which is the subject matter in the present appeal.

5. It is submitted that against the said order of assessment for the assessment year 2010-11, the appellant is before the Hon'ble ITAT in ITA No.981/Hyd/2016. The appellant requests that it may be held that the capital gain arising on entering into the Development Agreement is not taxable for the assessment year 2010-11 as the same is taxed for the assessment year 2008-09 and became final as the assessee filed application under Vivad se Vishwas Act.

6. The appellant requests the Hon'ble ITAT to kindly pass appropriate orders in the matter.”

6. The Id. DR, on the other hand, relied on the orders of the revenue authorities.

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. Before denying the assessee's claim of deduction u/s 54F of the Act, the AO observed that the assessee possess a residential house at D. No. 4-2-560/1, Radhakrishna Nagar, Haveli Panchayat, Khammam in individual capacity which was constructed in FY 2008-09 with a cost of construction of Rs. 23 lakhs out of which Rs. 15.9 lakhs was taken as loan from Dhanalakshmi Bank, Khammam. The assessee now in his HUF capacity has shown the same residential building owned in the capacity of individual status for claiming deduction u/s 54 for the impugned AY i.e. 2010-11 stating that the said house was not completed and lot of

investment was made in the years relevant to AY 2010-11 and 2011-12 from the sources of HUF funds. Further, the AO observed that in the income tax returns filed by the assessee in individual capacity for the AY 2009-10 and 2010-11 the said house was shown as self-occupied and interest on house loan was claimed as deduction from house property u/s 24 of the IT Act which shows that the assessee is the sole owner of the said house in individual capacity and the construction of the house was completed during the FY relevant to AY 2009-10 and interest on housing loan was claimed from the AY 2009-10 onwards in his individual income tax returns. In the written submissions filed by the assessee, it has been mentioned that the same addition in respect of same property had been assessed in AY 2008-09 u/s 143(3)/147 of the Act, vide order dated 07/03/2016, against which, the assessee filed appeal before the CIT(A), who had dismissed the appeal of the assessee. The assessee filed appeal before the Tribunal against the order of CIT(A) and the same is marked as ITA No. 1929/Hyd/2017 before the Tribunal, the assessee has opted VSVS scheme for the said appeal and Form No. 3 has been issued. The said appeal was disposed off by the coordinate bench of this Tribunal vide order dated 24/02/2021. Considering the submissions of the assessee, we remit this matter to the file of AO for a limited purpose for verification of the same as to whether the same capital gains arising on sale of the same property has been

assessed in AY 2008-09 If it is found that the capital gains has been assessed twice on the same property in AY 2008-9 and 2010-11, the proceedings for AY 2010-11 shall be dropped and, if it is found otherwise, the AO can revive the appeal as it is. Accordingly, the grounds raised by the assessee are treated as allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes in above terms.

Pronounced in the open court on 30th June, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 30th June, 2021.

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Copy to :

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| 2 | <i>ITO, Ward - 1, Khammam</i> |
| 3 | <i>CIT(A) - 7, Hyderabad.</i> |
| 4 | <i>Pr. CIT - 7, Hyderabad</i> |
| 5 | <i>ITAT, DR, Hyderabad.</i> |
| 6 | <i>Guard File.</i> |

| S.No. | Details | Date |
|-------|--|------|
| 1 | Draft dictated on | |
| 2 | Draft placed before author | |
| 3 | Draft proposed & placed before the Second Member | |
| 4 | Draft discussed/approved by Second Member | |
| 5 | Approved Draft comes to the Sr. PS/PS | |
| 6 | Kept for pronouncement | |
| 7 | File sent to Bench Clerk | |
| 8 | Date on which the file goes to Head Clerk | |
| 9 | Date on which file goes to A.R. | |
| 10 | Date of Dispatch of order | |