

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

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

Sl.No.	ITA No.	AY	Appellant	Respondent
1	732/H/2019	2011-12	Dy. Commissioner of Income-tax, Circle - 11(1), Hyderabad.	Kondal Rao Vaddepally, Hyderabad. PAN-ACOPV 2193 D
2	889/Hyd/2019	2011-12	-do-	Sudarshan Rao Ineni, Hyderabad. PAN-AAGPI 0333J
3	890/H/2019	2011-12	-do-	Vaddepally Damodar Rao, Hyderabad. Pan-ABSPV 5001 H
			Revenue by:	Shri Rohit Mujumdar
			Assessee by:	Shri K.C. Devdas
			Date of hearing:	27/05/2021
			Date of pronouncement:	18/06/2021

ORDER

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

These appeal filed by the Revenue are directed against CIT(A) - 5, Hyderabad's separate orders for AY 2011-12 involving proceedings u/s 143(3) rws 147 of the Income Tax Act, 1961 ; in short "the Act". As the facts and grounds are

identical in these appeals, they were clubbed and heard together and therefore a common order is passed for the sake of convenience.

2. The revenue has raised the following grounds of appeal, which are common in all the appeals under consideration:

"1. Whether in the facts and circumstances, the order of the Id.CIT(A) in allowing the claim of the assessee u/s 54F of the Income Tax Act, is not perverse, illegal and likely to be set aside.

2. Whether in the facts and circumstances, the, Id.CIT(A) erred in not upholding the order of the Assessing Officer in restricting the claim of the assessee u/s 54F of the Income tax Act, 1961 to one flat as against the claim of the assessee for exemption in respect of the entire constructed area received.

3. Whether in the facts and circumstances, the Id.CIT(A) is justified in allowing the exemption claimed u/s 54F when the assessee received multiple flats located on different floors separated by different blocks of a gated community/ apartment complex.

4. Whether in the facts and circumstances, the Id.CIT(A) is justified in deleting the addition relying on the decision of Sri Syed Ali Adil by not considering that the facts of the case are distinguishable and not applicable to the facts of the present case.

5. Any other ground(s) that may be urged at the time of hearing."

3. As the facts and grounds raised in these appeals are identical, we cull out the facts from the appeal in ITA No.

732/Hyd/2019 . The decision taken in this appeal mutatis mutandis shall apply to the other appeals.

4. Briefly, the facts of the case are that the assessee is an individual. For the AY 2011-12, the AO initiated action u/s 147 of the Act on the ground that the assessee entered into a development agreement with 12 others with M/s Sumashaila Developers in respect of land of ac.10.20 guntas situated at Kukatpally, Hyderabad on 14/02/2011. In response, the assessee filed the return of income declaring total income of Rs. 1,50,130/-. The AO had taken up the case for scrutiny and computed the total income at Rs. 3,03,81,700/-.

5. The facts relating to the grounds raised by the revenue are that the assessee had claimed the exemption u/s 54F, on account of investment made in the constructed area comprising of multiple residential flats (more than one in number), which was received by the assessee, as an application of the consideration with regard to the transfer of his share of land. The AO, however has restricted the exemption u/s. 54F claimed by the assessee only to the extent of investment in one residential flat and denied on the other residential flats.

6. Aggrieved, the assessee preferred an appeal before the CIT(A) and before the CIT(A) the assessee had cited

several decisions including that of the jurisdictional High Court, that exemption u/ s 54F has to be allowed in respect of a residential house which consist of multiple units and of jurisdictional ITAT wherein it has been held that Sec. 54F exemption has to be allowed even if such independent units or on different floors. The relevant part of decisions with citations are reproduced as under:

"1. Virtual Krishna Conjeevaramvs ITO (144 ITD 325) (Hyd): In this case the Hon'ble ITAT, Hyderabad Held as under:-

"Exemption u/ s. 54F only requires that the property should be of residential nature and the fact that the residential house consists of several independent units cannot be an impediment to grant relief u/s. 54F even if such independent units are on different floors. "

2. CIT vs Syed Ali Adil (Decision of AP High Court dated 20.12.2012): In this case though the decision was rendered in the context of Sec 54 of the IT Act the hon'ble high court held that the assessee was eligible for exemption in respect of a residential house which consists of multiple units."

7. The CIT(A) after considering the elaborate submissions as well as case law cited by the assessee, which were extracted in his order at pages 11 to 20 held that it is clear that even if the investment is made in multiple residential houses/units, the appellant will be entitled for exemption u/s 54F. Further, he held that it is also important to note that an amendment u/s. 54F took place vide Finance Act, 2014, wherein, "a residential house"

was substituted with "one residential house in India w.e.f. 01.04.2015. The said amendment very clearly states that prior to 01.04.2015, the section did not restrict the investment to only one residential house. Therefore, from the above decisions and subsequent amendment, the reinvestment quantum for eligibility u/s. 54F cannot be limited to one residential house. Therefore, he directed the AO to consider all the residential flats received as consideration as part of re-investment for the purpose of section 54F.

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

9. The ld. CIT-DR relied on the order of the AO, while, the ld. AR of the assessee relied on the order of the CIT(A).

10. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The AO restricted the exemption u/s 54F claimed by the assessee only to the extent of investment in one residential flat and denied on the other residential flats. Whereas the CIT(A) held that "*it is also important to note that an amendment u/s. 54F took place vide Finance Act, 2014, wherein, "a residential house" was substituted with "one residential house in India w.e.f. 01.04.2015. The said amendment very clearly states that*

prior to 01.04.2015, the section did not restrict the investment to only one residential house. Therefore, from the above decisions and subsequent amendment, the reinvestment quantum for eligibility u/s. 54F cannot be limited to one residential house. Therefore, he directed the AO to consider all the residential flats received as consideration as part of re-investment for the purpose of section 54F”.

10.1 It is clear from the supplementary agreement dated 20th March, 2013, which is executed against the assessee & developer and the details of total construction area is as under as per page No. 44 of paper book:

- a) Open plots – 4 Nos
- b) 2/3 Bedroom Blocks – 10 blocks (Block 1 to 10)
- c) EWS/LIG Blocks – 2 Blocks (Block 11/A and 11/B)
- d) Independent Villas – 40 Nos (Villa No. 1 to 40)
- e) Club house and Amenities
- f) Tot lots and Mandatory open areas
- g) Road and Driveways

10.2 The details of each block area as per page No. 46 of paper book, are as under:

Apartment – Each block area statement

Block No.	Construction pattern	Each Floor Area	Area in 5 Floors
B1	C+S+5 Floor	7962	39810
B2	C+S+5 Floor	7962	39810
B3	C+S+5 Floor	7962	39810
B4	C+S+5 Floor	7962	39810
B5	S+5 Floor	6194	30970

B6	C+S+5 Floor	6194	30970
B7	C+S+5 Floor	12189	60945
B8	C+S+5 Floor	12170	60850
B9	C+S+5 Floor	15099	75494
B10	S+5 Floor	5589	27945
B11/A	S+5 Floor	17012	86935
B11/B	S+5 Floor	2954	14770
			Total built up area in flats = 547120 SFT

Villa Area Statement

Villas	Nos	Built up area	Total area
East	20	3135	62700
West	20	3175	63500
Total Area in Villas (SFT) = 126200			

Open Plot Area Statement

Plot	No	Land Area
Open	1	625 Sq.Yds
Open	2	625 Sq.Yds
Open	3	625 Sq.Yds
Open	4	625 Sq.Yds

10.3 Allotment of the apartment units between first party and second party:

Area Distribution between owners and developers

Owners Area			Development Area		
Block	Description	Area in SFT	Block	Area in SFT	Description
B2	Full Block	39810	B1	39810	Full Block
B3	Full Block	39810	B4	31935	Partial Block
B4	Flat 1 x 5 Flrs	7875	B7	60945	Full Block
B5	Full Block	30970	B8	15050	2x3BHK x 5floor
B6	Full Block	30970	B9	30197	Partial

					Block
B8	Partial Block	45800	B10	12289	Partial Block
B9	Partial Block	45298	B11/A	18943	EWS
B10	Partial Block	15656	B11/A	30082	LIG
B11/A	EWS	15847	B11/B	7670	EWS
B11/B	EWS	7100			
Total area in SFT =		300199	246921 SFT		
Collective area =		300199 + 246921 = 547120			

10.4 Allotment of the apartments units between First Party and Second Party in the ratio of 42 : 58 at page No. 50 of paper book, is enclosed to the order as Annexure - 1.

10.5 Block-wise details are given at page 82 of paper book, which is enclosed to the order as Annexure - 2.

10.6 Further, in the agreement at page 63 & 64 of the paper book are mentioned as under:

"12. That the "PARTIES" have further agreed that with regard to the division of the constructed area in Residential Township, the same shall be done as per the following:

"Approximate Total Area of Construction of Apartments = 5,36,905 SFT

Total Number of Independent Villas Approximately = 40 Nos (1,00,000 SFT)

The FIRST PARTY (owners) shall be allotted an area of 3,00,000 SFT as their entire share and the balance area of construction of Flats and Independent Houses comes to the share of the "SECOND PARTY"(Developers! Builders) on the plan being sanctioned and such

allocation to be recorded in writing and the "PARTIES" will endeavour to make the distribution of their respective shares in Flats! Houses or block wise.

- The maximum excess area over proposed initial area of Apartments in the land earmarked for Construction of Flats as per the attached tentative drawing shall not cross beyond 1 % of 5,36,905 SFT. If any excess area is constructed beyond 1% in excess of 5,36,905 sft, then, the excess area shall be shared among the First party and the Second Party as per 40 : 60 ratio-respectively. Any area arrived within the excess of 5,36,905 Sft. shall belong to the share of the Second Party after giving First Party" its total share of 3,00,000 Sft.*

- However, the Second party is at liberty to do any changes in the area earmarked for Construction of Villas, either to construct flats or Villas, increase or decrease the area, as per the will of the Second. party only, without disturbing the area earmarked for Apartments, and that the First Party shall not have any objection or right on it.*

<i>TYPIC OF CONSTRUCTION</i>	<i>FIRST PARTY</i>	<i>SECOND PARTY</i>	<i>(OWNERS) (,DEVELOPERS)</i>
<i>Apartment/Flats</i>	<i>300000 SFT</i>	<i>236905 SFT</i>	<i>536905 SFT</i>
<i>Independent houses</i>	<i>NIL</i>	<i>100000 SFT</i>	<i>100000 SFT</i>

APPROX. AREA OF CONSTRUCTION FOR FLATS IN TOTAL: 5,36,905 SFT

APPROX. AREA OF CONSTRUCTION FOR INDEPENDENT HOUSES: 1,00,000 SFT (40 Villas)

ALL THE" AREAS CONSJDREDIMENTIONED herein are as per Saleable area in SFT only which includes total constructed area including balconies, sit out, staircases, lift rooms, Security rooms, games room, if any; electrical meter room, Economic Weaker Section, Low Income Group housing, pump room, generator rooms if

any, common areas, circulation areas but excludes car parking area.

The construction areas and the layout may be altered by the SECOND PARTY to meet the marketability demands, at any stage or as per stipulated rules of concerned authorities.

That the First Party shall retain an area of 2500 Sq. yds out of Ac 10 - 20 Guntas for their exclusive use and enjoyment of the First Party with absolute right of Ownership. The Second party is not having any claim in and over the 2500 Sq. yds which is clearly mentioned in the plan in red colour annex to this Agreement and the said area is abutting the 60 Feet of main Road which is facing towards East and South after deleting the area for the Transformer Yard on the Corner of South East. The Second party shall provide supply lines for Electrical, Drainage, Water (Ground and Municipal) etc and to develop them to the stage of Open Plots. However, any further construction and its implied expenses and deposits shall be borne by the First party itself. Moreover, Entry from these earmarked open plots into the developed layout shall not be permitted. It is mutually agreed that, a closed compound wall shall be constructed towards the West side of the said plots to restrict the access.

If made mandatory by the Competent Authority to construct either Economic Weaker Section or Low Income Group. housing, and as such, the construction expenses shall be borne by SECOND PARTY only, but the area will be shared among the FIRST and SECOND parties @ 40% and 60 % respectively between First and Second Parties.

The Mortgage of property towards Layout Development for the Concerned Authorities shall be made as per the 40% share of the FIRST PARTY and 60 % share of the SECOND PARTY.

For the Mortgage of property towards Building Permission for the Concerned Authorities, out of the total area to be Mortgaged, the First party shall mortgage 30,000 SFT from its share of apartment area and the balance total shortfall area to be Mortgaged shall be made by the Second Party only from its share of Apartments and Independent Villas.

Any legal issues / Claims / Settlements pertaining to the Scheduled Land shall be cleared and made free of any such claims at the risk and cost of the FIRST PARTY only in reasonable time.

Deviation in Construction shall not be entertained in any way by the SECOND PARTY.

The SECOND PARTY shall be at liberty to check the legality in any manner as deemed fit to ensure the Title Rights. There shall not be any objection by the FIRST PARTY in the process adopted by the SECOND PARTY for the same.

The SECOND PARTY is at liberty to Promote / advertise / market in any form of media as deemed fit and the FIRST PARTY shall not have any objection towards it as long as it is done on the name of the SECOND PARTY. “

10.7 The Id. CIT(A) has relied on the judgement of Hon'ble Delhi High Court in the case of CIT Vs. Geeta Dugal (ITA No. 1237/2011 dated 21/02/2013) and Hon'ble AP, Karnataka High Courts judgements as well as the decision of ITAT, Hyderabad. In all these judgements, the exemption claimed was in respect of multiple units on different floor/floors in a Block/Tower. But, in these cases, it is not clear as to whether one assessee has been allotted

house/houses in a Block/Tower. We have gone through the allotment of apartment, which has been enumerated in para 10.3 cited supra, it is clear that some of the Blocks have been allotted fully to the assessee/assesseees and some of the Blocks are partially allotted amongst the assesseees and developers. In this regard, the AR of the assessee has not submitted any documents or any allotment letter for ascertaining the number of flats allotted to the assessee/assesseees by the developers which is root for determining the deduction u/s 54F of the IT Act. The CIT(A)'s decision is right if the assessee has been allotted a house or more than a house in a Block/Tower as per the decision cited supra. The said blocks consist of more than a floor i.e. 5 floors. We, therefore, remit this file back to the AO for verification for the allotment of flats, which have been allotted to the assessee in a Block/Tower or in different Blocks/Towers. If the AO is found that the assessee has been allotted residential units in more than Blocks/Towers, the AO will recompute the capital gain afresh in the hands of the assessee as per law after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to substantiate its claim u/s 54F by producing necessary documents and avoid unnecessary adjournments. Accordingly, the grounds raised by the revenue are partly allowed for statistical purposes.

11. As the facts and grounds raised in other appeals in ITA Nos. 889 & 890/Hyd/2019 are similar to that of ITA No. 732/Hyd/2019, following the decision therein, these appeals are partly allowed for statistical purposes. A copy this common order be placed in respective case files.

12. In the result, all the appeals under consideration are partly allowed for statistical purposes.

Pronounced in the open court on 18th June, 2021.

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

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

Hyderabad, Dated: 18th June, 2021.

Kv

copy to :

1	<i>The DCIT, Circle – 11(1), Room No. 1012, 10th Floor, Signature Towers, Kondapur, Hyderabad – 84</i>
2	<i>Shri Kondal Rao Vaddepally, Plot No.381, Vivekananda Nagar, Signature Towers, Kondapur, Hyderabad – 500 084.</i>
3	<i>Shri Sudarshan RaoIneni, Door No. 5-3- 418/A/1, Seshadri Nagar, Kukatpally, Hyderabad – 500 072.</i>
4	<i>Shri Vaddepalli Damodar Rao, Plot No. 381, Vivekananda Nagar, Kukatpally, Hyderabad – 500 072.</i>
5	<i>CIT(A) –5, Hyderabad.</i>
6	<i>Pr. CIT - 5, Hyderabad</i>
7	<i>ITAT, DR, Hyderabad.</i>
8	<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	