



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.367/CTK/ 2019**

Assessment Year : 2016-17

|  |     |                                  |
|--|-----|----------------------------------|
| Smt. Jayashree Sahoo, Plot No.N<br>2,/70, IRC Village, Nayapali,<br>Bhubaneswar. | Vs. | ITO, Ward -3(3),<br>Bhubaneswar. |
| PAN/GIR No.AAAPS 7418 Q  |     |                                  |
| <b>(Appellant)</b>   | ..  | <b>( Respondent)</b>             |

Assessee by : Shri Kailash Chandra Majhi, AR  
Revenue by : Shri Umakant Dhruhati, sr DR

**Date of Hearing : 27/6/ 2022**

**Date of Pronouncement : 27/6/2022**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the CIT(A) -2 Bhubaneswar dated 20.8.2019 for the assessment year 2016-17.

2. Shri Kailash Chandra Majhi, Id AR appeared for the assessee and Shri Umakant Dhruhati, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR of the assessee that the assessee had been allotted land bearing Plot No.5, Kalinga Nagar, Ghatikia, Bhubaneswar under lease from Government of Orissa in the year 1994. The lease hold land was made free hold by Government in the year 2009. During the assessment year 2014-15, the assessee entered into a collaboration

agreement with a builder viz. Shri Pratap Kumar Roy for the purpose of construction of flats in the said plot. The construction was to be carried out by the builder with an undertaking that the assessee was to receive 37.5% of the total built up area and cash component of Rs.10 lakhs. Accordingly, the assessee transferred the proportionate undivided interest in the plot to the builder or his nominee in exchange of 37.5% of the built up area flats. It was the submission that as the builder was unable to provide 37.5% of the constructed area to the assessee in one floor, the builder had provided Flat No.201, 202 and 301 flats of 1760 sq. ft each totaling super built up area of 5280 sq.ft to the assessee.. It was the submission that the assessee was in possession of three flats as one house. The assessee is occupying all the three flats. It was further submitted that Flat No.201 & 202 are conjoint and Flat No.301 is above Flat No.201 and connected through common stair case. It was the submission that for all the three flats, a single electric connection was being operated. It was further submitted that as the assessee is retired from the Air force, no holding tax was leviable in Odisha in respect of three flats. It was the submission that the assessee had claimed exemption u/s.54F of the Act in respect of cost of construction of all three flats and the Assessing Officer disallowed the claim of exemption u/s.54F because the assessee had constructed three residential houses in two different floors and denied the assessee exemption u/s.54F of the Act. It was the submission that on appeal, the Id

CIT(A) had dismissed the assessee's appeal by holding the flats as separate units. It was the submission that the assessee aggrieved with the order of the Id CIT(A), has filed the appeal before the Tribunal. It was the submission that the assessee is using all three flats as there is only one kitchen. To examine the veracity of the claim of the assessee, a remand report after physical verification was called for from the Assessing Officer, who vide his remand report dated 22.6.2022 has submitted as follows:

"Sub: Furnishing of Remand report in the case of Smt. Jay ashree sahu in ITA No. - 367/CTK/2019. (Assessment Year 2016-17)- Matter Regarding.

Ref: The ITAT's direction given in the order sheet entry dated 16/17 - May 2022.

Kindly refer to the above.

In this context, I am to say that a letter was sent to the assessee on dated 08/06/2022 in e-proceedings module for physical verification of her premises as the matter was remanded for calling of physical verification report. As the assessee could not be available for this purpose as she is not staying there another letter was issued to her on 14.06.2022 to remain present there on 20.06.2022 for physical verification of the premises. On the stipulated date i.e. on 20/06/2022 Shri Kailash Chandra Majhi, Chartered Accountant and Power of Attorney Holder was present at the site on behalf of the assessee. He furnished the power of Attorney and the collaboration agreement made with the builder on 18/04/2013. He also stated that the assessee, Smt. Jayashree Sahu was not staying there as after the death of her husband she is staying at Keonjhar. He also furnished the copy of the death certificate of her husband on 07/02/2022.

However, after physical verification of the premises it is found that the Flat No. - 201 & 202 is designed to be a single unit without any dividing wall or partition wall between them. But the Flat No. 301 which is situated in the upstairs is a separate and independent unit not linked with Flat No. 201 & 202. Hence, it is ascertained that the premises is not a single unit rather multiple units. In this regard the

copy of the statement recorded at the time of physical verification by the Power of Attorney holder is enclosed herewith for necessary action and kind perusal of the Hon'ble Tribunal.

Yours faithfully.  
Sd/-  
(Kalpataru swain)  
Income Tax Officer,  
Ward - 3(1), Bhubaneswar

In the remand report, the Assessing Officer after physical verification has found that Flat No.201 & 202 is designed to be a single unit without any dividing wall or partition wall between them. Flat No.301 is a separate independent unit situated in the upstairs and not linked to Flat No.201 & 202.

4. In reply, Id Sr DR vehemently relied upon the order of the Id CIT(A). it was the submission that the assessee has acquired multiple units and, therefore, the assessee is not entitled to the claim of exemption u/s.54F of the Act.

5. We have considered the rival submissions. Admittedly, the physical verification report, remand report clearly show that the assessee has acquired Flat Nos.201 & 202 as a single unit and Flat No.301 on the upper stair is not connected to Flat No.201 & 202 owned by the assessee. Consequently, as the assessee has constructed one residential house being the combination of both Flat Nos.201 & 202, the assessee is entitled to the benefit of exemption u/s.54F of the Act in respect of Flat Nos.201 & 202 to

be considered as one. The assessee is not entitled to the benefit of exemption u/s. 54F of the Act in respect of Flat No.301.

6. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 27/6/2022.

Sd/-

**(Arun Khodpia)**

**ACCOUNTANT MEMBER**

Cuttack; Dated 27/06/2022

B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Smt. Jayashree Sahoo, Plot No.N  
2,,/70, IRC Village, Nayapali, Bhubaneswar
2. The Respondent. ITO, Ward -3(3),  
Bhubaneswar.
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

sd/-

**(George Mathan)**

**JUDICIAL MEMBER**

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**