

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA.No.302/Hyd/2020		
Assessment Year: 2013-14		
Bollineni Krishna Kumari A4, Plot No.39 Raj Sri Apartments Venkateswara Hills Srinagar Colony Hyderabad-500 073 PAN : AGLPB9758K	V s.	ITO, Ward-11(3) 10 th Floor Signature Towers Opp: Botanical Garden Road, Kondapur Hyderabad-500 084
(Appellant)		(Respondent)
Assessee by:	None	
Revenue by:	Shri Kumar Aditya, Sr.AR	
Date of hearing:	23.01.2023	
Date of pronouncement:	24.01.2023	

ORDER

Per Shri Laliet Kumar, J.M.

This is appeal filed by the Assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-5, Hyderabad, dated 29.05.2017 for the AY 2013-14, on the following grounds

1. *On the facts and in the circumstances of the case the order of the learned Commissioner (Appeals) is erroneous in law and facts of the case.*
2. *On the facts and in the circumstances of the case the learned Commissioner ought not to have confirmed the assessment of addition under the head capital gains by re-computation without allowing deduction u/s. 54 of u/s. 54F alternatively.*
3. *The appellant crave leave to add to, alter modify, delete, amend, substitute all or any of the above grounds.*

2. Brief facts of the case are that the assessee is an individual, filed her return of income on 30.07.2013 for the AY 2013-14 admitting total income of Rs.4,88,937/- consisting of income from house property of Rs.1,02,945/-, long term capital gain of Rs.3,60,837/- and income from other sources of Rs.25,155/- and agricultural income of Rs.90,000/-. The AO finalized the assessment proceedings and has calculated the long term capital gains at Rs.63,55,216 by disallowing the claim of the assessee u/s. 54 of the I.T.Act.

3. None appeared on behalf of the assessee during the course of proceedings despite repeated notices sent to the assessee.

4. Id.DR had drawn our attention to the finding of the Id.CIT(A), which are to the following effect:-

4.1 During the F.Y. 2003-04, the assessee had purchased following two properties.

<i>Name of the seller</i>	<i>Extent and location of land</i>	<i>Document No. & Date</i>	<i>Consideration in Rs.</i>
<i>Sri K.V.G.L.V Prasada, Sri K.b.Tilak, Sri K.Vijaya Mohan and Smt. Abbineni Anasuya</i>	<i>300 Sq.Yard in Plot bearing No.232 in Survey No.104/1, Venkateshwara HAL Co-Operative society, Kondapur Village, Serilingampally Mandal</i>	<i>13818/2003 dt. 01.11.2003</i>	<i>150000</i>

<i>Do</i>	<i>300 Sq.Yard in Plot bearing NO.231 in Survey NO.104/1, Venkateshwara HAL co-Operative Society, Kondapur village</i>	<i>12563/2003 dt. 30.09.2003</i>	<i>150000</i>

The description of the properties are delineated in the schedule of deed as follows:

.....

The Purchase deed clearly mentions that the properties purchased by the assessee during the F.Y.2003-04 are vacant plots of land.

4.2 The assessee had sold both the properties during the year under consideration i.e. AY 2014-15. Details which are as under:-

<i>Name of the buyer</i>	<i>Extent and location of land</i>	<i>Document No & Date</i>	<i>Consideration</i>	<i>Market value of the property for the purpose of stamp duty</i>
<i>D.Kumar Swamy</i>	<i>300 Sq.Yard in Plot bearing No.232 in survey NO.104/1, Venkateshwara HAL coOperative society, Kondapur village, Serilingampally Mandal</i>	<i>2905/2013 dt. 28.02.2013</i>	<i>Rs.34,50,000</i>	<i>Rs.39,00,000/-</i>

D.Sadanandam	300 Sq.Yard in Plot bearing No.231 in Survey No.104/1, Venkatesh wara HAL co-operative society, Kondapur village, Serilingamp ally Mandal	2906/20 13 dt. 28.02.20 13	Rs.34,50,000	Rs.39,00,000
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Thus, the sale deeds clearly indicate that the plots of land were sold

5. *In the return of income, the assessee had claimed deduction u/s. 54 and had shown the sale consideration of the property at Rs.69,00,000/-. There are four issues relating to above transaction are to be adjudicated i.e. i. Sale consideration; ii. Cost of acquisition ; iii. Deduction u/s. 54; and iv. Alternate claim of deduction u/s. 54F of the Act.*

6.Sale consideration: *The SRO value of the property is Rs.78,00,000/-. Hence as per the provisions of section 50C, the sale consideration should be taken as Rs.78,00,000/-. The assessee was asked why the market value of the both the properties amounting to Rs. 78,00,000/- should not be taken as sale consideration for the purpose of capital gains as per provisions of section 50C of the I.T. Act.*

6.2 *It was argued that the properties sold by the assessee are under litigation as Smt. P. Vijaya Laxmi and three others contested the ownership of the land and filed a suit in the court of Senior Civil Judge, R.R. Dist. requesting the Hon'ble Judge to cancel the sale deed in respect of properties purchased by Smt. B. Krishna Kumari and accordingly the market value (as adopted by the registration authority for the purpose of stamp duty) cannot be adopted for calculating capital gains). Accordingly, a reference was made by the AO to the valuation officer for the valuation of the property. However, the Asst. Valuation Officer, vide his letter in F.No.AE(Val)/HYd/776/CG/15-16/3172 dt. 03.03.2016 stated that Valuation cannot be taken up as the matter is sub-judice.*

6.3 *The AO did not accept the contention of the assessee as AR could not furnish any other evidence regarding the existence of disputes in respect of the properties at the time of sale of the property. The assessee was the owner of the properties under dispute and she had sold the property. The dispute was with regard to the ownership and not with. regard to the value of the property.*

6.4 A deeming provision has been enshrined in sec. 50C by virtue of which a legal fiction has been created for assuming the value adopted or assessed. By any authority of State Government as the full value of sale consideration received in respect of such transfer. A legal fiction has been created only in respect of the cases where the consideration received by the assessee is less than the value adopted or assessed by the stamp valuation authority of the State Government for the purpose of payment of stamp duty "in respect of such transfer". The normal rule thus is that where stamp duty valuation is higher than the stated consideration on transfer, the same is to be adopted for the purposes of computing capital gains.

Thus the statute mandates adoption of guidelines value as determined by the stamp and registration authority. Thus, the AO is justified in adopting the guidelines value. Hence ground no.s 4 and 5 are dismissed.

7.1 Claim of deduction u/s 54: Verification of both the purchase deed and sale deed indicate that the assessee purchased and sold vacant plots only. **The relevant purchase deed clearly mentioned that the properties purchased by the assessee during the F.Y. 2003-04 are vacant plots only.** The properties sold are same plots of land only. However, the assessee pleaded that the property sold is a house property only and furnished copies of the plots sold wherein certain abandoned structure consisting of four walls without any roof and doors, windows, bathroom and kitchen was shown.

Such structure cannot be treated as residential house. Also it is significant to mention here that assessee has not claimed any addition to the cost of construction at the time of sale. The inquiries conducted by the AO revealed that the so called open structure was having area of 6x8 8ft approximately where nobody can reside.

9. Further. during the course of assessment proceedings, assessee filed a letter stating as under:

1.The assessee constructed a small house at plot no. 231 and 232

2. Further, along with the letter assessee filed revised computation of income on 18.03.2016 wherein she admitted rental income of Rs.28,532 from the Plot No. 1-3/ 7/H/232 and 231, Kondapur, Hyderabad (the same plots which were sold on 28.02.2013). Also in the revised computation, she claimed Rs.63,000/- as cost of improvement during the F.Y. 2005-06. Also she claimed Rs.45,150/- on 22.04.2008 and Rs.1,19,898/- on 30.12.2011 towards LRS charges in respect of properties sold.

In the revised computation filed on 18.03.2016 wherein assessee have admitted house property income of Rs.28,532/- from Plot No. 1-31 7/H/232 and 231. Kondapur, Hyderabad which was not admitted in the original return of income. Also assessee have claimed cost of improvement of Rs.63,000 against Long Term Capital Gains but such cost of improvement was not claimed in original return of income.

The assessee again filed a fresh revised computation wherein further claimed expenditure of Rs.4,15,374/- paid on 25.08.2008 under urban

land ceiling Act in respect of properties sold. It was stated that she has inadvertently omitted to claim the cost of improvement.

7.3 It clearly shows that it is an after-thought and the act is orchestrated to claim exemption u/s 54 of the LT. Act. Further the contention that there are no photographs attached to sale deed in respect of properties purchased in year 2003 is not acceptable because both in the purchase deeds and sale deeds, it was clearly mentioned as an open plot only. The small open structure cannot be treated as a residential house.

7.4 The section 54 enacts an exemption to the capital gains and it provides that upon the satisfaction of the conditions therein prescribed, instead of the capital gains being charged to income-tax as provided in section 45, it shall be dealt with in accordance with the provisions of the said section. The relevant conditions prescribed in the opening part of the said section for its applicability are:

(i) the capital gain must arise from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property";

(ii) the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential-house.

In the present case, the property which was transferred is plots of land with a small open structure and since it is open structure its income is not yet charged under the head "Income from house property". The open structure cannot be treated as a house either for self occupation or for let out. Further, it is to be mentioned that the so called structure does not have any water supply, electrical supply. Also assessee has not furnished any proof regarding approval from Municipal authorities or local authorities for construction of house or electrical connection, water supply. Further the assessee, during the course of assessment proceedings, furnished valuation report and respect of two plots sold wherein it was clearly mentioned that properties sold were plots only. Further, when assessee himself stated that the plots purchased are under dispute, it is not clear how she constructed a house before clearance of this litigation.

Considering the above facts, it is clear the assessee sold a vacant plot only and not residential house and hence the assessee is not eligible for deduction u/s 54 of the I. T. Act. Thus, ground no 1,2 and 3 are dismissed.

8. Alternate claim of Deduction u/s 54F:

Alternatively the assessee claimed deductions u/s 54 F of the LT. Act. It is pertinent to mention here th. at assessee is having more than one house as on the date of transfer of the original asset. The assessee herself admitted income from house property from two houses. The details of two houses are as under:

The details of which are as under:

1. H. No 4-35/563/18; Paparayudu Nagar, Jagadgiri gutta, Hyderabad 500072.

2. Plot No. 994, Gokul Plots, Hyderabad.

The assessee furnished the relevant purchased deeds of the above said properties wherein it is clearly mentioned that properties purchased are house properties only. As per the provisions of section 54 F of the LT. Act deduction is not allowable if the assessee owns more than one residential house, other than the new asset, on the date of transfer of the original asset. Thus, the appellant is not entitled for deduction u/ s 54F.

5. We have gone through the order passed by the Id.CIT(A), we do not find any reason to interfere in the order passed by the Id.CIT(A) on merit. In this present case, the assessee has filed the present appeal after a long delay of 2080 days. Before us, no explanation has been given by way of affidavit explaining the reasons of filing the appeal after such a long period. In view of the above when no explanation has been given by the assessee, the appeal is highly time barred and therefore, is required to be dismissed on this ground allowed.

6. Though, we have mentioned hereinabove, the appeal of the assessee is time barred, however, we have also examined the order passed by the Id.CIT(A). The perusal of the order clearly shows that the assessee had sold and purchased the plots only and has not acquired any residential house within the meaning of law. Further, as mentioned by the Id.CIT(A), the assessee is having more than two houses, therefore, the assessee is not entitled to any claim u/s. 54F of the I.T.Act. In the light of the above, the assessee has no case of merit, which is duly mentioned by the Id.CIT(A) in the order passed by him. Accordingly, this appeal is dismissed.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 24th January, 2023

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 24th January, 2023
Thirumalesh/sps

Copy to:

S.No	Addresses
1	Bollineni Krishna Kumari A4, Plot No.39 Raj Sri Apartments Venkateswara Hills Srinagar Colony Hyderabad-500 073
2	ITO, Ward-11(3) 10 th Floor Signature Towers Opp: Botanical Garden Road, Kondapur Hyderabad-500 084
3	CIT(A)-5, Hyderabad
4	Pr.CIT-5, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order