

**आयकर अपीलीय अधिकरण, विशाखापट्टणम पीठ, विशाखापट्टणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**

**श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.231/Vizag/2014**

**(निर्धारण वर्ष / Assessment Year: 2007-08)**

ITO, Ward-1,  
Tenali

Smt. Sureddy Venkata Ramanamma,  
Rep. by L/Rs

Sri Sureddy Venkateswara Rao,  
Sri Sureddy Suresh &  
Sri Sureddy Ravi,  
Tenali, Guntur Dist.

[PAN No.AFDPS3646C]

**(अपीलार्थी / Appellant)**

**(प्रत्यर्थी / Respondent)**

अपीलार्थी की ओर से / Appellant by

: Shri S.R.S. Narayan, DR

प्रत्यर्थी की ओर से / Respondent by

: Shri C. Subrahmanyam, AR

सुनवाई की तारीख / Date of hearing

: 21.03.2017

घोषणा की तारीख / Date of Pronouncement

: 07.04.2017

**आदेश / ORDER**

**PER Shri Manjunatha, Accountant Member:**

This appeal filed by the revenue is directed against order of the CIT(A), Guntur dated 25.2.2014 and it pertains to the assessment year 2007-08.

2. The brief facts of the case are that the assessee is an individual, filed her return of income for the assessment year 2007-08 on 25.7.2007 declaring total income of Rs.75,980/-, comprising income from house property and income from other sources. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). Subsequently, the case has been re-opened u/s 147 of the Act, for the reasons that income chargeable to tax had been escaped assessment within the meaning of section 147 of the Act. The facts, which are relevant for re-opening of assessment are that during the previous year relevant to assessment year 2007-08, the assessee along with 7 co-owners entered into a development agreement-cum-general power of attorney with M/s. Lakshmi Enterprises, Vijayawada for construction of apartments on a piece of land measuring 3386 sq.yds. and agreed to share constructed apartments. As per the said development agreement, the assessee has got 3 constructed flats to her share, which were identified as plot nos.203, 307 & 407. The assessing officer held that handing over of possession under the development agreement executed on 31.7.2006 amounts to transfer u/s 2(47)(v) of the Act, and thus profit arising out of such transfer was chargeable to tax under the head "capital gains" as per the provisions of section 45 of the Act, accordingly, issued a notice

u/s 148 of the Act, requiring the assessee to file return of income for the assessment year 2007-08. In response to notice u/s 148 of the Act, the assessee has filed a letter and requested to treat the return filed originally on 25.7.2007 as return filed in response to notice issued u/s 148 of the Act.

3. Subsequently, the case has been selected for scrutiny and accordingly, notice u/s 143(2) of the Act was issued. In response to notice, the authorized representative of the assessee appeared and filed necessary details as called for. During the course of assessment proceedings, the A.O. observed that development agreement entered into by the assessee with the developer amounts to transfer of property within the meaning of section 2(47)(v) of the Act r.w.s. 53A of the Transfer of property Act, 1882 and hence liable for capital gains u/s 45 of the Act. Accordingly, issued a show cause notice and asked to explain as to why capital gain shall not be charged in respect of transfer of property in pursuance of development agreement. In response to show cause notice, the assessee submitted that mere entering into a development agreement does not part with her from ownership of the said land and the ownership rest with her till the agreed built up area is handed over by the developer. The assessee further stated that she has permitted the developer to enter into premises only for the purpose of

construction and the title of the property remains vest with them. The assessee further submitted that the builder has handed over the constructed apartment in the financial year relevant to assessment year 2009-10 & 2010-11 and accordingly, the liability for capital gain arises in the assessment year 2009-10 & 2010-11, but not for the assessment year 2007-08.

4. The A.O. after considering the explanations of the assessee and also referring to certain judicial precedents, including the decision of Hon'ble High Court of Bombay, in the case of Chaturbuj Dwarka Das Kapadia Vs. CIT (2003) 260 ITR 491 and also the decision of High Court of Karnataka in the case of CIT & others Vs. Dr. P.K. Dayalu 202 Taxman 531 (2011), held that as per the provisions of section 2(47)(v) of the Act, transfer includes any transfer involving the allowing of the possession of any immovable property to be taken or retained in part performance of the contract of the nature referred to in section 53A of the Transfer of Property Act, 1882. Since, the development agreement entered into with the developer is in the nature of transaction allowing possession of any immovable property, which comes under the definition of transfer u/s 2(47)(v) r.w.s. 53A of the Transfer of Property Act, 1882 and hence capital gain is chargeable on the transaction. With these observations, re-worked capital gain and made additions by adopting

Rs.12,500/- per sq.yds. on land transferred and computed long term capital gain of Rs. 76,44,645/- after allowing indexed cost of acquisition of Rs.4,92,855/-.

5. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee reiterated the submissions made before the A.O. The assessee further contended that the A.O. was erred in adopting guidance value of the land for the purpose of determination of consideration for transfer of land in pursuance of joint development agreement. The assessee further submitted that what was received in pursuance of joint development agreement is constructed apartments and the value of the constructed apartments has to be considered for determination of consideration for transfer of land, but not guidance value of land as per the provisions of section 50C of the Act. The assessee also raised an additional ground of appeal and requested to allow exemption towards capital gain u/s 54F of the Act for re-investing sale consideration received in pursuance of transfer of land in another residential house property. The assessee further submitted that she had re-invested sale consideration received for transfer of property for acquiring 3 residential apartments for which she is eligible for exemption u/s 54F of the Act. In support of her argument, relied upon the decision of Hon'ble Karnataka High Court, in

the case of CIT Vs. D. Ananda Basappa (2009) 309 ITR 329 as well as CIT Vs. K.G. Rukminiamma (2011) 331 ITR 211. The assessee also relied upon the decision of Hon'ble A.P. High Court, in the case of CIT Vs. Syed Ali Adil (2013) 352 ITR 418 and submitted that section 54F requires that the property should be of residential nature and the fact that residential house consist of several independent units cannot be an impediment to grant relief u/s 54 of the Act, even if such independent units were on different floors.

6. The CIT(A) after considering the relevant submissions of the assessee, held that consideration received by the land owner in case of a development agreement is the value of the flats and not the value of the land foregone. Thus, in the case of the assessee her share is 3 flats measuring 5100 sq.ft., therefore, the A.O. ought to have determined sale consideration by taking into account the cost of constructed flats on total value of flats received by the assessee. With these observations, CIT(A) directed the A.O. to re-work capital gain by adopting the value of constructed apartments received by the assessee in pursuance of development agreement. In so far as exemption u/s 54F of the Act, the CIT(A) observed that the Hon'ble Karnataka High Court, in the case of CIT Vs. K.G. Rukminiamma (supra) observed that the expression 'residential house' used in section 54 of the Act, does not refer to a

single residential house. It was held that all the four flats received by the assessee were situated in a residential building and constitutes 'residential house' for the purpose of section 54 of the Act and hence, the assessee was held entitled to the benefit of section 54F of the Act. Therefore, CIT(A) directed the A.O. to allow exemption u/s 54F of the Act towards all the 3 flats received in pursuance of joint development agreement. The CIT(A) further observed that since the legal heirs of the assessee sold 2 flats out of 3 flats within a period of 3 years from the date of acquisition, the amount of capital gain exempted u/s 54F of the Act, in respect of these 2 flats shall have to be brought to tax in the assessment year 2009-10. With these observations, CIT(A) directed the A.O. to bring short term capital gains towards 2 flats transferred in the assessment year 2009-10. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

7. The Ld. D.R. submitted that the Ld. CIT(A) erred in allowing exemption u/s 54F of the Act, which was never claimed before the A.O., ignoring the decision of apex court, in the case of Goetz (India) Limited Vs. CIT, 284 ITR 323. The D.R. further submitted that the CIT(A) erred in allowing exemption u/s 54F of the Act for 3 flats under development agreement ignoring the statute, wherein the statute provides for exemption towards one residential house. The D.R. further submitted

that the CIT(A) erred in coming to the conclusion that the assessee has made investment in new residential house in respect of 3 flats on that very date on which development agreement was executed, ignoring the fact that out of 3 flats, only 2 flats were handed over to the assessee within the stipulated time limit. The D.R. further submitted that the CIT(A) erred in adopting the cost of construction of flats for the purpose of determination of sale consideration, instead of the value determined by the stamp valuation authority for the purpose of computation of long term capital gains.

8. The Ld. A.R. for the assessee, submitted that the CIT(A) rightly allowed exemption u/s 54F of the Act, in respect of 3 flats received in pursuance of joint development agreement, as the legal position prior to the amendment to section 54F of the Act, by the Finance Act, 2014 w.e.f. 1.4.2015 is very clear about eligibility of exemption towards all flats received in pursuance of development agreement. The A.R. referring to the plethora of judicial decisions, including the decision of Hon'ble High Court of Madras, in the case of CIT Vs. Gumanmal Jain (2017) 98 CCH 93 (Chennai HC), submitted that when the assessee received his share of flats in pursuance of joint development agreement, the assessee is eligible for all the flats even if flats/apartments are in different blocks and different towers as long as they are in same



address/location and it does not disentitle the assessee from getting the benefit of section 54F of the Act. The A.R. further submitted that once the assessee is eligible for exemption u/s 54F of the Act in respect of all the flats, the other issues challenged by the revenue in respect of computation of long term capital gain and adoption of market value of the land for the purpose of determination of sale consideration are merely academic in nature and has no impact on computation of capital gains.

9. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The only issue to be decided is whether on the facts and in the circumstances of the case, the assessee is eligible for exemption u/s 54F of the Act, for all the flats received in pursuance of a development agreement? The issue is no longer res integra. The coordinate bench of ITAT, Visakhapatnam in the case of ITO Vs. Ravuri Kishore & Others in ITA Nos.498 to 500/Vizag/2013 dated 28.3.2017, wherein both Judicial Member as well as Accountant Member are party to the decision, has considered a similar issue and considering the provisions of Section 54F of the Act and also by following the decision of Hon'ble A.P. High Court, in the case of CIT Vs. Syed Ali Adil (supra), held the issue in

favour of the assessee. The relevant portion of the order is extracted below:

"11. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The factual matrix which leads to the dispute is that the assessee along with other 12 co-owners entered into a development agreement with Shri Sai Venkata Ramana Constructions for development of a piece of land admeasuring 1.68 acres at S.No.93. As per the said joint development agreement, the assessee and 12 other family members have agreed to share the constructed flats in the ratio of 17:23. The assessee has claimed exemption u/s 54F of the Act on total flats received in pursuance of joint development agreement. According to the assessee, exemption u/s 54F of the Act is allowable even if the flats/apartments are situated in different blocks or towers. The A.O. has disallowed exemption claimed u/s 54F of the Act, on the ground that the assessee has let out the apartment to educational institution for the purpose of commercial use. The A.O. further observed that exemption u/s 54F of the Act is available to one residential house, but not for all residential flats received in pursuance of joint development agreement.

12. The only issue to be decided is whether on the facts and in the circumstances of the case, the assessee is eligible for exemption u/s 54F of the Act for all the flats received in pursuance of a development agreement? The issue is no longer a res integra. The Hon'ble High Court of A.P., in the case of CIT Vs. Syed Ali Adil (supra), has considered the issue and after analyzing the provisions of section 54F of the Act, observed that the expression 'a residential house' in section 54F of the Act has to be understood in a sense that building should be of residential nature and 'a' should not be understood to indicate a single number and where an assessee had purchased two residential flats, is entitled to exemption u/s 54F of the Act, in respect of capital gains on sale of its property on purchase of both flats. The High Court further observed that deduction u/s 54F of the Act, is allowable with respect to the residential house consisting of several independent units. A similar view has been expressed by the Hon'ble High Court of Madras, in the case of CIT Vs. Gumanmal Jain (supra), wherein the Hon'ble High Court observed that all the flats are a product of one development agreement of the same piece of land being said land, hence even if flats are in different blocks and different towers, as long as they are in same address/location, it does not disentitle the assessee from getting the benefit of section 54F of the Act. In yet another case, the Hon'ble High Court of Madras in the case of CIT Vs. V.R. Karpagam (2015) 373 ITR 127, held that prior to amendment u/s 54F by Finance Act, 2004 w.e.f. 1.4.2015, with regard to word 'a', a residential house include multiple flats/residential units, where under the development agreement assessee was entitled to receive certain built-up

*area, which got translated into five flats, exemption u/s 54F in respect of five flats in a multi-storey construction would be available.*

*13. Thus, the legal proposition before the amendment of section 54F of the Act, by the Finance Act, 2014 w.e.f. 1.4.2015, in the case of development agreement, is very clear that if the land owner receives number of flats, even though they are located in different blocks and different towers, once they are in same address/location and all the flats are a product of one development agreement, then the assessee is eligible for exemption u/s 54F of the Act, in respect of all the flats. Therefore, we are of the view that the assessee is eligible for exemption u/s 54F of the Act in respect of all the flats received in pursuance of joint development agreement. The revenue has failed to bring on record any contrary decision against the law laid down by the Hon'ble A.P. High Court, in the case of CIT Vs. Syed Ali Adil (supra). Considering the facts and circumstances of the case and also respectfully following the decision of Hon'ble A.P. High Court, in the case of CIT Vs. Syed Ali Adil (supra), we are of the view that the assessee is eligible for exemption u/s 54F of the Act, towards all the flats received in pursuance to development agreement."*

10. In this view of the matter and also respectfully following the decision of coordinate bench, in the case of ITO Vs. Ravuri Kishore & Others in ITA Nos.498, 499 & 500/Vizag/2013 dated 28.3.2017, we are of the view that the assessee is eligible for exemption u/s 54F of the Act, in respect of 3 flats received in pursuance of development agreement. The CIT(A) after considering relevant facts has rightly held that the assessee is eligible for exemption u/s 54F of the Act for 3 flats. The CIT(A) further observed that, since, the legal heirs has sold two flats within 3 years from the date of acquisition, the amount of capital gain exempted in respect of two flats u/s 54F of the Act shall be brought to tax in the A.Y. 2009-10. We do not find any error in the order of the

CIT(A). Hence, we inclined to uphold the CIT(A) order and dismiss ground raised by the revenue.

11. The next ground raised by the revenue is with regard to the computation of long term capital gain in pursuance of development agreement and adoption of consideration for transfer of property. The A.O. has adopted guidance value of the land to determine the consideration received towards transfer of property in pursuance of development agreement. The assessee contended that cost of constructed apartments has to be considered for determination of consideration by transfer of property but not the guidance value of the land. Having heard both the sides, we find that once the issue has been decided that the assessee is eligible for exemption u/s 54F of the Act and in respect of all the flats, the other issues raised by the assessee with regard to the computation of capital gain and determination of consideration for the purpose of computation of capital gain becomes academic, as the assessee is eligible for exemption towards all the flats received in pursuance of a joint development agreement and this does not matter whatever is the value of flat or land to determine the consideration received for transfer of land. Therefore, we are of the view that determination of sale consideration and computation of capital gain has no impact on the total income, once exemption is allowed

towards all flats received in pursuance of development agreement. Accordingly, the grounds raised by the revenue are rejected.

12. In so far as, admission of claim of exemption u/s 54F of the Act by the CIT(A), we find that, the Hon'ble Supreme Court in the caase of Goetze (India) Ltd. Vs. CIT, reported in 284 ITR 373 has made it clear that, the A.O. cannot entertain any claim for deduction otherwise than by filing a revised return, however, it does not infringe on the power of the Tribunal under section 254 of the Act. Since, the CIT(A) is an appellate authority, it can entertain a fresh claim of deduction and hence, the case relied upon by the Ld. D.R. in the case of Goetze (India) Ltd. Vs. CIT (supra) has no application and hence, the ground of the revenue is dismissed.

13. In the result, the appeal filed by the revenue is **dismissed**.

The above order was pronounced in the open court on 7<sup>th</sup> Apr'17.

Sd/-  
(वी. दुर्गराव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-  
(जी. मंजुनाथा)

**(G. MANJUNATHA)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 07.04.2017

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The ITO, Ward-1, Tenali
2. प्रत्यर्थी / The Respondent – Sureddy Venkata Ramanamma, Late Sureddy Venkateswara Rao, D.No.11-1-20, Tilak Road, Chenchupeta, Tenali.
3. आयकर आयुक्त / The CIT, Guntur
4. आयकर आयुक्त (अपील) / The CIT (A), Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापट्टणम /  
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary  
ITAT, VISAKHAPATNAM

