

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'C', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.505/Mds/2013

निर्धारण वर्ष / Assessment Year : 2007-08

Asst. Commissioner of Income Tax,  
Non-Corporate Circle-6, Room No.223,  
BSNL complex, Tower-1, 2<sup>nd</sup> Floor,  
Greens Road, Anna Salai,  
Chennai – 600 006.

T.Yasoda,  
Vs. Legal Representative of (late)  
Tejendra Kumar Golecha,  
Chennai – 600 079.  
[PAN: AAIPG 8231B]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Ashish Tripathi, Jt. CIT  
प्रत्यर्थी की ओर से/Respondent by : Shri S.Sridhar, Advocate  
सुनवाई की तारीख/ Date of hearing : 02.08.2017  
घोषणा की तारीख /Date of Pronouncement : 31.10.2017

**आदेश /ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Revenue agitating the Order by the Commissioner of Income Tax (Appeals)-IV, Chennai ('CIT(A)' for short) dated 19.11.2012, partly allowing the assessee's appeal contesting its assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (AY) 2007-08 vide order dated 08.12.2009.

2. The appeal raises a single issue, i.e., whether the amounts credited to the assessee's capital account during the year stand satisfactorily explained or not

and, thus, liable to be deemed as unexplained credits, assessable u/s. 68. The further question, which may arise on the acceptance of the assessee's explanation, would be of eligibility to deduction u/s. 54F in the computation of Long Term Capital Gain (LTCG) in-as-much as the impugned credits stand explained as by way of sale of the assessee's landed properties, being long term capital assets.

3. It would be in order to narrate the background facts of the case. The assessee-individual, Shri Tejendra Kumar Golecha (since deceased, so that his legal representative (LR) has been brought on record, observing the due process, and the revised Form-36 in the name of the LR, filed), filed his return of income for the year on 31.03.2008, admitting income of ₹. 12,78,960/-, which is by way of interest and capital gain. The same was subject to verification procedure under the Act on the basis of AIR information to the effect that the assessee has made investments during the relevant year in shares and mutual funds. His capital account, furnished along with the final accounts during the assessment proceedings, was found credited by ₹. 25,39,800/- and ₹.6,65,420/-. In explanation, the same was stated to be profit on sale of a residential property at Hospet, Karnataka and land at Khichan, Rajasthan, purchased long ago, at ₹. 9.80 lacs and ₹. 13,700/- respectively. Further, as the assessee had constructed a residential house, the entire LTCG was claimed exempt. The same did not find acceptance by the Assessing Officer (AO) in the absence of the assessee not furnishing the copy of the purchase and sale deeds *qua* the two properties stated to be sold. In appeal, the assessee furnished copy of the sale deed for the Hospet property, and an affidavit from one, Shri Jethamal (alias Devaram Patel), stated to be the buyer of the property, i.e., at Khichan, Rajasthan. On that basis, the Id. CIT(A), after calling for a remand report from the AO in view of the additional evidences filed by the assessee, accepted his claim of the impugned credits as

representing the profit on the sale by the assessee of the said properties, as under, being in terms of the figures furnished earlier before the AO (refer pgs. 3 to 5 of the assessment order):

' (i) Amount from land of Rs. 6,65,420/-

*This represents long term profit from sale of land at Kichan (Rajasthan). The said piece of land was purchased in FY 1990-91 (AY 1991-92) for a sum of Rs. 13,700/- (Rs. 9,000 + 4700) which was sold in this FY for a sum of Rs. 6,79,120/-, resulting in long term capital gain of Rs. 6,65,420/-. The entire net sale consideration of Rs. 6,79,120/- had been utilized for purchasing a new residential property at Muthukadu.*

(ii) Amount from property of Rs. 25,39,800/-

*The assessee purchased a building at Hospet (Karnataka) in the F.Y. 1996-97 (A.Y. 1997-98) for a total cost of Rs. 9,80,000/-. The said building was sold for the total consideration of Rs. 35,19,800/- resulting a long term capital gain as under:-*

<i>Sale Consideration</i>	<i>Rs. 35,19,800/-</i>
<i>Less: cost Price as on 31-03-97 (F.Y. 1996-97)</i>	<i>Rs. 9,80,000/-</i>
	<i>-----</i>
<i>Long Term Capital Gain</i>	<i>Rs. 25,39,800/-</i>
	<i>-----</i>

<i>Sale Consideration</i>	<i>Rs. 35,19,800/-</i>
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<i>Less Indexed cost of acquisition</i>	
<i><u>980000 x 519 (F.Y. 06-07)</u></i>	
<i>305 (F.Y. 96-97)</i>	<i>Rs. 16,67,606/-</i>
	<i>-----</i>

<i>Long Term Capital Gain</i>	<i>Rs. 18,52,194/-</i>
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Capital Gain on Sale of Land at Khichan (Rajasthan)

<i>Sale Consideration</i>	<i>Rs. 6,79,120/-</i>
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<i>Less: Indexed cost of acquisition</i>	
<i><u>13700 x 519 (F.Y. 06-07)</u></i>	
<i>182 (F.Y. 90-91)</i>	<i>Rs. 3,90,675/-</i>
	<i>-----</i>

<i>Long Term Capital Gain</i>	<i>Rs. 2,88,445/-</i>
	<i>-----</i>

*Total Log Term Capital Gain from both  
[18,52,194 + 2,88,445] Rs. 21,40,639/-*

*The Long Term Capital Gain from sale of Building at  
Hospet (Karnataka) Rs. 18,52,195/-*

*Sale consideration from sale of  
land at Khichan (Rajasthan) Rs. 6,79,120/-*

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*Rs. 25,31,314/-*  
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*The above amount had been utilized for purchased the new residential property at Muthukadu for a sum of Rs. 26,52,530/-. Therefore the Long Term Capital Gain of Rs. 21,40,639/- is exempt u/s. 54F of the Income Tax Act, 1961.'*

Further, as the assessee had invested ₹. 40 lacs of the total net sale consideration of ₹. 41,98,920/- in a residential house, he was entitled to proportionate deduction u/s. 54F at ₹. 20,39,228/- (out of the total LTCG of ₹. 21,40,639/-). Aggrieved, the Revenue is in appeal, raising the following grounds:

1. The order of the Commissioner of Income tax (Appeals) is opposed to the facts and circumstances of the case.
2. The Learned CIT(A) has not appreciated the fact that the assessee was not in possession of the purchase deeds of the Rajasthan property and Hospet property.
3. The Ld. CIT(A) has erred in relying on the third party affidavits with regard to the ownership of the property at Rajasthan and has come to a conclusion that the sale was genuine.
4. The Ld. CIT(A) has erred in relying on the third party affidavits with regard to the ownership of the property at Hospet and has come to a conclusion that the sale was genuine.
5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Commissioner of Income tax (Appeals) may be set aside and that of Assessing Officer restored.'

4. We have heard the parties, and perused the material on record.

The sale deed of the Hospet property (at PB pgs. 35-44), which is the only evidence furnished, i.e., of the two purchase and two sale deeds called for (by the AO), is dated 20.04.2005, with the assessee receiving ₹. 15 lacs on 20/1/2005 (vide two cheques dated 22.01.2005) and the balance ₹. 19,84,800/- (by two demand drafts) on the execution of the sale deed (i.e., at a total of ₹. 34,84,800/-). The capital gain, therefore, arises only during AY 2005-06, relevant for AY 2006-07. How, then, we wonder, any capital gain arises to the assessee for the current year? The question of its assessment for the current year and, consequently, of it being eligible for deduction u/s. 54F to any extent, therefrom, does not arise. Section 54F benefit, where so, could only be for the year for which the capital gain arises. The direction by the Id. CIT(A), confirming the LTCG and also the s. 54F relief for the current year, i.e., *qua* the Karnataka property, is not sustainable in law. The only question that survives is whether the credit of Rs. 25,39,800/- to the assessee's capital account is satisfactorily explained. The same has been explained as profit arising to the assessee during an earlier year on the sale of his asset, which is duly evidenced by a sale deed and the assessee's books of account, representing the cost of the land as well as the receipt of profit, received through the banking channel. Both the nature and source of the credit, by way of realization of the assessee's capital asset, purchase particulars of which are stated in the sale deed, save to the extent of ₹. 35,000/-, being the difference in the amount of sale consideration (₹. 35,19,800 – ₹. 34,84,800/-), is satisfactorily explained. We, accordingly, find no basis for any addition u/s. 68, except to that extent, which is therefore directed for deletion. The Revenue's case is upheld only for ₹. 35,000/-, which part of the credit remains unexplained.

As regards the land at Khichan, Rajasthan, claimed to be sold at ₹. 6,79,120/-, receiving ₹. 2 lacs (on 12.04.2005), and the balance ₹. 4,79,120/-

again in cash, on 29.06.2005. The only evidence in its respect is an affidavit dated 11.03.2011 by Shri Jethamal (alias Devaram Patel), claiming to have purchased the property belonging to the assessee at Khichan, Rajasthan (PB pg. 51). The dates, again, fall during f.y. 2005-06, i.e., relevant to AY 2006-07. Toward this, we observe the credit in the name of Shri Jethamal reflected in Schedule-A (of the Creditors) to the assessee's final accounts as on 31.03.2006 (PB pgs. 7-13) in the sum of ₹. 6,79,120/-, the claimed sale value, stated as by way of advance received. The affidavit is not notarized, so as to be regarded as a sworn affidavit of the deponent. Even otherwise, how could he claim title to the property on the basis of a statement, and by self. Even if not registered, as required, there would surely be some agreement or like instrument evidencing the intent to purchase the subject property, if not also the money paid toward the same. There is also no explanation at any stage as to why the sale, since complete, has not been, as required by law, registered. The 'affidavit' also does not bear the details of the subject property. *Why, there is nothing on record to exhibit the assessee's ownership of the property.* The same, therefore, cannot be regarded as exhibiting or evidencing the credit as being in respect of sale of his property by the assessee. Rather, if it is an advance, as stated, which would normally be in a whole figure rather than the odd figure of '6,79,620', the buyer would have, further, surely secured some receipt in evidence. Again, it implies that the balance is to be paid, and the transaction completed, while the stated position is that the 'advance amount' is the total consideration. We are thus unable to accept the assessee's explanation *qua* the credit of ₹. 6,79,620/-. True, the same stands credited in the assessee's books of account for the year relevant to AY 2006-07. That would, to our mind, be not material for two reasons. Firstly, sec. 68, reproduced as under, draws no distinction between a credit in the assessee's books of account during the relevant year or any other year prior thereto:

**‘Cash credits.**

**68.** Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.’

The only condition is that the credit is to be, when called upon to, satisfactorily explained as to its nature and source. Of course, once explained, as required, i.e., subject of the satisfaction of the AO, the assessee cannot be called upon to explain the same again, unless of course there is some change in the attributes of the credit, as we find in the present case, and which brings us to our second reason. Even as the impugned credit was not explained to the Revenue prior to during the course of the assessment proceedings for the current year, so that it is open to be required to be explained satisfactorily as to its nature and source (i.e., in the assessment proceedings for the current year), there is clearly, during the current year, a change in the nature of the credit. The same, representing a liability earlier (for an earlier year), is now, i.e., by virtue of its capitalization, forms part of the assessee’s capital. There is clearly a change in the nature of the amount on account of its credit to the assessee’s capital account, and which therefore is to be satisfactorily explained by the assessee on being called upon to do so. It may be said that in-as-much as it is, as stated, an advance against property, it is, though reflected as a creditor, not the assessee’s liability, as shown. The argument is misconceived as, in-as-much as there is no transfer, the assessee is liable for refund – in terms of the agreement, so that it represents his liability, or substantially so. We, therefore, find no reason as to why the explanation in its respect could not be called for by the AO and, consequently, deemed as income u/s. 68 on finding it as not satisfactorily explained. The only question is whether his this finding is meritorious, i.e., sustainable in law in the facts and circumstances of the case, or not. We have

already found valid and cogent reasons to consider the credit as not satisfactorily explained. Succinctly put, there is no credible material to regard the credit as on account of sale of his property by the assessee, so that the nature of the credit remains unexplained. Then, there is nothing to exhibit the capacity of the creditor. Why, in-as-much as the 'affidavit' is not notarized, even the identity of the creditor cannot be said to be established. The credit, we wish to clarify, is for ₹. 6,79,620/-; it being irrelevant as to what part (₹. 13,700/-) is credited to the land account and what part (₹. 6,65,920/-) to the capital account. The addition *qua* this credit, reversing the impugned order, is accordingly upheld.

We decide accordingly.

5. In the result, the Revenue's appeal is partly allowed.

*Order pronounced on October 31, 2017 at Chennai.*

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, October 31, 2017

EDN

Sd/-

(संजय अरोड़ा)

(Sanjay Arora)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF