

2. Grounds of Appeal :

1. *That under the facts and circumstances of the case the orders passed u/s.143(3) of the I.T. Act are against the facts of the case and provisions of law.*

2. *The learned Commissioner of Income Tax(A)(In short "CIT(A)"),under the facts and circumstances of the case, is not correct in confirming the addition made on account of LTCG and STCG of Rs.4,91,000/- and Rs.27,30,000/- respectively as the addition confirmed does not stand the test of law.*

3. *The learned CIT(A) is not correct in dismissing the appeal without considering the submission made and evidences filed, if he had done so, he would not have resorted to confirming the addition made with regards to capital gains.*

4. *The learned CIT(A) ought to have known that the assessee is eligible for exemption u/s.54F of the IT Act. CIT(A) overlooked this aspect during appellate proceedings even though assessee submitted all information.*

5. *The Ld. CIT(A) erred in passing the order in the name of assessee's husband even though it has been brought to his notice that assessee's husband has passed away on 12 June 2013 and the appeal was disposed off vide orders dt. 25th October 2019. In view of this the impugned order is nullity in law.*

6. *For these and other reasons that are to be urged at the time of hearing of the case, it is the prayer of the assessee that the orders passed u/s. 143(3) of the I.T. Act are against the provisions of law, facts of the case, therefore, the same are to be quashed in the interest of justice.*

3. Ground No.1 and 6 are general in nature which does not require specific adjudication. During the appeal hearing, the assessee has withdrawn ground No.5, therefore, ground No.5 is dismissed as withdrawn.

4. Ground No.2 and 3 are related to the addition made by the Assessing Officer (AO) on account of long term capital gains and short term capital gains of Rs.4,91,800/- and Rs.27,30,000/- respectively which was sustained by the Ld.CIT(A).

5. Ground No.4 is related to the deduction claimed by the assessee u/s 54F of the Act, which was rejected by the AO during the assessment proceedings and sustained by the Ld.CIT(A).

5.1. Brief facts of the case are that the assessee is an individual, filed his return of income on 13.10.2010 admitting total income of Rs.2,44,770/- and agricultural income of Rs.1,25,000/-. The assessee expired on 12.06.2013 subsequent to completion of assessment proceedings and legal heir, Smt.R.Venkata Dhana Lakshmi was brought on record. The assessment was completed u/s 143(3) on total income of Rs.37,96,571/-. In the assessment proceedings, the AO made the addition of Rs.4,91,800/- on account of long term capital gains and Rs.27,30,000/- on account of short term capital gains. During the assessment it was found that the

assessee had purchased the vacant site of 300 sq.yards on 03.03.2005 which was subsequently rectified by deed of correction dated 13.10.2005 and correct size of the plot was 246.75 sq.yards. The assessee has given the said land for development through agreement dated 22.03.2007 to M/s Samyuktha Constructions, Hyderabad for construction of residential apartments with sharing ratio of 50% each of the constructed area including the parking area. Subsequently, on completion of construction, the assessee has sold the 4 flats received towards his share with undivided share of land of 24 sq.yards each for flat and built up area of 1060 sq.ft for each flat in addition to car parking area of 80 sq.ft. The assessee got the 4 flats as per the details given below :

	Extent of site	Built-up area	Car parking area
Flat No.G-2 (Ground Floor)	24 sq.yards	1060 sq.ft	80 sq.ft
Flat No.102 (First Floor)	24 sq.yards	1060 sq.ft	80 sq.ft
Flat No.201 (Second Floor)	24 sq.yards	1060 sq.ft	80 sq.ft
Flat No.302 (Third Floor)	24 sq.yards	1060 sq.ft	80 sq.ft
Total	96 sq.yards	4230 sq.ft	320 sq.ft

5.2. The above four flats were sold in August/October 2009 and thus liable for capital gains in the A.Y. 2010-11. In the return of income filed,

the assessee has neither submitted the capital gains liability nor claimed any exemption. During the course of assessment proceedings, the assessee submitted the details of some of flats and claimed the exemption u/s 54F for purchase new flat in Victory House, Kukkatpally for a consideration of Rs. 35.40 lacs as mentioned in his reply dated 26.03.2013 to the AO. The assessee contended that since, the capital gains tax resulted in 'Nil' income, he did not mention the same in the return of income. However, the AO found no merit in assessee's explanation, since, the assessee has neither purchased the flat before the end of the financial year nor made deposit in the specified account. The AO arrived at the sale consideration of land @7000/- per sq.yard and structure rate @Rs.600/- per sq.feet and thus determined total value of the undivided share of land of 96 sq.yards at Rs.6,72,000/- and the cost of acquisition of the land was worked out to Rs.1,80,200/- inclusive of stamp duty and the indexed cost of acquisition at 480 points and worked out the long term capital gains of Rs.4,91,800/- as under :

Sl.No.	Property Description	Name of the village	As on date	Market Value per sq.yard	Structure rate for sq.feet
1.	F.No.G-2(1060 Sft.) P.Nos.64 & 64A in Sy.298, 299, 301 & 402, US 24 sq.yds.	Nizampet, Quthbullapur Mandal, R.R. District	26.08.2009	7000/-	600/-
2.	F.No.102 (1060 Sft.) P.Nos.64 & 64A in	Nizampet, Quthbullapur	03.10.2009	7000/-	600/-

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	Sy.298, 299, 301 & 402, US 24 sq.yds.	Mandal, R.R. District			
3.	F.No.201 (1050 Sft.) P.Nos.64 & 64A in Sy.Nos.298, 299,301 & 402, US 24 Sq.yds	Nizampet, Quthbullapur Mandal, R.R. District	12.08.2009	7000/-	600/-
4.	F.No.302 (1060 Sft.) P.Nos.64 & 64A in Sy.Nos.298, 299,301 & 402, US 24 Sq.yds	Nizampet, Quthbullapur Mandal, R.R. District	24.08.2009	7000/-	600/-

Sale consideration of the land	:	Rs.6,72,000
Cost of acquisition of the land	: Rs.1,36,862/-	
Indexed cost of acquisition	: Rs.1,36,862 x 632 / 480	: Rs.1,80,200
Long Term Capital Gains	:	Rs.4,91,800

5.2.1. Similarly, the AO arrived at the sale consideration of built up area at Rs.27,30,000/- @Rs.600/- per sq.ft. including car parking area for four flats the total built up area was 4550 sq.ft., which was received by the assessee towards his share. Accordingly, the AO made the addition of Rs.4,91,800/- towards long term capital gains and Rs.27,30,000/- towards short term capital gains.

6. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of the AO and dismissed the appeal of the assessee.

7. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR vehemently

supported the grounds of appeal and argued that since, the assessee has invested the entire long term capital gains in acquiring the new flat , the assessee is entitled for deduction u/s 54F on long term capital gains. The Ld.AR further stated that though the assessee has not made the claim in the return of income, the claim was made before the AO as well as the Ld.CIT(A) and the Ld.CIT(A) is not barred from entertaining the additional claim as per the decided case laws. Hence, argued that the Ld.CIT(A) ought to have allowed the benefit u/s 54F against the long term capital gains. Thus, argued that the Ld.CIT(A) blatantly erred in confirming the addition. Hence, requested to set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

8. On the other hand, the Ld.DR supported the orders of the lower authorities and argued that the Ld.CIT(A) has rightly upheld the addition made by the AO, hence requested to dismiss the appeal of the assessee.

9. We have heard both the parties and perused the material placed on record. There is no doubt that the assessee has entered into development agreement for construction of the flats and sold 4 flats as per the details given in this order and received the sale consideration. There is no dispute with regard to sale of flats and rates adopted by the AO. The Ld.AR did not

bring any evidence to controvert the findings of the AO during the appeal hearing. Therefore, we uphold the action of the AO as well as the Ld.CIT(A) in treating the sale consideration received in respect of transfer of land as long term capital gain and transfer of super structure as short term capital gain. Thus, computing the income under long term capital gains @Rs.4,91,800/- and short term capital gains @ Rs.27,30,000/- is confirmed.

10. With regard to deduction u/s 54F of the Act, it is seen from the assessment proceedings as well as the CIT(A) proceedings that the assessee has made the investment for purchase of new flat or new house within two years from the end of the relevant financial year as specified u/s 54F of the act. Though the assessee has not made the deposit in specified account, it is observed from the order of the AO that the assessee has made the deposit in the bank account and used the said amount only for the purpose of acquiring the new asset. Hon'ble courts in similar circumstances held that, the assessee would be given the benefit of deduction u/s 54F of the Act, since, the deduction u/s 54F is beneficial provision and introduced with an intention to encourage the housing / accommodation across the country. This view is supported by the decision of coordinate bench of ITAT, Bangalore in Ramaiah Dorairaj.v.Income Tax Officer, ward 4(2)(2),

Bangalore. [2021] 124 taxmann.com 243 (Bangalore - Trib.)The coordinate bench in the above case held as under:

"6. We have heard both the parties and perused the material on record. The main contention of the ld. DR is that the assessee has not complied with the conditions laid down u/s. 54F(1) or 54F(4) of the Act. U/s. 54F of the Act, when the assessee invests the sale consideration from transfer either purchasing a residential house or constructing a new house within a period stipulated in Section 54F(1) of the Act, then only the assessee entitles for deduction under this section. In the intermediatory period the assessee shall deposit the amount in an account which is duly notified by the Central Government. In this case, the assessee has not deposited the net sale consideration in the Capital Gains Scheme Account notified by the Central Government. However the plea of the assessee is that within the stipulated time, the assessee has utilized the net sale consideration as enumerated in the Section 54F(1) of the Act and the assessee is entitled for exemption Under Section 54F of the Act. This issue has come up for consideration before the Hon'ble Karnataka High Court in the case of K. Ramachandra Rao (supra) wherein the following question was before the Hon'ble High Court :

" When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under section 139(1) of the IT Act ? "

This was answered by Hon'ble High Court as follows :

" As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."

7. Being so, in our opinion, the Section 54F is beneficial provision and should be interpreted liberally and the Assessing Officer has to see the end utilization of net sale consideration in the way prescribed in Section 54F of the Act, the assessee is entitled for exemption Under Section 54F of the Act. With this observation, we remit the issue to the file of Assessing Officer for fresh consideration."

Therefore, we are of the considered opinion, that the assessee is eligible for deduction u/s 54F from the long term capital gains. Though assesses did not make the claim, appellate authorities are not barred from entertaining the fresh claim. This view is supported by the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd Vs. CIT, 284 ITR 323 (SC). Hence, we set aside the order of the lower authorities and direct the AO to verify the facts regarding acquiring the new asset and allow deduction u/s 54F in respect of long term capital gains. Accordingly, the order of Ld.CIT(A) in respect of long term capital gains is set aside and the order of the Ld.CIT(A) in respect of short term capital gains is confirmed.

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

Order pronounced in the open court on 25th June, 2021.

Sd/- (एन के चौधरी) (N.K.CHOUDHRY) न्यायिक सदस्य/ JUDICIAL MEMBER Dated : 25.06.2021 L.Rama, SPS	Sd/- (डि.एस.सुन्दर सिंह) (D.S.SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - R.Venkata Dhana Lakshmi, (wife & legal heir of late R.Venkateswara Rao), Prop : Bharthi Teja Constructions, D.No.3-158, Western Street, Dharmajigudem Lingapalem Mandal, West Godavari
2. राजस्व/The Revenue - Income Tax Officer, Ward-2, Eluru
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam