

IN THE INCOME TAX APPELLATE TRIBUNAL

HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

AND SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.552/Hyd/2012

Asstt. Year 2008-09.

Venkata Ramana Umareddy,
Hyderabad.
PAN:AAFPU 4897A

V/s.

Dy. CIT, Cir-3(3),
Hyderabad.

(Appellant)

(Respondent)

Appellant by : Roopanjali. J (AR)

Respondent by : Shri M.H. Naik (DR)

Date of Hearing	19-11-2013
Date of Pronouncement	18-01-2013.

ORDER

Per Saktijit Dey, Judicial Member:

The assessee has filed this appeal being aggrieved by the order dated 31-1-2012 of CIT (A)-IV, Hyderabad passed in appeal No.205/DCIT 3(3)/CIT(A)-IV/10-11 pertaining to the assessment year 2008-09.

2. Ground Nos. 1 and 7 are general in nature, hence needs no adjudication. In ground Nos. 2 to 5, the assessee has challenged the denial of exemption claimed u/s 54 of the Act by the lower authorities on the ground that the assessee cannot claim exemption both u/s 54 and 54F for investment in the same house.

3. Briefly the facts are, the assessee is an individual. For the impugned assessment year the assessee filed his return of income on 29-9-2008 declaring income of Rs.53,60,050/- and agricultural income of Rs.3,17,628. Initially the return was processed u/s 143(1) of the Act. However, subsequently assessee's return was selected for scrutiny by issuing a notice u/s 143(2) of the Act. During the assessment proceeding the AO noticed that the assessee during the relevant financial year has transferred land to a developer under a development agreement and has earned long term capital gain of Rs.49,19,513. The assessee has also sold a house along with land and earned long term capital gain of Rs.44,05,302. Assessee had claimed the entire amount of long term capital gain of Rs.93,24,815/- exempt u/s 54 and 54F of the Act towards investment in a new house at Sagar Society, Banjara Hills, Hyderabad which was purchased for a total price of Rs.1,43,26,665. The AO on interpreting sec. 54 and 54F came to a conclusion that for claiming exemptions under both the sections i.e., 54 and 54F, the assessee has to invest in two houses. On the aforesaid basis the AO disallowed exemption claimed u/s 54 of the Act and added back an amount of Rs.44,05,302/- to the total income.

4. The assessee being aggrieved of the addition made filed an appeal before the CIT (A). In course of hearing of appeal before the CIT (A), the assessee contended that section 54 and 54F are independent provisions and are not mutually exclusive. It was submitted that sec. 54 provides for exemption when the asset transferred is a residential house property whereas sec. 54F applies when the asset transferred is an asset other than a residential house property. However, both the sections require investment in a new house. It was submitted, neither sec. 54 and 54F nor any other

provision of the Act restrict the assessee from claiming exemption under both the aforesaid sections against investment in the same residential property. It was submitted that the Act does not require that for claiming exemption u/s 54 and 54F of the Act, the assessee has to invest in two separate houses. The assessee also made an alternative submission that the entire long term gain of Rs.93,24,815 should have been allowed as exemption u/s 54F of the Act as the property on transfer of which exemption was claimed u/s 54 was in fact only a land having a watchman's room admeasuring 200 sq. ft. The constructed room occupies an insignificant portion of the plot. It was further submitted that the property supposed to be transferred as prescribed by sec. 54 is a residential house, the income of which is chargeable under the head income from house property. However, in assessee's case it cannot be considered to be a residential house as the room constructed over the plot of land was small room not capable of being let out. The assessee also relied upon various decisions in support of his contention.

5. The CIT (A) however rejected both the contentions of the assessee by holding in the following manner:-

"6. I have gone through the facts of the case and the submissions of the appellant. From the provisions of sections 54 and 54F it is clear that the incentive intent. While the purpose of both these sections is to give a fillip to the Housing Sector, evidently, different sources for investment in a residential house have been envisaged there under. Under the circumstances, it is clear that both these sections are not only independent, but mutually exclusive too. In fact, the conditions regarding ownership of another residential house at the time of

investment in new asset clearly show that the two are meant to operate in a exclusive manner and cannot be clubbed together for getting a bigger advantage of exemption on account of bigger investments. Under the circumstances, I do not find any infirmity in the view taken by the AO that the appellant could not have claimed deduction both u/s 54 and 54 F against the same new asset.

6.1 As regards the alternative argument f the representative of the appellant that the exemption claimed u/s 54F also should have been considered u/s 54 itself, as the watchman's room, admeasuring 200 sq. ft., built on the plot of land sold by the appellant could not have been considered as a house property chargeable to tax under the head 'income from house property', it is clear that the appellant had himself shown the said property as such a property in the return of income filed by him under due verification. Beside, the claim so made was not revised on any subsequent occasion by way of a revised return. Therefore, in the light of the decision of the Hon'ble Supreme Court in the case of Goetze (Inddia) Ltd. (284 ITR 323), the alternative ground so raised cannot be accepted at this stage, as there is no provision in the Act allowing an amendment in the return without a revised return. In the light of the above discussion, the grounds raised in this appeal are decided against the appellant.

6. The learned AR reiterating the stand taken before the CIT (A) submitted before us that, sec. 54 and 54F deal with sale of different assets and call for investment in house property. While sec. 54 provides for exemption of capital gain on transfer of a residential house if invested in another residential house, sec. 54F provides for

exemption of capital gain arising out of transfer of other assets if invested in residential house. The learned AR submitted that both these sections are independent and operate in isolation. Though these sections deal with different scenarios and call for investment in a residential house while operating in that particular scenario. The learned AR submitted that the interpretation of the lower authorities that as these two sections are separate and call for investment in one residential house and therefore the assessee should have invested in two different house is not a correct interpretation. The learned AR submitted that no double deduction is claimed as the entire capital gain arising out of sale of residential house is invested in the part of the new residential house and the sale consideration received from sale of plot of land is invested in another part of the new house. The learned AR submitted that these sections have to be interpreted liberally in order to maintain the assessee of the contention of the legislature which is invested in a new residential house.

7. The learned DR supported the orders of the lower authorities.

8. We have considered submissions of the parties and perused the materials on record. We have also applied our mind to the various decisions cited before us. Facts which are undisputed are, the assessee during the relevant financial year had earned long term capital gain out of transfer of two distinct and separate assets. One is a plot of land and the other is a house property. The total long term capital gain on transfer of these two assets is Rs.93,24,815. The assessee had purchased a new residential house within the prescribed time for a consideration of Rs.1,43,26,665/-. It is the claim of the assessee that the entire long term capital gain arising from the sale of the two assets

were invested in purchase of the new residential house hence the assessee is entitled to avail exemption u/s 54 and 54F of the Act whereas the AO has rejected such claim by holding that for claiming exemption u/s 54 and 54F the assessee has to invest in two houses. At this stage it is profitable to examine the provisions as contained in the aforesaid two sections. Section 54 provides exemption of capital gain in case of transfer of a long term capital asset being a residential house, the income of which is chargeable under the head income from house property and the assessee within the prescribed time has purchased or constructed a new residential house. Sec. 54F provides exemption of capital gain in case of transfer of any long term capital asset, not being a residential house and assessee within the prescribed time has purchased or constructed new residential house. A reading of section 54 and 54F makes it clear that they are independent of each other and operate in respect of long term capital gain arising out of transfer of distinct and separate long term capital assets. However, both the sections allows exemption only on purchase or construction of a new residential house. In the appeal before us the assessee had sold two distinct and separate long term capital assets viz., one is a residential house which comes under section 54 and the other is a plot of land coming within the ambit of section 54F. The assessee has also purchased a residential house within the prescribed period in terms with both sec. 54 and 54F for a price much more than the total long term capital gain. The only reasoning on which the lower authorities have rejected assessee's claim of exemption u/s 54 is that the assessee cannot claim exemption under both the sections towards investment in a single house. According to the lower authorities for claiming exemption both u/s 54 and 54F the assessee has to invest in two houses. In our view, such an interpretation of the provisions is totally

misconceived and misplaced. The restriction imposed under the proviso to section 54F (1) clearly debars exemption if the assessee purchases or constructs more than one residential house.

9. At the cost of repetition, we would like to reiterate that sec. 54 and 54F apply under different situations. While sec. 54 applies to long term capital gain arising out of transfer of long term capital asset being a residential house, sec. 54F applies to long term capital gain arising out of transfer of any long term capital asset other than a residential house. However the condition for availing exemption under both the sections is purchase or construction of a new residential house within the stipulated period. There is also no specific bar either u/s 54 and 54F or any other provision of the Act prohibiting allowance of exemption under both the sections in case the conditions of the provisions are fulfilled. In the facts of the present case, since long term capital gain arises from sale of two distinct and separate assets viz., residential house and plot of land and the assessee has invested the entire capital gain in purchase of a new residential house, in our view, he is entitled to claim exemption both u/s 54 and 54F of the Act. We therefore direct the AO to delete the addition of Rs.44,05,302/-. Hence, these grounds are allowed.

10. Ground No.6 reads as under:-

"Without prejudice to the above grounds, the AO failed to take note of the fact that exemption claimed u/s 54 could have been allowed u/s 54F, as the property sold was basically a plot consisting of a watchman's room admeasuring 200 sq.ft."

In view of our decision in ground Nos. 2 to 5 (supra), ground No.6 has become merely academic and needs no adjudication, hence is dismissed.

11. In the result, the appeal filed by the assessee is allowed in part as indicated above.

Order pronounced in the court on 18-01-2013.

Sd/-

(Chandra Poojari)
Accountant Member

sd/-

(Saktijit Dey)
Judicial Member

Dt/- 18th January, 2013.

Copy forwarded to:

1. Sri Venkata Ramana Umareddy, Plot No.32, Road No.2, Navodaya Colony, Banjara Hills, Hyderabad.
2. DCIT, Central Cir-3(3), Hyderabad.
3. CIT (A), -IV, Hyderabad.
4. CIT, Concerned, Hyderabad.
5. Departmental Representative, ITAT, Hyderabad.

Jmr*