

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA no.5661/Mum./2016
(Assessment Year: 2012-13)

Balgopal trust,
17 A, Shree Niketan 6th floor, 86 Netaji,
Subhash Rd, Mumbai 400002
PAN AABAB3419N

..... Appellant

v/s

ACIT 18(1)
Mumbai

..... Respondent

Assessee by : Shri. Prakash K. Jotwani
Revenue by : Shri. N.P. Singh

Date of Hearing -01.05.2017

Date of Order -03.05.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of Ld.
CIT-A dated 28.07.2016 and pertains to assessment year 2012-13.

2. The grounds of appeal read as under:

Ground No: Denial of deduction of Rs. 16,50,00,000/- u/s 54F

1.

a) *The learned CIT (A) erred in confirming the denial of deduction u/s. 54F of Rs. 16,50,00,000/-, on the ground that the status of the Appellant is Association of Persons (AOP) and the deduction u/s 54F is applicable only to 'Individual' or 'HUF'.*

b) *The learned CIT(A) failed to take into consideration that the Appellant is a Specific Trust which was incorporated for the benefit of a sole Beneficiary (Ms. Vidushi Somani), who is an 'Individual' and therefore the Trust/Trustee are merely Representative Assesseees u/s. 161, whose status is dependent on the status of the ultimate Beneficiary.*

2. *Without prejudice, the learned CIT (A) erred in not adjudicating the other grounds of appeal on merits by stating that the other grounds, being consequential, are dismissed. While the appellant had a case on merits and the same was argued before CIT (A) and submissions filed thereon.*

3. *The Appellant craves leave to add, alter or amend the Grounds of Appeal at or before the hearing of the appeal.*

3. The assessee is a private non discretionary Trust. Mr. Vinay Somani and Mrs. Shrilekha Somani are the trustees of the said trust and their daughter, Ms. Vidushi Somani is the sole beneficiary of the said trust. The said trust has sold 1000 unquoted equity shares of M/s. Somani and Compnay Pvt. Ltd to Satguru Corporate Services P. Ltd. at Rs.91,000/- per share totalling to Rs.9,10,00,000/-, Satguru Corporate Services P. Ltd agreed to give a further consideration of Rs.8,16,49,219/- to the assessee by way of a flat valued at Rs.15,63,98,521/-. The difference of Rs.7,46,59,302/- was to be paid by the assessee to M/s. Sadguru Corporate Services

Pvt. Ltd. The said residential flat is located at 301, Signia Isles, BKC, Mumbai. Thus the total consideration received by the assessee for selling 1000 unquoted shares of M/s. Somani and Co. Pvt. Ltd. is Rs.17,26,49,2019/- (by cheque Rs.9,10,00,000/- and Rs.8,16,49,219/- in kind by way of flat.) The cost of the flat was arrived at Rs.15,63,98,521/- and adding Rs.86,01,476/- towards stamp duty and registration charges, the appellant has claimed exemption u/s.54F for Rs.16,50,00,000/-. An amount of Rs.7,46,59,302/- which was to be paid by the assessee to Sadguru Corporate Services Pvt. Ltd. was kept in the capital gains fixed deposits. The AO held that deduction u/s. 54F is allowable only to individual or HUF and not to any other person. The present assessee being specific trust, it was held by the AO that it is not eligible for deduction u/s. 54F and disallowed the same. The AO further went on to discuss that the possession of the flat was not taken within 3 years from the date of transfer and therefore the appellant was not eligible for deduction u/s. 54F.

4. Upon assessee's appeal Ld. CIT-A confirmed the action of the A.O as regard holding that assessee being a AOP cannot be granted benefit of section 54F. She distinguished the decision relied upon by the assessee's counsel. She placed reliance upon the order of Hon'ble Punjab & Haryana High Court in the case of Raghunath Dass

Sethi Vs. CIT 277 ITR 341. She held that being AOP assessee cannot be entitled to deduction u/s. 54. As regards the issue regarding disallowance of deduction of u/s. 54F on other aspect as held against the assessee by the A.O Ld. CIT-A did not adjudicate those grounds in view of the decision on the first issue. Against this order assessee is in appeal before us.

5. Ld. Counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in the case of Mrs. Amy F. Cama vs. CIT 237 ITR 82. He further submitted that decision by other High Courts also support the assessee's case. For this proposition Ld. Counsel placed reliance upon the decision of Hon'ble Gujarat High Court in the case of Niti Trust And Ors. vs. CIT 221 ITR 435. Ld. Counsel further reliance upon CBDT direction dated 01.08.2012

6. Per contra Ld. D.R submitted that these cases are not applicable. He submitted that these case laws are with reference to the applicability of Section 161 of the Income Tax Act. However the issue before us is regarding special provisions relating to Section 54F of the I.T Act. He submitted that it is clearly prescribed in the Act that Section 54F exemption will be applicable to individual or HUF. Assessee being AOP is not entitled to the said exemption. As

regards the CBDT circular referred by the Ld. Counsel of the assessee he submitted that firstly CBDT circulars are not binding on ITAT and secondly the said circular is mere direction of accepting of returns. He submitted that the same cannot be treated as direction to make assessment in a particular manner.

7. Upon careful consideration we find that the issue before us is as to whether the assessee trust, which is for the sole benefit of an individual, will be entitled to deduction u/s. 54F or not, when its status is that of A.O.P. As per Section 54F the benefits of this section is available to individual or Hindu undivided family (HUF). Hon'ble jurisdictional High Court in the case of Mrs. Amy F. Cama (Supra) has elaborately considered the same issue. The jurisdictional High Court was dealing with assessee trust's claim for deduction for purchase price of the flat from capital gain as per Section 54 of the Act. The Hon'ble jurisdictional High Court has held that the assessee trust was entitled for the same. The Hon'ble Court had expounded that Section 161 of the I.T Act, 1961, makes a representative assessee subject to the same duties, responsibilities and liabilities as if the income was received by him beneficially. The fiction is created as it was never the object or intention of the Act to charge tax upon persons other than the beneficial owner of the income. Whatever benefits the beneficiary will get in the said

assessment must be made available to the trustee while assessing him under section 161.

8. We find that above decision of Hon'ble High Court squarely applies on the present case, when we are concerned with the issue of exemption/deduction u/s. 54F. Section 54 is also applicable to individuals and HUF. However Hon'ble jurisdictional High court had expounded that on per the mandate of Section 161, the I.T. Act doesn't intend to charge tax upon persons other than the beneficial owner of the income. Whatever benefits the beneficiary will get in a particular assessment must be made available to the trustee while assessing him u/s. 161. In the present case before us also the issue is benefit of investment made in purchase of flat for deduction u/s. 54F of the Act by the trustees and the sole beneficiary of the trust is the individual Ms. Vidushi Somani. Hence the ratio emanating from the above jurisdictional High court decision is squarely applicable on the facts of the case. The distinction referred by the Ld. D.R is devoid of cogency. Furthermore, Hon'ble Gujarat High court in the case of Niti Trust (Supra) has similarly granted benefit of assessment of a trust in the capacity of a individual. For this proposition Hon'ble High Court had relied upon the decision of Hon'ble Gujarat High Court in the case of CIT vs. Deepak Family

Trust to 211 ITR 575 and Calcutta High Court decision in the case of CIT vs. Shri Krishna Bandar Trust 201 ITR 989.

9. From the above case laws it is amply clear that by virtue of Section 161 of the I.T. Act the representative assessee is subject to the same duties, responsibilities and liabilities as if the income was received by him beneficiary, and whatever benefits the beneficiary will get in the said assessment must be made available to the trustee while assessing him u/s. 161. It is clear that it is only by virtue of u/s. 161 that the trust has been assessed for the income that is for benefit of sole beneficiary. According respectfully following the precedent we hold that the assessee is principally entitled to deduction u/s. 54F and it cannot be said that since it is a AOP and not a individual or HUF the said exemption/deduction should be denied.

10. Now we come to the merits of claim of deduction u/s. 54F. This has been denied by the A.O. However the Ld. CIT-A has not adjudicated the same since she has held that assessee being an AOP is not entitled to benefit u/s. 54F. Since we have already held in the earlier part of this order that assessee is legally entitled to claim deduction u/s. 54F, the issue of allowance of deduction u/s. 54F on merits needs adjudication by the CIT-A. Accordingly, we

remit this issue to the file of the Ld. CIT-A. Ld. CIT-A is directed to consider the issue of merits of deduction claim u/s. 54F and decide accordingly. Needles to add assessee should be granted adequate opportunity of being heard.

In the result this appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 03.05.2017

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 03.05.2017

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

By Order

Nishant Verma

Sr. Private Secretary

(Dy./Asstt.Registrar)

ITAT, Mumbai

| | | Date | Initial | |
|----|--|------------|---------|-------|
| 1. | Draft dictated on | 02.05.2017 | } | Sr.PS |
| 2. | Draft placed before author | 02.05.2017 | | Sr.PS |
| 3. | Draft proposed & placed before the second member | -- | | JM/AM |
| 4. | Draft discussed/approved by Second Member | -- | | JM/AM |
| 5. | Approved Draft comes to the Sr.PS/PS | .05.2017 | } | Sr.PS |
| 6. | Date of pronouncement | .05.2017 | | Sr.PS |
| 7. | File sent to the Bench Clerk | .05.2017 | | Sr.PS |
| 8. | Date on which file goes to the Head Clerk | | | |
| 9. | Date of dispatch of Order | | | |