

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

ITA.No.848/Hyd/2015
Assessment Year 2010-2011

The Income Tax Officer, Ward-9(3), Hyderabad. (Appellant)	vs.	Mr. Kondal Reddy Mandal Reddy, Hyderabad-500035 PANADQPM5900L (Respondent)
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Cross Objection No.01/Hyd/2016
Arising out of
ITA.No.848/Hyd/2015 - Assessment Year 2010-2011

Mr. Kondal Reddy Mandal Reddy, Hyderabad-500035 PANADQPM5900L (Cross-Objector)	vs.	The Income Tax Officer, Ward-9(3), Hyderabad. (Respondent)
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For Revenue :	Mr. B.R. Ramesh
For Assessee :	Mr. K.C. Devdas

Date of Hearing :	13.04.2016
Date of Pronouncement :	13.05.2016

ORDER

PER SMT. P. MADHAVI DEVI, J.M.

This is an appeal filed by the Revenue for the A.Y. 2010-2011 while the cross-objection is filed by the assessee. At the time of hearing, the Ld. Counsel for the assessee submitted that the cross objection is time barred by 170 days and therefore, the assessee is not pressing

the same. The cross objection is accordingly dismissed as not pressed.

2. As regards the Revenue's appeal, we find that the only issue is as to whether for allowing the exemption under section 54F of the Act, the deemed consideration under section 50C of the I.T. Act is to be taken into consideration or the consideration mentioned in the sale deed only is to be taken into consideration.

3. Brief facts of the case are that the assessee, an individual, deriving income from house property, capital gains and interest income, filed his return of income for the A.Y. 2010-2011 on 13.04.2011 declaring income of Rs.5,19,930. During the assessment proceedings under section 143(3) of the Act, the A.O. observed that the assessee has sold his plot at Banjara Hills for a consideration of Rs.20 lakhs as is mentioned in the sale deed. He observed that vendees have paid the stamp duty, registration charges etc., for the value of Rs.89,60,000. Therefore, he invoked the provisions of section 50C of the Act and brought the difference of Rs.69,60,000 to tax as the capital gain. Against the same, the assessee claimed deduction under section 54F of the I.T. Act for investment of Rs.1,37,15,550 made by him for construction of a residential house at Ramakrishnapuram, Saroornagar, Ranga Reddy District. The A.O. however, held that the sale consideration of Rs.20 lakhs mentioned in the sale deed alone is eligible for exemption under section 54F and

not deemed consideration arrived at by invoking the provisions of section 50C of the I.T. Act. He therefore, brought the sum of Rs.69,60,000 to tax as capital gain. Aggrieved, assessee preferred an appeal before the CIT(A) who allowed the same and the Revenue is in appeal before us.

4. The Ld. D.R., while relying upon the order of the A.O, has placed reliance upon the following two decisions in support of his contention that the “full value of the sale consideration” as mentioned in Section 54F is only the “Consideration” actually received by the assessee and not the deemed consideration received under section 50C of the I.T. Act.

(1) CIT, West Bengal and another vs. George Henderson & Co. Ltd., (1967) 66 ITR 622

(2) CIT vs. Smt. Nilofer L Singh (2009) 309 ITR 233 (Del.) (HC).

5. The Ld. Counsel for the assessee, on the other hand, supported the orders of the CIT(A) and also placed reliance upon the following decisions.

(1) Raj Babbar vs. ITO (2013) 56 SOT 1 (ITAT) (Mum.)

(2) Gouli Mahadevappa vs. ITO (2013) 356 ITR 90 (Kar.)

6. Having regard to the rival contentions and the material on record, we find that there is no dispute that the assessee has invested a sum of Rs.1,37,00,000 in the

construction of a new residential house at Saroornagar. It is also not disputed that the sale consideration under section 50C is to be adopted as the sale consideration for computation of the capital gain. The dispute only is whether the actual sale consideration mentioned in the sale deed or the deemed sale consideration under section 50C is to be adopted for allowing the deduction under section 54F of the I.T. Act. We find that in the case of Raj Babbar vs. ITO (cited supra), the Tribunal at Mumbai has considered this issue at length and at para 11 to 13 held as under :

"11. From the provisions of section 54F (1), it is evident that the provisions of section (a) and (b) read with the explanation on 'net consideration' decides if any chargeable capital gains u/s 45 exists or not subject to the conditions specified therein. As per the provisions of section 54F(1)(a) of the Act, no capital gains are chargeable u/s 45 of the Act, "If the cost of the new asset is not less than the net consideration in respect of the original asset". The principle of proportionate exemption vide clause (b) above is put into service. Now, the question is what is the meaning of the expression 'net consideration'? The same is defined in the Explanation below the section 54F(1) and the same reads that "For the purpose of this section (54F), net consideration', in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer." It is a settled issue that the provisions of section 54F of the Act are code by itself. Thus, the plain reading of the provisions of sections 45, 48, 50C and 54F of the Act suggest that there is nothing to bar benefits of exemption u/s 54F in respect of the capital gains relatable to the FVC as

per the deemed fiction u/s 50C of the Act. Clause (a) of section 54F(I) specifies that If the cost of the new asset is not less than the net consideration in respect of the original asset, there is no chargeable capital gains u/s 45 of the Act. In the instant case, the cost of the new asset is Rs. 17,65,752/and 'net consideration' as defined is ' .. the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer' i.e. Rs. 16,87,000 as per sec 50C and Rs. 8 lakhs as per the sale deed. The said clause (a) refers to the provisions of section 45 of the Act. In the given facts of the instant case, no chargeable capital gains arises u/s 45 of the Act. Thus, in this case, with investment of Rs. 17,65,752/in new asset, the cost of the new asset is not less than the net consideration (NC) in respect of the original asset. Of course, the 'net consideration' has two variants depending on FVC adopted and in this case, the NCs are quantitatively lesser than the cost of the new asset leaving no chargeable capital gains u/s 45 of the Act. Therefore, in our opinion, the assessee is not chargeable to any capital gains considering the given facts of the case and also the said clause (a) of section 54F(1).

12. *We shall now take up the orders of the Tribunal cited by the parties. First, we shall take up the decision in the case of Gouli Mahadevappa (supra) dt 16.07.2010. Facts are that the assessee sold plot for Rs. 20 lakhs. The consideration as per the SRO is Rs. 36 lakhs. Assessee purchased new asset for Rs. 24 lakhs and invested entire sale proceeds. AO calculated capital gains at Rs.14,06,494 and allowed exemption to the extent of FVC of Rs. 20 lakhs and not on FVC of Rs. 36 lakhs. On these facts, the Tribunal held that the deeming fiction on FVC given in section SOC cannot be extended to section 54F (para 8.19) as the same is an exemption provisions and is a complete code in itself and it does not override others CIT v. ACE Builders (P.) Ltd. [2006] 281 ITR 210/[2005] 144 Taxman 855 (Bom.).*

13. Thus, the cost of the new asset is Rs. 24 lakhs and 'net consideration' as defined is the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer' i.e. Rs. 36 lakhs as per sec 50C and Rs. 20 lakhs as per the sale deed. Therefore, it is case where the cost of the new asset is not less than net consideration u/s. 50C and more than the net consideration as per the sale deed. Therefore, the decision of the Tribunal in this case is distinguishable on facts. Therefore, clause (a) of section 54F(1) of the Act does not apply.”

6.1. Further, the Hon'ble Karnataka High Court in the case of Gouli Mahadevappa vs. ITO (cited supra), at paras 6 to 8 has held that the ultimate object and purpose of section 50C of the I.T. Act is to see that the undisclosed income of capital gains received by the assessee should be taxed and that the law should not encourage and permit the assessee to peg down the market value at their whims and fancy to avoid tax, but when the capital gain is assessed on notional basis, whatever amount is invested in the new residential house within the prescribed period under section 54 of the I.T. Act, the entire amount invested, should get benefit of deduction irrespective of the fact that the funds from other sources are utilised for new residential house. The decision relied upon by the Ld. D.R. in the case of CIT, West Bengal and another vs. George Henderson & Co., Ltd., (cited supra) and CIT vs. Smt. Nilofer L Singh are distinguishable on facts. Since the facts in the case of the assessee herein are similar to the facts in the case of Raj

Babbar (cited supra), respectfully following the decision of the Coordinate Bench, we do not see any reason to interfere with the order of the CIT(A).

7. In the result, appeal of the Revenue and cross objection of the assessee are dismissed.

Order pronounced in the open Court on 13.05.2016.

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Sd/-
(SMT. P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 13th May, 2016

VBP/-

Copy to :

1.	The Income Tax Officer, Ward-9(3), 2 nd Floor, D' Block, I.T. Towers, A.C. Guards, Masab Tank, Hyderabad.
2.	Mr. Kondal Reddy Mandal Reddy, 'Sri Arcade', 11-12-349, Road No.9, R.K. Puram, Saroornagar, Hyderabad - 500 035.
3.	CIT(A)-VII, Hyderabad.
4.	CIT-VII, Hyderabad.
5.	D.R. ITAT 'B' Bench, Hyderabad.
6.	Guard File