

IN THE INCOME TAX APPELLATE TRIBUNAL

Hyderabad ' B ' Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member

AND

Shri S.Rifaur Rahman, Accountant Member

ITA No.1707/Hyd/2016

(Assessment Year: 2013-14)

Sri Ajeet Kumar Jaiswal Hyderabad PAN: ABHPJ 1947 K <i>(Appellant)</i>	Vs	Income Tax Officer Ward 4 (4) Hyderabad <i>(Respondent)</i>
---	----	--

For Assessee :	Shri C.V. Narasimham
For Revenue :	Smt. N. Swapna, DR

Date of Hearing:	15.06.2017
Date of Pronouncement:	31.08.2017

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2013-14 against the order of the CIT (A)-1 Hyderabad, dated 20.09.2016. The assessee has raised the following grounds of appeal in its revised Form-36 filed on 9.2.2017:

"1. The order of the Learned Commissioner (Appeals) is contrary to facts of the case, contrary to the evidence on record and unsustainable in law. The Commissioner (Appeals) has passed a cryptic order without properly examining the relevant facts and law.

2. The Learned Commissioner (Appeals) failed to appreciate that the appellant had complied with all the requirements of Section 54 (1) of the Act since the appellant had purchased a residential apartment of value

more than the capital gains and the new residential asset was purchased within 2 years from the date of sale of residential property.

3. The Learned Commissioner (Appeals) failed to appreciate that the appellant had admittedly sold the property on 09-08-2012 and had purchased a new asset on 09-01-2014 which is well within the 2 year period under Section 54 (1) of the Act.

4. The Learned Commissioner (Appeals) failed to appreciate that the appellant had purchased the new residential asset well within the relevant assessment year itself and hence there is no default under Section 54 (2) of the Act considering that the time limit must be interpreted to include section 139 (4) of the Act.

5. The Learned Commissioner (Appeals) failed to appreciate that the time limit under Section 54 (1) of the Act has to be read as including the time limit under Section 139 (4) of the Act and hence the appellant having purchased the new asset within the period prescribed under Section 139 (4), the exemption cannot be denied merely on the ground that appellant has deposited the capital gains in term deposit with bank within the time instead of depositing in the Capital gains Account within the period prescribed under Section 139 (1).

6. The Learned Commissioner (Appeals) failed to appreciate that the Honorable Gauhati High Court in the case of CIT vs. Rajesh Kumar Jalan, reported in [2006] 286 ITR 274 (Gauhati) and the Punjab and Haryana High Court in the case of CIT vs. Ms. Jagriti Aggarwal, reported in [2011] 339 ITR 610 (P&H) have clearly stated that the Section 54 (2) must be read with Section 139 (4) and the appellant would have time up to 1 year from end of the relevant assessment year.

7. The Learned Commissioner (Appeals) also failed to appreciate that the appellant had admittedly deposited the entire capital gains with the bank under term deposit instead of deposit under capital gains account scheme which is merely a technical default and exemption cannot be denied.

8. For these and other grounds that may be urged at the time of hearing, it is prayed that appeal may be allowed”.

2. Brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y 2013-14 on 4.10.2013 admitting total income of Rs. 4,44,240. The assessee claimed exemption of capital gain u/s 54F of the Act.

Brief facts relating to this issue are that during the relevant A.Y, the assessee jointly sold an immovable property vide document No. 3253/12 dated 9.8.2012 for a consideration of Rs. 1,08,00,000. In his computation of income, while calculating the long term capital gain, the assessee admitted his share of 50% of the consideration i.e. Rs. 50,40,000 as long term capital gain and thereafter claimed deduction u/s 54F of the Act with the narration "Investment in Capital Gain amount in Bank Rs. 50,40,000" and thus admitted 'Nil' capital gain. In the cash account filed along with the return of income also, the assessee has shown that this amount was deposited in capital gains account. In the return of income filed, the assessee has claimed deduction u/s 54F of the Act on the entire amount received towards his share i.e. Rs. 50,40,000.

3. During the course of assessment proceedings u/s 143(3) of the Act, the AO asked the assessee to furnish the details of deposits in capital gains A/c. Though the assessee claimed that the amount of capital gain was invested in capital gains a/c u/s 54(2), the assessee, vide letter dated 16.11.2015 came up with a new plea of investment in construction of residential houses u/s 54(1) of the Act. It was stated that the assessee had deposited the entire amount in SBH on 13.08.2013 and the same was utilized for purchase of another two residential flats vide agreement of sale dated 9.1.2014 and therefore, the requirement of section 54 are substantially complied with.

4. The AO sought a clarification from the Bank about the deposit of capital gains and it was intimated by the Bank to the AO that the deposit was into a normal term deposit A/c and not a capital gain a/c. Observing that the unutilized portion of the capital gain has to be deposited in the capital gain a/c u/s 54 F of the Act, before the due date of filing of return u/s 139(1) of the Act and also that the flats allegedly purchased by the assessee were in joint names of the assessee and his son, the AO disallowed the claim u/s 54F of the Act and brought the entire amount of capital gain to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

5. The learned Counsel for the assessee submitted that the assessee had invested the entire sale consideration in purchase of residential flats within the time allowed u/s 139(4) of the Act and therefore, the exemption u/s 54F should be allowed. In support of this contention, he placed reliance upon the decision of the Honorable Gauhati High Court in the case of CIT vs. Rajesh Kumar Jalan reported in (2006) 286 ITR 274 (Gau.) and also the decision of the Honorable Punjab & Haryana High Court in the case of CIT vs. Jagriti Aggarwal reported in (2011) 339 ITR 610 (P&H H.C).

6. The learned DR, on the other hand, supported the orders of the authorities below.

7. Having regard to the rival contentions and the material on record, we find that the following facts are relevant for adjudication of the issue:

i)	Date of sale of the property	9.2.2012
ii)	Date of deposit of Previous year 2011-12, A.Y 2012-13 capital gains in term deposit a/c	13.8.2013
iii)	Due date for filing the return of income u/s 139(1)	31.07.2013
iv)	Due date for filing the return of income u/s 139(4)	31.03.2014
v)	Date of agreement of purchase	9.1.2014

8. From the above details, it is seen that the assessee has deposited the capital gains in the term deposit a/c and not the capital gains scheme a/c as required u/s 54(2) of the Act. Whether, it is sufficient compliance of the requirement is to be seen. It is the case of the assessee that it is only a technical defect and exemption cannot be denied on this ground. We have examined the features of the capital gains account scheme and find that such an account can be opened only by depositing the entire capital gain funds and not with partial sale withdrawals and the money can be withdrawn only by giving a written application giving details of the purpose of fund requirements such as for purchase of a property or construction of a house and cannot avail any loan facility on such funds. Thus, the intention of introducing the capital gain a/c scheme is to see that where the assessee intends to claim the benefit u/s 54 of the Act, the capital gains are parked with the bank till the assessee identifies the property and invests the same within the specified period. Except for the above conditions, there is not much of a difference between the term deposit and the CGAS and the interest earned thereon is also chargeable to tax as "income from other sources". Taking the above features into consideration and also that the assessee has not utilized the term deposit for any other purpose till investment in the residential flats, we agree with the contention of the assessee that the defect is only a technical defect which can be condoned provided he fulfills all the conditions of the capital gains a/c except for the nomenclature of the a/c. It is not the case of the Revenue that the assessee has violated any of the above conditions.

9. The other argument of the assessee is that the funds have been utilized for investment in residential flats within the period allowed to file the return of income u/s 139(4). For this purpose, the assessee has relied on two decisions. In the case of Rajesh Kumar Jalan, the assessee therein had invested the funds

in purchase of residential property within the period allowable u/s 139(4) of the Act and the Honorable Gauhati High Court confirmed the order of the Tribunal that it was sufficient compliance of section 54(1) and there was no necessity to comply with the conditions u/s 54(2) of the Act.

10. In the case of Jagruti Aggarwal, the Honorable Punjab & Haryana High Court followed the decision of the Honorable Gauhati High Court in the case of Rajesh Kumar Jalan. However, we find a slight difference in the case of the assessee before us from the case of Jagruti Aggarwal as the assessee before us has invested in the new property after filing the return of income but before the time u/s 139(4) expires, whereas in the said case the investment was made prior to filing of the return u/s 139(4) of the Act.

11. However, section 54 of the Act being a beneficial provision introduced with the goal of providing residence to the citizens of India, has to be construed liberally as long as it serves the purpose of its enactment. As held by the Honorable Supreme Court of India in the case of Kunal Singh vs. Union of India, reported in (2003) ARI SCW 1013 “in construing a provision of social beneficial enactment, the view that advances the object and serves its purpose must be preferred to the one which obstructs the object and paralyzes the purpose of the Act”.

12. Further, in the case of Petron Engineering Construction (P) Ltd vs. CBDT (1989) 175 ITR 523 (S.C), the Honorable Supreme Court held that “It is true that an exemption provision should be liberally construed but this does not mean that such liberal construction should be made doing violence to the plain meaning of such exemption provision. Liberal construction will be made whenever it is possible to be made without impairing the legislative requirement and the spirit of the provision”.

13. Therefore, it is important to understand the legislative intent behind the introduction of section 54 of the I.T. Act. It was introduced with a view to encourage house construction in India as explained by CBDT in its Circular No.348 dated 30.06.1982. We are of the opinion that unless the assessee has violated the provisions of section 54 in such a way that by allowing the exemption, the purpose of the legislation would be defeated, the assessee cannot be denied the exemption. In the case before us, we find that the assessee has invested in purchase of the residential flats within two years after sale of the original asset and is eligible for exemption u/s 54 of the Act subject to the fulfillment of the other conditions stipulated in the section. In the paragraphs above, in the peculiar circumstances of this case, we have already

held that the deposit in Term Deposit A/c can be considered as compliance u/s 54(2) of the Act, provided the assessee has deposited the entire capital gains and has not availed any loan against the said A/c and has utilized the same for purchase of the new property. The issue is therefore, set aside to the file of the AO only for verification of this aspect.

14. The other objection of the AO that the new property is purchased in the joint names of the assessee and his son also is not sustainable in view of the decision of the Honorable Delhi High Court in the case of CIT vs. Ravinder Kumar Arora reported in 242 ITR 38.

15. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 31st August, 2017.

Sd/-

(S.Rifaur Rahman)

Accountant Member

Sd/-

(P. Madhavi Devi)

Judicial Member

Hyderabad, dated 31st August, 2017.

Vinodan/sps

Copy to:

1 Sri Ajeet Kumar Jaiswal, 3-3-120/A Chappal Bazar, Kachiguda Hyderabad

2 Income Tax Officer Circle 4(4) IT Towers, AC Guards, Hyderabad 500004

3 CIT (A)-1 Hyderabad

4 Pr. CIT – 1 Hyderabad

5 The DR, ITAT Hyderabad

6 Guard File

By Order