IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD
(Through Virtual Hearing)

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1418/Hyd/2019		
A.Y. 2008-09		
Begum Badarunnisa, Warangal. PAN: ANWPB 6589 Q	VS.	Income Tax Officer, Ward-5, Warangal.
(Appellant)		(Respondent)
Assessee by	Shri G. Manikya Prasad	
Revenue by	Shri P. Suresh, DR	
Date of hearing:	29/03/2021	
Date of pronouncement:	01/07/2021	

<u>ORDER</u>

This appeal is filed by the assessee against the order of the Ld. CIT(A)-3, Hyderabad in appeal No. 10300/ITO-5/WGL/CIT(A)-3/2018-19, dated 7/6/2019 passed U/s. 143(3) r.w.s 263 of the Act for the A.Y. 2008-09.

2. The assessee has raised six grounds in her appeal however, the crux of the issue is that:

"The Ld. CIT (A) has erred in sustaining the addition made by the Ld. AO towards LTCG of Rs. 12,26,790/- denying the benefit of deduction U/s. 54F of the Act."

3. The brief facts of the case are that the assessee is an individual. The assessee failed to file her return of income for the relevant AY 2008-09. Subsequently, it was revealed that the assessee had sold her property thereby earning capital gain. Thereafter in response to the notice issued U/s. 148 dated 25/3/2015 the assessee filed her return of income on 29/6/2015 admitting LTCG of Rs. 3,29,460/- after claiming deduction U/s. 54/54F for Rs. 11,07,971/-. The assessee has stated to have purchased a new house property for Rs. 15,56,250/- on 6/6/2009. After due verification the assessment was completed U/s. 143(3) r.w.s 147 of the Act 13/7/2015 accepting the returned income of the assessee. When the matter cropped up before the ld. CIT he observed that the assessee had not deposited the sale consideration of Rs. 15,56,250/- in the capital gains deposit account scheme as envisaged U/s. 54F(4) of the Act. Therefore, invoking his power U/s. 263, he set aside the assessment order and directed the Ld. AO to redo the assessment in accordance with law after allowing an opportunity to the assessee of being heard vide order dated 27/11/2017. The Ld. AO after examining the facts of the case arrived at the conclusion that the assessee had not deposited the sale proceeds of Rs. 15,56,350/- in the capital gains deposit accounts scheme maintained with any Nationalised Bank as per section 54F(4) of the Act and therefore, disallowed the claim of deduction and assessed the LTCG in the hands of the assessee at Rs. 12,26,790/-. On appeal, The Ld.

CIT (A) confirmed the order of the Ld. AO by agreeing with his view by passing an ex-parte order.

4. Before me, the Ld. AR submitted that the assessee had deposited the sale proceeds of Rs. 15,56,350/- in the Nationalised Bank though it was not deposited in the capital gains scheme. The Ld. AR further argued stating that this was a small technical mistake which had occurred due to oversight for which the assessee may not be penalised. To verify these facts, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. AO. The Ld. DR on the other hand relied on the orders of the Ld. Revenue Authorities and pleaded for confirming the same.

5. I have heard the rival submissions and carefully perused the materials on record. On an earlier occasion the SMC Bench of Hyderabad Tribunal in ITA No. 504/Hyd/2020 in the case of Satya Prakash Reddy Aedudodla vs. ITO vide Order dated 22/06/2021 following the decision of the Division Bench of Chennai Tribunal had held that if the sale proceeds are deposited in any Nationalised Bank it would suffice though not transferred to the capital gain deposit scheme account. The relevant portion of the Hyderabad Bench of the Tribunal is extracted herein below for reference:-

“10. However, with respect to the claim of deduction U/s. 54F of the Act for Rs. 30 lakhs the Chennai Bench of the Tribunal in ITA No. 2455/Chny/2017 dated 30/01/2018 in the case of ACIT vs. Justice T.S. Arunachalam it was held that if the sale proceeds are deposited in Nationalised Bank it would suffice to claim the benefit of deduction U/s. 54F of the Act. Relevant portion from the said Tribunal’s order is reproduced herein below for reference:

“7. We have heard the rival submissions and carefully perused the material on record. At the outset we find this issue squarely covered by the decision of the Chennai Bench of the Tribunal in ITA No.1167/Mds/2016 vide order dated 15.09.2016 wherein on the identical situation it was held that such small technical breach will not disentitle the assessee the benefit of Section 54 of the Act. The gist of the decision is reproduced herein below for reference:-

“8. We have heard the riva”l submissions and carefully perused the materials available on record. In the decision of Shri Madhuvan Prasad Vs. ITO, supra the Chennai Bench of the Tribunal has allowed the benefit of section 54 of the Act because the assessee had fulfilled all the conditions prescribed under section 54 of the Act barring the deposit of the sale proceeds in the “capital gain scheme account” as prescribed under section 54(2) of the Act. In that decision reliance was also placed in the decision of Hon’ble Apex Court in the case of Motilal Padampat Sugarmill Co.Ltd. Vs. State of Uttar Pradesh & Ors wherein it was held, that ‘thus there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement there is no such Maxim known to the law. In the given case before us also, it is not disputed that the assessee had not fulfilled the conditions prescribed under section 54 of the Act barring the deposit of the sale proceeds in the “capital gain scheme account”. Moreover, the facts reveal that the assessee had deposited the entire sale proceeds in his savings bank account maintained with nationalized bank out of which he has constructed his house. The only small lacuna assessee had made is that the assessee though had placed the entire sale proceeds in the nationalized bank he has not transferred the same in the “Capital gain scheme account”. Considering these facts of the case and the decisions of the Tribunal and the Hon’ble Apex Court cited above, we are of the considered view that for this small technical lapse of the assessee, the benefit of section 54 should not be denied. Section 54 of the Act is a beneficial provision and a beneficial interpretation has to be made as far as possible for giving benefit to the assessee. The assessee had proceeded to comply with the provisions of section 54 of the Act but has only made a small technical breach which we are of the considered view should not disentitle the assessee for the benefit of section 54 of the Act. Therefore, we hereby direct the learned Assessing Officer to grant the benefit of section 54 of the Act to the assessee and accordingly delete the addition made by him which was further sustained by the learned Commissioner of Income Tax (Appeals).”

7.1 Further the Ld.CIT(A) has also followed the decisions of various higher Judiciary wherein the issued is held in favour of the assessee

> *in similar circumstances. Therefore we do not find it necessary to interfere with the order of the Ld.CIT(A) on this issue."*
> *Now, Since the assessee has claimed before me that the entire amount was deposited in Nationalised Bank and thereafter fully utilised the same for the purpose of acquiring the New asset within the period specified under the Act, in the interest of justice, I hereby remit back the matter to the file of the ld. AO in order to verify the claim of the assessee and decide the matter in accordance with law and merit and in the light of the Tribunal decision cited herein above."*

6. Therefore, in the interest of justice, I hereby remit the matter back to the file of the Ld. AO to verify whether the assessee has deposited the entire sale proceeds in any of the Nationalised Bank and if found so then the Ld. AO is hereby directed to grant the benefit of deduction provided all the other conditions stipulated under the Act are complied with. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

8. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, we find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, we have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

Pronounced in the open Court on the 01st July, 2021.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 01st July, 2021.
OKK
Copy to:-

1) Begum Badrunnisa C/o. G.S. Madhava Rao & Co., Chartered Accountnts, F5 & 7, Hyderabad Business Centre, Hyderguda, Hyderabad – 500 029.
2) The Income Tax Officer, Ward-5, O/o. Income Tax Officer, Station Road, Warangal.
3) The CIT(A)-3, Hyderabad.
4) The Pr. CIT-3, Hyderabad.
5) The DR, ITAT, Hyderabad
6) Guard File