



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

IT(SS)A No.667/LKW/2019
Assessment Year: 2016-17

Dr. Sudhir Srivastava 57-B, Singar Nagar Alambagh, Lucknow	v.	The Dy. CIT Central Circle 1 Lucknow
TAN/PAN:AKYPS2772D		
(Appellant)		(Respondent)

Appellant by:	Shri K. R. Rastogi, C.A.		
Respondent by:	Smt. Sheela Chopra, CIT (DR)		
Date of hearing:	15	07	2021
Date of pronouncement:	19	07	2021

ORDER

PER A.D. JAIN, V.P.:

This is an appeal filed by the assessee against the order of the Id. CIT(A) III, Lucknow, dated 16.9.2019, for assessment year 2016-17, raising the following grounds of appeal:

1. The CIT (A)-3, Lucknow erred on facts and in law in upholding the disallowance of Rs.17,24,084/- being Long Term Capital Gain on sale of Flat by not allowing the exemption u/s 54F of I. T. Act.
2. The Ld. CIT (A) erred on facts and in law in upholding the disallowance of exemption u/s 54F of I. T. Act by stating that Investment in new assets has to be made' from the "net consideration" received on sale of the Original Assets and not from any other fund.
3. The Ld. .C.I.T. (A) erred on facts and in law in not considering that the Capital Gain arising on sale of Plot was invested in Plot No. 42B , Singar Nagar, Lucknow in

accordance with the scheme laid out in Section 54F(1) of I. T. Act and all requirements of Section 54F are duly fulfilled.

4. The Ld. C.I.T. (A) erred on facts and in law in upholding the addition of Rs.7,50,000/- u/s 2(22)(e) of I. T. Act without appreciating that no incriminating material was found during the course of search relating to addition made on account of deemed dividend.
5. The Ld. C.I.T.(A) did not appreciate that no addition u/s 2(22)(e) of I. T. Act can be made for Rs.7,50,000/- as assessee has already given a Loan of Rs.14,42,391/- which is existing as on date.
6. The additions made are highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by Ld. C.I.T.(A).

2. Apropos ground Nos.1 to 3, the brief facts are that during the relevant assessment year, the assessee has sold a plot No. J-196, Aashiyana Colony, Kanpur Road, Lucknow for a consideration of Rs.40,00,000/-, vide registered Sale Deed dated 20.11.2015. The said plot was purchased by the assessee on 27.06.2009 for a consideration of Rs.13,30,600/-. After deducting the Index Cost of Acquisition of Rs.22,75,916/- from the sale consideration, the net long term capital gain of Rs.17,24,084/- was shown by the assessee. From the said capital gain, exemption u/s 54F of I. T. Act was claimed on account of investment made in the construction of residential house at plot No. 56-B, Singar Nagar, Lucknow. The said plot No. 56-B was jointly owned by the assessee along with his wife, Dr. Nandita Sudhir. The cost of construction of the residential portion by the assessee during the assessment year 2016-17 in plot No. 56-B was worked out by the Assessing Officer at Rs.25,00,000/-. The assessee, before the Assessing Officer, claimed the said amount

to be allowed as exemption u/s 54F of the Act from the Long Term Capital Gain of Rs.17,24,084/-. However, the Assessing Officer rejected the claim of the assessee on account of the following two reasons:

(a) that since the assessee has three properties, namely - (i) J-164, Aashiyana, Lucknow (ii) Plot No. 56-B, Singar Nagar, Lucknow and (iii) Plot No.,57-B, Singar, Nagar, Lucknow, accordingly, the assessee is not eligible for exemption u/s 54F of I.T. Act; and

(b) that since the sale consideration from sale of Plot No. J-196, Aashiyana, Lucknow, has not been utilized for construction of residential house at 56-B, Singar Nagar, Lucknow, the same was not eligible for claiming exemption u/s 54F of I.T. Act.

3. Before the ld. C.I.T (A) the assessee, with regard to the observations of the Assessing Officer at para 4.1 of his order, submitted that the assessee does not have three properties and it was further explained that there is no property at J-164, Aashiyana, Lucknow and the correct address of the property is J-194, Aashiyana, Lucknow and the said property, being J-194, Aashiyana, Lucknow was owned by the assessee's father, Shri Pramod Kuthar Verma. In support of the same, the assessee filed a copy of the Purchase Deed of the property before the ld. CIT(A).

4. The ld. C.I.T. (A) accepted the contentions of the assessee and at Para 10 of her order, she held as under:-

"On perusal of the Registered Lease Deed, it is noted that the aforesaid property J-194, belongs to Pramod Kumar Verma, father of the appellant, hence the appellant's

contention that this residential premises is not owned by the appellant is found to be acceptable."

5. With regard to the issue of non-utilization of sale consideration for investment in construction of residential house at 56-B, Singar Nagar, Lucknow, for which reasoning the Assessing Officer had rejected the exemption under section 54F of I. T. Act, before the Id. CIT(A), it was explained that there is no dispute that the assessee has constructed the residential house on the second and third floors at Plot No. 56-B. It was also explained that the Assessing Officer has taken the cost of construction / investment at Rs.25,00,000/- for the purpose of construction of the aforesaid house.

6. The Id. CIT(A) accepted that the assessee does not own three properties. However, she denied exemption under section 54F of I. T. Act by stating, at Para 15 of her order, as under:

"In view of the above, it is clear that the Investment in the New Asset has to be made from the net consideration received on sale of the original assets and not from any other source. Therefore, appellant's contention that as per Section 54F of the Act, whatever total amount actually incurred by the assessee for construction of residential portion at Plot No. 56-B should be deducted irrespective of the fact that funds invested from different source and not from the capital gain is found to be devoid of any merit and is hereby rejected."

7. The Id. Counsel for the assessee contended before us that section 54F of the I. T. Act does not require that the same fund should be utilized for claiming deduction u/s 54F of I. T. Act, 1961; that the only requirement u/s 54F of the Act is that the construction of residential house should take place within a period of one year before, or two years after the date on which the

transfer took place, or within a period of three years after the date of transfer; and that thus, as per section 54F of the Act, the total amount actually incurred by the assessee for construction of residential portion at plot No. 56-B should be deducted, irrespective of the fact that funds invested are from different sources and not from the capital gain only.

8. The assessee has placed reliance on the following judgments:

- (1) 'CIT vs. Kapil Kumar Agarwal', 66 Taxmann.com 191 (P&H).
- (2) 'Ms. Moturi Lakshmi vs. ITO' 119 Taxmann.com 488 (Mad.).
- (3) 'Gouli Mahadevappa vs ITO' [2013] 33 Taxmann.com 47 (Karnataka).
- (4) 'Smt. Pushpa Devi Tirbrewala vs. ITO' [2013] 33 Taxmann.com 305 (Hyderabad Trib.)

9. The ld. D R., on the other hand, has, supporting the impugned order, contended that as correctly held by the ld. CIT(A), the investment in the new asset has to be made from the net consideration received on sale of the original asset and not from any other source; and that therefore, the appellant's contention that as per section 54F of the Act, the total amount actually incurred by the assessee for construction of residential portion at plot No. 56-B should be deducted, irrespective of the fact that the funds invested are from different sources and not from the capital gain, is devoid of any merit.

10. The issue is as to whether the ld. CIT(A) is correct in holding that as per the provisions of section 54F, the investment in the new asset has necessarily to be made from the net

consideration received on the sale of the original asset and not from any other source.

11. In 'CIT vs. Kapil Kumar Agarwal' (supra), it has been held by the Hon'ble Punjab and Haryana High Court that section 54F nowhere envisages that the sale consideration obtained by assessee from the original capital asset is mandatorily required to be utilized for purposes of meeting the cost of the new asset and where the investment made by assessee, although not entirely sourced from capital gain, but, was within stipulated time and more than the capital gain earned by him, the assessee was entitled to exemption under section 54F of the Act.

12. In 'Ms. Moturi Lakshmi vs. ITO' (supra), the Hon'ble High Court of Madras has, inter alia, followed the case of 'CIT vs. H.K. Kapoor', [1998] 234 ITR 753, which has been rendered by the Hon'ble jurisdictional Allahabad High Court.

13. The decisions in 'Gouli Mahadevappa vs. ITO' (supra) and 'Smt. Pushpa Devi Dirbrewala vs. ITO' (supra) are also to the same effect.

14. No decision contrary to the above case-laws has been cited before us by the Department.

15. In view of the above, the assessee's grievance, by way of ground Nos.1 to 3, is found to be justified and is accepted as such. The assessee's claim for exemption under section 54F of the Act is allowed and the disallowance of Rs.17,24,084/-, being long term capital gain on sale of plot, is deleted.

16. Concerning ground Nos.4 and 5, the Assessing Officer treated 60% of the cost of construction of residential portion at plot No. 56-B as 'deemed dividend' u/s 2(22)(e) of the I.T. Act and, accordingly, added Rs.7,50,000/- being half of

Rs.15,00,000/- in the assessee's hands and the remaining Rs.7,50,000/- in the hands of the assessee's wife, Dr. Nandita Sudhir.

17. Before the Id. CIT(A), it was explained by the assessee that the assessee had given a loan of Rs.14,42,391/- to M/s Sun Eye Hospital and Laser Centre Private Limited, which is outstanding from assessment year 2015-16 and stands duly reflected in the audited Balance Sheet and the income tax return of the said Company; and that accordingly, to the extent of Rs.14,42,391/-, no addition can be made u/s 2(22)(e) of I.T. Act in the hands of the assessee. In support of the same, a copy of the Ledger Account of the assessee in the books of M/s Sun Eye Hospital and Laser Centre Private Limited was also filed before the Id. CIT(A). Copies of the audited Balance Sheet and Profit and Loss Account of M/s Sun Eye Hospital and Laser Centre Private Limited for the year ending 31.03.2016 were also furnished before the Id. CIT(A).

18. The Id. CIT(A) confirmed the addition made by the Assessing Officer observing that since the nature of income, from which the payment has been made, is undisclosed income, it does not partake the character of repayment of loan.

19. The Id. Counsel for the assessee has contended before us that Shri Sudhir Srivastava had given an unsecured loan of Rs.14,42,391.09 to the Company, M/s Sun Eye Hospital & Laser Center Private Limited; and that the said loan was outstanding as on 01.04.2015 and also the closing outstanding as on 31.3.2016 was Rs.14,42,391.09. Our attention has been drawn to APB:41 & 42, which is a copy of the ledger account of the assessee's unsecured loan in the books of the Company, M/s Sun Eye Hospital & laser Center Private Limited. Attention has

also been drawn to APB:43 to 54, i.e., a copy of the audited balance sheet and profit and loss account of M/s Sun Eye Hospital & Laser Center Private Limited for the year ending on 31.3.2016.

20. The ld. D.R. has stated that the ld. CIT(A) has rightly confirmed the addition made by the Assessing Officer, observing that since the nature of income, from which the payment has been made, is undisclosed income, it does not partake the character of repayment of loan.

21. In the ledger account of the assessee's unsecured loan in the books of M/s Sun Eye Hospital & Laser Center Private Limited (APB:41 & 42), the loan of Rs.14,42,391.09 has been shown as outstanding opening balance as on 1.4.2015 and as closing balance as on 31.3.2016. Further, in the balance sheet of M/s Sun Eye Hospital & Laser Center Private Limited, for the year ending 31.3.16 (APB:43 to 54), the loan account of Dr. Sudhir Srivatsava is lying under "Schedule 2.03- Long term Borrowings". The said Schedule 2.03 is placed at page 48 of the paper book. In the said Schedule, the loan of Dr. Sudhir Srivastava is grouped under the sub-head "Unsecured Borrowings" at Rs.68,45,871.64. The breakup of this sub head "Unsecured Borrowings" is placed at page 41 of the paper book, as under:

(1) Loan A/c Asha Verma	Rs.48,72,017.11
(2) Loan A/c Nandita Sudhir	Rs.5,31,463.44
(3) Loan A/c Sudhir Srivatsva	<u>Rs.14,42,391.09</u>
Total	Rs.68,45,871.64

2. In view of the above, it is evident that there was an opening deposit/loan of Rs.14,42,391.90 of the assessee, Shri Sudhir Srivastava, in the books of M/s Sun Eye Hospital & Laser Center Private Limited. The assessee has given an advance of Rs.14,42,391/- to M/s Sun Eye Hospital & Laser Center Private Limited, Lucknow. Therefore, as rightly contended, upto Rs.14,42,391/-, there cannot be any addition as per section 2(22)(e) of the Act. Accordingly, ground Nos.4 & 5 are accepted and the addition to the extent of Rs.7.50 lakhs for deemed dividend under section 2(22)(e) of the Act is deleted.

3. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 19/07/2021.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:19/07/2021

JJ:

Copy forwarded to

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar