आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

Appeal in ITA No.	Assessee	Revenue	A.Y
565/Hyd/2020	Smt. Madhu Devi Jain, Hyderabad PAN:AEJPJ5260Q	Income Tax Officer Ward 4(2) Hyderabad	2015-16
566/Hyd/2020	Shri Rajesh Kumar Jain, Hyderabad PAN:ACEPJ6675N	-do-	2015-16
567/Hyd/2020	Shri Ratanlal Jain Hyderabad PAN:ACEPJ6676N	-do-	2015-16
568/Hyd/2020	Smt.Chandra Devi Jain, Hyderabad PAN:ACEPJ6674P	-do-	2015-16

Assessee by:	Shri S. Rama Rao, Advocate
Revenue by:	Shri K. Madhusudan, CIT(DR)
Date of hearing:	05/10/2023
Date of pronouncement:	11/10/2023

ORDER

Per R.K. Panda, Vice-President

The above 4 appeals filed by the assessees are directed against the separate orders dated 24.02.2020 passed u/s 263 of the I.T. Act of the learned Pr.CIT-1 Hyderabad, relating to A.Y.2015-16. Since identical issues are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order.

ITA No.565/Hyd/2020 – Smt. Madhu Devi Jain.

2. Facts of the case, in brief, are that the assessee is an individual deriving income from house property, business income, capital gains and other sources. She filed her return of income for the A.Y 2015-16 electronically on 27.11.2015 declaring an income of Rs.3,49,568/- after claiming deduction under Chapter VIA at Rs.1701/-. Subsequently, the case was selected for scrutiny under CASS and the Assessing Officer completed the assessment u/s 143(3) on 22.11.2017 accepting the income returned.

3. Subsequently, the learned PCIT, on perusal of the assessment record, noted that the order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue for the following reasons:

> *"2(i) The case of the assessee was selected for scrutiny to verify the deduction claimed under the head Capital Gains. In this case, the assessee, along with three others, entered into development agreement with M/s. Ace Venture India Pvt. Ltd on 5.6.2012, keeping land possession and rights with him. In consideration, the developer has allotted seven flats bearing Nos. 103, 203, 204, 205, 206, 303 & 304 in the month of February, 2015 at ACE RATNA PEARL Apartment. Out of the seven flats given to the assessee, the assessee has sold all flats during F.Y.2014-15 itself and claimed exemption u/s.54F of I.T. Act.*
>
> *2(ii). As verified from the assessment-record; it is evident that the assessee has sold all the flats bearing nos.,103, 203, 204, 205 206, 303 &304 without holding them for minimum period of three years from the date of acquisition. The assessee's act of such sale within three years amounts to short term capital gain of .Rs.157,08,220 and the same needs to be taxed @ 30% for the A.Y. in which it is sold along with his net taxable income for the A.Y question".*

4. He, therefore, issued a notice u/s 263 of the I.T. Act asking the assessee to explain as to why the order passed by the Assessing Officer should not be set aside. The assessee in her

reply filed the following submission which has been reproduced by the learned PCIT and which reads as under:

> *"the assessee purchased a piece of land way back in 1995 on 24th January 1995. This fact is on record. He along with others entered into a development agreement on 5th June 2012 with a developer. Later in 2015 the builder allotted flats. The assessee filed his return of income for the assessment year 2015-16 on 27.11.2015 admitting Capital Gains of Rs.1,66,23,000/- taking it as consideration for the portion of land transferred to the builder and after reducing the indexed cost of acquisition amounting to Rs. 9,14,780/ on the portion of land transferred arrived at Capital Gains or Rs.1,57,08,220/-. The same amount is claimed as investment U/s.54F. Such claim is held to be valid in several cases by the I.TA.T, following decision of the Madras High Court, Karnataka high Court. One such case is Coonjeevaram Krishnan. This decision is followed even by the Commissioners in appeal stage. The amendment to the provisions of Sec.54F has come subsequently. Thus, there no error in the claim made U/s.54F or in allowing by the Assessing Officer, be that as it may, if the Honorable CIT clarifies as to what is the error in allowing the deduction and what short comings are there in the enquiries the assessee would submit the details required for such enquiries. Copy of the purchase "DEED" of 1995, Copy of the development agreement entered in 2012 and also the return of income with computation are submitted for ready perusal. As there is no error in view of the decisions of the ITAT and High Court it is to party that the proceedings u/s 263 may please be dropped".*

5. However, the learned PCIT was not satisfied with the arguments advanced by the assessee. He referred to the provisions of section 54 F of the I.T. Act and observed that the assessee in the instant case has not fulfilled the conditions prescribed u/s 54F of the I.T. Act. He further noted that in this case, the developer viz., M/s. Ace Venture of India Pvt Ltd has entered into development agreement on 05.06.2012 with the assessee along with three others and allotted seven flats bearing Nos. 103, 203, 204, 205, 206, 303 & 304 in the month of Feb.2015 at ACE RATNA PEARL APARTMENT. Out of these seven flats, the assessee has sold all flats bearing Nos. 103, 203, 204, 205, 206, 303 & 304 during the financial year 2014-15 itself and

claimed exemption u/s 54F. He verified from the assessment record, that the assessee has sold the flats bearing Nos. 103, 203, 204, 205, 206, 303 & 304 without holding them for minimum period of three years from the date of acquisition. According to him, the assessee's act of such sale within three years requires the capital gains of Rs.1,57,08,220/- to be taxed @ 30% along with her net taxable income.

6. Relying on various decisions, he held that the Assessing Officer has applied the provisions incorrectly which constitutes an error and as such the assessment is erroneous and prejudicial to the interest of the Revenue. He, therefore, set aside the order of the Assessing Officer with a direction to redo the assessment after examining the issue and after allowing an opportunity of being heard to the assessee.

7. Aggrieved with such order of the learned Pr.CIT, the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned Principal Commissioner of Income-Tax is erroneous both on facts and in law.

2. The learned Principal Commissioner of Income-Tax erred in holding that there is error in the order of assessment made by the Assessing officer u/s 143(3) on 22.11.2017 and further erred in holding that the provision of Sec.263 are applicable to the facts of the case.

3. The learned Principal Commissioner of Income-Tax ought to have considered the fact that exemption u/s 54F granted by the Assessing officer for the assessment year 2015-16, is not erroneous, particularly when the appellant satisfied the necessary conditions for allowing the deduction.

4. The learned Principal Commissioner of Income-Tax ought to have seen that the appellant is entitled for deduction u/s 54F as claimed by the appellant for the assessment yearn 2015-16 and, therefore, there is no error in the assessment order which is prejudicial to the interests of Revenue.

5. Without prejudice, the learned Principal CIT ought to have seen that the capital gain is not taxable for the assessment year 2015-16; that the same was taxed wrongly for the assessment year 2015-16. The learned Principal CIT ought to have seen that no loss to Revenue arose for the year and accordingly initiation of proceedings u/s 263 of the I.T. Act is bad in law.

6. Any other ground that may be urged at the time of hearing.

8. The learned Counsel for the assessee strongly challenged the order of the learned PCIT invoking the provisions of section 263 of the I.T. Act. He submitted that in the instant case there is no loss of revenue and therefore, the twin conditions are not satisfied. Referring to page 2 of the Paper Book, he submitted that the assessee in the computation of total income has declared the estimated market value of flats constructed at Rs.1,66,23,000/- and after claiming the indexed cost of land surrendered and investment u/s 54F computed the tax at Nil. Referring to the copy of the assessment order, he submitted that the Assessing Officer has verified the reply filed by the assessee giving the details of computation of total income, details of long-term capital gain, form 26AS, bank account statement, development agreement, purchase deed copy etc. Referring to Page 17 to 18 of the Paper Book, he drew the attention of the Bench to the copy of the reply filed by the assessee in response to notice u/s 143(2) of the I.T. Act. Relying on various decisions, he submitted that since the Assessing Officer in the instant case after verifying various details given by the assessee has passed the order u/s 143(3), therefore, the same is neither erroneous nor prejudicial to the interest of the Revenue and therefore, the learned PCIT was not justified in invoking the provisions of section 263 of the I.T. Act.

9. The learned DR, on the other hand, submitted that the assessee in the instant case in his reply to the notice issued u/s 143(2) has herself mentioned that she has sold all the seven flats for a consideration of Rs.1,66,23,000/-. The Assessing Officer without examining the contents of the letter has accepted the income returned and therefore, the very purpose for which the case was selected for scrutiny remained unverified. Further,

the assessee without holding the seven flats for a period of 3 years from the date of acquisition claimed deduction u/s 54F after selling these flats. Therefore, there is complete non-application of mind by the Assessing Officer for which the order is erroneous as well as prejudicial to the interest of the Revenue and therefore, the learned PCIT is fully justified in invoking the provisions of section 263 of the I.T. Act.

10. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned Pr. CIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case has accepted the income returned by the assessee at Rs.3,47,867/- allowing the claim of deduction u/s 54F at Rs.1,57,08,220/-. A perusal of the reply given by the assessee before the Assessing Officer shows that the assessee has sold all the seven flats received from M/s. Ace Venture of India Pvt. Ltd for a consideration of Rs.1,66,23,000/- and after claiming the indexed cost of land given for development and investment in house property has claimed 'nil' long term capital gain. We find the learned PCIT has given a finding that as per the letter of the assessee before the Assessing Officer that she has sold all the seven flats during the impugned A.Y without holding these properties for a minimum period of 3 years, the assessee could not have claimed the deduction u/s 54F and therefore, such order of the Assessing Officer has become erroneous and prejudicial to the interest of the Revenue for which he has invoked the provisions of section 263 and accordingly set aside the order to the file of the Assessing Officer for redo the assessment after giving an opportunity of being heard to the assessee. It is the submission of the learned Counsel for the assessee that it was a

typographical error and the PCIT has not examined the issue in detail himself which he could have done and absolutely there is no loss to the Revenue.

11. We do not find any force in the argument of the learned Counsel for the assessee. It is seen from the letter addressed by the assessee to the Assessing Officer in response to the notice u/s 143(2) copy of which is available in the paper book that the assessee has categorically stated that she has sold all the flats for a consideration of Rs.1,66,23,000/-. When the assessee has not held the flats for a minimum period of 3 years, the provisions of section 54F are not fulfilled and therefore, by allowing the claim of deduction u/s 54F, the order of the Assessing Officer has become erroneous as well as prejudicial to the interest of the Revenue. Further, the order of the Assessing Officer is also very cryptic and the reasons for which the case was selected for scrutiny have not been addressed at all. Under these circumstances, the order passed by the Assessing Officer u/s 143(3) on 23.11.2017, in our opinion, has become erroneous as well as prejudicial to the interest of the Revenue. We therefore, do not find any infirmity in the order of the learned PCIT invoking the jurisdiction u/s 263 of the I.T. Act. Accordingly, the order of the learned PCIT is upheld and the grounds raised by the assessee are dismissed.

ITA No.566/Hyd/2020 – Shri Rajesh Kumar Jain

12. After hearing both sides, we find the assessee filed his return of income on 27.11.2015 declaring an income of Rs.2,83,110/- which was accepted by the Assessing Officer in the order passed u/s 143(3) of the I.T. Act on 22.11.2017. We find the

learned PCIT on examination of the record noted that the assessee has not held the properties those were sold for a period of 3 years from the date of acquisition and therefore, the income of the assessee has to be taxed on account of short-term capital gain @ 30%. However, the Assessing Officer in the instant case has allowed the claim of long-term capital gain at Nil. He therefore, issued a notice u/s 263 of the I.T. Act asking the assessee to explain as to why the order passed by the Assessing Officer should not be set aside. The assessee replied that the claim made by the assessee u/s 54F is as per law in view of the various decisions and that there is no error in the order of the Assessing Officer. However, the learned PCIT did not agree with the contention of the assessee and restored the issue to the file of the Assessing Officer to redo the same after examining the issues and after allowing an opportunity of being heard to the assessee.

13. Aggrieved with such order of the learned PCIT, the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned Principal Commissioner of Income-Tax is erroneous both on facts and in law.

2. The learned Principal Commissioner of Income-Tax erred in holding that there is error in the order of assessment made by the Assessing officer u/s 143(3) on 22.11.2017 and further erred in holding that the provision of Sec.263 are applicable to the facts of the case.

3. The learned Principal Commissioner of Income-Tax ought to have considered the fact that exemption u/s 54F granted by the Assessing officer for the assessment year 2015-16, is not erroneous, particularly when the appellant satisfied the necessary conditions for allowing the deduction.

4. The learned Principal Commissioner of Income-Tax ought to have seen that the appellant is entitled for deduction u/s 54F as claimed by the appellant for the assessment yearn 2015-16 and, therefore, there is no error in the assessment order which is prejudicial to the interests of Revenue.

5. Without prejudice, the learned Principal CIT ought to have seen that the capital gain is not taxable for the assessment year 2015-16; that the same was taxed wrongly for the assessment year 2015-16. The learned Principal CIT ought to have seen that no loss to Revenue arose for the year and accordingly initiation of proceedings u/s 263 of the I.T. Act is bad in law.

6. Any other ground that may be urged at the time of hearing".

14. We have heard the rival arguments made by both the sides. A perusal of the submission filed by the assessee before the Assessing Officer shows that Shri Rajesh Kumar Jain has been allotted flat Nos.305, 306, 403, 404, 405, 406 and 503. However, when the assessee has retained 5 flats and invested in two more house properties i.e. property at Sunrise Valley (at Rs.43,29,750/) and investment in another property at LB Nagar (at Rs.1,11,60,000/-), then whether the assessee is entitled to deduction u/s 54F for holding more than two house properties has not been examined by the Assessing Officer. Further, the assessee has sold the flats bearing No.305 and 405 without holding it for a mandatory period of 3 years and therefore the allowability or otherwise of the Long-Term Capital Gain has also not been examined by the Assessing Officer. Under these circumstances, the order passed by the Assessing Officer, in our opinion, is erroneous as well as prejudicial to the interest of the Revenue and therefore, we do not find any infirmity in the order of the learned PCIT invoking the jurisdiction u/s 263 of the I.T. Act. Accordingly, the same is upheld and the grounds raised by the assessee are dismissed.

ITA No.567/Hyd/2020 -Shri Ratanlal Jain

15. After hearing both the sides, we find the assessee in the instant case filed his return of income on 27.11.2015 declaring total income of Rs.3,39,652/- which was accepted by the Assessing Officer in the order passed u/s 143(3) on 23.11.2017. The PCIT on examination of the record noted that the assessee has sold flats 104, 105 & 106 without holding it for a

minimum period of 3 years and therefore, the assessee's act of such sale before 3 years requires the capital gains of Rs.70,62,533/-to be taxed @ 30% being short term capital gain as against the Long-Term Capital Gain claimed by the assessee and thereafter, claiming deduction u/s 54F of the I.T. Act. He, therefore, issued a show cause notice to the assessee asking him to explain as to why the order passed by the Assessing Officer should not be set aside. Rejecting various explanation given by the assessee, the learned PCIT set aside the order of the Assessing Officer with a direction to redo the same after allowing the assessee an opportunity of being heard to the assessee.

16. Aggrieved with such order of the learned Pr. CIT, the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned Principal Commissioner of Income-Tax is erroneous both on facts and in law.

2. The learned Principal Commissioner of Income-Tax erred in holding that there is error in the order of assessment made by the Assessing officer u/s 143(3) on 22.11.2017 and further erred in holding that the provision of Sec.263 are applicable to the facts of the case.

3. The learned Principal Commissioner of Income-Tax ought to have considered the fact that exemption u/s 54F granted by the Assessing officer for the assessment year 2015-16, is not erroneous, particularly when the appellant satisfied the necessary conditions for allowing the deduction.

4. The learned Principal Commissioner of Income-Tax ought to have seen that the appellant is entitled for deduction u/s 54F as claimed by the appellant for the assessment yearn 2015-16 and, therefore, there is no error in the assessment order which is prejudicial to the interests of Revenue.

5. Without prejudice, the learned Principal CIT ought to have seen that the capital gain is not taxable for the assessment year 2015-16; that the same was taxed wrongly for the assessment year 2015-16. The learned Principal CIT ought to have seen that no loss to Revenue arose for the year and accordingly initiation of proceedings u/s 263 of the I.T. Act is bad in law.

6. Any other ground that may be urged at the time of hearing.

17. After hearing both the sides, we find the above grounds are identical to the grounds of appeal No.565/Hyd/2020. We have already decided the issue and the grounds raised by the assessee have been dismissed. Following similar reasonings, the grounds raised by the assessee are dismissed.

ITA No.568/Hyd/2020 – Smt. Chandra Devi Jain

18. After hearing both the sides, we find the assessee in the instant case filed her return of income on 27.11.2015 declaring an income of Rs.3,06,200/- which was accepted by the Assessing Officer in the order passed u/s 143(3) on 22.11.2017. The learned Pr.CIT on examination of the record noted that out of the seven flats allotted by the Developer, the assessee has sold two flats 505 & 506 and claimed deduction u/s 54F. According to the learned PCIT, the assessee without holding the assets under consideration for a period of 3 years could not have claimed the long-term capital gain and thereafter, by claiming the deduction u/s 54F of the I.T. Act. He, therefore, issued a show-cause notice to the assessee u/s 263 asking her to explain as to why the order passed by the Assessing Officer should not be set aside. Rejecting the various explanation given by the assessee, the learned PCIT set aside the order passed by the Assessing Officer with a direction to redo the same after allowing the assessee an opportunity of being to the assessee.

19. Aggrieved with such order of the learned PCIT, the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned Principal Commissioner of Income-Tax is erroneous both on facts and in law.

2. The learned Principal Commissioner of Income-Tax erred in holding that there is error in the order of assessment made by the Assessing officer u/s 143(3) dt. 22.11.2017 and further erred in holding that the provision of Sec.263 are applicable to the facts of the case.

3. The learned Principal Commissioner of Income-Tax ought to have considered the fact that exemption u/s 54F granted by the Assessing officer for the assessment year 2015-16, is not erroneous, particularly when the appellant satisfied the necessary conditions for allowing the deduction.

4. The learned Principal Commissioner of Income-Tax ought to have seen that the appellant is entitled for deduction u/s 54F as claimed by the appellant for the assessment yearn 2015-16 and, therefore, there is no error in the assessment order which is prejudicial to the interests of Revenue.

5. Without prejudice, the learned Principal CIT ought to have seen that the capital gain is not taxable for the assessment year 2015-16; that the same was taxed wrongly for the assessment year 2015-16. The learned Principal CIT ought to have seen that no loss to Revenue arose for the year and accordingly initiation of proceedings u/s 263 of the I.T. Act is bad in law.

6. Any other ground that may be urged at the time of hearing.

20. After hearing both the sides we find the above grounds are identical to the grounds of appeal No.565/Hyd/2020. We have already decided the issue and the grounds raised by the assessee have been dismissed. Following similar reasonings, the grounds raised by the assessee are dismissed.

21. In the result, all the 4 appeals filed by the assessee are dismissed.

Order pronounced in the Open Court on 11th October, 2023.

Sd/-	Sd/-
(LALIET KUMAR) **JUDICIAL MEMBER**	**(R.K. PANDA)** **VICE-PRESIDENT**

Hyderabad, dated 11th October, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Smt.Madhu Devi Jain/ Shri Rajesh Kumar Jain, Flat No.101, Royal Manor Apartments, H.No.3-4-133 & 133/1 Lingampally, Barkatpura, Hyderabad 500027
2	Shri Ratan Lal Jain/ Smt.Chandra Devi Jain, 2-4-67/SRV/12 Uppar Pally Attapur, Hyderabad 500048
3	Income Tax Officer Ward 4(2) IT Towers, AC Guards, Hyderabad
4	Pr. CIT - Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order