

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'SMC' BENCH : Hyderabad**

**(Through Video Conference)**

**Before Smt. P. Madhavi Devi, Judicial Member**

**ITA No. 547/Hyd./2020  
Assessment Year: 2010-11**

Smt. Teegala Manjulatha  
Hyderabad

vs. ITO, Ward 14(2)  
Hyderabad

[PAN: ACIPT8826D]

**(Appellant)**

**(Respondent)**

**For Assessee:** Sri T. Rama Murthy, C.A  
**For Revenue:** Sri Srikanth S, D.R.

**Date of Hearing** : 08/07/2021  
**Date of Pronouncement** 28/07/2021

**ORDER**

This is assessee's appeal for AY 2010-11 against the order of the CIT(A)-6, Hyderabad dated 31.07.2020.

At the outset, it is seen that there is a delay of 7 days in filing of the appeal before the Tribunal and being satisfied with the reasons given in the application for condonation of delay, the delay is condoned.

**2.** Brief facts of the case are that the assessee, an individual, filed her return of income for AY 2010-11 on 31.7.2010 declaring an income of Rs. 2,21,760/-. The same was processed u/s 143(1) of the I.T.Act, 1961. Subsequently, it came to the notice of the AO that the assessee along with her son, sold an immovable property bearing flat no. 3, situated at Raaga Mansion, Banjara Hills admeasuring 2150 sft for a consideration of Rs.50

lakhs as against the SRO value of Rs.52,85,000/-. The AO noticed that the assessee has not declared capital gain as per sec.50C of the Act, therefore, the AO re-opened the assessment u/s 148 of the Act by issuance of a notice to assessee, in response to which, assessee attended and filed necessary details stating that the assessee had purchased the property in semi finished condition and had incurred Rs.20 lakhs to get the flat finished so as to make it habitable and stated that after considering the indexed cost of acquisition, the capital gain was nil. Ld.counsel for the assessee contended that the assessee has constructed a residential house by utilising the sale consideration of the original asset and hence is eligible for exemption u/s 54 of the Act. The AO did not accept sec.54 claim of the assessee, by holding that assessee has failed to file details for construction of residential house before filing of return of income. Therefore, he disallowed the claim and brought sum of Rs. 9,75,540/- to tax as net taxable capital gain and 50% of the same was brought to tax in the hands of assessee.

3. Aggrieved, assessee filed an appeal before the CIT(A) who confirmed the order of the AO and assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

*“1. On both the facts and circumstances and provisions of I.T.Act, 1961 the CIT(A) has erred by confirming the action of the AO in completing the assessment u/s 143(3) rws 254 of the Act.*

*2. Ld.CIT(A) erred/failed in/to considering the facts submitted through affidavit and facts of the case.*

*3. Ld.CIT(A) erred/failed to appreciate the fact of investment made in the residential property on the basis of documents filed.*

*4. LdCIT(A) erred and ought not to have ignored the clarifications, explanations, given along with available documentary evidences in support of the appellant’s claim for exemption u/s 54 of the Act*

*5. The appellant crave leave to add to/delete/alter/modify/amend/substitute all or any of the above grounds.”*

4. Ld.Counsel for the assessee, while reiterating submissions made before the authorities below, has filed certain documents to prove that the assessee

has carried on construction work during the relevant A.Y. He has filed copies of the drawings of the house, municipal taxes paid, electricity bills, water bills for May, 2010 and photo of house construction and estimation of GDR. He submitted that this house was subsequently sold by the assessee, and, therefore, assessee's claim of exemption u/s 54 should have been accepted and allowed by the AO.

5. Ld.DR submitted that assessee has not filed any evidence before the authorities below and the evidence filed before the ITAT is nothing but additional evidence which cannot be considered by the Tribunal.

6. Having regard to rival contentions and material placed on record, I find that the assessee had purchased an open plot and thereafter, had constructed a house thereon which has subsequently been sold by the assessee. All the relevant evidence now filed before the Tribunal is in the form of additional evidence. I, therefore, deem it fit and proper to remit the issue back to AO for re-consideration as per law after affording the assessee an opportunity of being heard.

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

Order pronounced in Open Court on 28/07/2021.

Sd/-

**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Dated: 28<sup>th</sup> July, 2021

• *gmv*

Copy of Order forwarded to:

1. Smt. Teegala Manjulatha, Door no. 1-62, Meerpet village, Saroornagar Mandal, Hyderabad, Telangana
2. ITO, Ward 14(2), Hyderabad.
3. ACIT, Range 14, Hyderabad
4. CIT(A)-6, Hyderabad
5. Pr.CIT-6, Hyderabad.
6. D.R. ITAT Hyderabad
7. Guard File