

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF FEBRUARY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

ITA NO. 303/2015

BETWEEN:

1. Principle Commissioner of
Income Tax,
C.R.Building,
Bangalore.

2. Assistant Commissioner of
Income Tax,
Circle 15(1),
Bangalore.

...Appellants

(By Sri.E.I.Sanmathi, Adv)

AND:

Sri.C.Gopalaswamy
No.17, 3rd Cross,
4th Main, AECS Layout,
1st Stage, Geddalhalli,
Aswathnagar,
Bangalore - 560094

...Respondent

This ITA is filed Under Section 260-A of I.T.Act, 1961 arising out of Order dated 20.02.2015 passed in ITA. No.933/Bang/2012, for the Assessment year 2008-2009 praying to decide the foregoing question of law and / or such other questions of law as may be formulated by the Hon'ble Court as deemed fit set aside the appellate order dated: 20/02/2015 passed by the ITAT, 'B' Bench, Bengaluru, appeal proceedings No. ITA No.933/BNG/2012 for Assessment year 2008-09, as sought for in this appeal; and to grant such other relief as deemed fit, in the interest of justice.

This Appeal coming on for admission this day, **JAYANT PATEL J.**, delivered the following:

JUDGMENT

The appellant revenue has preferred the appeal on the following substantial question of law:

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that assessee is entitled for exemption under section 54F just because the assessee has re-invested entire capital gains by making payment in full to the builder and builder has not handed over the possession within the time limit prescribed under section 54F notwithstanding the fact that section being treated as beneficial provision, the exemption claimed by the

assessee is disallowed since the initial agreement of construction itself spoke completion time being 31/12/2011 against available time of construction by 1/8/2010 and assessee had failed to satisfy the specific condition to get exemption"? Tax effect 1.61 crore.

2. We have heard Mr.E.I.Sanmathi, learned Advocate appearing for the appellant-Revenue. As appears from the record that the assessee along with his son had effected sale of certain equity shares which resulted in long term capital gain of Rs.13,55,84,748/- and the son Sri Navin Kumar had the share of Rs.4,20,283/-.

3. Out of this capital gains, Rs.50,00,000/- each were deposited by the respective assessee in REC Bond and claimed exemption under Section 54-F of the Income Tax Act. As per the assessee, the balance amount was invested in the residential

house. The assessing authority in the course of assessment order, dis-allowed the claim of exemption of Rs.5.23 crore under Section 54-F of the Income Tax Act (hereinafter referred to as 'the Act') on the ground that the construction of villas was not completed within the stipulated time allowed under Section 54-F of the Act.

4. Being aggrieved by the said order, the assessee preferred an appeal before the CIT(A) which came to be dismissed. The assessee carried the matter before the Tribunal in ITA 933(BNG)/2012 and the Tribunal after considering the submissions of the revenue observed at para-8 as under:

“8. We have perused the orders and heard the rival contentions. There is no dispute that on 28-07-2008, the builder gave an allotment letter to the assessee which clearly mentions that Rs.7.70

Crores for villa no.75 stood paid by the assesses. The sale of shares giving rise to the capital gains was on 20-07-2007. May be it is true that the agreement for construction entered by assessee with builder gave an outer date, which went beyond the three year period from the date of sale of the shares. However, assesses had done what all it could do for acquiring the villa by paying the whole of the price on 28-07.2007 itself. There is no case for the revenue that the construction itself was not started. Only grievance of the revenue is that the unit numbers have changed and the outer limit for completing the construction went beyond three years limit mentioned in Section 54F of the Act. In our opinion, none of these would disentitle the assessee from claiming the benefit u/s 54F of the Act. Their Lordship's in the case of Sri Sambandam Udaykumar (Supra) had held as under:

“A reading of Section 54F of the Act, 1961, makes it very clear that if a capital gain arises from the transfer of any

long term capital asset, not being a residential; house and the assessee has within the period of one year before or two years after the date on which transfer took place purchased or has within a period of three years after that date constructed a residential house, if the cost of the new asset is not less than the net consideration on respect of the original asset the whole of such capital gain shall not be charged under section 45 of the Act. However, if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain the same proportion as the cost of the new asset bears to the net consideration shall not be charged under section 45 of the Act. Section 54F of the Act is a beneficial provision of promoting the construction of residential house. Therefore, the provision has to be construed liberally for achieving the purpose for which it was incorporated in the statute. The intention of the legislature was to encourage investments in the acquisition of a residential

house and completion of construction or occupation is not the requirement of law. The words used in the section are “purchased” or “constructed”. For such purpose, the capital gain realized should have been invested in a residential house. The condition precedent for claiming the benefit under the provision is that capital gains realized from sale of capital asset should have been invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of section 54F of the Act. Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was not in fit condition to be occupied within the period under section 54F of the Act. The essence of the provision is whether the assessee who received capital

gains has invested in a residential house. Once it is demonstrated that the consideration received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the transactions are not complete in all respects are required under the law, that would not disentitle the assessee from benefit.”

The wordings in Section 54 & 54F with regard to period with in which an assessee has to acquire or construct a residential house are pari-materia. Assessee in any case would have been eligible for the claim under section 54, if not under section 54F of the Act. We are therefore, of the opinion that assessee’s could not be denied the deduction claimed by them.”

3. Consequently, the Tribunal allowed the appeal. Under the circumstances, the present appeal before this Court.

4. We have heard the learned counsel for the parties and perused the record.

5. If the reasons recorded by the Tribunal as considered as it is, the issue is already covered by the decision of this Court in case of CIT vs. Sambandham Udayakumar reported in 345 ITR 389. If the Tribunal has followed the said decision of this Court, no substantial question of law would arise for consideration in the present appeal.

6. However, learned counsel for the appellant raised two contentions:

- i) One was that since the earlier decision of this Court in case of Sambandham Udayakumar (supra), the tax amount was less, the matter was not carried before the Apex Court and therefore, the said decision may not be holding the field.
- ii) The learned counsel in furtherance of his submission contended that as the word

used is “constructed” completion of construction is *sine qua* requirement and in absence thereof, the deduction cannot be claimed and therefore, the Tribunal has committed error. He also relied upon the decision of the Apex Court in case of Giridhar Yadalam vs. Commissioner of Wealth Tax reported (2016) 65 Taxman.com 148(SC) and contended that, similar word was interpreted by the Apex Court and was found that the construction ought to have been completed.

7. In his submission, since the construction was not completed in the present case, the Tribunal ought not to have allowed the appeal and the matter may deserve consideration.

8. In the first aspects, we are not impressed by the submission that, since tax amount was less and the matter having been not carried before the Apex Court, the efficacy of the decision of this Court in Sambandham Udayakumar case referred supra would be lost so far as applying principles a binding precedent is concerned. When a co-ordinate Bench of this Court has already taken a view in normal circumstances, the departure therefrom is not permissible unless there are strong and valid reasons or the Apex Court has taken a different view.

9. Attempt to rely upon the decision of the Apex Court in case of Giridhar G.Yadalam is ill founded because in the said case before the Apex Court, the question arose for making distinction between the land and building for the purpose of wealth tax and for the purpose of exemption.

Further, the language in the section is “Construction is done with the approval of the authority”. Further, in clause (b) language was “Such a building has been constructed”. As per clause (a), the requirement was “the land is occupied” by any building. It is on account of said languages, meaning of the word “constructed” came up for consideration before the Apex Court. Whereas, in the present case, the relevant aspect is that, utilization of the capital gain in construction of a residential house. Such being the basic difference, we do not find that the said decision in case of Giridhar G.Yadalam referred supra would be of any help to the learned counsel for the Revenue.

10. The resultant situation would be that, issue stands covered by the decision of a coordinate Bench of this Court in case of Sambandham Udayakumar (supra). When the issue

is already covered by the decision of this Court, we do not find that any substantial question of law would arise for consideration as sought to be canvassed in the present appeal.

11. Under the circumstances, the present appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sk/-