IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5th DAY OF JANUARY 2015

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR
AND
THE HON'BLE MR. JUSTICE B.VEERAPPA

I.T.A. NO.232/2013

BETWEEN :

Mrs.Rahana Siraj,
Since deceased,
Represented by L.Rs.

1. Syed Siraj Ahmed,
   Aged 65 years,

2. Syed Salman
   Aged 35 years,

3. Syed Jibran Ahmed,
   Aged 32 years,

   #32, 5th Cross,
   Jai BharathNagar,
   Banaswadi Main road,
   Bangalore – 560 033. ...APPELLANTS

   (By Sri.R.Chandrashekar R. &
   Sri.Kashinath Kalmath, Advs. for
   Sri.R.Rama Murthy, Adv.)

AND :

1. The Commissioner of
Income Tax-I,
C.R.Building,
Queen Road,
Bangalore – 560 001.

2. The Income Tax Officer,
Ward – 1(2),
Bangalore – 560 027. ...RESPONDENTS

(By Sri.K.V.Aravind, Adv.)

. . . .

This I.T.A. is filed under Section 260A of the Income Tax Act, 1961, arising out of order dated 18.01.2013 passed in I.T.A. No.635/Bang/2010, for the Assessment Year 2005-06 praying to :

(i) formulate the substantial questions of law stated therein,

(ii) Allow the appeal and set-aside the order passed by the Income Tax Appellate Tribunal, Bangalore in I.T.A. No.635/Bang/2010 dated 18.01.2013.

This I.T.A. coming on for *admission,* this day, ***N.Kumar J.***, delivered the following:

JUDGMENT

The assessee has preferred this appeal against the order passed by the Tribunal holding that only the

expenses incurred to make the residential house habitable is entitled to benefit under Section 54F of the Income-tax Act, 1961, but not any additions made to the newly acquired building.

2. The assessee is an individual. Assessee was the owner of immovable property bearing No.96, Brigade Road, Civil Station, Bangalore. When the said property was sold, she received a sum of Rs.92,80,350/- towards her share as a co-owner. She declared a capital gain of Rs.34,31,912/-. She claimed exemption under Section 54F of the Act as she invested the said amount in purchase of another property. Return was processed under Section 143(1)(a) of the Act. Later on, a notice under Section 148 of the Act was issued on 24.11.2006 calling upon her to show-cause as to why the return of Income should be revised, as the income declared under the head capital gains as Rs.44,04,743/- is not correct.

She filed a reply. The assessee had claimed the fair market value as on 01.04.1981 at Rs.280/- per sq. ft. According to the assessee as per the Government notification, it was only Rs.45/- per sq.ft. Aggrieved by the same, the assessee preferred an appeal to the Commissioner of Income-tax (Appeals), who assessed the fair market value at Rs.175/- per sq. ft. Both the assessee and the Revenue preferred an appeal to the Tribunal.

3. The Tribunal, by the impugned order remanded the matter to the Assessing authority to consider the case in the light of the judgment of the Tribunal in respect of another co-owner in I.T.A. Nos. 425 & 462/2010. Insofar as the determination of the market value of the property is concerned, the assessee also had claimed benefit of the amounts, which she invested by way of laying marble flooring and re-painting of the

house and improving kitchen, constructing compound wall and other additions. The said claim was rejected by the Tribunal on the ground that when admittedly, the property, which was purchased by the assessee was habitable, any amounts invested by way of improvement is not liable for the benefit under Section 54F of the Act. Aggrieved by the said order of the Tribunal, the assessee is before this Court.

4. The learned counsel for the assessee, assailing the impugned order contended that the records disclose that after issue of notice under Section 148 of the Act and after receiving the reply from the assessee, the assessing authority addressed a letter to the Sub-Registrar to furnish the market value of the property as on 01.04.1981. It shows that without any material before him, he had initiated proceedings for re-opening and therefore, the very initiation of proceedings in re-

opening was one without jurisdiction and it is set-aside. Alternatively, he has contended that though the property purchased was habitable, the assessee spent money on the property purchased by way of improvements to make the premises convenient for her living which also should be taken into consideration in calculating the cost of investment, which has not been done by the authorities. Therefore, he submits that the impugned order requires to be set-aside.

5. The learned counsel for the Revenue submitted that on the day the notice under the Act was issued, the Assessing Authority had in its possession, the Government notification showing the market rate of the property at Rs.45/- per sq. ft. It is on the basis of that material, as the assessment order was under Section 143(1) of the Act, proceedings were initiated for re-opening. Merely because he wrote a letter subsequently

to the Sub-Registrar calling upon him to furnish the particulars regarding the market value, that would in no way vitiate the initiation of proceedings and therefore, the authorities were justified in rejecting the said contentions. Insofar as the improvements carried out by the assessee after acquiring the property is concerned, as the same was not required for making the premises habitable, the authorities were justified in refusing to take into consideration the amount so invested for acquisition of new asset.

6. In the light of the aforesaid rival contentions, the substantial questions of law that arise for our consideration in this appeal are as under:

(i) Whether, the order of the Appellate Tribunal in arriving at the finding that there was sufficient reasons and material to re-open the assessment, by issue of notice under Section 148 of the Act is sustainable in law?

(ii) *Whether the Tribunal is right in holding that the appellant is not entitled to make a deduction in respect of additions/alterations made to the property after purchase in order to have a normal living in computing the deduction under Section 54F of the Act, when no such restriction has been provided under Section 54F of the Act?*

7. Insofar as the extracts made in the order of the Tribunal is concerned, it discloses that the assessing authority, before issuing notice under Section 148 of the Act was satisfied that the assessee, while computing indexed cost of acquisition has taken the value as on 01.04.1981 as Rs.280/- per sq.ft., but as per the Government notification, the value is at Rs.45 per sq. ft. Therefore, he came to the conclusion that the assessee has taken higher value while working out indexation and therefore, he recorded an opinion that the income chargeable to tax has escaped assessment under

Section 147 of the Act. Merely because, he addressed a letter to the Sub-Registrar asking him to furnish the particulars would not lead to the conclusion that on the day he issued notice, he had no material to show that the assessee has over valued the asset. Rightly, the authorities have rejected the said contention and the proceedings initiated is valid and legal and do not suffer from any legal infirmity. Therefore, the first substantial question of law is answered in favour of the revenue and against the assessee.

8. Insofar as the second substantial question of law is concerned, it is not in dispute that the property purchased by the assessee was habitable but had lacked certain amenities. The assessee has spent nearly about Rs.18 lakhs towards removal of mosaic flooring and laying of marble flooring, alteration of the kitchen, putting up compound wall, protecting the property with

grill work and attending to other repairs. Section 54F of the Act provides that if the cost of the new asset, which is to be taken into consideration while determining the capital gain, the words used is "cost of new asset" and not "the consideration for acquisition of the new asset". In law, it is permissible for an assessee to acquire a vacant site and put up a construction thereon and the cost of the new asset would be cost of land plus (+) cost of construction. On the same analogy, even though he purchased a new asset, which is habitable but which requires additions, alterations, modifications and improvements and if money is spent on those aspects, it becomes the cost of the new asset and therefore, he would be entitled to the benefit of deduction in determining the capital gains. The approach of the authorities that once a habitable asset is acquired, any additions or improvements made on that habitable asset is not eligible for deduction, is contrary to the statutory

provisions. The said reasoning is unsustainable. To that extent, the impugned order passed by the Tribunal as well as the Lower authorities require to be set-aside and it is to be held that in arriving at cost of the new asset, Rs.18 lakhs spent by the assessee for modification, alterations and improvements of the asset acquired is to be taken note of. Thus, the second substantial question of law is answered in favour of the assessee and against the Revenue. Hence, we pass the following order:

Appeal is ***allowed in part***.

Sd/-
JUDGE

Sd/-
JUDGE

SPS