

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF AUGUST 2012

PRESENT

THE HON'BLE MR.JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

ITA.NO.1147/2006

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE,
C.R.BUILDING, QUEENS ROAD,
BANGALORE.
2. THE ASSISTANT COMMISSIONER OF
INCOME TAX,
CIRCLE – 6(1) C.R.BUILDING,
QUEENS ROAD, BANGALORE. ...APPELLANTS

(BY SRI.M.THIRUMALESH, ADV)

AND:

SMT.PADMAVATHY,
202-203, PADMASHREE APARTMENTS,
II MAIN, SESHADRIPURAM,
BANGALORE – 560 020. ...RESPONDENT

(BY SRI.S.PARTHASARATHI, ADV)

ITA FILED U/S. 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 17-04-2006 PASSED IN ITA.NO.1473/BANG/2003 FOR THE ASSESSMENT YEAR 1999-00, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA.NO.1473/BANG/2003 DATED 17-04-2006 AND CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE - 6 (1), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA HAVING BEEN HEARD AND RESERVED AND COMING ON FOR PRONOUNCEMENT OF JUDGEMENT THIS DAY, *B.MANOHAR J.*, MADE THE FOLLOWING:

J U D G M E N T

The Revenue has filed this appeal challenging the order dated 17-04-2006 made in ITA No.1473/Bang/2003 passed by the Income Tax Appellate Tribunal, Bangalore Bench-B dismissing the appeal and confirming the order dated 11-09-2003 passed by the Commissioner of Income Tax (Appeals), Bangalore ('CIT (Appeals)' for short) in ITA No.14/W6(3) CIT(A) III/2002-03 for the assessment year 1999-2000.

2. The respondent-assessee filed return of income on 28-06-1999 for the assessment year 1999-2000 declaring the income of Rs.4,65,200/-. Subsequently, the assessee filed revised returns on 11-11-1999 declaring the income of Rs.13,83,616/-. The income declared consists of income from property, capital gain and income from other sources. The Assessing Officer selected the returns filed by the assessee for scrutiny. The assessee has claimed deduction under Section 54EA of the Income Tax Act (hereinafter referred to as 'the Act') in respect of sum of Rs.41,13,000/- invested in specified securities out of total consideration received from the sale of flats owned by the assessee. It is the case of the assessee that she has entered into a joint development agreement with M/s. Soundharya Constructions on 6-7-1994 in respect of property bearing No.94 – 97 situated at II Main Road, Link Road, Seshadripuram, Bangalore. As per the said agreement, the assessee has to transfer the said land in favour of

the Developer and the Developer in turn has to construct 16 multistoried apartment, out of which, the assessee is entitled to receive 6 flats with car parking space in the basement by way of consideration for transfer of the said property. As per the joint development agreement, the Developer has to demolish the old structure and develop the property by constructing multistoried apartment. The Developer has to bear the entire cost of the construction of the multistoried apartment. As per the agreement, after construction of the apartment, six flats equivalent to Rs.45,00,000/- were to be given to the assessee. Out of six flats received as sale consideration, three flats were sold for the total sale consideration of Rs.41,13,000/- retaining the other three flats. Out of three flats, one is being used by the assessee for her self-occupation, another has been let out on a monthly rent of Rs.10,000/- and the third flat was mortgaged for a lump-sum consideration. In the returns filed by her,

she claimed deduction under Section 54EA of the Act. The Assessing Authority issued notice to the assessee. After hearing the representatives of the assessee, computed the assessment on 19-03-2002 and the Assessing Officer held that the assessee has not fulfilled the conditions laid down under Section 54EA of the Act, hence she is not entitled for deduction under Section 54EA of the Act.

3. The assessee being aggrieved by the assessment order dated 19-3-2002, preferred an appeal before the CIT (Appeals). The CIT (Appeals) after considering the matter in detail partly allowed the appeal denying the exemption under Section 54 and allowed the appeal insofar as exemption under Section 54EA is concerned. Even though the assessee has not received the sale consideration in cash pursuant to the agreement, she has received six flats as consideration. The sale consideration of three flats was invested in the long

term capital gain. Hence, she is eligible for exemption under Section 54EA of the Act. The Revenue being aggrieved by the order passed by the CIT (Appeals) approached the Income Tax Appellate Tribunal in ITA No.1473/Bang/2003. The Appellate Tribunal relying upon the judgment of Bombay High Court reported in 81 ITD 545 (BOMBAY HOUSING CORPORATION LTD. v/s ACIT) dismissed the appeal and confirmed the order passed by the CIT (Appeals). Being aggrieved by the said order, the Revenue has preferred this appeal.

4. The appeal was admitted for consideration of the following substantial questions of law.

1. Whether the Tribunal was right in holding that the investment made by the assessee in the specified securities from the sale consideration on the sale of flats amounts consideration received by the assessee on the sale of long-term capital asset i.e., the land owned by the assessee?

2. Whether the Assessing Officer was right in holding that the sale consideration invested in specified securities from sale of flats does

not amount to consideration on transfer of long term capital asset as per the provisions of section 54EA of the Act?

3. Whether the Assessing Authorities were correct in holding that though the amount invested in the securities is from the sale consideration on sale of flats, the flats were transferred to the assessee on consideration for transfer of the long term capital asset i.e., land and the amounts invested in securities has to be treated as consideration received on sale of long term capital asset?

5. Sri.M.Thirumalesh, learned counsel appearing for the appellant contended that the order passed by the Appellate Authority as well as the Appellate Tribunal is contrary to law. Section 54 speaks of profit on sale of property used for residence. It provides that the long term capital gains arising from the transfer of a residential house are exempt from Income Tax subject to reinvestment in acquiring a residential house within two years. The records disclose that the joint development agreement was entered into between the parties in the year 1994, the property was handed over

to the Developer pursuant to the agreement and the construction was completed in the year 1998-99. After lapse of four years, the flats were given to the assessee in lieu of sale consideration, therefore, the assessee is not entitled for deduction under Section 54 of the Act. The assessee is not entitled for the benefit of Section 54EA of the Act since she has not invested the sale consideration for purchase of a residential house. In the instant case, as per the joint development agreement dated 6-7-1994, the assessee has received six flats in lieu of sale consideration for transfer of land in favour of the developer. Out of six flats, she has alienated three flats. The sale consideration of three flats was deposited in the 'Specified Securities' and claimed the proportionate exemption under Section 54EA of the Act, hence, she is not eligible for such deduction. The judgment relied upon by the Appellate Tribunal is not applicable to the facts of the present

case and sought for setting aside the same by allowing the appeal.

6. On the other hand, Sri.S.Parthasarathi, learned counsel appearing for the respondent-assessee argued in support of the order passed by the Appellate Tribunal and contended that as per the joint development agreement, the assessee has to transfer the land to the Developer for a sale consideration of Rs.45,00,000/-. In lieu of cash, the Developer has agreed to give six flats. Accordingly, after construction of the apartment, six flats were handed over to the assessee for a sale consideration of Rs.45,00,000/-. It is virtually investment of the sale consideration for purchase of the house. Further, she has alienated three flats for a sale consideration of Rs.41,13,000/- and invested the same in the Specified Securities while retaining the other three flats. In view of that, she claimed exemption under Section 54EA of the Act. The Assessing Authority

misconstrued the Development Agreement and held that the assessee is not entitled for the benefit of Section 54EA of the Act. The Appellate Authority after considering the matter in detail held that the assessee is entitled for exemption under Section 54EA of the Act and the said order was confirmed by the Appellate Tribunal. There is no infirmity in the order passed by the Authorities below and sought for dismissal of the appeal.

7. We have carefully considered the arguments addressed by the parties.

8. It is not in dispute that the assessee entered into a joint development agreement with M/s.Soundharya Constructions. As per the agreement, the Developer after completion of the construction had delivered six flats with car parking space in the basement for parking of six vehicles in favour of the assessee. The assessee admitted that the sale consideration of Rs.45,00,000/-

is equivalent to six flats given by the Developer for transfer of the land to M/s.Soundharya Constructions. Out of six flats, three flats were sold for a sum of Rs.41,13,000/- and retained three flats. After sale of three flats, the sale consideration was invested in Specified Securities and claimed deduction under Section 54EA of the Act. The Assessing Authority held that the assessee has sold the land and received six flats in lieu of such land. Out of six flats three were sold. The long term capital gain has arisen on the sale of land. Therefore it cannot be said that the amount invested in the Specified Securities are qualified for deduction under Section 54EA of the Act.

9. Section 54EA of the Act reads as under:

54EA. (1) Where the capital gain arises from the transfer of a long-term capital asset [before the 1st day of April, 2000] (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period

of six months after the date of such transfer, invested the whole or any part of the net consideration in any of the (bonds, debentures, shares of a public company or units of any mutual fund referred to in clause (23D) of section 10,] specified by the Board in this behalf by notification in the Official Gazette (such assets hereafter in this section referred to as the [specified securities]), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,

(a) if the cost of the [specified securities] is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the [specified securities] is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the [specified securities] bears to the net consideration shall not be charged under section 45.

(2) Where the [specified securities] are transferred or converted (otherwise than by transfer) into money at any time within a period of three years from the date of their acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such [specified securities] as provided in clause(a) or clause (b) of sub-section (1) shall be deemed to be the income chargeable under the head “Capital gains” relating to long-term capital assets of the previous year in which the [specified securities] are transferred or converted (otherwise than by transfer) into money.

Explanation.- *In a case where the original asset is transferred and the assessee invests the whole or any part of the net consideration in respect of the original asset in any [specified securities] and such assessee takes any loan or advance on the security of such [specified securities], he shall be deemed to have converted (otherwise than by transfer) such [specified securities] into money on the date on which such loan or advance is taken.*

(3) Where the cost of the [specified securities] has been taken into account for the purposes of clause (a) or clause (b) of sub-section (1), a rebate with reference to such cost shall not be allowed under section 88.

Explanation.- *For the purposes of this section,-*

(a) “cost”, in relation to any [specified securities], means the amount invested in such [specified securities] out of the net consideration received or accruing as a result of the transfer of the original asset;

(b) “net consideration”, in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by the expenditure incurred wholly and exclusively in connection with such transfer.

10. Reading of Section 54EA of the Act makes it very clear that in case, the whole or any part of the net consideration of sale is invested in Specified Securities within a period of six months after the date of transfer, the deduction under Section 54EA is available. The Net

Consideration has been defined in Explanation to Section 54EA of the Act. The Net Consideration as per the definition means, the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by the expenditure incurred wholly and exclusively in connection with such transfer. The definition of net consideration does not refer that the consideration should be received in cash only. It also refers to the full value of consideration accruing. If the assessee has invested the long term capital asset in the specified securities, then the assessee is entitled for deduction under Section 54EA of the Act. The view taken by the CIT (Appeals) is on the basis of decision of Bombay High Court. The Tribunal agreeing with the said reasoning of the Bombay High Court has granted the relief. Keeping in view of the definition of 'Net Consideration' given in Explanation to Section 54EA of the Act, we hold that the Tribunal is justified in allowing the exemption under Section 54EA of the Act. The CIT

(Appeals) rightly allowed the appeal in part. The order passed by the Appellate Tribunal confirming the order of the CIT (Appeals) is just and sound. No ground is made out to interfere with the same. The substantial questions of law framed are held against the revenue. Accordingly, the appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

mpk/-*