

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1899/Bang/2018
(Assessment Year: 2013-14)

Shri Ramaiah Dorairaj,
No.2186, BMKAVAL,
HAL 3rd Stage,
Bangalore-560 075
PAN ABRPD 2580L

....Appellant

Vs.

Income Tax Officer,
Ward 4(2)(2), Bangalore.

.....Respondent.

Assessee By:	Shri S.V. Ravi Shankar, Advocate.
Revenue By:	Shri Priyadrshi Mishra, JCIT (D.R)

Date of Hearing :	08.12.2020.
Date of Pronouncement :	09.12.2020.

ORDER

PER SHRI CHANDRA POOJARI, A.M. :

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-4, Bangalore dt.22.04.2016 for the Assessment Year 2013-14.

2. The only issue in this appeal is with regard to denial of deduction Under Section 54F of the Income Tax Act, 1961 ('the Act').

3. The facts of the case are that the assessee filed Return of Income for the Assessment Year 2013-14 on 3.3.2014 declaring income at Rs.3,46,640. In the Return of Income, the assessee claimed deduction Under Section 54F of the Act. The claim of the deduction Under Section 54F was denied by the Assessing Officer on the reason that the assessee has not deposited the net sale consideration in Capital Gain Scheme Account which is a clear violation provisions of Section 54F(4) of the Act. On appeal, the CIT (Appeals) observed that the assessee has not deposited the net sale consideration in Capital Gain Scheme Account during the intermittent period of construction of residential house and he confirmed the order of the Assessing Officer and dismissed the assessee's appeal. Aggrieved by the assessee filed an appeal before us.

4. The learned Authorised Representative submitted that the assessee has finally invested the net sale consideration in the construction of new residential house within the stipulated period though the assessee was failed to keep the net sale consideration in Capital Gain Scheme Account. According to him, non-depositing of fund in prescribed Capital Gain Scheme Account cannot go against the assessee when the assessee has fully utilized the net sale consideration in the construction of new residential house. The Id. AR further submitted that the

investment of net sale consideration in new residential property within a period of three years from the date of sale of the property is important rather than keeping the net sale consideration in separate Capital Gain Scheme Account as notified by the Central Government. For this purpose he relied on the following judgements :

1.	CIT Vs. K Ramachandra Rao (2015) 56 taxmann.com 163 (Kar)
2.	CIT Vs. Smt. B S Shanthakumari (2015) 60 taxmann.com 74 (Kar)
3.	CIT Vs. Sambandam Udaykumar (2012) 345 IRE 389 (Kar)
4.	Goverdhan Singh Sekhawat Vs. ITO (2019) 102 taxmann.com 50 (Jaipur-Trib)
5.	Venkata Dilip Kumar Vs.CIT (2019) 419 ITR 298 (Mad)
6.	Ms. Moturi Lakshmi Vs. ITO (2020) 119 taxmann.com 488 (Mad)
7.	Smt. Babitha Kemparajee Urs Vs. CIT (2017) 86 taxmann.com 43 (Bang-Trib)
8.	Kannan Chandrashekar Vs. ITO (2017) 82 taxmann.com 284 (Chennai-Trib)

5. On the other hand, the Id. DR submitted that Section 54F(4) of the Act stipulates that for claiming the benefit of Capital Gain tax exemption, the assessee has to invest within a period of one year before or two years after the date of transfer took place purchased or has within a period of three years after the sale date constructed, one residential house in India, the capital gain shall be exempted from the tax. If the assessee has not complied with these requirements and not appropriated the net sale consideration towards purchase of new asset or constructed new residential house than the said net sale consideration to be deposited in prescribed capital gains scheme as notified by the Central Government. According to Id. DR if the assessee not complied with the conditions laid down under Section 54F(1) of the Act or 54F(4) of the Act, the assessee is not entitled for exemption Under Section 54F of the Act.

6. We have heard both the parties and perused the material on record. The main contention of the Id. DR is that the assessee has not complied with the conditions laid down u/s. 54F(1) or 54F(4) of the Act. U/s. 54F of the Act, when the assessee invests the sale consideration from transfer either purchasing a residential house or constructing a new house within a period stipulated in Section 54F(1) of the Act, then only the assessee entitles for deduction under this section. In the intermediatory period the assessee shall deposit the amount in an account which is duly notified by the Central Government. In this case, the assessee has not deposited the net sale consideration in the Capital Gains Scheme Account notified by the Central Government. However the plea of the assessee is that within the stipulated time, the assessee has utilized the net sale consideration as enumerated in the Section 54F(1) of the Act and the assessee is entitled for exemption Under Section 54F of the Act. This issue has come up for consideration before the Hon'ble Karnataka High Court in the case of CIT Vs. K. Ramachandra Rao 277 CTR 522 (Kar) wherein the following question was before the Hon'ble High Court :

" When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under Section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under Section 139(1) of the IT Act ? "

This was answered by Hon'ble High Court as follows :

" As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee

wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."

7. Being so, in our opinion, the Section 54F is beneficial provision and should be interpreted liberally and the Assessing Officer has to see the end utilization of net sale consideration in the way prescribed in Section 54F of the Act, the assessee is entitled for exemption Under Section 54F of the Act. With this observation, we remit the issue to the file of Assessing Officer for fresh consideration.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Dated: 09.12.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore