IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No.1084/Bang/2019
Assessment year: 2014-15

R. Lakshmamma, Prop. M/s. Sri Lakshmidevi Enterprises, No.65/2, 5th Cross, Ramamandira Road, Kaveripura, Kamakshipalya, Bangalore – 560 079. **PAN: ACGPL 2108Q**	Vs.	The Income Tax Officer, Ward 6(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri L. Mahesh Kumar, Advocate
Respondent by	:	Shri Priyadarshi Mishra, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.08.2020
Date of Pronouncement	:	14.08.2020

O R D E R

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 25.02.2019 of the CIT(Appeals), Bengaluru-6, Bengaluru in relation to assessment year 2014-15.

2. The assessee is an individual. For the AY 2014-15 she filed a return of income declaring total income of Rs.2,42,350. The case of the

assessee was selected for scrutiny assessment under CASS for the reason that there was cash deposit in co-operative bank and mismatch in income/capital gain on sale of land & building and interest income. In the course of scrutiny assessment proceedings, the AO confronted the assessee with the fact that there were cash deposits of Rs.20,46,000 in the assessee's bank account with The Janatha Co-op. Bank. The assessee explained the source of deposit of cash in bank account as from and out of sale proceeds of a property during the previous year and the sum so received was deposited in the bank account. It was also explained that the capital gain on sale of property was not exigible to capital gains tax because the assessee invested the sale proceeds in construction of house and was entitled to the benefit of deduction u/s. 54 of the Act. The claim of assessee was as follows:-

> "Revised Statement of Income filed by the assessee that she has shown LTCGs are as under:-"

Sale consideration of			Rs.95,99,000/-
Less: Selling expenses			Rs. 2,00,000/-
			Rs.93,99,000/-
Less: Acquisition cost	2004-05	Rs. 1,68,585	Rs 3,29,794/-
Cost of construction	2006-07	Rs. 36,00,000	Rs.65,13,295 /-
Capital Gain			Rs.25,55,911/-
Less: Exemption			Rs.25,55,911/-
Taxable Capital Gain			Nil

3. The AO called upon the assessee to furnish the proof with regard to incurring of cost of construction of Rs.36 lakhs on which the indexed cost of acquisition was claimed by the assessee at Rs.65,13,295. The property sold was land together with building. The AO has observed in para 5.3 of his order that the assessee did not furnish the required details and therefore the claim on account of const of construction was restricted to

50% of that claimed by the assessee i.e., Rs.32,56,650. The cost of construction which was disallowed was added to the total income as income from capital gain. The AO also denied the benefit of deduction u/s. 54 of the Act for the reason that the assessee has not deposited the unutilized capital gain in a specified bank account within the due date for filing return of income as contemplated u/s. 54(2) of the Act. Thus, income under the head 'capital gain' was determined by the AO at Rs.32,56,650 + 25,55,911.

4. Aggrieved, the assessee filed appeal before the CIT(Appeals). The assessee sought to file report of registered valuer to show the cost of construction of the capital asset. The assessee also sought to file evidence to show that within a period of 3 years from the date of transfer of capital asset, the assessee had put up construction of residential house and therefore the requirement of deposit of the unutilized capital gain in a specified bank account did not arise for consideration. In this regard, the assessee placed reliance on the decision of Hon'ble High Court of Karnataka in the case of *Fathima Bai [2009] 32 DTR 243 [Karn]* wherein it was held that the time limit of deposit of unutilized capital gain in bank account is not required to be seen, if the capital gain is utilized in construction of a new asset within the period contemplated u/s. 54(2) of the Act.

5. The CIT(Appeals), however, refused to admit the additional evidence on the ground that the assessee has not shown any valid reason as to why the additional evidence that is filed before the CIT(A) was not filed before the AO. Accordingly, the CIT(Appeals) confirmed the order of AO. Before the CIT(Appeals), it transpired that as per Sale Deed dated 28.11.2013, on the capital asset in question which was sold by the assessee the actual consideration was only Rs.49,99,000; whereas the assessee had claimed in the computation of capital gain the full value of

consideration received on transfer of Rs.95,99,000. The CIT(A) was therefore of the view that the difference between the actual sale consideration received on transfer of capital asset as per the Sale Deed and as claimed by the assessee in the computation of long term capital gain viz., a sum of Rs.46 lakhs should be added as 'income from other sources'. Accordingly, the CIT(A) computed the long term capital gain as follows:-

Sale consideration	Rs. 49,99,000/-
Less selling expansion	Rs. 2,00,000/-
	Rs. 47,99,000/-
Les: Indexed Acquisition cost	Rs. 3,29,794/-
Indexed Cost of construction(as allowed by AO)	Rs. 32,56,650/-
Capital Gain	Rs. 12,12,556/-

6. The CIT(Appeals) also held that the sum of Rs.46 lakhs which was the full value of consideration received on transfer should be taxed as income from other sources. This direction had some tax implication because the long term capital gain is taxed @ 20%; whereas the income under the head 'income from other sources' is taxed under the maximum marginal rate. Aggrieved by the order of CIT(A), the assessee has preferred the present appeal before the Tribunal.

7. There are basically three issues that need to be decided viz., -

i) What is the cost of construction of capital asset that was sold by the assessee?

ii) whether the assessee is entitled to deduction u/s. 54 of the Act on the basis of decision of the Hon'ble High Court of Karnataka in the case of *Fathima Bai (supra)?* and

iii) whether the sum of Rs.46 lakhs should be assessed under the head income from 'other sources' or 'capital gain'?

8. As far as the issues (i) & (ii) are concerned, in our opinion, the CIT(Appeals) ought to have admitted the additional evidence filed by the assessee in terms of Rule 46A(4) of the Income-tax Rules, 1962 [the Rules]. It was necessary to ascertain the correct computation of long term capital gain on sale of capital asset by the assessee in accordance with the law. When 50% of the cost of construction is allowed as deduction, there is no reason why the actual cost should not have been examined by the CIT(A). In our view, the additional evidence ought to have been admitted under Rule 46A(4) of the Rules.

9. Similarly, the cost of construction of new asset and the period within which it was constructed also requires examination in the light of evidence filed as additional evidence by the CIT(Appeals). In our view, for proper adjudication of long term capital gain in accordance with the law, these documents are necessary. We therefore set aside the order of CIT(Appeals) on the above two issues and remand the case to the Assessing Officer for fresh consideration in accordance with the law on the computation of long term capital gain and the claim of assessee for deduction u/s. 54 of the Act in the light of additional evidence filed before Tribunal and such other evidence that the Assessee may seek to rely on or required by the AO to substantiate her claim.

10. As far as the third issue with regard to whether the sum of Rs.46 lakhs should be part of long term capital gain or income from other sources, we find that the assessee in the proceedings before the AO has filed copy of agreement for sale dated 22.7.2013 in which the price agreed between the parties was a sum of Rs.94 lakhs. In the light of this evidence, the question whether the sum of Rs.46 lakhs should form part of long term capital gain or income from other sources also needs to be examined by

the AO. Accordingly, we set aside the order of CIT(Appeals) on this issue also and direct the AO to admit the additional evidence filed by the assessee and decide the issue in accordance with the law, after affording assessee opportunity of being heard.

11. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on this 14th day of August, 2020.

Sd/-	Sd/-
(B R BASKARAN) ACCOUNTANT MEMBER	(N V VASUDEVAN) VICE PRESIDENT

Bangalore,
Dated, the 14th August, 2020.

/Desai S Murthy /

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.