

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B”, BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.1039/Bang/2018 : Asst.Year 2014-2015

Smt.Chandrakala Shashidhar No.266, Navneeth, 6 th Cross Vikramaditya Road, Laxmipura Gavipuram Bengaluru – 560 019. PAN : BFCPS4326H.	v.	The Income Tax Officer Ward 5(2)(4) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Vivek D.S., CA

Respondent by :Sri. Priyadarshi Mishtra, Addl.CIT-DR

Date of Hearing : 12.07.2021	Date of Pronouncement : 14.07.2021
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)’s order dated 03.01.2018. The relevant assessment year is 2014-2015.

2. The solitary issue raised is whether the CIT(A) was justified in confirming A.O.’s order wherein he had restricted exemption u/s 54F of the I.T.Act.

3. Brief facts of the case are as follow:

The assessee is an individual. She had filed return of income on 29.08.2015 declaring a sum of Rs.11,11,950. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. During the course of assessment proceedings, the A.O. noticed that the assessee had sold plots measuring 71,685 sq.ft. for a sale consideration of Rs.1,19,04,500 and invested the same in a villa project in Bangalore by the name Napa Valley. The assessee in the

return of income had claimed exemption of Rs.1,16,34,752 u/s 54F of the I.T.Act. The A.O. issued notice dated 07.11.2016 asking the assessee to show cause as to why exemption u/s 54F of the I.T.Act should not be disallowed and brought to tax as the sale consideration of plots was not deposited in capital gains scheme on or before the due date of filing of the return u/s 139(1) of the I.T.Act. In response to the show cause notice, the assessee made the detailed submission stating that the sale consideration was invested in a residential house property within three years from the date of sale of capital asset. In this context, the assessee relied on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. K.Ramachandra Rao (2015) 56 taxmann.com 163 (Karnataka). The Assessing Officer, however, vide order dated 20.12.2016, passed u/s 143(3) of the I.T.Act restricted the exemption u/s 54F of the I.T.Act to the extent of Rs.24,44,124. The reasoning of the Assessing Officer in restricting the claim of exemption u/s 54F of the I.T.Act was that the balance amount was not deposited in capital gains account scheme within the due date of filing of the return of income u/s 139(1) of the I.T.Act.

4. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal to the first appellate authority. The CIT(A) held that the assessee was not able to prove that the house has been constructed within three years from the date of sale of original asset. It was further held by the CIT(A) that completion certificate issued by the builder, namely, Concorde Housing Corporation Private Limited showing the date of completion as 25.07.2015 did not prove the

construction of the house is completed unless the same is issued by the local municipal authority. The CIT(A) further stated that the electricity bill for the property was not produced in the name of the assessee. Accordingly, the CIT(A) confirmed the addition of Rs.92,10,629 made by the Assessing Officer by stating that the judgment of the Hon'ble Karnataka High Court in the case of CIT v. K.Ramachandra Rao (supra) relied on by the assessee would not be applicable in the present case.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal by raising the following grounds:-

"1. The order passed by the learned CIT(A) is bad in law and against natural justice.

2. The learned CIT(A) has erred in confirming the order of the AO in denying the exemption claimed by the appellant u/s 54F and making addition therein. Thus, the order passed by the CIT(A) is erroneous and bad in law.

3. The CIT(A) has also erred to state that the appellant was not able to prove that the house has been constructed within 3 years and the completion certificate issued by Concorde Housing (P) Ltd showing the date of completion as 25.07.2016 did not prove the construction of the house is completed unless the same is issued by local municipal authority. Thus the order of the CIT(A) is erroneous.

4. The CIT(A) has erred in stating that the Electricity Bills for the property should be in the name of the appellant to prove that the house was constructed within 3 years.

5. The learned CIT(A) has erred to state that the decision of Karnataka High Court in the case of K.Ramachandra Rao relied by the appellant would not be applicable to the present case as the appellant had neither deposited the amount in capital gain account scheme nor had completed the construction of the house within 3 years as prescribed in section 54F of the Income Tax Act.

6. *Without prejudice to the above, even if it is said that house was not constructed within 3 years as the amounts were paid to the builders within the time period, relief u/s 54F should be given in line with the judicial decisions laid down in the decision of the Jurisdictional Karnataka High Court in the case of CIT v. B.S.Santhakumari – ITA No.165/2014.*

7. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) is so far as it relates to the above grounds may be reversed and that the appellant be allowed.*

8. *The appellant reserves right to add additional grounds or elaborate on the above grounds during the appeal hearing as long as it is in relation to the above matter under dispute.”*

6. The learned AR has filed a brief written submission reiterating the submission made before Income Tax Authorities. The learned AR has filed two sets of paper books. One set comprising of case laws relied on, the other enclosing the submission submitted before the A.O. and CIT(A). The learned AR had also enclosed in the paper book the details of payments received for sale of original assets, the details of payment for purchase of new asset, the letter of Concorde Housing Private Limited vouching that villa was handed over to the assessee on 14.07.2015, the letter of builder stating that due to katha bifurcation, electricity connection could not be changed to assessee's name even after handing over of villa to assessee and electricity due were paid by builder on behalf of assessee, etc.

7. The learned Departmental Representative, strongly relied on the orders of the Income Tax Authorities.

8. We have heard rival submissions and perused the material on record. During the relevant assessment year 2014-2015, the assessee had sold plots measuring 71,685 sq.ft. for a sale consideration of Rs.1,19,04,500 (plots were sold on 20.01.2014). The plots were acquired by the assessee for a sum of Rs.80,000 on 29.09.1993. The assessee had declared in the return of income, the long term capital gains on account of sale of plots and claimed exemption u/s 54F of the I.T.Act in respect of purchase of Villa project by the name Napa Valley to the extent of Rs.1,16,34,752 (restricted to Rs.1,16,34,752). The admitted facts are that the assessee had paid the entire sale consideration for purchase of the Villa Project (new asset) prior to the execution of the sale deed dated 14.07.2015. The A.O. restricted the claim of deduction u/s 54F of the I.T.Act for the reason that the assessee ought to have invested in constructing the house or deposited in the specified account before the due date of filing of the return u/s 139(1) of the I.T.Act. The view taken by the Assessing Officer was confirmed by the CIT(A) by holding the assessee had not deposited the amount in the capital gains scheme nor she got the house constructed within the period of three years from the date of sale of original asset. The plots were sold on 20.01.2014, therefore, necessarily going by the provisions of section 54F of the I.T.Act, the assessee is required to complete the construction on or before 20.01.2017. The reason for the CIT(A) for holding that the assessee had not constructed the house within the specified period was on account of assessee's inability to produce the electricity bill in her name, during the course of appellate proceedings. Therefore, the CIT(A) concluded that the A.O. had rightly restricted the claim

of exemption u/s 54F of the I.T.Act to a sum of Rs.24,44,124 instead of Rs.1,16,34,752 claimed by the assessee.

8.1 In order to analyse the issue raised, it is necessary to examine the relevant provision, namely, section 54F of the I.T.Act, which reads as follow:-

“54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereinafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date 5 [constructed, one residential house in India] (hereinafter in this section referred to as the new asset), 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 new asset 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 new asset is less than the new 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 the new asset bears to the net consideration, shall not be charged under section 45;

Provided that nothing contained in this sub-section shall apply where –

(a) the assessee –

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchase any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation – For the purpose of this section –

"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 any expenditure incurred wholly and exclusively in connection with such transfer.

(2)

(3)

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year from the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purchases of such-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:....."

8.2 Reading of the above provision, it is clear that exemption u/s 54F of the I.T.Act has to be granted in respect of the capital gain arising from the transfer of any long term capital asset, other than a residential house if the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India. Further, as per section 54F of the I.T.Act, exemption is to be granted if the stipulated conditions

are fulfilled and the assessee's case does not fall under the exceptions to exemption specified in the proviso to section 54F(1). Also, as per section 54F(4), the requirement of depositing the amount in Capital Gain Account Scheme (CGAS) arises only if the following conditions are not satisfied:

- (a) Net consideration invested in new asset within one year before the date on which the transfer of the original asset took place, or
- (b) Not utilized by the assessee for purchase or construction of the new asset before the date of furnishing of return of income u/s 139 of the I.T.Act.

8.3 If above conditions are not satisfied, only then, such unutilized amount has to be deposited in CGAS before due date for filing return of income u/s 139 of the I.T.Act. Also, the section firstly referred in section 54F(4) of the I.T.Act is section 139 of the I.T.Act which also includes section 139(4) of the I.T.Act, which would be 31st March, 2016 in the given case. If the amount has been incurred before this date, 139(1) of the I.T.Act due date for depositing into CGAS scheme becomes applicable only when the amount has not been spent before the due date for filing return of income u/s 139(4) of the I.T.Act. In this context, we rely on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. K.Ramachandra Rao (2015) 56 taxmann.com 163 (Karnataka). The Hon'ble High Court was considering the following substantial question of law –

“(2) When the assessee invests the entire sale consideration construction of a residential house within three years from the date of transfer can 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 I.T.Act ?”

8.4 In considering the above question of law, the Hon'ble High Court rendered the following findings :-

“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 to 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.”

8.5 Further, the CIT(A) in para 5.3 of the impugned order, has stated that the electricity bills for the property should be in the name of the assessee to prove that the house was constructed within three years. The provisions of section 54F of the I.T.Act only provides that the sale proceed should be invested in construction of house property within three years. In other words, in order to get the benefit u/s 54F of the I.T.Act, the assessee need not complete the construction of the house in all aspects and occupy it. It is enough if the assessee established that the investment of the entire net consideration was made within the stipulated period and the construction is mostly completed. The essence of the said provision is whether the assessee who received capital gains

has invested the proceeds 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 respect and as required under the law, that would not disentitle the assessee from the said benefit. The words used in provisions of section 54F of the I.T.Act are 'purchased' or 'constructed' and the condition precedent for claiming benefit under such provision is the capital gain realized from sale of a long term capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If the assessee has invested money in constructing the residential house, merely because the construction was not complete in all respects or such building is yet to be completed fully or the building not being in a fit condition for being occupied, would by itself not be a ground for the assessee to be denied the benefit u/s 54F of the I.T.Act. In this context, we rely on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Smt.B.S.Shanthakumari [2015 (8) TMI 274], wherein the Hon'ble High Court held that – *"The words used in section 54F are 'purchased' or 'constructed' and held that the condition precedent for claiming benefit under such provision is the capital gain realized from sale of a Long Term capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house."*

8.6 Further, the following judicial pronouncements have also held that assessee would be entitled to the benefit u/s 54F of the I.T.Act 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 and as required under the law.

- (a) Pr.CIT v. Sri.C.Gopalaswamy [2016 (6) TMI 643 – Karnataka HC],
- (b) CIT v. Sambandam Udaykumar [2012(3) TMI 80 – Karnataka HC],
- (c) Smt.Babitha Kemparaje urs v. CIT [ITA No.699/Bang/2014] and
- (d) Sri.T.Shiva Kumar v. ITO [2016(3) TMI 52 – ITAT Bangalore].

8.7 In view of the aforesaid reasoning and the judicial pronouncements cited supra, we hold that the assessee is entitled to the benefit of section 54F of the I.T.Act in its entirety. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 14th day of July, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 14th July, 2021.
Devadas G*

Copy to :

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5. The DR, ITAT, Bengaluru.
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Asst.Registrar/ITAT, Bangalore