

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1395/Bang/2019
Assessment Year : 2012-13

Shri Rajappa Sreenivasa Murthy Chandrashekara 921, Sobha Dew Flower, MG Gardens 4 <sup>th</sup> Cross, Sarakki Main Road JP Nagar 1 <sup>st</sup> Phase Bengaluru  <b>PAN NO : ACOPC5878L</b>	<b>Vs.</b>	ACIT Circle-5(3)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Ravishankar, A.R.
<b>Respondent by</b>	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	16.06.2021
Date of Pronouncement	:	18.06.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 29.3.2019 passed by Ld. CIT(A) 9 Bengaluru and it relates to the assessment year 2012-13. The assessee is aggrieved by the decision of Ld. CIT(A) in partially confirming the disallowance made by the A.O. u/s 54F of the Income-tax Act, 1961 ['the Act' for short].

2. The facts relating to the issue are stated in brief. The assessee sold an ancestral property on 11.8.2011 for a consideration of

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Rs.1.05 crores and the same resulted in long term capital gain to the assessee. However, the assessee invested a sum of Rs.1.78 crores on purchase of a residential apartment from M/s. Shobha Developers. The above said amount was paid in instalments beginning from 30.3.2011. The details of payment are placed at pages 35-36 of the paper book. In view of the purchase of new flat, the assessee claimed the deduction u/s 54F of the Act against long term capital gain and accordingly returned nil income under the head long term capital gain. The A.O. noticed that the assessee has invested a sum of Rs.57.24 lakhs only in the new house before the due date for filing return of income for assessment year 2012-13. As per the provisions of sec.54F of the Act, if the sale consideration is not fully utilized in purchasing/construction a new house before the due date for filing return of income, then the unutilized amount should be deposited in Capital gains account scheme. In that case, the amount so deposited shall be deemed to be the investment for the purpose of deduction allowed u/s 54F of the Act. However, the assessee did not deposit unutilized amount in capital gain accounts scheme as required u/s 54F of the Act. Accordingly, the AO restricted the deduction u/s 54F of the Act to Rs.57.24 lakhs, being the amount actually invested in purchase of new flat. Accordingly, the AO computed the taxable amount of long term capital gain at Rs.41.87 lakhs.

3. Before Ld. CIT(A), the assessee contended that it has fully utilized the sale consideration in purchasing a new flat within the period of two years from the date of sale of original asset, being the period prescribed u/s 54F of the Act for purchase of new house. The assessee also contested the cost of property as on 1.4.1981 adopted by the A.O, while computing long term capital gain. The Ld. CIT(A) granted relief with regard to the cost of property as on 1.4.1981. However, he concurred with the view taken by the A.O. with regard

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to the claim of deduction made u/s 54F of the Act. The Ld. CIT(A) took the view that the provisions of section 54F of the Act should be interpreted strictly. In this regard, he took the support of the decision rendered by Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Dilip Kumar & Company (Civil Appeal No.3327 of 2007). Accordingly, he confirmed the partial disallowance of claim made u/s 54F of the Act.

4. Before us, the Ld. A.R. placed his reliance on the decision rendered by coordinate bench in the case of of Ramaiah Durai Raj 187 ITD 460 and also the decision rendered in the case of Sudheer Valsala Sreekumaran ITA 393/Bang/2019 dated 20.12.2019. The Ld. A.R. submitted that the coordinate bench in the case of Ramaiah Durai Raj (supra) had placed its reliance on the decision rendered by Hon'ble Madras High Court in the case of Venkata Dilip Kumar Vs. CIT 419 ITR 298, wherein the Hon'ble Madras High Court, after considering the decision rendered by Hon'ble Supreme Court in the case of Dilip Kumar & Company held that if the assessee had satisfied the mandatory requirement of investing the capital gain in the new property within the prescribed period, he would get deduction u/s 54 of the Act and the decision rendered in the case of Dilip Kumar & Company would not help the revenue. Further, the coordinate bench has also followed the binding decision rendered by Hon'ble Karnataka High Court in the case of K. Ramachandra Rao (2015) 56 Taxmann.com 163. Accordingly, the coordinate bench has held that section 54F of the Act is beneficial provision and should be interpreted liberally. Accordingly, it was held that non-deposit of unutilized amount in the capital gain scheme would not affect the claim made u/s 54F of the Act. On the contrary, the Ld DR supported the order passed by Ld CIT(A).

5. We heard the parties and perused the record. We notice that an identical issue has been examined by the co-ordinate bench in the case of Ramiah Durai Raj (supra). For the sake of convenience, we extract below the relevant observations made by the coordinate bench in the case of RamaiahDurai Raj (supra).

*“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.	<i>CIT v. K. Ramachandra Rao</i> [2015]156 <a href="#">taxmann.com</a> 163/30 Taxman 334(Kar.)
2.	<i>CIT v. Smt. B.S. Shanthakumari</i> [2015] 60 <a href="#">taxmann.com</a> 74/233 Taxman 347 (Kar.)
3.	<i>CIT v. Sambandam UdayKumar</i> [2012] 19 <a href="#">taxmann.com</a> 17/206 Taxman 15Q/345 ITR 389 (Kar.)
4.	<i>Goverdhan Singh Shekhawat v. ITO</i> [2019] 102 <a href="#">taxmann.com</a> 50/175 ITD 272 (JP-Trib)
5.	<i>Venkata Dilip Kumar v. CIT</i> [2019] 111 <a href="#">taxmann.com</a> 180/[2020] 268 Taxman 11020191 419 ITR 298 (Mad.).
6.	<i>Ms. Moturi Lakshmi v. ITO</i> [2020]119 <a href="#">taxmann.com</a> 488/274 Taxman 286 (mad.)
7.	<i>Smt. Babitha Kemparajee UrS. v. CIT</i> [2017] 86 <a href="#">taxmann.com</a> 437 ITD 125 (Bang - Trib)
8.	<i>Kannan Chandrasekar v. ITO</i> [2017] 82 <a href="#">taxmann.com</a> 284/165 ITD 223 (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 intermediary period the assessee shall

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*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 came up for consideration before the Hon'ble Karnataka High Court in the case of K. Ramachandra Rao (supra) 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."*

6. We notice that the co-ordinate bench has followed the decision rendered by the Hon'ble Madras High Court in the case of of Venkata Dilip Kumar (supra), wherein it has been held that the decision rendered by Hon'ble Supreme Court in the case of Dilip Kumar & Co (supra) will not come to the help of the assessee. Further the claim of the assessee is supported by the binding decision rendered by Hon'ble Karnataka High Court in the case of K Ramachandra Rao (supra).

7. Accordingly, following the above said decisions, we direct the A.O. to allow the claim of the assessee after verifying the details of

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investment made in the purchase of new flat by the assessee, i.e., whether the investment has been made within the period prescribed u/s 54F of the Act

8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 18<sup>th</sup> June, 2021

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 18<sup>th</sup> June, 2021.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.