IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE

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

ITA No.1105/Bang/2019 : Asst.Year 2013-2014

Smt.Kempanna Shylaja No.617, Neeru Bhavikempanna Layout, Guddadahalli Main Road Hebbal Bengaluru – 560 024. **PAN : DGVPS6700R.**	v.	The Income Tax Officer Ward 6(3)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Shri L.Maheshkumar, Advocate
Respondent by :Shri Priyadarshi Mishtra, Addl.CIT-DR

Date of Hearing : 06.07.2021		**Date of Pronouncement : 12.07.2021**

O R D E R

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 12.03.2019. The relevant assessment year is 2013-2014.

2. Fifteen grounds are raised in this appeal, however, only two issues were argued, namely, (i) whether the CIT(A) was justified in confirming the disallowance of exemption u/s 54F of the I.T.Act, amounting to Rs.61,44,440; and (ii) whether the CIT(A) was justified in confirming the addition of Rs.17,00,000 u/s 68 of the I.T.Act.

We shall adjudicate the above issues as under:

Whether the CIT(A) was justified in confirming the disallowance of exemption u/s 54F of the I.T.Act, amounting to Rs.61,44,440

3. The assessee along with her two children had sold a vacant land situated in Bangalore North during the relevant

assessment year. The above mentioned vacant land was sold vide two separate sale deed dated 24.05.2012. The sale proceedings of the vacant land was declared by the assessee in her return of income filed for the relevant assessment year, namely, A.Y.2013-2014 and exemption u/s 54F of the I.T.Act was claimed in respect of the house property constructed at No.617, Hebbal, Bangalore. The assessment was completed by disallowing the exemption u/s 54F of the I.T.Act on the premises that the assessee had failed to discharge the burden placed on her with respect to the construction of residential house and has not filed any documentary evidences in support of the claim of deduction u/s 54F of the I.T.Act.

4. Aggrieved, the assessee preferred an appeal to the first appellate authority. During the course of appellate proceedings, the CIT(A) sought for a remand report and on receipt of the same, the appeal was disposed of by confirming the denial of exemption u/s 54F of the I.T.Act. The CIT(A) was of the view that the assessee had built multiple residential units instead of one residential unit. The CIT(A) further held that the units were let out and were not being used by assessee and her family, thereby rejecting the claim of exemption u/s 54F of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee preferred an appeal to the Tribunal. Before the ITAT, it was contended that the legislature has amended the provisions of section 54F of the I.T.Act vide Finance (No.2) Act, 2014 with effect from 01.04.2015 and has withdrawn the deduction for more than one residential house with effect from 01.04.2015

onwards. It was submitted that the amendment was prospective and the assessee's case being prior to the amendment, the Income Tax Authorities were not justified in denying the benefit of deduction u/s 54F of the I.T.Act. In this context, the learned Counsel relied on the judgment of the Hon'ble Karnataka High Court in the case of Arun K Thiagarajan v. CIT reported in 427 ITR 190.

6. The learned Departmental Representative, on the other hand, supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. The CIT(A) had denied the benefit of section 54F of the I.T.Act solely for the reason that the assessee had constructed multiple residential houses and not a single residential unit. The provisions of section 54F of I.T.Act was amended vide Finance (No.2) Act, 2014 with effect from 01.04.2015 and has withdrawn deduction for more than one residential unit with effect from 01.04.2015 by replacing word "a" with "one". In this context, it is relevant to mention that the Hon'ble jurisdictional High Court, prior to the amendment, in the case of CIT v. Smt.K.G.Rukminiamma reported in 331 ITR 211 had held that "residential unit house", used in section 54 makes it clear that, it was not the intention of the legislature to convey the meaning that it refers to a single residential house. It was held by the Hon'ble High Court that if that was the intention, they would have used the word "one". As in the earlier part, the words used are buildings or lands which are plural in number and that is referred to as "a residential house, the original asset. It was

further observed by the by the Hon'ble Court that an asset newly acquired after the sale of the original asset also can be buildings or lands appurtenant thereto, which also should be "a residential house". Therefore, the letter "a" in the context it is used should not be construed as meaning "single". It was concluded by the Hon'ble High Court that, being an indefinite article, the said expression should be read in consonance with the other words "buildings" and "lands" and, therefore, the singular "a residential house" also permits use of plural by virtue of section 13(2) of the General Clauses Act. A similar view was taken by the Hon'ble Karnataka High Court in the case of D.Ananda Basappa v. ITO reported in 209 ITR 329 (Kar.).

7.1 Further, the amendment to section 54 of the I.T.Act with effect from 01.04.2015 has been held to be prospective by the Hon'ble Karnataka High Court in the case of Arun K.Thiagarajan (supra). The relevant finding of the Hon'ble jurisdictional High Court in the case of Arun K.Thiagarajan (supra), reads as follow:-

> *"12. A Bench of this court in the case of Smt.KG Rukminiamma (supra) dealt with the meaning of expression `a residential house' used in Section 54(1) of the Act while taking into account Section 132(2) of the General Clauses Act, 1897 held that unless there is anything repugnant in the subject or context, the words in singular shall include the plural and vice versa. It was further held that context in which the expression `a residential house' is used in Section 54 makes it evident that it is not the intention of the legislature to convey the meaning that it refers to a single residential house. It was also held that an asset newly acquired after sale of original asset can also be buildings or lands appurtenant thereto, which also should be residential house, therefore, the letter `a' in the context it is used should not be construed as meaning singular, but the expression should be read in consonance with other words viz., buildings and lands. Accordingly, the contention*

raised by the revenue was rejected. Similar view was taken by a bench of this court in Khoobchand M.Mukhija (supra) B Srinivasappa and in the case of Smt.Jyothi K.Mehta (supra). The Madras High Court while dealing with Section 54 of the Act as it stood prior to amendment by Finance Act No.2/2014 in the case of Tilokchand & Sons (supra) took the similar view and held that the word `a' would normally mean one but in some circumstances it may include within the ambit and scope some plural numbers also. The Delhi High Court also took the similar view in case of Gita Duggar (supra).

13. It is well settled in law that an Amending Act may be purely clarificatory in nature intended to clear a meaning of a provision of the principal Act, which was already implicit [See:Decision of the Supreme Court in CIT v. Ram Kishan Das [2019] 103 Taxmann.com 414/263 Taxman 657/413 ITR 337. In view of the aforesaid enunciation of law by different High Courts including this court and with a view to give definite meaning to the expression `a residential house', the provisions of section 54(1) were amended with an object to restrict the plurality to mean singularity by substituting the word `a residential house' with the word `one residential house'. The aforesaid amendment came into force with effect from 01.04.2015. The relevant extracts of Explanatory note to provisions of Finance (No.2) Act, 2014 reads as under:

> *20.3 Certain courts had interpreted that the exemption is also available if investment is made in more than one residential house. The benefit was intended for investment in one residential house within India. Accordingly, sub-section (1) of section 54 of the Income-tax Act has been amended to provide that the rollover relief under the said Section is available if the investment is made in one residential house situated in India.*
>
> *2.5 Applicability – These amendments take effect from 1st April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.*

Thus, it is axiomatic that the aforesaid amendment was specifically applied only prospectively with effect from assessment year 2015-16.

14. The subsequent amendment of section 54(1) also fortifies the fact that the legislature felt the need of amending the provisions of the Act with a view to give a definite meaning to the expression `a residential house', which was interpreted as plural by various courts by taking into account the context in which the aforesaid expression was used. The subsequent amendment of the Act also fortifies the view taken by this court

as well as Madras High Court and Delhi High Court. It is trite law that the principle underlying the decision would be binding as precedent in a case. In Halsbury Laws of England, Volume 22. Page 1682. Page 796, the relevant extract reads as under:

> *The enunciation of the reasons or principle on which a question before a court has been decided is alone binding as a precedent. This underlying principle is often termed the ratio decided, that is to say, the general reasons given for the ecision of the general grounds on which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision.*
>
> *[Also see `Sate of Haryana v. Ranbir of Rand, (2006) 5 SCC 167 & Girnar Traders v. State of Maharashtra [2007] 7 SCC 555].*

15. This Court as well as Madras and Delhi High Court have interpreted the expression `a residential house' and have held that the aforesaid expression includes plural. The ratio of the decisions rendered by coordinate bench of this court are binding on us and we respectively agree with the view taken by this court while interpreting the expression `a residential house'. Therefore, the contention of the revenue that the assessee is not entitled to benefit of exemption under section 54(1) of the Act in the facts of the case does not deserve acceptance."

7.2 In view of the above judgment of the Hon'ble jurisdictional High Court, we hold that the assessee is entitled to the benefit of section 54F of the I.T.Act, since the relevant A.Y. was prior to the amendment to section 54 of the I.T.Act (i.e.01.04.2015). It is ordered accordingly.

Whether the CIT(A) was justified in confirming the addition of Rs.17,00,000 u/s 68 of the I.T.Act.

8. The Assessing Officer vide order dated 30.03.2016 passed u/s 143(3) of the I.T.Act, made an addition of cash deposit totalling to Rs.35,00,000. The A.O. held that the

assessee had not furnished any documentary evidences / explanation on the same.

9. Being aggrieved by the addition of unexplained cash deposit u/s 68 of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The CIT(A), during the course of appellate proceedings, sought for a remand report from the Assessing Officer and accepted the source of cash deposit amounting to Rs.18,00,000. The CIT(A) sustained the balance amount of Rs.17,00,000 by holding that the source of the same is to be examined with reference to the provisions of section 269SS of the I.T.Act.

10. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The assessee has filed a brief submission with regard to the above issue and the same is reproduced below:-

> *"In this regard, the appellant submits that the source of the cash deposits in her bank accounts are as under:-*

Sl. No.	*Particulars*	*Amount (Rs.)*
a.	*Cash received from purchaser of land sold during the year - Smt.S.Parthamma and Sri.Gangadhar H.S. on 09.03.2012*	*1,00,000*
b.	*Cash received from purchaser of land sold during the year – Sri.R.Srinivasas on 24.05.2012*	*15,50,000*
c.	*Accumulated savings of appellant.*	*1,50,000*
I.	*Total – Source accepted by the CIT(A)*	*18,00,000*
d.	*Repayment of loan by agriculturist Sri.K.M.Srinivas on 26.05.2012*	*10,00,000*
e.	*Cash received from agriculturist Mrs.Lakshmidevamma, relative of the assessee on 24.05.2012*	*2,00,000*
f.	*Cash loan obtained from Sri.A.N.Srinivas on 02.02.2013*	*5,00,000*
II.	*Total – Source not accepted by the CIT(A)*	*17,00,000*
	Total I + II	*35,00,000*

The appellant submits that the disallowance under section 68 of the Act is uncalled for on the facts and circumstances of the case.

The appellant is extracting the provisions of section 68 for convenience:

"68. Where any sum is found credited in the books of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof of the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee for the previous year."

The appellant submits that she has satisfactorily discharged her burden of proof by explaining the credit entry in her savings bank accounts of the previous year and by submitting the affidavits and confirmation before the lower authorities which was not appreciated in the right spirit.

It is submitted that the appellant has discharged the primary onus casted upon her by demonstrating the genuineness of the transactions. Thus, the appellant has complied with the requirements of the provisions of section 68 of the Act and hence the addition made by the learned assessing officer, confirmed by the learned CIT(A) amounting to Rs.17,00,000 is not warranted under the facts and circumstances of the case. It is further submitted that the source of source and origin of origin of the income of the third person need not be proved by the appellant which is a settled position of law as held by various courts:

- *Aravali Trading Co. v. ITO (2008) 220 CTR 622 (Raj.)*
- *CIT v. Daulat Ram Rawat Mull (1973) 87 ITR 349 (SC)*
- *Additional Commissioner of Income-tax, Bihar v. Hanuman Agarwal 151 ITR (Pat.)*
- *CIT v. Pragathi Co-operative Bank Ltd. (2005) 278 ITR 170 (Guj.)*
- *CIT v. Diamond Products Ltd. (2009) 177 Taxman 331 (Delhi).*

The appellant submits that the Supreme Court while interpreting the phraseology of Section 68 employs the word `may' and not `shall'. Thus, the unsatisfactoriness of the explanation does not and need not automatically result in

deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt.P.K.Noorjahan (1999) 237 ITR 570 (SC).

The word `may' indicates the intention of the Legislature that a discretion is conferred on the Assessing Officer in the matter of treating the source of investment or credit which had not been satisfactorily explained as income of an assessee, but it is not obligatory to treat such source as income in every case where the explanation offered was found to be not satisfactory. Reliance is placed on the decision of the Hon'ble Gujarat High Court in CIT v. Pragati Co-operative Bank Ltd. (2005) 278 ITR 170 (Guj.)

The appellant submits that she has discharged the primary onus by giving the affidavits and confirmation letters from the three persons confirming paying money to the appellant in cash which ought to have been appreciated by the lower authorities and ought to have summoned the persons. Under law the appellant can be asked to prove the source of the credits in the books of account but not the source of the source. Reliance is placed on the decision of Hon'ble Gujarat High Court in the case of DCIT v. Rohini Builders (2002)256 ITR 360. The Hon'ble Supreme Court dismissed the Special Leave Petition filed by the revenue against this judgment is reported in (2002) 254 ITR (St.) 275.

It is also submitted that the learned CIT(A) erred in holding that the affidavits submitted by the 3 parties i.e., Sri.K.M.Srinivas, Mrs.Lakshmidevamma and Sri.A.N.Srinivas have stated that they are agriculturists however any of them have any income chargeable to tax is not mentioned in the affidavits and failed to appreciate that the second proviso to Section 269SS would be applicable to the case of the appellant. The CIT(A) erred in not issuing summons and recording their statement on oath of the above three persons and not appreciating the three affidavits given by the parties in the right spirit.

Without prejudice to the above, the appellant submits the lower authorities erred in treating the credit entries in her bank account of the appellant is unexplained cash credits found credited in the "books" of the appellant.

The appellant submits that the provisions of section 68 of the Act can be invoked where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof of the explanation offered by him is not, in the opinion of the income-tax officer, satisfactory. In the eventuality, the said sum so credited may be charged to income-tax as the income of the assessee of that previous year.

Meaning thereby maintenance of books of the assessee, in which credit entry so found, is a condition precedent for invoking the provisions of section 68 of the Act, whereas in the instant case, the additions are made based on the AIR information of deposits made in the jointly held savings bank account of the appellant.

The appellant submits that even the passbook or the bank statement cannot be considered as books for the sake of section 68 of the Act. Reliance is placed on the following decisions:

a. CIT v. Baichand N.Gandhi (1983) 141 ITR 67 (Bom.). The head notes of the case are reproduced below for kind reference.

> *Income – Cash Credit – Bank Pass Book is not a book maintained by assessee or under his instructions – Cash Credit for previous year shown in assessee's bank pass book – not shown in cash book of assessee for that year – cannot be treated as income of that previous year – Income Tax Act, 1961, s.68.*

b. CIT v. Ms.Mayawati reported in 338 ITR 563.

c. Smt.Manasi Mahendra Pitkar v. ITO reported in 160 ITD 605 (Mum – Trib.)

d. Lokesh Chandrappa v. ITO in ITA No.1254/Bang/2015 dated 09.11.2016 wherein it was held as under –

In the light of the above, the appellant submits that provisions of section 68 cannot be invoked on various deposits found credited in the savings bank account of the appellant in the previous year.

In view of the above, it is submitted that the learned CIT(A) erred in not appreciating the evidences furnished by the appellant and the additions confirmed of Rs.17,00,000 cannot be sustained in law on the facts and circumstances of the case."

11. The learned Departmental Representative supported the orders of the Income Tax Authorities.

12. We have heard rival submissions and perused the material on record. The CIT(A) had not accepted the source of Rs.17 lakh. Out of the total amount of Rs.17 lakh not

accepted by the CIT(A), the assessee had received repayment from Shri K.M.Srinivas on 02.02.2013 amounting to Rs.10 lakh. This amount has been paid by the assessee vide cheque No.437961 dated 14.03.2012 to Shri K.M.Srinivas as a stop gap arrangement, so as to support agricultural activities of Shri K.M.Srinivas, who is a relative of the assessee. Shri K.M.Srinivas had repaid Rs.10 lakh to the assessee by cash on 26.05.2012. The assessee had filed confirmation letter from Shri K.M.Srinivas. Similarly, for an amount of Rs.2 lakh received from Smt.Lakshmidevamma and Shri A.N.Srinivas to the extent of Rs.5 lakh also, the assessee had filed confirmation letters from them. The Hon'ble Supreme Court in the case of Mehta Parikh & Co. v. CIT reported in 30 ITR 181 had held that the rejection of an Affidavit filed by an assessee was not justified unless the assessee has either been cross-examined or called upon to produce documentary evidence in support of the Affidavit sworn by him. In the instant case, the A.O. has not made any opinion on the source of cash deposit in the remand report submitted to the CIT(A), but only pointed out the violation of provisions of section 269SS of the I.T.Act. Violation of provisions of section 269SS of the I.T.Act calls for penalty u/s 271D of the I.T.Act, which is a separate proceeding. Violation of provisions of section 269SS of the I.T.Act cannot be the ground for making addition u/s 68 of the I.T.Act. In the above facts and circumstances of the case, we hold that the addition sustained by the CIT(A) u/s 68 of the I.T.Act is uncalled for and we delete the same. It is ordered accordingly.

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

Order pronounced on this 12th day of July, 2021.

Sd/-	**Sd/-**
(Chandra Poojari)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 12th July, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bangalore
4. The Pr.CIT-6 Bangalore
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore