

N THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.629/Bang/2019
Assessment Year : 2015 - 16

Padma Rajagopalan, Flat No.2A, Rukmini Apartments, No.1, Annamaya Block, Sheshadripuram, Bengaluru-560 020.	Vs.	The Income Tax Officer, Ward-3(3)(5), Bengaluru.
PAN - ALUPP 2532 K		
APPELLANT		RESPONDENT

Appellant by	:	Shri Prashanth G.S, C.A
Respondent by	:	Shri Priyadarshi Mishra, JCIT (DR)

Date of Hearing	:	17-09-2020
Date of Pronouncement	:	20-09-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 07/02/2019 passed by Ld.CIT(A)-3, Bangalore for assessment year 2015-16 on following grounds of appeal:

Sl No.	GROUNDS OF APPEAL	Tax Effect in Rupees
1	<p>a) The orders of the authorities below in so far as these are against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.</p> <p>b) The appellant denies herself liable to be assessed on a total income Rs.49,29,292/- as against Rs.5,19,220/- returned by the appellant under the facts and circumstances of the case.</p>	
2	<p>Denial of exemption claimed under section 54F of the Act in respect of amount of Rs.65,00,000/- invested in residential property</p> <p>a) The learned CIT(A) erred in confirming the action of the assessing officer in disallowing the exemption claimed under section 54F of the Act on the amount invested of Rs.65,00,000/- in residential property under the facts and circumstances of the case.</p> <p>b) The learned CIT(A) erred in stating that exemption under section 54F of the Act cannot be claimed on the amount invested in residential property prior to the date of sale of original asset on the facts and circumstances of the case.</p> <p>c) The action of the learned CIT(A) in disallowing the exemption claimed under section 54F in respect of the investment made in residential property prior to the date of sale of original asset is against the principles laid down by the Jurisdictional High Court in the decision of CIT vs. J. R. Subramanya Bhat reported in 165 ITR 571 on the facts of the case.</p> <p>d) The authorities below ought to have provided the exemption under section 54F of the Act amounting to</p>	Rs.9,08,474/-

	<p><i>Rs.44,10,070/- on the facts of the case</i></p> <p><i>e) The authorities below failed to appreciate. that exemption claimed Wider section 54F of the Act cannot be denied merely on the ground of delay in construction of residential property by the builder within stipulated period on the facts of the case.</i></p> <p><i>f) The authorities below ought to have appreciated the fact that the appellant has paid substantial sum of money for acquisition of property and the delay in completion of the residential property by the builder is beyond control of the assessee on the facts of the case.</i></p>	
3	<p><i>a) The appellant denies herself liable to be levied interest under sections 234B and 234D of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234B and 234D of the Act.</i></p> <p><i>b) Without prejudice, the interest levied under sections 234B and 234D of the Act requires to be waived off under the facts and circumstances of the case.</i></p>	<i>Rs.2,74,536/-</i>
4	<i>The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.</i>	
5	<i>In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.</i>	

Brief facts of the case are as under:

2. Assessee is an individual and filed return of income for year under consideration on 31/08/2015 declaring total income of Rs.5,19,220/-. Return was processed under section 143(1) of the Act, and case was selected for scrutiny. Subsequently, notice under section 143(2) of the Act and 142(1) of the Act, was issued

to assessee, in response to which, representatives of assessee appeared before Ld.AO and filed various details as called for.

3. On perusal of details, Ld.AO noted that, assessee had entered into a Memorandum of Understanding dated 19/09/2013 with Nilachala Ventures Pvt.Ltd. for purchase of residential house for total consideration of Rs.1,60,00,000/-. Ld.AO on verification found that, construction was not completed even after completion of 3 years.

4. Ld.AO also noted that, assessee vide sale deed dated 30/07/2014 sold vacant site bearing 432 formed by HMT Employees Co-operative House Building Society Ltd., Bangalore, at Narasipura layout, for consideration of Rs.1,28,40,000/-.

Ld.AO noted that possession of the property was not taken by assessee and registered sale deed was not executed in favour of assessee. Ld.AO thus came to the conclusion that, conditions for claiming exemption under section 54F did not stand satisfied.

5. He accordingly, disallowed claim of assessee and made additions amounting to Rs.87,92,748/-, that was claimed as exemption by assessee.

6. Aggrieved by addition made, assessee preferred appeal before Ld.CIT(A).

7. Ld.CIT(A) allowed exemption claimed by assessee under section 54F to the extent of Rs.64,00,000/- that was deposited into capital gains account scheme maintained with Indian overseas bank and state bank of India. However he disallowed exemption claimed amounting to Rs.65,00,000/- in respect of

investment made in residential property by holding that, investment in residential property was made prior to date of sale of original asset, and construction of residential property was not completed within stipulated time. Ld.CIT(A), denied deduction u/s.54F by observing as under:

“4.8 Thus after discussing a plethora of decisions on the issue and following decision of Karnataka High Court in the case JR Subramanya Bhat [1987]165 ITR 571, the assessee was allowed deduction u/s 54F of the Act, however the amount of deduction, was restricted to the investment made by assessee in the construction of new property, after the date of sale of original asset. Thus the above decision of JTAT is squarely applicable to the case of appellant..

4.9 The reliance of the appellant on the decisions in the cases of Commissioner of Income-tax V. Sambandam Udaykumar [2012] 19 taxmann.com 17 (Kar) and Principal Commissioner of Income-tax, Bangalore v. C. Gopaldaswamy [2017] 81 taxmann.com 78 (Karnataka) is found to be misplaced as the said decisions were not on the issue of investment in construction prior to sale of the original asset. Further, in the case of Commissioner of Customs (Import), Mumbai vs M/s Dilip Kumar and Company & Or in Civil Appeal No. 3327 of 2007, dt July 30, 2018.(2018-. TIOL-302-SC-Cus-CB) while discussing the issue of interpretation of exemption provisions, the Constitution Bench of the Hon'ble Supreme Court held that a provision giving benefit to the assessee needs to be interpreted strictly and in case there is an ambiguity in the provision, which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue. While doing so the SC overruled the ratio laid down in the decision in the case of Sun. Export Corporation, Bombay v. Collector of Customs, Bombay, (1997)6 SCC564 and upheld the ratio laid down in Mangalore Chemicals & Fertilizers Ltd. vs. Dy. Commissioner of Commercial Taxes, (1992) Supp. 1 SCC 21, which had already been approved by a three Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 supp (3) SC' C 606. In this case the three Judge Bench had held as follows :

“We are, however of the opinion that, on Principle, the decision of this Court in Mangalore Chemicals and in Union of India v. Wood Papers, referred to therein represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee assuming that the said principle is good and sound does not apply to the construction of an exception or an exempting provision, they

have to be construed strictly. A person invoicing an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State..."

4.10 So in view of the above binding decision of the Hon'ble Supreme Court, the exemption provision needs to be interpreted strictly and in case of doubt the benefit would go to the revenue, So the action of the AO in disallowing exemption under Section 54F of the Act in relation to investment in construction to the extent of Rs 65,00,000/- is upheld, although for the reasons as discussed supra."

8. Aggrieved by order of Ld.CIT(A), assessee is in appeal before us now.

9. At the outset, Ld.AR submitted that, Ld.CIT(A) remanded to Ld.AO vide letter dated 08/01/2019, for verification whether, amount of Rs.64 Lacs, was deposited by assessee in capital gains account scheme.

10. In response to the same, Ld.AO filed report vide letter dated 24/01/2019, wherein categorically it is mentioned that assessee is eligible to claim exemption under section 54F of the total sale consideration for year under consideration. He referred to para 4.3 of order by Ld.CIT(A), wherein relevant portion of remand report is reproduced, that reads as under:

4.3 In response to the same the AO sent her report vide letter dated 24.01.2019 The same is reproduced as follows:

With reference to the above, the report is submitted as follows -

As verified from the assessee's bank account statement, the assessee, Mr.Padma Rajagopalan has made payments to M/s. Nilachala Ventures Pvt. Ltd., during the F.Y.2013-14 as under :-

Date	Amount
19/08/2013	Rs. 1,00,000
14/09/2013	Rs.30,00,000

16/12/2013	Rs.34,00,000
Total	Rs.65,00,000

The sale consideration is Rs.1,28,00,000/-. The assessee has kept Rs.64,00,000/- in the capital gain account scheme. The assessee has utilised the a part of net consideration by Investing in the new asset and the unutilised amount has been kept in capital gain account scheme before the due date of filing of return of income for A.Y.2015-16. Hence, the assessee Is eligible to claim exemption u/s. 54F for the A.Y.2015-16.

11. Ld.AR also submitted that, decision referred to and relied by Ld.CIT(A) has been dealt with, and considered, by *Hon'ble Madras High Court* in case of *Ms.Moturi Luxmi vs ITO* in ITA No.181 of 2019 by order dated 17/08/2020. Ld.AR further submitted that, *Hon'ble Madras High Court* further referred to decision of *Hon'ble Karnataka High Court* in case of *CIT vs K Ramachandra Rao*, reported in (2015) 277 CTR 522 and *CIT vs JR Subramanya Bhat* reported in (1987) 165 ITR 571, wherein identical situations were considered.

12. He referred to pages 65 to 81, 82 to 87 and 28-29 of caselaw compilation paper book I and II, wherein, these decisions are placed.

13. On the contrary, Ld.Sr.DR submitted that, issue needs to be re-verified by Ld.CIT(A), in light of decision by *Hon'ble Madras High Court*, since it was not available at the time of disposal of appeal by him. He therefore submitted that, appeal be remanded to Ld.CIT(A) for verification of facts.

14. We have perused submissions advanced by both sides in light of records placed before us.

15. It is undisputed that, assessee invested entire amount of Rs.1,28,00,000/-, partly in Capital Gain account Scheme and partly in construction of residential property within prescribed time period. There is no dispute regarding the amount deposited in capital gains account scheme. The authorities below alleges that, sum of Rs.65 Lacs invested in construction of residential property cannot be allowed to assessee, since property could not be constructed within period of 3 years. There is no finding by authorities below that, delay in construction was attributable to assessee but was beyond the control of assessee since the construction was carried out by the builder.

16. Assessee in the synopsis filed before this *Tribunal* gave details of date wise payments, made to the builder for acquisition of property as under:

a) Payments made prior to sale of original asset	
Date	Amount (Rs.)
21.08.2013	1,00,000/-
13.09.2013	30,00,000/-
04.12.2013	19,00,000/-
16.12.2013	15,00,000/-
Total (a)	65,00,000/-
b) Payments made after the sale of original asset	
Date	Amount (Rs.)
24.08.2015	5,83,000/-
08.12.2017	18,31,500/-
03.05.2018	23,76,000/-
04.04.2019	24,75,000/-
05.07.2019	10,00,000/-
05.07.2019	24,69,500/-
Total (b)	1,07,35,000/-
Total Payments (a+b)	1,72,35,000/-

16. In decision relied by Ld.AR in case of *Ms.Moturi Luxmi vs ITO (supra)*, decisions referred by Ld.CIT(A) was considered by *Hon'ble Madras High Court*. Substantial question of law that arose before *Hon'ble Madras High Court* was as under:

“Whether, for purpose of section 54 of the Income tax Act, the advance payment made by assessee for the purchase of residential flat would constitute a part of purchase or not, when such advance is made to the seller of flat prior to the date of sale of capital asset in question?”

17. While considering aforesaid question framed by *Hon'ble Court*, we note that decisions relied by Ld.CIT(A) has been referred as under :-

7. In fact, the argument of the Revenue in the said case is identical to that of the argument made by Mrs.R.Hemalatha, learned Standing Counsel appearing for the Revenue in the case on hand. She has argued that the language of Section 54(1) of the Act is very clear and that this being a benefit given to the assessee, it requires a strict interpretation. In this regard, she has referred to the decision in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co. and Ors [reported in (2018) 9 SCC 1] The Hon'ble First Bench considered the said argument in the said judgment and held in favour of the assessee. The relevant portions of the decision of the Hon'ble First Bench of this Court in the case of C.Aryama Sundaram are as hereunder :

"14. Under Section 54(1) of the said Act, the capital gain arising from transfer of a residential house is not to be charged to income tax as income of the previous year, if the assessee has within a period of one year before or two years after the date of transfer of that residential house purchased another residential house in India or has within a period of three years after the date of transfer constructed a residential house in India and if the amount of the cost of the residential house so purchased or constructed is equal to or less than the amount of capital gain.

15. It is a well settled principle of construction and interpretation of statutes that statutory provisions should, to the extent feasible, be interpreted and/or construed in accordance with plain meaning of the language used in those provisions.

16. On a plain reading of Section 54W of the said Act, the transfer of a long term asset, which would include a residential house, would be chargeable to income tax as a capital gain, except in circumstances specified in the said section.

17. It is not necessary for this Court to go into the question of mode and method of computation of capital gain as there is no dispute in this regard, which requires adjudication in this appeal.

18. The question is, whether any part of the capital gain from transfer of the residential house is exempt from the capital gain tax and if so to what extent?

19. The conditions precedent for exemption of capital gain from being charged to income tax are:

(i) The assessee should have purchased a residential house in India either one year before or two years after the date of transfer of the residential house which resulted in capital gain or alternatively constructed a new residential house in India within a period of three years from the date of the transfer of the residential property which resulted in the capital gain.

(ii) If the amount of capital gain is greater than the cost of the residential house so purchased or constructed, the difference between the amount of the capital gain and the cost of the new asset is to be charged under Sect/On 45 as the income of the previous year.

(iii) If the amount of the capital gain is equal to or less than the cost of the new residential house, the capital gain shall not be charged under Section 45.

20. What has to be adjusted and/or set off against the capital gain is, the cost of the residential house that is purchased or constructed. Section 54(1) of the said Act is specific and clear. It is the cost of the new residential house and not just the cost of construction of the new residential house, which is to be adjusted. The cost of the new residential house would necessarily include the cost of the land, the cost of materials used in the construction, the cost of labour and any other cost relatable to the acquisition and/or construction of the residential house.

21. A reading of Section 54(1) makes it amply clear that capital gain is to be adjusted against the cost of new residential house. The condition precedent for such adjustment is that the new residential house should have been purchased within one year before or two years after the transfer of the residential house, which resulted in the capital gain or alternatively, a new residential house has been constructed in India, within three years from the date of the transfer, which resulted in the capital gain. The said section does not exclude the cost of land from the cost of residential house.

22. It is axiomatic that Section 54(1) of the said Act does not contemplate that the same money received from the sale of a

residential house should be used in the acquisition of new residential house. Had it been the intention of the Legislature that the very same money that had been received as consideration for transfer of a residential house should be used for acquisition of the new asset, Section 54(i) would not have allowed adjustment and/or exemption in respect of property purchased one year prior to the transfer, which gave rise to the capital gain or may be in the alternative have expressly made the exemption in case of prior purchase, subject to purchase from any advance that might have been received for the transfer of the residential house which resulted in the capital gain.

23. At the cost of repetition, it reiterated that exemption of capital gain from being charged to income tax as income of the previous year is attracted when another residential house has been purchased within a period of one year before or two years after the date of transfer or has been constructed within a period of three years after the date of transfer of the residential house. It is not in dispute that the new residential house has been constructed within the time stipulated in Section 54(1) of the said Act. It is not a requisite of Section 54 that construction could not have commenced prior to the date of transfer of the asset resulting in capital gain. If the amount of capital gain is greater than the cost of the new house, the difference between the amount of capital gain and the cost of the new asset is to be charged under Section 45 as the income of the previous year. If the amount of capital gain is equal to or less than the cost of the new residential house, including the land on which the residential house is constructed, the capital gain is not to be charged under Section 45 of the said Act."

"16. From the above, it is dear that the intention of the Legislature was to either purchase before or after the date of sale and the word 'purchased or 'constructed' used in the Notes on Clauses amply makes the intention clear. In the light of the above discussions, we hold that the substantial question of law is required to be answered in favour of the assessee."

18. We also refer to Full Bench decision of *Hon'ble Supreme Court* in case of *Commissioner of Customs (Import) Vs. M/s Dilip Kumar & Sons & Ors. (Supra)*. This decision was relied by Ld. CIT(A) to deny exemption claimed by assessee u/s 54F. On careful study of decision by *Hon'ble Supreme Court* we note that, ratio has been expressly mentioned in para 27 as under:

"27. Now coming to the other aspect, as we presently discuss, even with regard to exemption clauses or

exemption notifications issued under a taxing statute, this Court in some cases has taken the view that the ambiguity in an exemption notification should be construed in favour of the subject. In subsequent cases, this Court diluted the principle saying that mandatory requirements of exemption clause should be interpreted strictly and the directory conditions of such exemption notification can be condoned if there is sufficient compliance with the main requirements. This, however, did not in any manner tinker with the view that an ambiguous exemption clause should be interpreted favouring the revenue. Here again this Court applied different tests when considering the ambiguity of the exemption notification which requires strict construction and after doing so at the stage of applying the notification, it came to the conclusion that one has to consider liberally.”

19. *Hon’ble Court on considering catena of decisions observed as under:-*

“46.The above decision, which is also a decision of two Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of Parle Exports Case (supra) deduced as follows:

“Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally”.

47. We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand Case(supra).

20. *Hon’ble Court thus summarised their observation as under:-*

“52.To sum up, we answer the reference holding as under:

1) Exemption notification should be interpreted strictly; the burden of Proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted infavour of the revenue.

(3) The ratio in Sun Export case (supra) is notcorrect and all the decisio

ns which took similar view as in Sun Export Case (supra) stands over-ruled.

21. Now coming to the decision of *Hon'ble Madras High Court* in case of *C Aryama Sundaram (Supra)* relied in case of *M/s Moturi Laxmi Vs. ITO (Supra)*. *Hon'ble Court* first analysed the conditions assessee fulfilled to enter exemption clause and thereafter applicability was liberally interpreted.

22. Similar is the analysis by *Hon'ble Madras High Court* in other decisions referred to in *M/s Moturi Laxmi Vs. ITO (Supra)*. *Hon'ble Delhi High Court* in case of *CIT Vs. Bharti Mishra* reported in (2014) 41 taxmann.com 50, decisions of *Hon'ble Karnataka High Court* in case of *CIT Vs J.R Subramnya Bhat* reported in (1986) 28 Taxman 578 and *CIT Vs. K Ramachandra Rao* reported in (2015) 56 taxmann.com 163, all principally allowed exemption u/s 54/54F, only on substantial satisfaction of required conditions therein. *Hon'ble Karnataka High Court* and *Hon'ble Madras High Court* in decisions relied by Ld.AR widely interpreted the provision, consequent to strict satisfaction of conditions therein.

23. In present facts, assessee made investment in under constructed residential property during F.Y 2013-14. During F.Y 2014-15 she sold vacant land for Rs.1.28 crores. Assessee thus claimed payment made to the builder for purposes of construction of residential house amounting to Rs.65,00,000/- out of capital gains earned from sale of vacant land. As per sec. 54(1) assessee has to within a period of one year before, or two years after the date on which such transfer took place,

purchased, or has within a period three years after that date, constructed a residential house in India then, capital gain will be computed as per (i) or (ii) of sub section 1 of sec. 54. In the present facts assessee fulfils the requirement of investing the sale proceeds in new Residential Property Requirement emphasised by *Hon'ble Supreme Court* in case of *M/s Dilip Kumar (Supra)* stands fulfilled by assessee as per sec. 54(1). This has not been objected by Revenue. The reason why the claim was rejection is, non completion of construction within the period stipulated under Act.

24. It is pertinent to note that, there is no strict requirement regarding completion of construction under section 54F(1) to be entitled for availing exemption. The passport to derive benefit under sec.54F(1) is investment in construction of property within the period required u/s 54(1)F or to invest in residential property within the stipulated time for enabling deduction under section 54F of the Act. *Hon'ble Karnataka High Court* in decision of *CIT vs.Sambandam Udaykumar* reported in 251 CTR 371 took the view that, under provisions of section 54F of the Act, the condition preceded is that, capital gains realised from sale of capital asset should have been parted by assessee and invested or constructed a residential house, as the case may be. *Hon'ble court* also observed that, the essence of the purpose of section 54F, is whether, the assessee who received the capital gain has invested in a house. Once it is demonstrated that the consideration received on transfer of capital asset has been

invested in or construction of residential house, even though the construction is not complete in all respect as required under law, assessee cannot be denied benefit under section 54F. Further on a plain reading of decision of *Hon'ble Karnataka High Court* in case of *CIT Vs. Sambandam (Supra)* reveals that, there is no particular stage of completion of construction, that is contemplated. Ld. AR submitted that, the construction was later on completed and the sale deed was registered in favour of assessee on 05/07/2019 in respect of transfer of ownership of residential property. There is nothing placed by revenue on record to demonstrate any other violation in support of their arguments.

25. In present facts we are of the view that assessee has substantially fulfilled all necessary conditions to be entitled for liberal interpretation of sec.54F. In our view, F.B decision relied by Ld.Sr.DR and Ld.CIT(A) of *Hon'ble Supreme Court* in case of *M/s Dilip Kumar (Supra)* needs to be applied after analysing the facts in each case. In our opinion, in present facts decision by *Hon'ble Supreme Court* support the case of assessee.

26. Respectfully applying ration of *Hon'ble Karnataka High Court* in case of *CIT Vs. Sambandam (Supra)*, we hold that assessee is eligible for exemption of Rs.65 lakhs u/s 54F.

Order pronounced in the open court on 20th Oct, 2020

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 20th Oct, 2020.

Sd/-
(BEENA PILLAI)
Judicial Member

/Vms/

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-10-2020		Sr.PS
3.	Draft proposed & placed before the second member	-10-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-10-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-10-2020		Sr.PS/PS
6.	Kept for pronouncement on	-10-2020		Sr.PS
7.	Date of uploading the order on Website	-10-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-10-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS