

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2293/Bang/2019
Assessment Year: 2015-16

Shri. Chandrashekar Veerabhadraiah, No.54, Ramachandrapura, Jalahalli Post, Bangalore – 560 013. PAN NO : AEBPV 1717 Q	Vs.	ITO, Circle – 6[2][4], Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri. V. Srinivasan, Advocate
Respondent by	:	Shri. Priyadarshi Mishra, JCIT(DR)(ITAT)

Date of Hearing	:	01.12.2020
Date of Pronouncement	:	07.12.2020

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is by the assessee directed against the Order of CIT(A) dated 11.07.2015. The assessee raised the following grounds:

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in upholding the computation of long term capital gains at Rs. 1,73,90,462/- being the entire gross consideration received by the appellant on the sale of property without appreciating that the entire consideration cannot be treated as capital gains under the facts and in the circumstances of the appellant's case.*

2.1 *The learned CIT[A] ought to have appreciated that the indexed cost of acquisition for the property sold by the appellant ought to have been determined and allowed while computing capital gains and in as much as the property sold by the appellant was held before 01/04/1981, the fair market value of the property on 01/04/1981 ought to have been adopted as the cost of acquisition and indexed cost thereon ought to have been allowed as a deduction under the facts and in the circumstances of the appellant's case.*

3. *Without prejudice to the above, the learned CIT[A] is not justified in upholding the rejection of the exemption claimed by the appellant u/s. 54F of the Act, under the facts and in the circumstances of the appellant's case.*

3.1 *The learned CIT[A] ought to have appreciated that the appellant had constructed a residential house from out of the sale proceeds and in support of the same, the appellant had produced evidence in the shape of a valuation report for cost of construction, Municipal tax paid, BESCO and water supply connection evidence to show the completion of construction and therefore, the disallowance of exemption u/s. 54F of the Act was contrary to law and facts of the appellant's case.*

3.2 *The learned CIT[A] further ought to have appreciated that the appellant had constructed only one residential house from out of the sale proceeds and the same cannot be regarded as 10 residential houses in the absence of any municipal number allotted to the several units that were forming part of a single Khata for municipal assessment and hence, the disallowance of exemption u/s. 54F of the Act on the ground that the appellant had constructed more than one house was contrary to law and facts of the appellant's case.*

4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A and 234B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

2. At the time of hearing, learned AR argued only on the issue with regard to granting of deduction under section 54F of the Income Tax act, 1961 (hereafter called 'the Act'). As such, we are adjudicating only ground relating to disallowance under section 54F of the Act.

3. The facts of the case are that the assessee along with his brother sold a property for RS.3,47,80,925/- on 12-12-2014. The assessee's share of 50% in the sale consideration was Rs.1,73,90,462/-. He has claimed deduction of conveyance expenses of Rs.2,37,500/- (50% of .4,75,000/-). The net consideration declared is Rs.1,71,52,962/-. The assessee has submitted that he has constructed a residential building worth Rs.1,71,52,963/- on Sy.No.47/8, Doddabommasandra, Chamundeshwari Layout, Vidyaranyapura, Yelahanka Hobli, and claimed Exemption under section 54F. The AO disallowed the claim of deduction of conveyance expenses of Rs.2,37,500/- as it does not have any relation with sale consideration and the same cannot be deducted from the sale consideration expenditure wholly and exclusively incurred in connection with sale of the property. Further, the AO rejected assessee's claim for exemption u/s.54F as he did not produce the documents in support of his claim of construction of residential property.

4. The assessee has submitted during the course of asst. proceedings that has constructed a residential building worth Rs.1,71,52,963/- on inherited land Sy.No.47/8, Doddabommasandra, Chamundeshwari Layout, Vidyaranyapura,

Yelhanka Hobli and land measuring 93 * 25 sq.ft. Also, that the construction of residential building started in the month of June, 2014 and since he started construction on completion of sale proceedings of the original asset and utilized the entire sale proceedings before filing return (25-9-2015), he did not keep the sale consideration amount under capital gains scheme. However, the assessee did not furnish any proof by way of copy of sanctioned plan, date of commencement of construction, completion certificate or any other details. It is to be mentioned here that the due date for filing of the return for A.Y. 2015-16 was 7-9-2015 , before which the net consideration not appropriated by the assessee had to be deposited into Capital Gains Deposit account with a Bank and not before filing of the return by the assessee.

5. During the course of appellate proceeding the assessee has submitted additional documents by way of copy of B Katha in respect of the property in assessee's name, self-assessment property tax return and bills for purchase of materials for construction of the new asset. He has submitted that the BBMP does not give approval for building plans for B Katha properties. If the BBMP does not give approval for construction for B Katha property, then question arises as to how the assessee got approval from BESCO and BWSSB for giving electricity and water connections which require BBMP approved plan. It is further noticed that except for making submission that the construction of residential building started in the month of June,2014, the assessee did not furnish any proof in support of this claim such as vouchers and bills for purchase of construction materials, payment of labour charges, house construction account. He has furnished before the AO a valuation report wherein the value of the residential building is mentioned as Rs.1,70,00,000/-.

6. It is seen from the valuation report that except for no. of units (Area of the unit or the building not mentioned) in the building, the constructed super

built up area is not mentioned. From this it appears that the valuation report is made to enable claim exemption u/s.54F. It is also noticed from the Valuation Report that under "Accommodation of the Building" 10 units, i.e., multiple houses, have been built. This also makes the assessee ineligible to claim exemption under section 54F as the words used in Section 54F are "constructed a residential house" As regards copies of bills submitted for construction expenses furnished the same could have been furnished before the AO at the time of assessment.

7. The contention of the AR is that the assessee is not able to deposit the sale proceedings on capital assets in Capital Gain Account Scheme, 1988 due to ignorance, though ignorance of law has excuse, it was submitted that the provisions of section 54F of the Act is to encourage and to give a boost for construction of new residential property. It is a beneficial provision to be construed liberally so as to see that the share proceedings arising out of sale of certain type of long term assets are utilized for the purpose of construction of new residential property. It was submitted that assessee utilised the entire amount of sale proceeds for the construction of new residential house and thereby the assessee created new asset. The lower authorities rejected the claim of the deduction under section 54F on the reason that the assessee constructed the building having following constructions:

“The building is having Ground, First & Second Floor.

Ground floor consists of a parking area with 2 BHK of 2 units.

First floor consists of a 2BHK of 3 units.

Second floor consists of a 1BHK of 5 units.

All the units are Rented out except first floor is fully occupied by the owner.”

8. It was submitted that according to lower authorities, it is not one residential house but multiple residential units and w.e.f. 01.04.2015, the provisions of section 54F of the Act have been amended to allow exemptions of capital gains only to the extent of investment in purchase or construction of one residential house. Since is having more than 10 residential houses, the exemption under section 54F of the Act was denied. According to learned AR, for the corporation tax purpose, the entire building as a whole is assessed as single residential unit and there was a single BESCOM and BWSSB connection. The Revenue authorities have also issued single khata and there is single tax paid receipt also. He relied on the judgment of Karnataka High Court in the case of K. G. Rukminiamma wherein it was held that even if new assets comprises of flats (more than one residential unit), the assessee is eligible for deduction under section 54F of the Act. Accordingly, he submitted that the single building having multiple floors cannot be construed as multiple residential unit so as to deny deduction under section 54F of the Act. The learned AR relied on the following decisions:-

- (i) CIT v. K.G.Rukmniamma [ITA No.283/2008 dated 27.08.2010 - Hon'ble High Court of Karnataka]
- (ii) Sri.M.Nagesh Suvarma v. Sri.Narayana, reported in Indian Law Reports 2016 Karnataka Series ILR 2016 KAR 4252 – Hon'ble High Court of Karnataka.
- (iii) Sri.Bhatkal Ramarao Prakash v. ITO [ITA No.2692/Bang/2018 order dated 04.01.2019 – ITAT Bangalore Benches]

On the other hand, learned DR relied on the order of CIT(A) and drew our attention to the amended provision of section 54F of the Act which is applicable to the assessee's case since the Assessment Year involved is 2015-16.

9. We have heard both the parties and perused the material on record. Section 54F of the Act reads as follows:

“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 (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or 74[two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter 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 assets 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 net 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”.

9.1 Now the contention of DR is that the building is having multiple residential units. The assessee is entitled for deduction in respect of only one residential unit.

10. We have gone through the case records. Actually, this was the single piece of property bearing Sy.No.47/8 (Eastern Portion), Doddabommasandra, Chamundeshwari Layout, Vidyaranyapura, Yelahanka Hobli. The area of land is East to West 25ft, North to South 93ft, totally 2,325 sq.ft. The assessee constructed residential building consisting of the following:

“The building is having Ground, First & Second Floor.

Ground floor consists of a parking area with 2 BHK of 2 units.

First floor consists of a 2BHK of 3 units.

Second floor consists of a 1BHK of 5 units.

All the units are Rented out except first floor is fully occupied by the owner.”

11. According to the DR, there are multiple residential units w.e.f. 01.04.2015, the assessee is entitled for deduction to the extent of value of only

one residential unit. The claim of the assessee is that the assessee invested in single residential unit and is eligible for deduction under section 54F of the Act on the entire value of the building and relied on judgment on judicial High Court in the case of K. G. Rukminiamma 331 ITR 211 wherein it was held that the phrase “a” residential house would mean “one” residential house is not correct. The expression “a” residential house should be understood in a sense that building should be of residential house in nature and “a” and should not be understood to indicate a singular number. Section 54/54F uses the expression “a residential house” and not “a residential unit”. Section 54F requires the assessee to acquire “a residential house” and so long as the assessee acquires the building, it may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently, used as an independent residence, the requirement of Section should be taken to have been satisfied. There is nothing in these Sections which requires a residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in this Section which requires that the residential house should be in built in a particular manner, it seems to us that the Income Tax Authorities cannot insist upon that requirement. A person may construct a house according to his plans, requirements and compulsions. A person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post retirement. One may build a house consisting of four bedrooms (all in same or in different floors) or in such a manner than an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He

may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. The physical structuring of the new residential house, whether it is lateral or vertical, cannot come in the way of considering the building as a residential house. The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction u/s 54/54F. It is neither expressly nor by necessary implication prohibited.

12. We are therefore of the opinion that the assessee in principle, is entitled for deduction under section 54F in respect of investment made in impugned property subject to production of other relevant evidence by the assessee before the A.O. In the present case, the assessee has not filed relevant evidences for incurring the cost on new residential house before the A.O. Hence, we inclined to restore the issue to the file of A.O. for quantification purpose the deduction u/s 54F of the Act. The assessee is directed to produce all relevant evidences in support of the claim of deduction u/s 54F of the Act.

13. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

SD/-

(BEENA PILLAI)
Judicial Member

SD/-

(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated : 07.12.2020.
NS*/Devadas

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.**