

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “SMC-A”, BANGALORE**

**Before Shri George George K, Judicial Member**

ITA No.1717/Bang/2019 : Asst.Year 2016-2017

Rajyalakshmi Reguraj 539, 2 <sup>nd</sup> Main, 2 <sup>nd</sup> State RMV 3 <sup>rd</sup> Block Bengaluru – 560 094. <b>PAN : ACVPB6306M.</b>	v.	The Income Tax Officer Ward 6(3)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Smt.Kavitha Paramesh, CA  
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

<b>Date of Hearing : 04.01.2021</b>	<b>Date of Pronouncement : 05.01.2021</b>
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**ORDER**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 23.05.2019. The relevant assessment year is 2016-2017.

2. The solitary issue raised is whether the A.O. and the CIT(A) have erred in restricting deduction u/s 54F of the I.T.Act and adding back to the total income an amount of Rs.11,58,896.

3. The brief facts of the case are as follow:

The assessee is an individual. During the relevant assessment year assessee sold 3000 equity shares in a company called Aditya Auto Products Private Limited for a total consideration of Rs.2,40,00,000. For the assessment year 2016-2017, the return of income was filed declaring total income of Rs.3,02,110. In the return of income, the assessee had declared long term capital gains of Rs.2,05,39,185 on sale

of aforementioned shares. Out of the above consideration, the assessee had claimed exemption u/s 54EC and 54F of the I.T.Act amounting to Rs.50,00,000 and Rs.1,55,39,185, respectively. As regards the claim of exemption u/s 54EC of the I.T.Act, there is no dispute. With regard to exemption u/s 54F of the I.T.Act, the A.O. during the course of assessment proceedings, had called for information from the builder, M/s.Prestige Estates Projects Limited, regarding the amount invested in construction / purchase of a flat. In reply to the A.O.'s query, the builder submitted that the assessee had made payment of only Rs.1,75,83,000 instead of Rs.1,90,00,000 claimed by the assessee. Therefore, in the assessment order completed u/s 143(3) of the I.T.Act (order dated 28.12.2018), the A.O. recomputed the exemption u/s 54F of the I.T.Act at Rs.1,43,80,289 as against Rs.1,55,39,185 claimed by the assessee. Accordingly, the excess exemption claimed of Rs.11,58,000 was added to the assessee's total income.

4. Aggrieved by the order of the assessment in restricting the claim of deduction u/s 54F of the I.T.Act, the assessee preferred appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer in restricting the claim of deduction u/s 54F of the I.T.Act. The CIT(A) held as regards the payment of registration charges paid amounting to Rs.10-12 lakh, the assessee has not produced any proof. Further, the CIT(A) held that unutilized amount which was not deposited in the capital gains account would not be entitled to exemption u/s 54F of the I.T.Act. The relevant findings the CIT(A) reads as follow:-

*“5. .... I have considered the facts of the case, the grounds of appeal, the statement of facts as well as the submissions filed. The appellant had invested a total of Rs.50,00,000/- in the REC bonds. A sum of Rs,1,75,83,000/- was paid to the builder from the capital gains account which was confirmed by the builder in reply to the AO’s notice u/s 133(6). During the assessment proceedings, the appellant had submitted to the AO a copy of the builder’s intimation regarding registration charges to be paid amounting to Rs.10-12 lakhs. However, even during appellate proceedings, no proof has been submitted of the registration having been completed or this amount having actually been spent. In view of the same, the balance amount of Rs.1,90,00,000/- out of the consideration received cannot be considered to have been fully utilized towards construction of the new asset and only the sum of Rs.1,75,83,000/- is to be considered for exemption u/s 54F. The provisions of section 54F reproduced below are unambiguous in this regard.”*

5. Further, the CIT(A) after extracting the provisions of section 54F of the I.T.Act, held as follows:-

*“In view of the clear and unambiguous provision of the law, the appellant would be entitled to exemption u/s 54F of only so much of the net consideration that was invested in the purchase / construction of the new asset and the appellant cannot claim the benefit of exemption on the unutilized amount which has not been deposited in the capital gains account. The appellant has placed reliance on the decision of the Hon’ble Karnataka High Court in the case of CIT v. K.Ramachandra Rao on ITA Nos.494 and 495 of 2013 and 46 and 47 of 2014 dated 14/07/2014. However, the facts of the case were somewhat different as the assessee had invested in the construction of the new asset more than one year prior to the date of transfer and it was held that the assessee had invested the sale consideration within the time specified u/s 54F(1). In the appellant’s case, as detailed above, the sale consideration has not been fully utilized till date in the new asset and the unutilized amount should have been deposited in the capital gains account as per law. Hence the appellant cannot derive much support from CIT v. K.Ramachandra Rao. Accordingly, it is held that there is no infirmity in the AO’s order and the same is upheld.”*

6. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The assessee before the Tribunal has produced the proof of payment of registration charges. The assessee also furnished the proof of total payment of Rs.1,80,34,321 and letter from the builder confirming the same is also placed on record. The learned AR contended that apart from the above amounts the assessee has also paid further sum of Rs.33,26,923 towards the construction of the property. Therefore, it was submitted that the assessee has utilized the entire sale consideration of shares towards construction / purchase of a residential property. It was contended that delay in completion of the registration of the property cannot be attributed to the assessee and the assessee was prevented by sufficient cause which was beyond the control in making the complete investment in the said property. Therefore, it was prayed that the entire claim of deduction u/s 54F of the I.T.Act ought to be granted in the facts and circumstances of the case.

7. The learned Standing Counsel strongly supported the orders of the Income Tax Authorities.

8. I have heard the rival submissions and perused the material on record. The A.O. had restricted the claim of exemption u/s 54F of the I.T.Act for the reason that the assessee had utilized only the sale consideration of Rs.1,75,83,000 out of the balance sale consideration of Rs.1,90,00,000 (Rs.2,40,00,000 – Rs.50,00,000) for the construction of a residential house. Accordingly,

proportionately exemption u/s 54F of the I.T.Act was allowed amounting to Rs.1,43,80,289 instead of Rs.1,55,39,185 claimed by the assessee. The builder in its letter dated 29.11.2019 had stated that there are payments by the assessee amounting to Rs.4,17,000 which were not included in the reply submitted to the A.O. pursuant to the notice issued to the builder u/s 133(6) of the I.T.Act. The A.R further submitted that the registration of the property was undertaken, which cost the assessee an amount of Rs.10,00,000 apart from the total consideration of Rs.1,80,34,321 mentioned by the builder. It was also stated that the assessee has further paid a sum of Rs.33,26,923.

8.1 In the light of the judgments of the Hon'ble jurisdictional High Court in the cases of CIT v. Sri.K.Ramachandra Rao in ITA No.46 and 47 of 2014 and 494 and 495/2013 (judgment dated 14<sup>th</sup> July, 2014) and CIT & Anr. v. Sambandam Udaykumar [(2012) 345 ITR 389 (Kar.)], it is clear that the assessee would be entitled to exemption u/s 54F of the I.T.Act with regard to utilization of sale proceeds for the purpose of construction of a residential property within a period of three years from the date of sale of old asset. In the instant case there is no clarity as regards the date of utilization of the amounts apart from Rs.1,75,83,000. It is also not clear when the assessee had incurred the expenditure of Rs.10 lakh for registration of the property. In the light of these facts, I am of the view that the matter needs to be examined by the Assessing Officer. The assessee shall be entitled to exemption u/s 54F of the I.T.Act with regard to utilization of the sale proceeds which

are within three years from the date of sale of original asset, in the light of the dictum laid down by the above judicial pronouncements. It is ordered accordingly.

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

Order pronounced on this 05<sup>th</sup> day of January, 2021.

**Sd/-  
(George George K)  
JUDICIAL MEMBER**

Bangalore; Dated : 05<sup>th</sup> January, 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