

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.194/Bang/2020
Assessment Year: 2016-17

Halesh K.C. No.948, 28 th Main, Jayanagar, 9 th Block Bangalore-560 069 PAN NO : AVHPK3392F	Vs.	ITO Ward-7(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri H. Guruswamy & Shri M. Ravi Kumar, A.Rs
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	24.02.2021
Date of Pronouncement	:	24.02.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 29-11-2019 passed by Ld CIT(A)-7, Bengaluru and it relates to the assessment year 2015-16. The solitary issue urged in this appeal is whether the Ld CIT(A) was justified in rejecting the claim for deduction u/s 54F of the Income-tax Act,1961 ['the Act' for short].

2. We heard the parties and perused the record. The assessee along with other family members had sold an immovable property located at Bommanahalli, Bangalore on 20-08-2015. The assessee worked out long term capital gain of Rs.1,50,20,000/- and claimed

deduction of entire amount u/s 54F of the Act. The AO noticed that the assessee had received a building by way of gift on 13.8.2015 and the said building consisted of ground floor, first floor and second floor. The AO also deputed his inspector to physically inspect the property. The Inspector reported that the Ground floor is having a garage and one residential unit; first floor is having two 1BHK flats and second floor is having 2 single (with bath) units. The AO, accordingly, took the view that each of the unit is separate house. Since deduction u/s 54F of the Act is not permitted, if the assessee is having more than one house property, the AO rejected the claim for deduction u/s 54F of the Act. The Ld CIT(A) also confirmed the same and took support of decision rendered by Bangalore bench of Tribunal in the case of Ramaiah Harish (ITA No.789/Bang/2019 dated 04-09-2019).

3. We notice that the decision rendered by the Tribunal in the case of Ramaiah Harish (supra) was an ex-parte order and the same has been recalled by the Tribunal later. Hence the Ld CIT(A) could not have placed his reliance on the above said decision.

4. The question, whether each floor of a single stand alone building should be considered as separate house was examined by the coordinate bench in the case of Shri Bhatkal Ramarao Prakash vs. ITO (ITA No.2692/Bang/2018 dated 04-01-2019). The relevant portion of the order in the above said case is extracted below:-

“20. As far as the case of the AO that assessee has purchased two properties under Sale Deed dated 28.06.2014 is concerned, we have perused the schedule of the property that was purchased. Actually this was a single piece of property viz., Site No.1 owned by Smt. Janaki Iyengar, Smt. Janaki Iyengar constructed a residential house in ground floor in the year 1937 and the first floor in the year 1962-63 with the ground floor of the property re-numbered as No.37 and the first floor as Door ITA No. 2692/Bang/2018 No.37/1 of 1st

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*Main Road, N.R.Colony. Janaki Iyengar executed a will on 28.5.1975 wherein she bequeathed to her sister Dr.M.Vaidhei with Door No.37 which is Schedule-A of the Sale Deed under which the Assessee purchased this property and the first floor bearing door No.37/1, described in Schedule B in the sale deed under which Assessee purchased the new asset to her nephew P.Ramanuja Chari. Janaki Iyengar died on 6.6.1975 and the legatees under the will sold their respective shares in one property to the Assessee. The entire property constitutes single house but was bifurcated with two door numbers for the ground and first floor with common entrance in the ground floor only to earmark the share of each beneficiaries. **The property otherwise constitutes a single property, though they have two different door nos.** In such circumstances, the assessee has purchased only one property and not two properties. In this regard, the decisions cited by the Id. Counsel for the assessee before us supports the plea of the assessee viz., the decision of the Delhi High Court in the case of CIT Vs. Gita Duggal (2013 30 taxmann.com 230 (Delhi). In the aforesaid decision, the facts were that the assessee entered into a development agreement pursuant to which the developer demolished the property and constructed a new building comprising of three floors. In consideration of granting the development rights, the assessee received Rs. 4 crores and two floors of the new building. The AO held that in computing capital gains, the cost of construction of Rs. 3.43 crores incurred by the developer on the development of the property had to be added to the sum of Rs. 4 crores received by the assessee. The assessee claimed that as the said capital gains was invested in the said two floors, she was eligible for exemption u/s 54. The AO rejected the claim on the basis that the units on the said floors were independent & self-contained and not "a residential house" and granted exemption for only one unit. The CIT(A) and Tribunal upheld the assessee's claim by relying on B.Ananda Basappa 309 ITR 329 (Kar) and K.G. Rukminiamma 331 ITR 211 (Kar). On appeal by the ITA No. 2692/Bang/2018 department, the High Court dismissed the appeal of the revenue. The Hon'ble Court observed that as held in B.Ananda Bassappa (SLP dismissed) & K G Rukminiamma, the Revenue's contention that the phrase "a" residential house would mean "one"*

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*residential house is not correct. The expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. Also, [section 54/54F](#) uses the expression "a residential house" and not "a residential unit". [Section 54/54F](#) requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which 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 the Section should be taken to have been satisfied. There is nothing in these sections which require the 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 the section which requires that the residential house should be 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 the same or different floors) in such a manner that 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.

21. We are therefore of the view that the Assessee was entitled to claim deduction u/s.54F of the Act in respect of investment in the property bearing Door No.37 & 37/1, 1st Main Road, N.R.Colony, Bangalore.

5. We also notice that the revenue had filed a miscellaneous application against the above said order passed by the Tribunal in MP No. 08/Bang/2020 and the same was rejected by the order dated 09-09-2020 passed by the co-ordinate bench with the following observations:-

“4. In this miscellaneous petition, the revenue has contended that since the Tribunal has placed reliance on the decision of the Hon'ble High Court of Karnataka rendered in the case of B. Ananda Bassappa (supra) and K G Rukminiamma (supra) and since by the [Finance Act, 2014](#), [section 54F](#) was amended by substituting the words "a residential house" with "one residential house" and since the assessment year in this appeal is after the aforesaid amendment, the conclusions drawn by the Tribunal are incorrect and suffers from an apparent mistake on the face of record and should be rectified suitably.

5. We have heard the rival submissions. The ld. DR reiterated the stand of revenue as contained in the petition.

6. We are of the view that there is no mistake, much less an apparent mistake, in the order of the Tribunal. The Tribunal in para 20 of its order has clearly given a finding that the property at N.R. Colony belonged to one owner, Smt. Janaki Iyengar and as per the Will of Smt. Janaki Iyengar, the Ground Floor of the premises which was numbered as Door No.37 was given to Smt. Janaki's sister, Dr. M. Vaidehi and the 1st Floor numbered as Door No.37/1 was given to Smt. Janaki's nephew, Shri P. Ramanuja Chari. Both these owners of Ground Floor and 1st Floor sold the property to the assessee. The

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Tribunal in para 20 of the order clearly observed that the entire property constitutes one residential house, but was bifurcated with two Door Nos. for Ground Floor and 1st Floor with common entrance in Ground Floor only to earmark the share of each beneficiary and that otherwise the property constitutes a single property, though it has two different Door Nos. The Tribunal has reached the conclusion that assessee has purchased only one property and not two properties. Though the Tribunal has made a reference to the decisions rendered by the Hon'ble Delhi High Court in the case of Gita Duggal (2013) 30 Taxmann.com 230(Delhi) in which flats located in two different floors were regarded as one property. The Tribunal also referred to decisions of High Court of Karnataka referred to by the Hon'ble Delhi High Court and those decisions were only purely supportive, but the real conclusion of the Tribunal on facts is that the assessee purchased only one house property. In the circumstances, we are of the view that there is no mistake, much less an apparent mistake, in the order of Tribunal.”

6. The view taken in the case cited above is that an independent building can have a number of residential units and it will not lose the character of “one residential house”. Identical view has been expressed by another co-ordinate bench in the case of Shri Chandrashekar Veerabhadraiah vs. ITO (ITA No.2293/Bang/2019 dated 07-12-2020 relating to AY 2015-16). Accordingly, we are unable to agree with the view taken by the tax authorities that each floor of the individual house/each portion in a floor is separate house property. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and hold that the house property received by the assessee is “one residential house” only within the meaning of sec.54F of the Act. Accordingly, we are of the view that the reasoning given by the AO to reject the claim for deduction u/s 54F is not justified.

7. With these observations, we restore this issue to the file of the AO for allowing the deduction u/s 54F of the Act in compliance with the above decision.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 24th Feb, 2021

Sd/-
(Beena Pillai)
Judicial Member

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

Bangalore,
Dated 24th Feb, 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.