

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.82/Bang/2014
Assessment year : 2007-08

Shri S. Tejraj Ranka, No.22, S.T. Bed, New Extn., 1 st A Main Road, 4 th Block, Koramangala, Bangalore – 560 034. PAN: ADFPR 8399P	Vs.	The Assistant Commissioner of Income Tax, Circle 7(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri G.S. Prashanth, C.A.
Respondent by	:	Shri Sunil Kumar Agarwala, Jt. CIT(DR)

Date of hearing	:	18.08.2015
Date of Pronouncement	:	26.08.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 30.10.2013 of the Commissioner of Income-tax (Appeals), LTU at Bangalore relating to assessment year 2007-08.

2. The assessee is an individual. He derives income from salary, income from partnership business from two firms, called M/s Tyre Gallery and M/s Car Gallery, which is exempt u/s 10(2A) of the Income-tax Act, 1961 ["the Act"] and income from other sources. Return for assessment year 2007-08 was filed on 30/11/2007 declaring a total income of Rs.17,17,194. The total income of the assessee was assessed by the AO at Rs.28,47,194 as against declared income of Rs.17,17,194. The only issue that arises for consideration in this appeal is regarding claim made by the assessee for deduction u/s 54F of the Act at Rs.34,34,640 which was restricted by the Revenue authorities to Rs.23, 04,640.

3. During the previous year relevant to asst. year 2007-08, the assessee sold immovable property being vacant site in HSR layout, Bangalore for a total sale consideration of Rs.36 lakhs. The Long Term Capital Gain (LTCG) on such transfer was Rs.34,34,360. In the return of income filed, the assessee claimed that the LTCG was exempt u/s 54F of the Act as the Assessee had purchased a flat, being Flat No.C 503, Block-C in a project known as 'ESPERANZA BY UKN' Phase – I in Varthur Hobli, Bangalore South Taluk [hereinafter referred to as "the property"].

4. In the course of asst. proceedings, the assessee produced before the AO three documents relating to purchase of property for availing exemption u/s 54F of the Act viz.,

- (i) Agreement for sale dated 17/5/2007 under which undivided share of land and Flat with a built up area of 2025 sq.ft. together with one covered car park was agreed to be purchased by the assessee for a sale consideration of Rs.46,55,000.
- (ii) Letter from the developer, Esperanza by UKN dated 18.6.2008 wherein basic cost, car park 2 numbers, upgradation cost. additional features and other infrastructure to the flat, incidental charges etc. was agreed to be sold at a price of Rs.52,60,292. The breakup of the above amount was given as follows:-

a. Basic Cost for 2025 sq. ft.	Rs.22,05,000
b. Car Park	Rs. 3,00,000
c. Upgradation cost, additional features & other infrastructure to the flat	Rs.22,98,000
d. Incidental Charges:-	
Electricity Deposit	: Rs.1,62,000
Water & STP Deposit	: Rs. 30,375
Club House Membership:	Rs. 75,000
Sinking Fund towards	
Maintenance	: Rs.1,51,875
Service tax on Deposit	: Rs. 28,042
Legal Fees	: Rs. 10,000

	Rs.4,57,292

GRAND TOTAL	Rs.52,60,292

- (c) Registered Sale deed by the developer, Esperanza by UKN dated 25/6/2008 wherein undivided share of land, residential apartment and 2 covered car parks proportionate share in common area was sold for a sale consideration of Rs.22,05,000/-.

5. The Assessing Officer was of the view that the value shown in the registered sale deed can be considered as investment in a residential house for allowing exemption u/s 54F of the Act. The value as per registered sale deed was Rs.22,05,000. The AO allowed registration charges and stamp duty and thus arrived at a total investment in 'residential house' of Rs.24,15,595. The proportionate deduction u/s 54F of the Act was computed by the AO as follows:

$$\frac{34,34,640 \times 24,15,595}{36,00,000} = \text{Rs.}23,04,640$$

6. The AO accordingly computed LTCG as follows:-

<u>Long Term Capital Gains :</u>	
Sale Value	: 36,00,000
Less: Cost	: 1,65,360

Capital Gains	34,34,640
Less : 54F	: 23,04,640

LTCG chargeable	: 11,30,000

7. The AO was of the view that the investment of Rs.52,50,292 contained in the letter of EXPERANZA BY UKN, the developer, was inclusive of basic cost of the residential house, cost of other items like upgradation cost, additional features, club house membership, sinking fund towards maintenance, electricity deposit, etc. According to the AO, the investments other than undivided share of land; residential apartment, 2

covered car parks and proportionate common area; alone could be considered as investment in “residential house” and investment in other amenities could not be regarded as investment in “residential house” so as to be eligible for deduction u/s 54F of the Act.

8. Aggrieved by the order of the AO, the Assessee preferred appeal before the CIT(Appeals). Before CIT(A), the Assessee pointed out that the total investment in purchase of the property was a sum of Rs.52,60,292 and stamp duty and registration fee of Rs.2,10,595; in all a sum of Rs.54,70,887. The entire payment to the builder and incurring of stamp duty were through cheques and the details of the cheque payments are given in the form of a statement which is placed at page-11 of the Assessee's paper book. The Assessee pointed out before the CIT(A) that it was a common practice in real estate sector that the agreement between the developer and the purchaser of flat contains, besides the basic cost of undivided share of land and value of apartment, car park and undivided interest in other common areas, as these are regarded as immovable property which can be conveyed only through a registered document. The other amenities which make the residential house complete in all respects, have to be incurred by the purchaser of flat. These amenities need not be included in the registered document. The value of these amenities if included in the sale deed would involve payment of stamp duty and registration charges on their value. These amenities need not be legally treated as part of immovable property. There is, therefore, no illegality on

the part of the Assessee in making the claim for deduction u/s.54F of the Act as was made in the return of income filed by the Assessee. The Assessee also pointed out that the Developer confirmed the receipt of Rs.52,60,292 towards the cost of undivided share of land, constructed apartment, car parks and other amenities. Therefore there was no reason for the AO to have restricted the deduction u/s.54F of the Act only to the extent of value as disclosed in the registered sale deed.

9. The CIT(Appeals), however, did not agree with the submissions of the Assessee. She was of the view that the Assessee was indulging in undervaluation of property to avoid stamp duty and registration charges on registration of the property at the correct value. Thereafter, the CIT(A) found that under the agreement dated 17.5.2007, the developer agreed to sell undivided share of land, residential flat for Rs. 44,55,000 and Rs.2,00,000 for one covered car park. The CIT(A) found that under Schedule E to this agreement, there was a time schedule for payment by the Assessee towards cost of the flat, but the said schedule of payment was not kept up by the Assessee. There was no reference to any basic cost in this agreement. Nor was there any reference to basic cost in the registered sale deed. The CIT(A) was, therefore, of the view that the explanation of the Assessee that the registered sale deed contains only basic cost of flat is not borne out of the documents between the parties. The confirmation of the developer only refers to "basic cost". According to the CIT(A) therefore, the agreement between the parties was not acted

upon. That there was no basis for the claim of the Assessee that there was “basic cost” and “upgradation cost” as the said claim is not supported by any document. According to CIT(A), the apartment replete with all its features existing as on 23.6.2008 constituted an item of immovable property in totality, and it was registered as such before the Sub-Registrar. The description of the property recorded in the sale deed therefore, constitutes, the property owned by the Assessee. The CIT(A) also found that the Assessee had declared that the consideration mentioned in the sale deed that was registered, was the true market value, under the Karnataka Stamp (Prevention of Undervaluation of Instruments) Rule, 1957. The CIT(A) was also of the view that it was unethical for the Assessee to have avoided stamp duty by undervaluing the property. The CIT(A) finally concluded that she was inclined to accept only the value as given in the registered document. The CIT(A) accordingly confirmed the order of the AO.

10. Aggrieved by the order of the CIT(A), the Assessee has preferred the present appeal before the Tribunal.

11. We have heard the submission of the learned counsel for the Assessee who reiterated submissions made before the CIT(A). The learned DR relied on the order of the CIT(A).

12. We have given a careful consideration to the rival submissions. The relevant provisions of Sec.54F of the Act, in so far as it relevant for the present case, reads thus:

“Sec.54F: Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

(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 (hereinafter in this section referred to as the original asset), and the assessee has, within a period of one year before or 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 in India] (hereinafter 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 asset 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:

.....”

13. The claim of the Assessee, in the present case, is that he has constructed a residential house and is therefore entitled to exemption u/s.54F of the Act. The term ‘residential house’ is not defined in the Act. Therefore the said expression should be understood in the normal sense of a house, which is habitable. There is no dispute that the Assessee in fact

paid a sum of Rs.52,60,292 to the developer for acquiring a flat which was habitable with all amenities in place. The confirmation of the developer/builder is on record. In addition to the same, the Assessee also incurred stamp duty and registration charges of Rs.2,10,595. Thus the Assessee has invested a sum of Rs.54,70,887 in acquiring a residential house. The Assessee should therefore be allowed the deduction claimed u/s.54F of the Act, on a plain reading of the provisions of Sec.54F of the Act.

14. The Agreement dated 17.5.2007 is the first document between the developer and the Assessee for purchase of the property. This Agreement refers to only undivided share of land and flat measuring about 2025 Sq.ft. together with one covered car park for a consideration of Rs. 44,55,000 + registration charges of Rs.2,00,000 as per schedule E to this Agreement. Schedule E refers only to the cost of the built up area of 2025 sq.ft. at Rs.2,200 per sq.ft. Par-II of Schedule-E and Article IV of the Agreement gives a list of other charges to be paid by the Assessee.

15. The next document is the registered sale deed dated 25.6.2008 which is for a sum of Rs.22,05,000 which is towards undivided share of land and flat together with 2 covered car parks.

16. The third document is the letter dated 18.6.2008 by the developer which refers to a sum of Rs.52,60,292 as the total cost of the property paid by the Assessee. This letter refers to the basic cost of the property as

Rs.22,05,000. 2 Car Parks have been valued at Rs.3,00,000. To this extent, there appears to be a contradiction between the registered sale deed and this letter of the builder. The other charges mentioned in this letter, in our view, cannot be regarded as immovable property to be included in the registered sale deed as value of property. These are all provided by the builder in his capacity as developer and building contractor for the Assessee. Therefore, in our view, there can be no adverse inference drawn against the Assessee.

17. The fact remains that the Assessee has parted with a sum of Rs.54,70,887 to acquire a “residential house”, in the sense, a house which is habitable. Therefore as far as proceedings under the Act are concerned, the Assessee cannot be denied the benefit of deduction u/s.54F of the Act. The fact that there was undervaluation of the value of the property for the purpose of stamp duty, is an issue which is alien to the question of allowing deduction u/s.54F of the Act, when the evidence on record clearly shows investment in construction of “residential house” to the extent of Rs.54,70,887.

18. The AO and the CIT(A) have ignored the fact that the Assessee has in fact made investment to the extent of Rs.54,70,887 and therefore the deduction claimed u/s.54F of the Act ought to be allowed. The fact that there was discrepancy between the amount set out in the registered document and the agreement with the builder has already been noticed by

the State Registration Authorities and the Assessee is contesting those proceedings. Those proceedings will not have any bearing with regard to the claim of the Assessee for deduction u/s.54F of the Act, as the factum of investment in acquiring a residential house and payment of Rs.54,70,887 has been established and not disputed by the Revenue.

19. We are therefore of the view that the claim of the Assessee for deduction u/s.54F of the Act ought to be allowed as claimed by the Assessee. We hold and direct accordingly. The appeal of the Assessee is accordingly allowed.

20. In the result, the appeal by the Assessee is allowed.

Pronounced in the open court on this 26th day of August, 2015.

Sd/-
(ABRAHAM P. GEORGE)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 26th August, 2015.
/D S/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.