

IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. JASON P. BOAZ, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.2092/Bang/2017)  
(Assessment Year : 2013-14)

Shri. Mahesh Suryanarayan Lingam,  
No.53, Pragathi, 6<sup>th</sup> Cross, Pai Layout,  
Hulimavu Main Road, Bengaluru 560 076 .. Appellant  
PAN : ADJPM3492N

v.

Income-tax Officer,  
Ward -5(3)(2), Bengaluru .. Respondent

Assessee by : Shri. Lokesh Jain, CA  
Revenue by : Shri. B. R. Ramesh, JCIT

Heard on : 08.02.2018  
Pronounced on : 16.03.2018

**ORDER**

**PER LALIET KUMAR, JUDICIAL MEMBER :**

The present appeal is filed by the assessee against the order passed by the CIT (A)-5, Bengaluru, dt.19.05.2017, for the assessment year 2013-14, on the following grounds :

1. The order of the learned Commissioner of Income Tax (Appeals) ("CIT(A)") is opposed to law, facts and circumstances of the case.
2. The order is passed in haste, without providing sufficient and reasonable opportunity of being heard.
3. The order is passed against the principle of natural justice and thus liable to be quashed.
4. The Ld. CIT(A) erred in confirming the order of Ld. AO who brought to tax a sum of Rs. 53,27,788 as long-term capital gain for AY 2013-14 by not allowing exemption under section 54 and 54F of the Income-tax Act, 1961 ("Act") under the premise that majority of the sale consideration has been invested in commercial property and that the investment in residential house property has been made out of borrowed funds.
5. The Ld. CIT(A) ought to have appreciated that the provisions of section 54 and 54F of the Act do not mandate utilization / investment of the sale consideration itself, in a residential house property in order to claim exemption under those sections.
6. The Ld CIT(A) erred in not taking cognizance of the principles arising out of the following decisions submitted during the appellate proceedings, by dismissing them on account of being different in facts from the case of the Appellant:
  - a. CIT Vs Dr P.S.Pasricha (Bombay High Court) (ITA No. 1825 of 2009);
  - b. Bombay Housing Corporation Vs Asst CIT (2002) 81 ITD 454 (Bom)

Ground nos.1 to 3 are general and need not be adjudicated.

02. Brief facts are, the assessee filed the return of income for AY 2013-14, declaring income of Rs.45,39,930/- under the head salary, house property and other sources. The assessee had claimed exemption u/s.54 and 54F under the head capital gains. The case of the assessee was selected for scrutiny and notice u/s.143(2) was issued. In response thereto the assessee filed copy of the sale deed for sale and purchase of the property during the year, supporting

statements etc., However, the AO was not convinced with the explanation given by the assessee and therefore made an addition of Rs.53,27,788/- on account of long-term capital gains arising out of sale of immovable property during the assessment year. Feeling aggrieved, the assessee filed appeal before the CIT (A).

03. The CIT (A) confirmed the order passed by the AO and has given the following finding :

I have perused the above said decisions rendered by various Courts and also gone through the findings given by the Assessing Officer after marshalling the facts of the case. The case laws relied upon by the appellant are totally different from the facts of the appellant's case. As seen from the facts of the case, the appellant has predominantly utilized the sale consideration for investment in commercial space and only part of the sale consideration paid for residential property from a/c no.17521030004909. The transfer of property was during July 2012 and majority of the sale consideration has been invested towards the commercial property from November 2012 upto February 2014 except for payment of Rs.20 lakhs on 09/03/2013 and Rs.1,96,025/- on 30/04/2013 which goes to prove that the appellant has not utilized the sale consideration for purchase rather availed housing loan to source the investment in residential flat at SJR Luxuria. With reference to the fact that the investment was out of borrowed funds, the contention of the appellant before the Assessing Officer was that he was entitled to exemption u/s.54 and 54F claimed, as there was no necessity for nexus between the capital gains and amount of investment and that even out of borrowed funds. The Assessing Officer has observed that if that be the case, the intention of the legislation to allow exemption of capital gains earned out of sale consideration for acquiring residential property either through purchase or construction within the time frame stipulated as per provisions of Sec.54 and 54F and the spirit of the section to encourage the appellant to utilize the sale consideration for purchase or construction of residence would be defeated. Further observed that Smt. Sudha Mahesh, who had received her share of sale consideration of Rs.57,75,000/- in her a/c

no.17521930004909 has claimed exemption u/s.54 and 54F in her return filed for A.Y. 2013-14 towards investment in SJR Luxuria. As the payment of Rs.21,96,026/- towards SJR Luxuria has been made from Smt. Sudha Mahesh's account, the exemption can be allowed to the extent of Rs.21,96,026/- in her case for A.Y. 2013-14 and not in the appellant's case. The above case laws referred are for a limited purpose of saying that the sale proceeds need not be utilized for acquisition of the new residential property since it is not possible to acquire the property one year before the transaction of capital gains arise and not that the borrowed funds need not be repaid out of such sale proceeds. Keeping in mind the legislative intention in introducing the provision u/s.54 & 54F in order to encourage the construction of the residential property, I am of the view that the sale proceeds / the capital gains arise out of the transfer of the original asset has to be either invested or used for repayment of the loan / borrowed funds utilized for the purchase of the new residential house, otherwise the condition of putting the same sale proceeds in the account of capital gain scheme and utilized for the purchase of new residential house will not have any relevance. As there is no infirmity in the Assessing Officer's findings as also the case laws relied upon by the appellant are totally different from the facts of the appellant's case, no interference is called for. Therefore the grounds of appeal is hereby dismissed.

Further aggrieved by the CIT (A)'s order, assessee is in appeal before us.

#### 04. Submission of the assessee :

The assessee has submitted that the assessee along with five other family members had sold the residential cum commercial property at R. V Road, Bangalore, for a total consideration of Rs.3.9 crores. The assessee and his wife both were 1/6<sup>th</sup> each co-owners of the R. V Road property. The assessee had declared 1/6<sup>th</sup> share in the residential cum commercial property under the head capital gains and claimed exemption u/s.54 and 54F of the Act, as under :

PARTICULARS	RESIDENTIAL PORTION	COMMERCIAL PORTION
Appellant Share	1/6 <sup>th</sup>	1/6 <sup>th</sup>
Exemption Claimed under Sec	54	54F
Sale Consideration	33,82,898	31,17,102
Less: Indexed Cost of Acquisition	3,32,166	8,40,046
Long Term Capital Gain	30,50,732	22,77,056
Less: Exemption u/s. 54 & 54F	30,50,732	22,77,056
<b>Taxable Long Term Capital Gain</b>	-	-

It is the case of the assessee that he had made investment in the residential property along with his wife in SJR Luxuria Apartment No.B-06, 6<sup>th</sup> floor, Block B-Sapphire. Name of the assessee is mentioned at sl.no.1 and the name of the wife is mentioned in sl.no.2 in the purchase document dt.03.06.2013. The assessee has also drawn our attention to the construction entered between the assessee, SJR Enterprises and Shri. M. R. Ramesh and others (owner of the land). By virtue of this agreement it was submitted by the assessee that the land was owned by Shri. M. R. Ramesh, and others; SJR Enterprises was the buyer of the property ; and the assessee, along with his wife was the purchaser of the property. In terms of the construction agreement the assessee was to pay a sum of Rs.77,06,881/- towards the full and final payment for construction of the portion belonging to the assessee. Therefore it was submitted that the total cost of the flat purchased by the assessee was Rs.1,09,76,025/-, out of which, as mentioned at page 27, an amount of Rs.21,95,205/- was to be paid as advance, Rs.19,47,775/- was to be paid in the name of SJR Enterprises and an amount of Rs.68,31,045/- was to be paid at the time of registration of the property. The detailed invoice / payment schedule raised by Shri. M. R. Ramesh on the assessee is given at page 87 of the paper book.

It was submitted that the assessee's share in the residential portion after the sale of R V Road property was Rs.33,82,898/- towards the residential portion and Rs.31,17,108/- towards the commercial portion. The long-term capital gains for residential

portion was Rs.30,50,732/- and for commercial portion was Rs.22,77,056/-. It was the case of the assessee that he had utilised the consideration received from selling the property for purchase of a new apartment in SJR Luxuria. It was also submitted by the assessee that the funds invested in purchase of the new property was routed through the bank account of the assessee's wife. It was also submitted that he had claimed exemption u/s.54F to the extent of Rs.22,77,056/- and has further submitted that as his wife being the coowner of the property had also claimed the exemption of an amount of Rs.21,96,026/- for the AY 2013-14. It is the case of the assessee that total consideration paid was Rs.1,09,76,025/-. The assessee by taking a loan in his and his wife's name had made the payment of Rs.87,80,000/- and the remaining amount of Rs.21,96,025/- was paid from the account of the wife, namely Mrs. Sudha Mahesh.

On the basis of the above, it was submitted by the Ld. AR that under the provisions of Section 54 and 54F, what is contemplated by the Act is investment should be made by the assessee within a period of one year before or two years after the date on which the transfer took place, to purchase one residential house in India. It was not a case that the law does not provide that the amount received on account of sale of the capital asset should alone be utilised for the purposes of investment in the residential house. It was submitted that even if the residential house is purchased after borrowing from the bank then in that situation also the assessee is also entitled to claim the benefit of 54 and 54F of the Act.

05. On the other hand the Ld. DR has vehemently submitted that before the AO as well as before the CIT (A), the assessee had failed to establish that the assessee has utilise the sale consideration for purchase of the residential house and in fact the Ld. DR has submitted that the assessee had predominantly utilised the sale consideration received for investment in the commercial space. Further it was noted by the AO and CIT (A) that the assessee will not eligible for exemption u/s.54F of the Act, if the assessee constructs or purchases a residential house out of the borrowed funds. It was submitted that Section 54 and 54F provides that the sale consideration should be used for purchase of the residential house one year before the date of transfer or purchase ; or two years after the sale of the capital asset or constructs a house within three years thereof.

Further it was the case of the Revenue that both the assessee and his wife cannot claim the exemption u/s.54 and 54F for purchasing the same property. In the light of the above, it was submitted that the order passed by the lower authorities was in accordance with law.

06. We have heard the rival submissions, perused the record and gone through the case laws cited before us. It is recorded by the AO in the assessment order that a sale deed dt.04.07.2012 was executed by the assessee along with five other members (including his wife) for a total consideration of Rs.3.90 crores. It is also undisputed that the assessee as well as his wife both were entitled to 1/6<sup>th</sup> share in the property so sold on 04.07.2012. It is also not disputed that the sale consideration for the residential portion was

Rs.2,02,97,385/- and the remaining amount of Rs.1,87,02,165/- was towards the sale consideration of commercial portion of the property. As mentioned in para 5 of the assessment order, the assessee's share of the long-term capital gains in respect of the residential house and commercial portion was Rs.30,50,732/- and Rs.22,70,756/- respectively. The AO in para 5.6 of the assessment order has recorded as under :

*5.6 The total sale consideration of Rs.57,75,000/- received by the assessee Mr.L S Mahesh as per the sale deed dated 4-7-2012 are as under :*

<i>Cheque No. credited on</i>	<i>Amount</i>	<i>Credited to</i>
<i>427007/24-5-2012</i>	<i>10,00,000</i>	<i>SB A/c No.17521000001222 HDFC Bank</i>
<i>427014/5-7-2012</i>	<i>47,75,000</i>	<i>-do-</i>

It is the case of the AO that the entire amount received by the assessee were deposited in SB A/c No.17521000001222 with HDFC Bank.

07. Four FDs of Rs.30 lakhs, Rs.10 lakhs, Rs.10 lakhs and Rs.7,75,000/- were made on 06.08.2012 as reflected in page 65 of the paper book as mentioned by the AO in 5.7 of his order. An amount of Rs.16,80,000/- was paid to M/s. Prestige Estates on 21.11.2012 by liquidating two FDRs of Rs.10 lakhs and Rs.7,75,000/-.

08. In the statement of bank account at page 66, it is clear that the remaining two FDRs of Rs.30 lakhs and Rs.10 lakhs with maturity value of Rs.30,77,551.20 and Rs.10,25,850/- were credited in the account of the assessee on 29.12.2012. Thereafter the assessee had

transferred an amount of Rs.41 lakhs to the account bearing No.17521030004909 of Smt. Sudha Mahesh with HDFC Bank, Bilekali Branch.

09. The assessee's wife, Smt. Sudha Mahesh was also having an account with HDFC Bank bearing No.17521930004909. In the said account, Smt. Sudha Mahesh had also received the amount of Rs.10 lakhs and Rs.47.75 lakhs as 1/6<sup>th</sup> share in her name and five FDs of Rs.30 lakhs, Rs.10 lakhs, Rs.10 lakhs, Rs.7.75 lakhs and Rs.8 lakhs were made on 06.08.2012.

10. As on 29.12.2012 the balance in the account of Smt. Sudha Mahesh was Rs.59,55,774/- and after receiving the credit of Rs.41 lakhs from the other account namely 17512000001222, the balance in the account of Smt. Sudha Mahesh was Rs.1,00,55,774/-. On the basis of this amount two FDRs of Rs.50 lakhs each was made on 29.12.2012. Now it is the case of the Revenue that two cheques of Rs.20 lakhs and Rs.1,96,025/- were issued from the accounting bearing 1752102000909 on 09.03.2013 and 30.04.2013 towards the investment in the residential property from the bank account of Smt. Sudha Mahesh. Further it is the case of the Revenue that the funds transferred from the account of the assessee to his wife were used for joint investment in the commercial space at Prestige Technopolis up to February, 2014.

11. As per the bank statement, the following payments were made to Prestige Estates :

Sl No	Date	Amount Rs.	A/c No.
1	21.11.2012	16,80,000	17521000001222
2	29.03.2013	25,20,000	17521930004909
3	25.09.2013	10,50,000	-do-
4	22.02.2014	19,80,000	-do-

12. If we examine the details of the bank account of the assessee's wife, Smt. Sudha Mahesh, then it is clear, that the amount of Rs.20 lakhs and Rs.1,96,025/- were invested in the house property. In the opinion of the bench, the nature and the character of the investment would not change merely the investment by the assessee were routed to the account of his wife, it will continue to be the investment of the husband and therefore in the considered opinion of the bench the assessee is entitled to the benefit of the beneficial provision of section 54F of the Act. The bench failed to appreciate the argument of the revenue that since the investment were made from the account of the wife the same cannot be considered for the purpose of the 54F. We may point out, as admitted by AO in assessment order, initially the cheques were deposited by the assessee after receiving it on account of sale of house, in the bank account being a number 17521000001222 allegedly in the name of wife . The cheques cannot be deposited in the name of the wife unless assessee is either beneficiary or joint holder of the account with his wife. Further nothing had been brought on record by the revenue to prove that wife had also claimed the benefit of 54F this amount also. It is one thing to say that the assessee's wife also claimed the benefit of 54F, but this statement

alone would not disentitle the assessee for the benefit of 54F, unless the revenue categorically proves both had claimed benefits for same amount. This categorical finding with supporting documents should have been proved by the revenue under the present set of facts, especially when wife also received the sale consideration being the co-owner with assessee and further a housing loan was also sanctioned in favour of both by the bank, which was invested jointly by both. In the light of above, when the assessee was able to prove the trail of investment made in the house property from the funds received by him on account the sale of the property, hence assessee is entitled to the benefit of 54F and hence the appeal is required to be allowed and we hold accordingly.

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

Order pronounced in the open court on 16<sup>th</sup> day of March, 2018.

Sd/-

Sd/-

(JASON P. BOAZ)

(LALIET KUMAR)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Bengaluru

Dated : 16.03.2018

MCN\*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.