

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T.(I.T) A. No.1721/Bang/2017
(Assessment Year : 2014-15)

Income Tax Officer,
(International Transactions),
Ward 1(2), Bangalore.

.... Appellant.

Vs.

Ms. B. Nandita Reddy,
No.87, 15thCross, 15th Main,
Indiranagar, 2nd Stage, Bangalore-560 084.

..... Respondent.

Appellant By : Dr. Sandeep Goel, Addl. CIT (D.R)
Respondent By : Shri C. Ramesh, C.A.

Date of Hearing : 21.05.2018.

Date of Pronouncement : 25.05.2018.

O R D E R

Per Shri Inturi Rama Rao, A.M. :

This appeal filed by the revenue is directed against the order of
Learned Commissioner of Income Tax (Appeals)-12, Bangalore
dt.19.6.2017 for the Assessment Year 2014-15.

2. The revenue raised the following grounds of appeal :

1. The order of the learned Commissioner of Income Tax(Appeals)-12, Bengaluru is contrary to the law and facts of the case.
2. The learned Commissioner of Income Tax(Appeals)-12, Bengaluru ought to have considered the fact that in view of the Statutory provisions of section 54F, the residential house must be in India.
3. The learned Commissioner of Income Tax(Appeals)-12, Bengaluru failed to appreciate the fact that in view of settled ruling of interpretation of tax statute, the residential house purchased/constructed must be in India and not outside India.
4. The learned Commissioner of Income Tax(Appeals)-12, Bengaluru failed to consider the Memorandum explaining provisions in the Finance Bill 1982 that the exemption in section 54F is granted with a view to encouraging house construction. This would naturally mean that house construction/purchase would be encouraged by provisions of this section in India and not outside India.
5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned Commissioner of Income Tax(Appeals) -12, Bengaluru may be cancelled and that of the AO may be restored.

3. Briefly the facts of the case are that the respondent-assessee is an individual and Non-Resident Indian (NRI) deriving income under the heads 'Capital Gains' and 'Income from Other Sources'. The assessee filed return of income for the Assessment Year 2014-15 on 8.7.2014 declaring a total income of Rs.3,32,650. Against the said return of income, the assessment was completed by the Assessing Officer vide order dt.30.12.2016 passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') at a total income of Rs.88,06,650. The disparity between the returned income and assessed income is on account of addition of Rs.84,74,000 denying the exemption under Section 54F of the Act.

4. Brief facts leading to the above addition are as under :

4.1 The respondent-assessee sold property situated at Hutchins Main Road, Corporation Ward No.86, Bangalore for a total consideration of Rs.2,73,00,000 in respect of which the respondent-assessee share in total sale consideration of Rs.91,00,000, for which the net sale proceeds was determined at Rs.84,74,000, which were invested in the purchase of residential property situated outside India i.e. in Malaysia, and claimed exemption under Section 54F of the Act. The Assessing Officer denied exemption under Section 54F on the ground that the legislature contemplated that purchase or construction of a house only in India. Accordingly, the Assessing Officer brought to tax the capital gains of Rs.91,00,000. Being aggrieved, an appeal was preferred before the learned CIT (Appeals). The learned CIT (Appeals) vide order dt.19.6.2017 allowed the appeal following the decision of co-ordinate bench of the Tribunal in the case of Vinay Mishra Vs. ACIT 141 ITR 301 (Bang. Trib) and Hon'ble Gujarat High Court decision in the case of Jugalkishor Shah Vs. ACIT (Tax Appeal No.483 of 2006) dt.14.6.2016 by holding as under :

4. The issue relating to investment in a house property in a foreign country for claiming exemption under sections 54 and 54F in an assessment year prior to assessment year 2015-16 is not res integra.

It has been held in *Vinay Mishra v ACIT* [2013] 141 ITD 301(Bang. Trib) that the words "in India" cannot be read into section 54F when Parliament in its legislative wisdom had deliberately not used the words "in India" in section 54F in the Act.

In *Leena Jugalkishor Shah v ACIT*(Tax Appeal No. 483 of 2006) , Hon'ble Gujarat High Court in its order dated 14.06.2016 held that the language of section 54F of the Act before amendment was clear and unambiguous. The words 'in India' could not be imported in the statute and the benefit of section 54F before its amendment could be extended to a residential house purchased outside India.

In *Mrs. Prema P Shah v ITO* [2006] 100ITD 60(Mum.) and *ITO(Intl. Taxn.) v Dr. Girish M Shah* [IT Appeal No. 3582(Mum) of 2009 dated 17.2.2010 , it has been held by Mumbai ITAT that an assessee is entitled for deduction under section 54F of the Act even if the assessee acquires property outside India.

Similar finding has been given by ITAT Lucknow in *ACIT v Iqbal Jafar* [2014]151ITD 364(Lucknow-Trib.). In *N. Ranganathan vs ITO* [2014] 51 taxmann.com 56 (Chennai-Trib), it was held that the assessee was entitled to claim exemption under section 54 even if the investment in new property was made in Singapore.

The subsequent amendment in sections 54 and 54F do not have any implication for assessment years prior to assessment year 2015-16 as the statute itself provides that the amendments are effective from 01.04.2015.

The assessing officer had not followed the decision of ITAT Bengaluru on the ground that an appeal had been filed before the High Court.

It is not a valid argument. As held by Hon'ble Supreme Court in *Union of India and others v Kamlakshi Finance Corporation*, AIR 1992 SC 71, the order of appellate authority is binding on the subordinate authorities unless stayed by a competent Court. The court held as under:

"...The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department- in itself an objectionable phrase-and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court."

The same judicial principle has been reiterated several times by the different Courts as below:

- a. *K.N. Agarwal v CIT [1991] 189 ITR 769(All)*
- b. *K.Subramanian, ITO and another vs Siemens India Ltd.-Equivalent Citations: (1983) 36 CTR BOM 197, 1985 156 ITR, Bombay high Court*
- c. *Bank of Baroda vs. H.C. Shrivatsava and Another 256 ITR 385 (Bom)*
- d. *Agarwal Warehousing and Leasing Vs. Commissioner of Income Tax, [2002] 257 ITR 235 (MP)*

Therefore, considering the hierarchical nature of judicial administration of the disputes in Income Tax matters, the decision of ITAT Bengaluru has a binding precedent value over the subordinate authorities including all the assessing officers in Karnataka.

It is directed that the appellant be allowed exemption claimed under section 54/54F of the Act. Ground nos. 1 to 4 are allowed in terms of above direction..

5. The learned Departmental Representative vehemently contended that Section 54F of the Act was not available as far as the investment in new house property is situated at abroad.

6. On the other hand, the learned Authorised Representative relied on the orders of authorities below and submitted that no interference in the order of learned CIT (Appeals) is called for as the learned CIT (Appeals) followed the decision of the co-ordinate bench of this Tribunal (supra) and Hon'ble Gujarat High Court decision (supra) while granting relief to the assessee.

7. We have heard the rival contentions and perused the material on record. The only issue in this appeal is whether the relief under Section 54F of the Act is admissible in respect of purchase of property situated outside India. The co-ordinate bench of this Tribunal held that since the provisions of Act, does not emanates that new house property should be situated in India. The learned CIT (Appeals) granted relief following the decision of the co-ordinate bench of this Tribunal in the in the case of Vinay Mishra Vs. ACIT (supra) and Hon'ble Gujarat High Court decision in the case of Jugalkishor Shah Vs. ACIT (supra). Admittedly, the amendment brought by the legislature is only prospective and is not applicable to the assessment year under consideration. Therefore, we do not find any reason to interfere with the orders of the learned CIT (Appeals). Accordingly, the appeal of revenue is dismissed.

8. In the result, the revenue's appeal is dismissed.

Order pronounced in the open court on the 25th day of May, 2018.

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

Sd/-
(INTURI RAMA RAO)
Accountant Member

Bangalore,
Dt.25.05.2018.

*Reddy gp

Copy to :

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

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.