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

BEFORE SHRI. JASON P. BOAZ, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.2062/Bang/2018
(Assessment Year : 2015-16)

Shri. Suresh Sonnahallipura Narayanaswamy,
No.105, 2nd Main Maithri Extension,
Hope Farm, Whitefield, Bengaluru 560 066 .. Appellant
PAN : ACCDPN6837F

v.

Income-tax Officer,
Ward – 5(3)(7), Bengaluru .. Respondent

Assessee by : Shri. H. V Gowthama, CA
Revenue by : Dr. P. V. Pradeep Kumar, Addl. CIT

Heard on : 03.09.2018
Pronounced on : 28.09.2018

O R D E R

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee against the order of the CIT (A) – 5, Bengaluru, dt.30.04.2018, for the assessment year 2015-16, on the following grounds :

1.

A) The Learned Commissioner of Income Tax erred in confirming the order passed by Learned Assessing Officer in respect of adopting the value as per guidelines prevailing at the time of registration of converted property as per Sec 50C of the Income Tax Act, as against actual consideration received by the Appellant.

B) In not allowing deduction claimed U/s. 54F in respect of investment made by the Appellant for purchase of immovable property for construction of residence.

2.

A) The Learned Commissioner of Income Tax (Appeals) should have considered that the Appellant had entered into an agreement for Sale of Agricultural Land in the year 2013 and had received substantial amount at the time of entering into an agreement as well as period before registration of Sale Deed. Therefore, the Learned Commissioner of Income Tax should have accepted the guideline value as existing at the time of entering into an agreement for sale should have been considered as Consideration for arriving at Capital Gains.

B) The Appellant submits that the deemed value of Agricultural Land even at the time of registration of Sale Deed was much below the agreed price. Therefore, the Learned Commissioner of Income Tax (Appeals) should have directed the Assessing Officer to adopt the value of consideration received as fair consideration and not as per Sec 50Cof the Income Tax Act.

C) The Learned Commissioner of Income Tax (Appeals) ought to have accepted the fact that since substantial portion of Sale Consideration was received at the time of signing the Agreement to sell, as per the amended Income Tax Act brought in by Finance Act 2016, the value as at the time of entering into an Agreement ought to have been considered as against consideration as per guideline value at the time of registration.

3.

A) The Learned Commissioner of Income Tax (Appeals) erred in confirming the denial of Deduction U/s. 54F in respect of the amount invested out of the Sale Consideration received for Residential purposes.

B) The Appellant submits that out of the Sale Consideration received by the Appellant in respect of the Agricultural Land sold, the Appellant to avail the benefits of Sec 54F purchased another land for construction of residence on 14.12.2015 amounting to Rs.1,09,58,950/- and claimed Deduction U/s. 54F of the Income Tax Act. Since the investment is made before end of the Financial Year as specified U/s. 139, the Appellant is entitled to claim Deduction U/s. 54F.

C) The Appellant submits that if the amount is required to be deposited in Capital Gains Bank A/c the same should have been deposited before due date specified U/s. 139(1) whereas if the amount is invested in purchase of Immovable Property to avail benefit U/s. 54F the same could be done before end of the Financial Year in which Capital Gains arises.

02. Brief facts are, the assessee had filed the return of income for AY 2015-16 declaring income of Rs.3,79,950/-. However the AO has assessed the income at Rs.1,83,00,900/-. The AO has made additions on two counts, namely, Rs.69,62,000/- by adopting the value of the property sold by the assessee at the stamp value consideration as against the sale consideration declared by the assessee in the sale deed. Thus the AO has made the addition of Rs.69,62,000/- as long-term capital gains. Secondly the AO had also denied the benefit of section 54F as the assessee had not deposited the long-term capital gains amount in the capital gains

account before the date of filing of return of income. It was the case of the AO that assessee had purchased the property beyond the date of filing of the return of income and had not deposited the said amount and therefore the deduction claimed u/s.54F had been denied by the AO. Feeling aggrieved by the above denial of the deduction, the assessee preferred appeal before the CIT (A).

03. In the appeal before the CIT (A), the argument of the assessee was not accepted by the CIT (A) and confirmed the addition on both the counts. Hence, the assessee is in appeal before us.

04. Broadly the grounds can be clustered together as grounds 1(a), 2(a), 2(b) and 2(c) in respect of addition towards the long term capital gains and the other as 1(b), 3(a), 3(b) and 3(c) in respect of addition towards denial of deduction u/s.54F of the Act.

05. The first set of grounds viz., 1(a), 2(a), 2(b) and 2(c). In this regard, submission before us was as under :

The assessee is the owner of land along with the family members. As he was not having experience of developing the land, therefore, he entered into an unregistered agreement with Mr. Suryanarayana and Mr. Ramanjanappa on 11.11.2013 and pursuant to this agreement the assessee had received amounts of Rs.10 lakhs by cheque and Rs.40 lakhs by cash. Thereafter the amount of Rs.25 lakhs was paid on 30.08.2014, further amount was paid on 30.08.2014, Rs.26 lakhs on 12.12.2014 and the balance amount of Rs.12 lakhs was paid at the time of registration on 13.03.2015. Our

attention was drawn to clause (3) and (6), of the agreement wherein it was agreed by the assessee to transfer the land as a converted land to the purchaser, which are reproduced hereunder :

> *3. It is agreed between the Vendor and the Purchasers that the Vendor shall file application for conversion of the schedule property and the Purchasers shall precipitate the matter before the revenue authorities and get the land converted and the Purchasers have agreed to bear all the necessary charges for such conversion and the Vendor has agreed to execute the registered sale deed in favour of the Purchasers and the total time agreed for completion of the transaction between the parties is four months within which date the Vendor and the Purchasers shall obtain the said document and also the conversion order enabling the vendor to sell the schedule property and the Purchasers to puchase the schedule property.*
>
> *4......*
> *5......*
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> *6. The Vendor and the Purchasers with an intention to complete the transaction have entered into this Sale Agreement. However if is agreed between the parties that in the event if the Purchasers fail to obtain necessary conversion orders before the competent authorities in respect of the schedule property, the Purchasers shall pay the balance sale. consideration amount pertaining to the schedule property to the Vendor immediately and the Purchasers shall be at liberty to obtain the registered sale deed whenever the conversion order is obtained from the revenue authorities and the Vendor has agreed to execute such deed as and when the Purchasers call upon the Vendor to do so and in the event if the Vendor fails to execute the registered sale deed inspite of readiness and willingness shown by the Purchasers, the Purchasers are entitled to seek for specific performance of the contract based on the terms of this Agreement of Sale.*

Further it was the condition mentioned in the above two clauses that the purchaser would bear the cost of conversion. It was the case of the assessee before us that the agreement entered on 11.11.2013 was for agricultural purposes and it was the case of the assessee that the guidance value as effective on 15.07.2013 for the agricultural land was Rs.20 lakhs per acre whereas the consideration received by the assessee pursuant to agreement dt.11.11.2013 was Rs.22,25,000/- per acre. On the basis of the above it was submitted that the sale value consideration taken by the assessee for the land in question was more than the guidance value for agriculture land . In alternative it was submitted by the assessee that the guidance value as fixed on 01.12.2014 for kushki land (agricultural land) was 21,15,750/-. It was submitted by the assessee that the assessee has taken the agreed value in terms of agreement dt.11.11.2013 instead of the valuation taken by the Stamp Value authority at the time of registration, firstly it was the sale consideration agreed in terms of agreement and secondly it was prevalent agricultural land value at the time of agreement. The assessee further relies upon the amendment to IT Act which came into effect from 01.04.2017, on the basis of which the following provision was added u/s.50C :

50C. SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION IN CERTAIN CASES

(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessed or assessable shall, for

the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

[**Provided** ***that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:***

Provided further ***that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.***]

(2) Without prejudice to the provisions of sub-section (1), where-

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer ;

(b) the value so adopted or assessed or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.— For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.— For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

The learned AR submitted that this provision was applicable to the case of the assessee and further submitted that the provision was an enabling provision and was inserted in the statute with a view to redress the grievances of various assessees like the present assessee before us and therefore the said insertion by way of Finance Act, 2016 should be given retrospective application being inserted with a view to clear the maladies in the Income Tax Act. He had drawn our attention to the written submissions to the following effect:

Addition u/s.50C:

The Appellant inherited properties from his family. All the properties received by him was only agricultural land. In order to develop the agricultural land into the sites and thereafter sell the sites, as the assessee was not an expert, entered into an unregistered agreement with one Mr. Sathyanarayan and Mr.Ramanjannappa on 11.11.2013. At the time of executing the sale agreement and thereafter, the following amounts are paid in instalment:

1. *Rs. 10,00,000/- was given as advance by cheque on 11.11.2013*
2. *Rs.40,00,000/- was paid in cash on 11. 11.2013*
3. *Rs.25,00,000/-was paid in May 2014*
4. *Rs.25,00,000/- was paid on 30[1h] August 2014*
5. *Rs.26,00,000/- was paid on 12th December 2014*
6. *Rs. 1,00,000/- balance at the time of Registration on 13.03.2015*

The Sale Deed was registered on 13.03.2015 after getting the property converted into non-agricultural land. The condition for sale was that after conversion for non-agricultural purposes he property to be sold as converted land.

The fact of giving advance has been detailed in Sale Deed itself. The total sale consideration was Rs.1,27,00,000/-. In the agreement of sale, it is specifically mentioned that the registration of the final Sale Deed should be made only after getting the land converted to non-agricultural land. The development fee, etc. was paid by the Purchaser and not the Appellant. As per agreement for purchase of property, the consideration agreed is Rs.22,50,000/- per Acre of land. As per the Guideline issued by Govt. of Karnataka, for registration of the property, vide Notification No.CVC24 Malur/13-14 dated 04.07.2013, which was effective from 15.07.20 13 (Copy of Guideline is enclosed) the Guideline value fixed was Rs.20,00,000/- per Acre. See the item No.83 of Guideline, whereas the consideration fixed as per agreement was Rs.22,50,000/- per Acre, which is more than the Guideline value. The Guideline value fixed as on 01.12.2014 for Kushki land was Rs.21,75,000/- per Acre. Copy of Guideline is enclosed. It is important to note that as per agreement, the Purchaser was required to pay for conversion fee also.

When the Sale Deed was registered on 13.03.2015, the Sub-registrar, for the purpose of Stamp Duty, adopted the value of land converted land at Rs.1,96,62,000/- and therefore the difference of Rs.69,62,000/- was considered as additions u/s.50C of Income Tax Act. The property is situated in a place called Malliyappanahalli Village and the guideline value at the time of registration of the property prevailing on 31.3.2015 at Rs.21,75,000/- per Acre of Agricultural land. If the value is considered in 2015 as an agricultural land itself, the guideline value fixed by Government of Karnataka is much lower than the amount adopted for the sale in the present transaction.

Income Tax Act has been amended by Finance Act 2016 effective from 01.04.2017 i.e. Asst. Year 2017-18, wherein it is stated that where the date of agreement fixing the amount of consideration and the date of registration for transfer of capital assets are not the same, the value adopted or assessed or assessable by the Stamp Valuation Authority as on date of the agreement may be taken for the purposes of computing full value of consideration for transfer. It is also further stated that the above provision should be adopted for

consideration or part thereof has been received by way of an account payee cheque or Bank Draft or any Electronic mode through Bank account before the date of agreement for transfer. In the case of the Appellant, substantial amount of consideration in instalment has been paid before the date of registration. It may be observed from the Agreement of Sale and Sale Deed that the payment has been made through the Bank account right from the date of agreement entered into by the assessee with the prospective Purchaser. The Sale Deed could not even be registered at the time of entering into agreement because of agricultural land.

In this connection we would like to rely on the decision of Hon'ble Supreme Court of India in the case of Allied Motors(P)Ltd. Vs CIT as reported in 224 ITR 677, wherein Hon'ble High Court has held that "Hence the first proviso was inserted in section 43B. The amendment which was made by the Finance Act, 1987 in section 43B by inserting, inter alia, the first proviso, was remedial in nature, designed to eliminate unintended consequences which may cause undue hardship to the assessee and which made the provision unworkable or unjust in a specific situation. Looking to the curative nature of the amendment made by the Finance Act, 1987 it can be said that the proviso which is inserted by the amending Finance Act, 1987 should be given retrospective effect and be read as forming a part of section 43B from its inception.

A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole".

A copy of agreement to Sell and Registered Sale Deed is enclosed for Hon'ble Commissioner's reference.

06. Per contra, the Ld. DR had ably submitted that :

i) the agreement dt.11.11.2013 was entered with a view to transfer the land after it was converted from agricultural to non-

agricultural uses i.e., in substance the agreement was for the sale of converted land and was not for transfer of agricultural land. It was submitted that the guidance value prevalent as on 11.11.2013 (01.12.1014) was much more for non agricultural land and the guidance value for agriculture land was not available to the assessee as the assessee had agreed to transfer the non-agricultural land for a consideration to the purchase . Therefore if at all the guidance value is required to be considered then in that eventuality the guidance value as prevalent at the time of entering into agreement for converted land should be adopted. Further it was submitted that the amendment inserted by way of Finance Act, 2016, as canvassed by the AR is correct that it is having a retrospective application. It was submitted that the proviso inserted by the Finance Act, 2016 is not retrospective in nature which is clear from the memorandum and Explanation to the Finance Act, 2016. It was submitted that even the authorities have erred in taking the value as taken by the Stamp duty Authorities as in the estimation of Revenue, the land value should be taken as applicable the converted land instead of agricultural land.

07. We have heard the rival submission and perused the record. Undoubtedly as is clear from the perusal of the agreement dt.11.11.2013, the parties had agreed to transfer the converted land for a valuable consideration. It was mentioned in clause (iii) and (vi) reproduced herein above agreement was entered for sale of converted land and not for agriculture land, though the cost of conversion was to be borne by the purchaser. In our view the

methodology adopted by the parties to the agreement seems to followed with a view to avoid payment of due stamp duty on converted land but also to avoid payment of the long-term capital gain arising on account of sale of non agriculture land. Undoubtedly it is not the case before us that the said land which was transferred was not of a capital asset, it is also not disputed that on account of transfer of capital asset, long-term capital gains arose to the assessee. Once the land, which is a capital asset other than the agricultural land has been transferred by assessee, then in that case, for the purposes of LTCG, if the sale consideration mentioned in the sale document is less than the guidance value taken by the stamp authority, then the value mentioned by the stamps authority would be considered for the purpose of computing the long-term capital gain. Therefore at the time of calculating long-term capital gains assessee should have taken the value of land as taken by the stamp authority instead of taking the value mentioned in the agreement in the return of income for AY 2015-16.

08. The argument of the assessee that Finance Act, 2016 should be given retrospective application is not correct for more than one reason viz., the income is required to be assessed and tax is required to be paid by the assessee in accordance with the IT Act as prevalent on the last date on 31.03.15 and on the basis of the law existing as on 31.03.2015, the assessee was required to file the return of income on or before the due date of filling the return , in the present case i,e on or before 31.08.2015. Further the Revenue

was duty bound to processor scrutinise the return of income on the basis of law available on 31.03.2015.

Further we are in agreement with the contention of the Ld. DR that the land which was subject matter of agreement was to be transferred was non-agricultural land and not as agriculture land . Therefore the guidance value as prevalent for the non-agricultural land or converted land on 11.11.2013 is required to be considered. In the absence of guidance value as prevalent for the non-agricultural land, value adopted by stamp authorities at the time of registration of the sale agreement would be correct value for the purposes of LTCG.

Thirdly, we are of the opinion that the **MEMORANDUM to FINANCE BILL, 2016 - PROVISIONS RELATING TO DIRECT TAXES**, clearly shows that the purpose for which this provision was inserted and whether it has retrospective application or not. The relevant portion to the memorandum to Finance Act, 2016, is as under :

> ***"Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property***
>
> *Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building on both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in-trade.*
>
> *It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration.*

It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years."

On the basis of the above, it is clear that legislature has not intended to give retrospective application to the proviso. Further in the present case substantial consideration mentioned below was paid in cash by the assessee,

Rs 40,00,000/- was paid in cash on 11. 11.2013
Rs.25,00,000/-was paid in May 2014
Rs.25,00,000/- was paid on 30^{1h} August 2014
Rs.26,00,000/- was paid on 12th December 2014

Hence this proviso would not be attracted as most of the payments were made in cash . Furthermore the land was agriculture at the time of agreement though agreed to be transferred as non agriculture but later on transferred as non agriculture. In our view subject matter of agreement should be same at both occasion i.e at the time of agreement as well as at the time of registration for the purposes of application of this clause .In view thereof the ground with respect of Section 50C urged before us in the form of ground nos.1(a), 2(a), 2(b) and 2(c) are dismissed.

09. The second set of ground nos.1(b), 3(a), 3(b) and 3(c) are taken up now. In this regard the AO had noted that the assessee had claimed deduction u/s.54F of Rs.109,58,950/- in respect of the

investment made by the assessee in purchase of vacant land on 14.12.2015 which is beyond the period of limitation. It was submitted that as per the sale deed dt.14.12.2015 the land was vacant and the date of filing of the return of income u/s.139(1) of the Act, was 07.09.2015. Therefore the assessee had not deposited the amount in the capital gains account before the due date of filing the return and had purchased the property o 14.12.2015, after the date of filing the return. Aggrieved assessee filed appeal before the CIT (A).

10. The CIT (A) on appeal was not convinced with the argument of the assessee and hence rejected this ground on the premise that the sale proceeds were required to be deposited in the bank account before the due date for filing the return of income. As the amount was deposited in the capital gains account, therefore the authorities below have denied the benefit of section 54F to the assessee.

11. Before us, during the course of argument, the assessee has submitted the following written submissions and has relied upon the judgments/ decisions :

- Fatima Bai v. ITO [ITA.435 of 2004, dt.17.10.2008 - Kar HC];
- PCIT v. Shankar Lal Saini [(2018) 89 taxmann.com 235-Raj];
- CIT v. Smt. Vrinda P Issac [(2012) 24 taxmann.com 131 – Kar] ;
- Nipun Mehrotra v. ACIT [(2008) 110 ITD 520 – Bang Trib]
- Nand Lal Sharma v. ITO [(2015) 61 taxmann.com 271 [Jaipur Trib]
- Sabir Salim Ahmed v. ITO [ITA.941/Bang/2010, dt.21.01.2011]

12. On the other hand the Ld. DR has submitted that the judgment rendered by the Hon'ble jurisdictional High Court in the matter of Fatima Bibi (supra) was passed ignoring the decision pending by the Hon'ble Supreme Court in the matter of Prakash Nath Khanna v. CIT [135 Taxmann 327] therefore the said judgment is not applicable to the facts of the case, as the statute under section 54F has not contemplated on 139(4), but only restricted to section 139(1), where it due date for filing the return of income is mentioned. On the basis of the above, the Ld. DR submitted that the order passed by the lower authorities is to be upheld.

13. We have heard the rival contentions and perused the record. The Hon'ble jurisdictional High Court in the matter of Fatima Bibi (supra), while interpreting the relevant provision at (page 11 of PB), held as under :

> *In the instant case, the due date for filing of return is 30.7.88. U/s.139(4) the assessee was entitled to file returns in the extended time, which is within 31.3.1990.*
>
> *The extended due date u/s.139(4) would be 31.3.1990. The assessee did not file the returns within the extended due date, but filed the returns on 27.2.2000. However, the assessee had utilised the entire capital gains by purchase of a house property within the stipulated periods of Sec. 54(2) ie., before the extended due date for return u/s.139. The assessee technically may have defaulted in not filing the returns u/s.139(4). But, however, utilised the capital gains for purchase of property before the extended due date u/s.139(4). The contention of the revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention.*

13. Similarly the reason pronounced by the Hon'ble Rajasthan High Court in the matter of Shankar Lal Saini (supra), on which the Ld. AR relied, at para 6, 7 and 13, is as under :

> ***6.*** *However, while considering the matter, he contended that the tribunal has committed serious error in ignoring the observations made by the Supreme Court in the case of P.N. Khanna v. CIT, [2004] 135 Taxman 327/266 ITR 1 (SC) wherein it has been held as under:—*
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> > *12. As a result of the amendment of Section 139(3) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 the power of the Income Tax Officer to extend time for furnishing return was taken away w.e.f. Ist April, 1987.*
> >
> > *17. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou 1966 (1) QB 876, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC {1963 AC 557} where at AC p.577 he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges".)*
> >
> > *20. Another plea which was urged with some amount of vehemence was that the provisions of Section 276CC are applicable only when there is discovery of the failure regarding evasion of tax.*

It was submitted that since the return under Sub-section (4) of Section 139 was filed before the discovery of any evasion, the provision has no application. The case at hand cannot be covered by the expression "in any other case". This argument though attractive has no substance.

7. *He relied upon the judgment in the* ***Sh. Nand Lal Sharma v. ITO[2015] 61 taxmann.com 271 (JP. - Trib.) wherein it has been held as under :—***

3.7 We have heard the rival contentions and perused the materials available on record. Apropos Ground No. 1 i.e. deposit of net consideration into capital gain account scheme on 31-03-2009, we find merit in the arguments of the ld. AR that Section 54 refers to Section 139 for the time limit to acquire eligible new asset, which includes return u/s 139(4) also i.e. time limit of one year from the end of assessment year. Various judicial precedents cited above have taken this view; respectfully following them we hold that assessee purchase of new residential house is eligible for claim of exemption u/s 54. Thus ground no. 1 of the assessee is allowed.

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10. ......

11. ......

12. ......

13. *He also contended that judgment of Gauhati High Court is required to be viewed very seriously inasmuch as reproduction of sub-Section (2) of Section 54B is not causing breach of Section 139(1) which has been ignored by the Gauhati High Court.*

Further we may notice that the coordinate bench in the matter of ITO v. R. Srinivas [63 taxmann.com 101] in para 6.5.3 has held as under :

6.5.3 *The fact that the assessee has invested the entire sale consideration/capital gains in the purchase of the site and in the construction of the residential property thereon by 31.3.2010 is not disputed. The dispute raised by revenue is that since the assessee failed to invest the capital gains of Rs. 70,16,326 before the due date of filing the return of income for Assessment Year*

2008-09 i.e. 31.7.2008, as laid down u/s. 139(1) of the Act or to deposit the same by this date, i.e. 31.7.2008, in the Capital Gains Account Scheme of the Govt., the assessee is not eligible for exemption under Section 54/54F of the Act. In this regard, we find the co-ordinate bench of the ITAT, Bangalore in the case of Nipun Mehrotra (supra) held that if the sale consideration/capital gains is utilized for the purchase or construction of the new asset before the date of filing the return under Section 139(4) of the Act, the assessee is entitled to exemption under Section 54F of the Act. In the case on hand, the facts clearly establish that the assessee has utilized the sale consideration/capital gains for a) purchase of a residential site for Rs. 52,08,164 on 3.4.2008 and b) for cost of construction of the Ground to 2nd floor of the residential construction of the Ground to 2nd floor of the residential building upto 31.3.2010 amounting to Rs. 72,91,836. In this factual matrix, we are of the opinion that the assessee is eligible for exemption under Section 54F of the Act. In coming to this finding we draw support from the decision of the co-ordinate bench of the Tribunal in the case of Nipun Mehrotra (supra),wherein following the decision of the Hon'ble Gauhati High Court in the case of Rajesh Kumar Jalan(supra), it was held that when the sale consideration/capital gains has been utilized for the purchase or construction of the new asset before the due date for furnishing the return of income under Section 139(4) of the Act, the assessee is entitled to exemption under Section 54F of the Act. The learned CIT (Appeals) in the impugned order has, also observed that the claim for exemption, in respect of the other co-sellers of the said property, has been allowed by the Department. In this view of the matter, following the decision of the co-ordinate bench of the ITAT, Bangalore in Nipun Mehrotra (supra), we find that revenue has failed to controvert the decision of the learned CIT (Appeals) and therefore uphold the impugned order of the learned CIT (Appeals). Consequently, the grounds atS.Nos.1 to 11 raised by revenue are dismissed.

14. On the basis of the above, it is clear that the expression used in Section 54F is required to be interpreted to include not only the due date for filing the return, but the extended date as mentioned in section 139(4) of the Act, for rectification of the return of income.

In view of the above as the assessee in the present case has purchased the property only in December, 2015 i.e., before the date of filing of the return of income u/s.139(4) of the Act. Hence, the assessee is entitled to deduction u/s.54F of the Act. We hold accordingly.

15. Now we will deal with the submission of the Ld. DR that the Hon'ble jurisdictional High Court while passing of the decision by the Full Bench, considered the judgment of the Hon'ble Apex Court in the matter of Prakash Nath Khanna (supra). In this regard, we would like to point out that though it is correct that the Hon'ble jurisdictional High Court has no occasion to consider the judgment of Hon'ble Supreme Court in the matter of Prakash Nath Khanna (supra), but nonetheless, the ratio laid down by the Hon'ble High Court still holds good as it has not been set aside or reversed by the Hon'ble Supreme Court even after passing of the judgment in October, 2008. Even after the judgment dt.17th October, 2008, the Hon'ble jurisdictional High Court in the matter of Vrinda P Issac [24 Taxmann.com 131 on 18/10/2011] had again relied and reiterated the ratio laid down in Fathima Bai case. Nonetheless for the completeness of the facts, it will suffice to mention that Hon'ble Rajasthan High Court in Shankar Lal Saini (supra) has considered the judgment of Apex Court in Prakash Nath Khanna (supra) in para 6 and thereafter in para 17 to 21 reiterated the ratio of law to the following effect :

> "**6.** *However, while considering the matter, he contended that the tribunal has committed serious error in ignoring the observations made by the Supreme Court in the case of P.N.*

Khanna v. CIT, [2004] 135 Taxman 327/266 ITR 1 (SC) wherein it has been held as under:—

12. As a result of the amendment of Section 139(3) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 the power of the Income Tax Officer to extend time for furnishing return was taken away w.e.f. Ist April, 1987.

17. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou 1966 (1) QB 876, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC {1963 AC 557} where at AC p.577 he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges".)

***17.** We have heard counsel for the parties.*

***18.** The first contention of Mr. Pathak regarding interpretation of prosecution and the exemption benefit is required to be accepted. Admittedly, while considering the prosecution, the provisions are to be very strictly construed whereas in the case of exemption and other benefits, it is to be construed from the statue very liberally.*

***19.** The contention of Mr. Singhi that under Section 139, investment is to be made before the return is filed otherwise it will render the provision nugatory is to be considered in the light that while considering the case, Karnataka High Court in para no.6 & 7 (supra) has considered the provisions and interpreted the same. Even the same is accepted by the Punjab and Haryana High Court and Gauhati High Court which has taken the view contrary to Kerala High Court decision.*

***20.** In that view of the matter, three High Courts have taken the view and the tribunal has followed the Karnataka High Court which has*

> *followed the earlier Gauhati judgment which has been independently supported by the Punjab Harayana High Court.*
>
> ***21.*** *In that view of the matter, the issue is required to be answered in favour of the assessee and against the department."*

In view of the above, the contention put forward by the Ld. DR is not maintainable and is not accepted .

16. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 28th day of September, 2018.

Sd/- Sd/-

(JASON P. BOAZ) (LALIET KUMAR)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Bengaluru
Dated : 09.2018

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.