

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.2938/Bang/2018
Assessment year : 2006-07

Shri. B. J. Badrinath, #377/D, 14 th Main, Shanthinikethan Layout, Arekere, Bannerakatta Road, Bangalore – 560 076. PAN : AATPB 3237 B	Vs.	The Income Tax Officer, Ward – 4(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. K. R. Narayana, JCIT

Date of hearing	:	05.11.2018
Date of Pronouncement	:	16.11.2018

ORDER

Per Jason P Boaz, Accountant Member

This appeal by the assessee is directed against the order of CIT(A)-4, Bangalore dated 28.09.2018 for Assessment Year 2006-07.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee, as per the details on record, did not file any return of income for Assessment Year 2006-07. As per the order of assessment dated 30.03.2014, the assessing officer ('AO') states that on the basis of information received from the Investigation Wing of Income Tax Department, Bangalore, it was learned that the

assessee had executed a Joint Development Agreement ('JDA') dated 14.12.2005 with a builder / developer M/s. Chamundi Builders in respect of his property bearing No. 42/2, CMC Old Khatta No. 549/4, new Khatta No. 4278, New Property No. 42/2-3, Arakere Village, Begur Hobli, Bangalore South Taluk Bangalore, measuring 3200 square feet for being developed into residential apartments by the builder. As per the terms of the JDA, the assessee received refundable deposit of Rs.6 lakhs and in consideration of the assessee agreeing to transfer the undivided share of 60% in the aforesaid land, the builder agreed to construct and deliver 40% of super-built up area in the form of 3 flats in the Apartment Complex/Building, car parking and other benefits in the constructed area. The AO was of the view that this transaction being in the nature of transfer of land, capital gains accrued in the assessee's hands in the period relevant to Assessment Year 2006-07 and initiated proceedings u/s 147 of the Income Tax Act, 1961 (in short 'the Act'), recording that he had reason to believe that the assessee's income is exigible to tax, by virtue of the above transaction, had escaped income. The AO then issued notice u/s 148 of the Act on 27.03.2013; after obtaining the previous approval of the authorities concerned. The AO observing that in view of the assessee's non-compliance to statutory notices issued, he was constrained to complete the assessment ex-parte on the basis of material on record passed an order u/s 144 r.w.s. 147 of the Act on 30.03.2014, wherein the Long Term Capital Gain ('LTCG') in respect of the aforesaid transaction was computed at Rs.20,37,333/-.

2.2 Aggrieved by the ex-parte order of assessment dated 30.03.2014 for Assessment Year 2006-07, the assessee filed an appeal before the CIT(A)-4, Bangalore. The CIT(A) disposed off the appeal allowing the assessee partial relief vide order dated 28.08.2018. In the impugned order, the CIT(A), while upholding the AO's computation of LTCG at Rs.20,37,333/-, held and allowed the assessee the benefit of exemption u/s 54F of the Act to the extent of Rs.13,60,280/- in respect of

1 residential unit as against the assessee's claim for being allowed exemption u/s 54F in respect of all three residential units received as per the terms of the JDA.

3. The assessee, being aggrieved by the order of CIT(A)-4, Bangalore dated 28.08.2016 for Assessment Year 2006-07, has filed this appeal before the Tribunal, wherein he has raised the following grounds:

1. *The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the order of re-assessment requires to be cancelled.*

3. *Without prejudice to the above, the learned OT[A] is not justified in upholding long term capital gains at Rs. 20,37,333/- for the year under appeal without appreciating that there was no transfer of any interest in land as per the joint development agreement dated 14/12/2005 under the facts and in the circumstances of the appellant's case.*

4. *Without prejudice to the above, the learned CIT[A] ought to have held that the appellant was entitled to exemption u/s. 54F of the Act, in respect of all 3 residential apartments instead of allowing the same in respect of only one residential apartment under the facts and in the circumstances of the appellant's case.*

5. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, Me appellant denies himself liable to be charged to interest u/s.234-A and 234-of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

6. *For the above and other grounds that may be urged at the time of -tearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

4. **Ground Nos. 1 and 6 (supra)** being general in nature, no adjudication is called for thereon and they are accordingly dismissed as infructuous.

5. **Ground Nos. 2 and 3 (supra)** are in respect of the challenging the validity of assumption of jurisdiction u/s 148 of the Act and computation of LTCG at Rs.20,37,333/- respectively. At the outset of the hearing, the learned AR for the assessee submitted that these two grounds (supra) are not being pressed by the assessee in this appeal. In these circumstances, ground Nos. 2 and 3 of the assessee's appeal are rendered infructuous and accordingly dismissed as not pressed.

6. **Ground No. 5 – Charging of interest u/s 234A and 234B of the Act**

6.1 In this ground (supra), the assessee denies himself liable to be charged interest u/s 234A and 234B of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This principle has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala in 252 ITR 1(SC) and I therefore uphold the AO's action in charging the said interest. The AO is, however, directed to re-compute the interest chargeable u/s 234A and 234B of the Act, if any, while giving effect to this order.

7. **Ground No. 4 – Claim of Exemption u/s 54F of the Act.**

7.1 The learned AR for the assessee, in support of the ground raised on this issue, submitted that the assessee entered into a JDA with M/s. Chamundi Builders on 14.12.2005 for development of land at Arekere Village, Begur Hobli, Bangalore. As per the terms thereof, the assessee was entitled to 3 residential flats; in lieu of transfer of 60% undivided share of the land to the Developer; for which the assessee was entitled to exemption u/s 54F of the Act. According to the learned AR, the CIT(A)'s action in holding that the assessee was eligible for exemption u/s 54F of the Act only in respect of one flat was erroneous as in doing so, he failed to follow the binding decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Smt. K. G. Rukminiamma (2011) 331 ITR 211 (KAR). The learned AR contends that the learned

CIT(A)'s attempt to distinguish the case on facts was erroneous as he ought to have applied the principles laid down in the aforesaid decision of the Hon'ble Jurisdictional High Court (supra) and allowed the assessee the benefit of exemption u/s 54F of the Act for all the 3 units instead of restricting the exemption to one flat only. It is the learned AR's contention that in the aforesaid decision of the Hon'ble Karnataka High Court (supra), the Hon'ble Court has held that the meaning of "a residential House" in Section 54 of the Act meant that the assessee is entitled to exemption in respect of multiple units in the same residential building. In view of the above, it is submitted by the learned AR that the aforesaid decision of Hon'ble Karnataka High Court in the case of CIT Vs. Smt. K. G. Rukminiamma (2011) 331 ITR 211 squarely applies on all fours to the assessee in the case on hand on facts and in law and therefore prays that the assessee be granted exemption u/s 54F of the Act in respect of all 3 units received by the assessee in the same residential apartment building. Reliance was also placed on the decisions of the Co-ordinate Bench of the Tribunal in the cases of T A V Gupta Vs. ITO in ITA No. 209/Bang/2018 dated 24.04.2018; Smt. Nethravathi Vs. ITO in ITA No. 2630/Bang/2017 dated 25.04.2018 and Ms. Saritha Anand Shetty in ITA No. 1886/Bang/2018 dated 10.08.2018, copies of which have been placed on record.

7.2 Per contra, the learned DR for Revenue submitted that both the AO and the CIT(A) have thoroughly examined the provisions of section 54F of the Act and the intention of the Legislature. According to the learned DR, the amendment in section 54F of the Act by Finance Act, 2014 w.e.f. 01.04.2015, where "one" residential house has been substituted in place of "a" residential house makes it clear that the intention of the Legislature was that exemption u/s 54F of the Act was to be allowed only in respect of one unit and not multiple units. Therefore, the action/finding rendered by the learned CIT(A) cannot be faulted in restricting the assessee's claim for exemption u/s 54F of the Act to one unit only.

7.3.1. I have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. This ground is raised with regard to the assessee's claim for exemption u/s 54F of the Act in respect of 3 residential units received by the assessee in lieu of entering into a JDA on 14.12.2005 with the developer M/s. Chamundi Builders. After taking into account the factual and legal matrix of the case on hand, in my considered view, the issue before me i.e., the assessee's claim for exemption u/s 54/54F of the Act in respect of 3 flats in the same Apartment building, is covered in favour of the assessee, both on facts and in law, by the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Smt. K. G. Rukminiamma (2011) 331 ITR 211 (Karn).

7.3.2 I also find that a decision of ITAT, Bangalore in the case of Ms. Saritha Anand Shetty Vs. ACIT in ITA No. 1886/Bang/2018 dated 10.08.2018, on almost similar facts, has allowed the assessee's claim for exemption u/s 54F of the Act on multiple units received by the assessee in the same building on entering into JDA with the developer. In coming to this finding, the ITAT, Bangalore Bench, followed the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Smt. K. G. Rukminiamma (supra).

7.3.3 On similar facts, the same view was also taken by the Hon'ble Madras High Court in the case of CIT Vs. V. R. Karpagam (ITA No. 301 of 2014 dated 18.08.2014). In this judicial pronouncement, the Hon'ble Madras High Court also held that the Amendment made to section 54F of the Act with regard to the word 'a' by Finance (No.2) Act, 2014 was operative w.e.f. only 01.04.2015, whereby exemption for more than one flat (residential house), is to be withdrawn. However, prior to the aforesaid Amendment (supra), a residential house would include multiple flats/residential units in the same multi-storey apartment building.

7.3.4 The contentions of the learned DR that the Amendment to section 54F of the Act by Finance (No.2) Act, 2014 w.e.f. 01.04.2015 is clarificatory in nature and has to be read retrospectively since the intention of Legislature was that exemption was to be allowed only in respect of one unit/flat is not tenable, as it goes contrary to the decision of the Hon'ble Madras High Court in the case of CIT Vs. V. R. Karpagam (supra) at para 10 thereof. In this regard, the Hon'ble Apex Court in the case of CIT Vs. Vatika Township P. Ltd., (367 ITR 466) has observed that when a Legislature has given applicability of a section from a particular date, it is impermissible for the authorities to consider the same retrospectively for earlier years.

7.3.5 In the factual and legal matrix of the case as discussed above, and respectfully following the decisions of the Hon'ble Karnataka High Court in the case of CIT Vs. Smt. K. G. Rukminiamma (surpa) and of the Hon'ble Madras High Court in the case of CIT Vs. V. R. Karpagam (supra) and other judicial pronouncements referred to above, I am of the considered opinion that the assessee in the case on hand is eligible to be allowed for exemption u/s 54F of the Act in respect of multiple facts, i.e., the 3 flats in the same apartment building received by him upon entering into the JDA on 14.12.2005 with M/s. Chamundi Builders. The AO is accordingly directed. Consequently, ground No. 4 of the assessee's appeal is allowed.

8. In the result, the assessee's appeal for Assessment Year 2006-07 is partly allowed.

Pronounced in the open court on this 16th day of November, 2018.

Sd/-

(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 16th November, 2018.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.