

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.734/Bang/2015
Assessment year : 2011-12

Sri R Balaji Singh, M/s Sumuka Art Creations, No.2, 1 <sup>st</sup> Floor, Kanakapura Road, Yelachanahalli, Bengaluru-560 078.  PAN – APFPS 9831 P	Vs.	The Income-tax Officer, Ward-9(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, Advocate
Respondnet by	:	Shri R.N Siddappaji, Addl. CIT

Date of hearing	:	03.07.2019
Date of Pronouncement	:	03.07.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The assessee has filed this appeal challenging the order dated 17-04-2015 passed by Ld CIT(A)-4, Bangalore and it relates to the assessment year 2011-12. The assessee is aggrieved by the decision of Ld CIT(A) in confirming rejection for claim of deduction u/s 54F of the Act.

2. We heard the parties and perused the record. The assessee sold some property other than house property located at B M Kaval Village and declared Long term capital gain of Rs.52.37 lakhs. The

assessee constructed a residential house property on a plot of land belonging to his father. Accordingly the assessee claimed exemption u/s 54F of the Act to the tune of Rs.40.87 lakhs. The AO noticed that the plot of land did not belong to the assessee. When asked about the same, the assessee produced a family settlement deed, as per which the assessee herein got the plot of land on which the house property was constructed. The AO noticed that the father of the assessee expired only 25-08-2012. Further the family settlement deed was executed on 04-09-2012, just prior to the filing of return of income of the year under consideration and it was not registered. The AO also took the view that the assessee should be owner of the land on which the building was constructed in order to claim exemption u/s 54F of the Act. Since the father of the assessee was alive at the time when construction took place and since the plot of land was owned by him, the AO took the view that the assessee is not entitled to claim deduction u/s 54F of the Act. Accordingly he rejected the claim of the assessee. The Ld CIT(A) also upheld the same by observing that the assessee should be owner of the property for claiming deduction u/s 54F of the Act. Aggrieved, the assessee has filed this appeal.

3. We notice that the tax authorities appear to have taken the view that the land should also be owned by the assessee. The Ld D.R also reiterated that the property was owned by the father of the assessee and the same has been claimed to have been transferred to the assessee through an unregistered family settlement deed. Accordingly he submitted that the assessee is not eligible for deduction u/s 54F of the Act. However, the Ld A.R submitted that

there is no condition prescribed in sec.54F of the Act that the plot of land should be owned by the assessee. He submitted that the land and the super structure are two different assets. The assessee has claimed deduction u/s 54F of the Act only in respect of the cost of super structure only. He further submitted that the assessee has inherited the land subsequently and now it stands in the name of the assessee. In support of his contentions, the Ld A.R placed his reliance on the decision rendered by Jaipur bench of ITAT in the case of Shri Ganesh Chawla (ITA No.452/JP/2017 dated 25-01-2018), wherein it was held that, where an assessee constructs a residential house property on the land owned by his mother, then the assessee is entitled for deduction u/s 54F in respect of investment made in construction of property.

4. We find merit in the contentions of the assessee. As submitted by Ld A.R, the provisions of sec.54F do not prescribe any condition that the investment made should be for both land and building. Under General Law also, no prohibition is there to construct building on a land belonging to another by getting due permission or license. It is pertinent to note that the provisions of sec.24, before its amendment by Finance Act, 2000 w.e.f. 1.4.2001, provided for deduction of "ground rent" from the House property income, where the property is subject to ground rent, meaning thereby, the Income tax Act also has recognised the fact that the land may stand in some other person's name. Hence the tax authorities are not correct in law in holding that the land should also belong to the assessee for the purpose of claiming deduction u/s 54F of the Act.

5. The Ld A.R submitted that the assessee has claimed deduction u/s 54F of the Act in respect of investment made in construction of residential house. We notice that there was no occasion for the AO to examine the correctness of the claim made by the assessee., since he has rejected the claim of the assessee for the reasons discussed above. Accordingly, we are of the view that the quantum of deduction u/s 54F and satisfaction of other conditions for claiming the same need to be examined at the end of the AO. Accordingly we restore this issue to the file of the AO for examining the claim of the assessee, after affording adequate opportunity to the assessee.

6. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the Open Court on **3<sup>rd</sup> July, 2019.**

**Sd/-**  
**(Pavan Kumar Gadale)**  
**Judicial Member**

Bangalore,  
Dated, 31<sup>st</sup> July, 2019.  
/ vms /

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
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10. Date on which order goes for Xerox & endorsement.....
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