

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.995/Bang/2018  
(Assessment Year: 2012-13)

Shri B J Bhaskar Reddy, No.802, Aaradhana, 9 <sup>th</sup> Main, Koramangala 3 <sup>rd</sup> Block, Bengaluru-560 034 PAN: ABIPD 8668G	Vs.	Income Tax Officer, Ward 5(2)(4), Bangalore.
(Appellant)		(Respondent)

Assessee By: Shri Ravi Shankar S V, Advocate.  
Revenue By: Dr. P. V. Pradeep Kumar, Addl. CIT (D.R)

Date of Hearing :	03.07.2019
Date of Pronouncement :	07.08.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of learned Commissioner of Income Tax (Appeals)-10, Bangalore passed under Section 143(3) and 250 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal :

1. The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.
2. The appellant denies itself liable to be assessed to total income of Rs. 3,17,00,000/- as against the returned income of Rs. 9,39,150/- on the facts and circumstances of the case.
3. The authorities below failed to appreciate that the cost incurred towards improvement of the asset amounting to Rs. 4,91,750/- ought to have been deducted for arriving at the short term capital gains on the facts and circumstances of the case.
4. The Commissioner of Income Tax (Appeals) erred in not adjudicating on the denial of deduction of an amount of Rs, 4,91,750/- incurred towards improvement of the asset on the facts and circumstances of the case.
5. **Grounds on granting of exemption under section 54F of the Act :**
  - a) The learned authorities below erred in not granting exemption of Rs. 3,01,57,920/- under section 54F on the facts and circumstance of the case.
  - b) The learned authorities failed to appreciate that in terms of section 54 F (4) of the act the amount deposited in Capital gains scheme shall be deemed to be the cost of the new asset in the relevant Assessment year and consequently ought to have allowed the amount of Rs. 3,39,00,000/- deposited in the capital gains account as the cost of the new asset on the facts and circumstance of the case.
  - c) Without further prejudice, the authorities below failed to appreciate that in the event of non-fulfillment of conditions prescribed u/s 54F of the Act, addition to income could have been made only in the previous year in which the period of three years from the date of transfer expires i.e in AY 2015-16 and not in the impugned assessment year i.e. AY 2012-13 on the facts and circumstances of the case.

6. **Grounds on completion of construction of the residential house.**
- a) The authorities below erred in holding that the construction of the residential house is not completed within a period of 3 years on the basis of non-furnishing of completion certificate issued by BBMP on the facts and circumstances of the case. The authorities below failed to appreciate that the BBMP bye-laws do not provide for issuance of completion certificate.
  - b) Without prejudice, the completion of the house in all aspects is not the requirement of the section and hence the exemption claimed ought to have been allowed on the facts and circumstance of the case.
  - c) Without prejudice, the authorities below failed to appreciate that the appellant had applied for the certificate to BBMP on 26.09.2014 and also furnished an endorsement issued by BBMP and valuation cum completion report from a Chartered Engineer substantiating that the construction was completed within a period of 3 years and accordingly fulfilled all the conditions prescribed for availing benefit u/s 54F of the Act.
  - d) Without prejudice, the authorities below failed to appreciate that even if the construction of the residential house is not completed in all aspects within a period of 3 years, if the proceeds of transfer are invested for construction, relief u/s 54F of the Act ought to have been given to the assessee as per various judicial pronouncements on the facts and circumstances of the case.
7. The appellant denies the liability to pay interest under section 234A and 234B of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.
8. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.
9. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

3. The Brief facts of the case are that the assessee has filed Return of Income on 17.04.2013 with a total income of

Rs.5,69,020. Subsequently, the case was selected for scrutiny under CASS and Notice under Section 143(2) of the Act was issued. In compliance the learned Authorised Representative of the assessee appeared from time to time before the Assessing Officer and filed the information in respect of Bank Account, acquisition and purchase of the property on 20.10.2014, and further the revised computation of income was filed declaring income from Short Term Capital Gains (STCG) whereas the Assessing Officer required the assessee to furnish information on construction of house property along with copy of Capital Gain Account. The assessee has sold the ancestral property along with wife and two daughters for a consideration of Rs.3,39,00,000, and the said property was inherited on death of his father. The sale consideration of Rs.3.39 Crores was deposited in the Capital Gain Account Scheme on 19.12.2011. Subsequently, the money was withdrawn on 25.4.2012, and was deposited in three accounts of Rs.75 lakhs each and one account of Rs.72 lakhs. Subsequently, the assessee has withdrawn the said amount on 8.3.2013 and purchased property at Koramangala for a consideration of Rs.2.15 Crores. The contention of Id. AR that

the assessee has constructed House Property out of the capital gains account amount within three years but could not substantiate with regard to completion of construction of the House whereas the Assessing Officer based on report of the Inspector observed that construction of House is not completed hence denied the exemption under Section 54F of the Act and assessed the income of Rs.3,17,00,000 and passed under Section 143(3) of the Act Dt.31.3.2015. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). Whereas the CIT(Appeals) has confirmed the order of the Assessing Officer and dismissed the appeal. Aggrieved by the CIT (Appeals) order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorised Representative submitted that the CIT(Appeals) has erred in confirming the addition irrespective of the fact that the assessee is eligible for exemption under Section 54F of the Act. The learned Authorised Representative submitted Paper Book and supporting evidences of deposit of Long Term Capital Gains in the Capital Gains Account Scheme and explained that the property was sold on 12.12.2011 in the A.Y. 2012-13 and whereas the assessee has

purchased site/plot for construction of a residential house on 15.3.2013. Further to substantiate that the House construction is complete, the assessee made an application to the Executive Engineer, Revenue Inspector, BBMP, Koramangala to issue completion certificate. Learned Authorised Representative also supported the case with the copy of confirmations and capital gains account scheme certificate and prayed for granting of exemption under Section 54F of the Act. Contra, the Id. Departmental Representative relied on the orders of the CIT (Appeals).

5. We heard the rival contentions and perused the material on record. The sole matrix of the disputed issue is on granting of exemption under Section 54F of the Act. The learned Authorised Representative has vehemently argued that the assessee has complied with the conditions of deposits in the Capital Gains Account Scheme and performed House warming ceremony on 3.10.2014 duly supported with the copy of Invitation Card at page 95 of the Paper Book and also letters filed for obtaining the sanction including leveling and construction of compound wall. On perusal of the CIT(Appeals) order, we find that the Id.

CIT(Appeals) has only dealt on the issue that the completion of the House Property should be before 12.12.2014 i.e. ;within three years from date of the sale of property. We found the assessee has filed substantive material on compliance of the stipulated conditions before 12.12.2014. The learned Authorised Representative demonstrated with the copy of the letter filed with the Executive Engineer for issue of completion Certificate application of Electric connection and Assessment of House Tax, Capital Gains Account Schemes and details of leveling of the compound wall and other letters in respect of Annual Payment of tax. We found the CIT (Appeals) has passed the order overlooking the vital information filed by the assessee in respect of completion of construction of House and accordingly we set aside the order of the CIT(Appeals) and restore back the entire disputed issue to the file of CIT(Appeals) to adjudicate afresh to consider the material filed by the assessee in the Tribunal and shall pass a speaking and reasoned order. Nevertheless to mention that the assessee shall be afforded adequate opportunity of hearing and shall co-operate in submitting the information for early disposal of

the appeal and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 7th Aug., 2019.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 07.08.2019.

\*Reddy GP

Copy to

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

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore