

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

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

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| ITA No.2623/Bang/2018 |
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| Assessment year : 2013-14 |
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| Shri Mohanlal Khanna, No.10, 12 th Main, 14 th Cross, Lakkasandra Hosur Road, Bengaluru-560 030. PAN – ACMPK 0643 B | Vs. | The Income-tax Officer, Ward-7(2)(2), Bangalore. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri K.S Nagesh, C.A |
| Respondent by | : | Shri Karuppusamy, Addl. CIT (DR) |

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| Date of hearing | : | 19.12.2019 |
| Date of Pronouncement | : | .12.2019 |

ORDER

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the order dated 2/8/2018 passed by Id CIT(A)-10, Bengaluru and it relates to the asst. year 2013-14.

2. The assessee is aggrieved by the decision of Id CIT(A) in confirming the disallowance of deduction claimed by the assessee u/s 54F of the Act.

3. We heard the parties and perused the record. For the year under consideration the assessee filed return of income declaring a total income of Rs.6,50,830/-. The AO noticed that the assessee has claimed deduction u/s 54F of the Act to the tune of Rs.2.47 crores. The AO noticed that the assessee, in order to avail deduction u/s 54F of the Act should not own more than one residential house at the time of transferring the original asset. However, the AO noticed that the assessee has held residential properties in some other places also, the details of which are mentioned in 3rd and 4th page of asst. order. Since the assessee has held more than one house, the AO rejected the claim for deduction u/s 54F of the Act.

4. In the appellate proceedings the ld CIT(A) also confirmed the same.

5. The ld AR submitted that the assessee had entered into a joint development agreement on 8/2/2006 and hence, as per the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of T.K Dayalu, the capital gain is assessable in asst. year 2006-07. The ld AR submitted that the AO had reopened the asst. for asst. year 2006-07 and the matter is pending before the appellate authorities.

6. We heard the ld DR and perused the record.

7. We noticed that the assessee appears to have declared capital gain arising on arising on account of entering into joint

development agreement in asst. year 2013-14 and accordingly claimed deduction u/s 54F of the Act. The ld AR submitted that the AO has also reopened the asst. of asst. year 2006-07 for assessing the capital gain. If the capital gain is assessed in asst. year 2006-07, then the same amount cannot be assessed in asst. year 2013-14. The deduction is claimed u/s 54F of the Act against capital gains only.

8. It is not clear from the record as to whether the capital gain has been assessed in asst. year 2013-14 also. It is also not clear as to whether the assessee is contesting the capital gain assessed in 2013-14/2006-07, as the details of appellate proceedings were not brought on record. If capital gain is held to be assessable in asst. year 2006-07, then the question of allowing deduction u/s 54F of the Act may arise in that year, in which case, the question of disallowing the deduction in AY 2013-14 should not arise.

9. As the facts relating to the above said issue are not clear, we are of the view that this issue requires fresh examination at the end of the AO by duly considering the matter relating to capital gains. Accordingly we set aside the order passed by the ld CIT(A) and restore this issue to the file of AO for examining it afresh in the light of discussions made (Supra).

10. In the result, all the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **20th December, 2019.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, the 20th **December**, 2019.

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. 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.....
7. If not uploaded, furnish the reason for doing so
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8. Date on which the file goes to the Bench Clerk
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Dictation note enclosed
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
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14. Dictation note enclosed
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