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

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

ITA No.393/Bang/2019
Assessment year : 2013-14

Sri Sudheer Valsala Sreekumaran, # Flat – B, 101, 'Sharada Nivas', Sterlign Apartments, 6th Main, 15th Cross, Indiranagar, Near ESI Hospital. Bengaluru-560 038. PAN – CFTPS 5268 A	Vs.	The Income-tax Officer, Ward-5(3)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V Srinivasan, Advocate
Respondent by	:	Smt. R Premi, JCIT (DR)

Date of hearing	:	11.12.2019
Date of Pronouncement	:	.12.2019

O R D E R

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the order dated 1/2/2019 passed by ld CIT(A)-12, Bengaluru and it relates to asst. year 2013-14.

2. The assessee is aggrieved by the decision of ld CIT(A) in rejecting the claim made by the assessee for deduction u/s 54F of the Act.

3. The facts relating to the above said issue are stated in brief:

During the year under consideration, vide sale deed dated 13/8/2012, the assessee along with the Ms. Uma S Kumar sold a vacant plot located at Seashore Town, 3rd Street, Sholinganallur Taluk, Kanchipuram for a total consideration of Rs.4.10 crores. The assessee declared 50% of the above said sale consideration as his share and accordingly computed capital gain thereon, wherein he claimed deduction u/s 54F of the Act to the tune of Rs.1.50 crores.

4. The AO noticed that the assessee has invested a sum of Rs.50 lakhs in capital gains bond scheme eligible for deduction u/s 54EC of the Act. He further noticed that the assessee has not deposited the unutilised sale consideration into capital gain accounts scheme as required u/s 54F(4) of the Act before the due date prescribed u/s 139(1) of the Act for filing return of income. The AO noticed that the assessee has made deposit in capital gain scheme as per sec. 54F(4) of the Act only on 26/8/2013, i.e., subsequent to the due date prescribed u/s 139(1) of the Act for filing return of income. The AO noticed that the assessee has withdrawn money from capital gain account scheme and purchased a vacant plot at Devanahalli for a consideration of Rs.1.29 crores during the May 2014.

5. Since the assessee had transferred the property on 13/8/2012, the AO observed that, as per sec. 54F of the Act, the assessee should have constructed a residential house on or before 31/8/2015. The AO deputed his Inspector to physically inspect the status of construction. The Inspector, vide his report dated 10/3/2016, reported that only foundation work for construction of a small house has just started a fortnight back. Accordingly the AO took the view that the assessee was not eligible for deduction u/s 54F of the Act for the following reasons:

a) The assessee has not deposited the unutilized sale consideration in capital gains account scheme before the due date for filing the return of income for asst. year 2013-14 as per sec. 54F(4) of the Act.
b) The construction has not been completed within 3 years from the date of transfer of original asset.

Accordingly the AO rejected the claim of deduction u/s 54F of the Act.

6. The CIT(A) confirmed the order of the AO with the following observations :-

"Ground 1,2,3 & 3.1

Claim: Deposit in the capital gain account should be on or before due date for filing of return u/s 139(4) and not u/s 139(1) - the exemption claimed u/s. 54F of the Act is allowable.

Examination from Factual point of view:

9. The appellant has invested in a land of 8,305 sq. ft. for a consideration of Rs. 1.29 Crores. The AO has held that so called construction of the house there-on was claimed as an after-thought for winning exemption u/s. 54F of the Act.

10. In this respect the chronology of events is examined. I find that the appellant must have completed the house construction on or before 12/08/2015 since the original asset was sold on 13.8.2012. I find that the sanction plan was approved by BIAAPA on 24.06.2015. Normally the construction of even one floor takes at least 8 to 10 months. From the preponderance of probabilities, I do not find it possible that the appellant could have completed the construction within 45 days from the date of approval i.e. on or before l2/08/2015.

11. This is further confirmed by the Inspector's report dt. 10.3.2016. This report clearly states that the construction was started about 15 days before. The photographs taken at that time (on 10.3.2016) indicate that plinth of ground floor is being constructed and the construction has barely started. This proves beyond doubt that the construction was not complete.

Examination from Legal point of view:

12. In this respect the appellant has submitted certain judgments of High Courts / ITAT where it is held that due date for filing of return u/s 139(4) should be the cut-off date and not the due date for filing of return u/s 139(1).

13. The appellant has relied on the judgement of the Hon'ble Karnataka High Court in the case of FATIMA BAI. It is claimed that the mere delay in deposit of the amount in the capital gains account scheme will not disentitle the appellant to exemption claimed as the appellant has time till the due date u/s. 139(4) of the Act. I have examined the issue further.

14. The section 54(2) is as under:

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section .21 in an account in any such hank or institution as may be specified in, and utilised in accordance with,

any scheme-R) which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

15. 1 find that section 54(2) is very clear that the due date applicable is the date for furnishing the return of income under sub-section (1) of section 139. There is no mention of section 139(4) in this section.

16. In this respect, Hon. Supreme Court in the case of Smt. Tarulata Shyarn v. CIT [1977) 108 ITR 345 (SC) has held that there is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation.

17: Further, Hon. Supreme Court in the case of Keshavji Ravji & Co. v. CIT 119901 49 Taxman 87 (SC) has held that as long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible.

18. Similarly, Hon. Supreme Court in the case of CIT v. T.V. Sundaram Iyengar & Sons (P.) Ltd. 11975] 101 ITR 764 (SC) has held that if the language of the statute is clear and unambiguous, the Court cannot discard the plain meaning, even if it leads to an injustice.

19. The appellant has relied on the judgment of the Honourable Karnataka High Court in the case of FATIMA BAI (Karnataka). I have considered the same. The above judgments of Hon. Supreme Court have not been brought before the Honourable Karnataka High Court while deciding the FATIMA BAI case and therefore could not be considered by the Honourable Karnataka High Court.

20. 1 have further examined the order of the AO and the submissions made by the appellant. I find that in the judgments cited by the appellant the following decision of the Hon. Supreme Court of India has not been considered.

21. Hon. Supreme Court of India in the case of Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company [Civil Appeal No. 3327 of 20071 had setup the Constitution Bench to examine the correctness of the ratio in Sun Export Corporation.

1. This Constitution Bench is setup to examine the correctness of the ratio in Sun Export Corporation, Bombay v. Collector of Customs, Bombay, (1997) 6 SCC 564 /hereinafter referred as 'Sun Export Case for brevity, namely the question is What is the interpretative rule to he applied while interpreting a tax exemption Reportable provision/ notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

2. in Sun Export Case (supra), a three Judge Bench ruled that an ambiguity in a tax exemption provision or notification must be interpreted so as to favour the assessee claiming the benefit of such exemption. Such a rule was doubted when this appeal was placed before a Bench of two Judges. The matter then went before a three Judge Bench consisting one of us (Rarijan Gogoi, J.). The three Judge Bench having noticed the unsatisfactory state of law as it stands today, opined that the dicta in Sun Export Case (supra), requires reconsideration and that is how the matter has been placed before this Constitution Bench.

22. The Constitution Bench of Hon. Supreme Court of India in this case has held as under:

To sum up, we answer the reference holding as under

1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.

23. 1 have examined the submissions made by the appellant. I find that in the judgements cited by the appellant various decisions of the Hon. Supreme Court of India have not been considered.

24. Therefore, by relying on the decision of the Constitution Bench of Hon. Supreme Court of India in the case of Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company [Civil Appeal No. 3327 of 2007] the deduction u/s 54P is not allowed.

25. Therefore, the arguments of the appellant are not acceptable. The appellant has failed to deposit the

required amount in the capital gains account within the prescribed time. Further, the appellant has also failed to construct a house within the prescribed time. Thus, both factually and legally the case lacks merit and the grounds are therefore, dismissed."

7. We heard the parties on this issue and perused the record. The first reason given by the tax authorities for rejecting the claim for deduction u/s 54F of the Act is that the assessee has not invested the unutilized sale consideration amount into Capital gains account scheme before the due date prescribed u/s 139(1) of the Act for filing return of income. The Ld A.R relied upon the decision rendered by Hon'ble Madras High Court in the case of Venkata Dilip Kumar vs. CIT (2019)(111 taxmann.com 180)(Mad), wherein the Hon'ble Madras High Court followed the decision rendered by Hon'ble Karnataka High Court in the case of CIT vs. K.Ramachandra Rao (ITA No.47 of 2014) to hold that if the assessee has utilised the sale consideration within 3 years, then the requirement of non-compliance of provisions of sec.54(2) cannot come in the way of the assessee in claiming deduction. The Hon'ble Karnataka High Court held as under in the case of K Ramachandra Rao (supra):-

"If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore, the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not

entitled to the benefit even though he has invested the money in construction is also not correct."

Hence, if the assessee has invested entire sale consideration within three years, then the requirement of complying with provisions of sec.54F(4) cannot come into the way of the assessee for claiming deduction u/s 54F of the Act.

8. The next reason cited by the AO is that the assessee has not completed the construction within 3 years of date of transfer of original asset. In this regard, the Ld A.R placed his reliance on the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of CIT vs. Sambandam Udaykumar (20120(345 ITR 389)(Kar), wherein the High Court has observed as under:-

> **"11.** Section 45 of the Act makes it very clear that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save or otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H is chargeable to income tax under the head 'capital gains' and shall be deemed to be income of the previous year in which the transfer took place. The aforesaid sections which form part of section 54 of the Act are cases where capital gain on transfer of capital asset not to be charged in those cases. Section 54F of the Act is a beneficial provision of promoting the construction of residential house. Therefore, the said provision has to be construed liberally for achieving the purpose for which it was incorporated in the

statute. **The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law.** The words used in the section are 'purchased' or 'constructed'. For such purpose, the capital gain realized should have been invested in a residential house. The condition precedent for claiming benefit under the said provision is the capital gain realized from sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of section 54F of the Act. **Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under section 54F of the Act.** The essence of the said provision is whether the assessee who received capital gains has invested in a residential house. Once it is demonstrated that the consideration received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the transactions

> are not complete in all respects and as required under the law, that would not disentitle the assessee from the said benefit."

In view of the above said binding decision of jurisdictional High Court, the second reasoning given by the AO would also fail.

9. The Ld CIT(A) has expressed the view that the exemption provision should be strictly construed as per the decision rendered by Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai vs. M/s Dilip Kumar and Company (Civil Appeal No.3327 of 2007). The Ld A.R submitted that the Ahmedabad bench of Tribunal has examined an identical question in the case of DCIT vs. Shri Pankaj Chimanlal Patel (HUF) (ITA No.3179/Ahd/2016 dated 12.12.2018) and has held that the decision rendered by Hon'ble Supreme Court in the case of Dilip Kumar and Company (supra) cannot be invoked while examining the issue of deduction u/s 54F of the Act. We notice that the Ahmedabad Bench has observed as under in the above cited case:-

> "11. However, to address the concern of Revenue for strict construction of beneficial provisions in the light of Dilip Kumar & Co. (supra), we notice that the deduction under s.54F of the Act essentially depends upon the extent of utilization of the sale proceeds in the new asset. The benefits of Section 54F of the Act also stands denied where the assessee owns more than one residential house other than new asset on the date of transfer of the original asset. The object of Section 54F is to encourage an

assessee to convert any of his long term assets into a residential house subject to the condition that assessee does not own more than one residential house other than the new residential house on the date of transfer of long term asset. The Section, thus, in essence, offers some incentives to a tax payer to change its unproductive assets into a residential house. The action of the assessee is thus in conformity with the object and purpose of Section 54F of the Act. To say that the assessee is entitled for deduction in respect of capital gains arising from sale of only one long term capital asset and conversion thereof in residential property would in effect seriously limit the object and purpose of Section 54F of the Act.

12. To delineate further, an incidental situation may also crop up whether capital gains deduction with reference to Section 54F of the Act would apply with respect to a solitary transaction and not on whole of several different transactions of capital assets in the form of equity, mutual fund and so on. If the interpretation of 'any long term asset' as suggested by Revenue is read to mean deduction in respect of only one transaction of transfer is endorsed, it will seriously curtail the application of Section 54F of the Act. Such interpretation would lead to absurd results and requires to be shunned. Significantly, we also notice the use of broader expression 'any' long term asset in distinction to

expression 'a' long term asset as used in Section 10(38) of the Act. Thus, the legislative intent when gathered from the distinct language used, it is clear that a narrower interpretation would fail to achieve manifest purpose of the deduction provision. We thus, prefer to avoid a construction which would reduce the legislation to futility and grant broader construction to bring effective result on availability of such deduction.

13. As a corollary, the decision of the co-ordinate bench in favour of the assessee is, in effect, harmonious interpretation of Section 54F of the Act and not necessarily a liberal interpretation of the deduction provision. We are thus of the view that the decision of the Hon'ble Supreme Court in Dilipkumar & Co. (supra) does not hinder the claim of assessee."

Hence the observation made by Ld CIT(A) in this regard would also fail.

10. Hence, what is required to be seen is whether the assessee has invested the sale consideration proportionate to the deduction claimed u/s 54F of the Act in construction or purchase of new residential house within the period prescribed in the section. Accordingly, we set aside the order passed by Ld CIT(A) and restore the issue to the file of the AO for verifying the quantum of amount spent by the assessee before three years from the date of transfer of

original asset and accordingly for examining the deduction claimed u/s 54F of the Act. The assessee may be provided with adequate opportunity in this regard.

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

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

Sd/-	**Sd/-**
(Pavan Kumar Gadale)	**(B.R Baskaran)**
Judicial Member	**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.
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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 ……..
8. Date on which the file goes to the Bench Clerk …….
   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. ……..

14. Dictation note enclosed ……