

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BENGALURU
BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**I.T.A No.1066/Bang/2019
(Assessment Year: 2015-16)**

Smt. Shobha Venugopal,
U4-201, Rosewood Regency,
Next to St. Peter School,
Kaikondrahali, Sarjapur Road,
Bengaluru – 560 035.

The Income Tax Officer,
Vs. Ward-6(2)(4),
Bengaluru.

[PAN: ACZPV 7119G]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri V. Srinivasan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Smt. R. Premi, JCIT
सुनवाई की तारीख/ Date of hearing	:	27.11.2019
घोषणा की तारीख /Date of Pronouncement	:	05.12.2019

ORDER

PER D.S. SUNDER SINGH, A.M. :

This appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-6, Bengaluru (hereafter referred as “CIT(A)”) in ITA No.10392/cit(a)-6/Bengaluru/2017-18 dated 08/04/2019 for the assessment year 2015-16.

2. All the grounds of appeal are related to the deduction u/s.54F of the Act. The assessee filed return of income declaring total income of Rs.10,11,750/- and the case was selected for scrutiny. During the course

of assessment proceedings, the Assessing Officer noticed that the assessee has admitted the Long Term Capital Gains (LTCG) of Rs. 1,17,82,561/- and claimed the deduction u/s. 54F of the Act, having reinvested the sale consideration in residential property. During the year under consideration, the assessee has sold the site bearing No.12(old site No,12,Site No.13,Site No.1,Site No3A), situated at 14th Main Road, Brindavan Nagar, Jallahalli, Bangalore, PID No.2-92-12 admeasuring 3611 sft, for a consideration of Rs.1,26,70,000/- and the guideline value of the said property was Rs. 1,39,03,000/- as per Stamps and Registration Authority. The Assessing officer(AO) proposed to take the guideline value for the purpose of capital gains for which the assessee did not object, hence the AO adopted the sale consideration at Rs.1,39,03,000/-.

2.1 During the proceedings though the assessee had stated that she has purchased the house site for consideration of Rs.75,00,000/- and constructed a residential house and claimed deduction u/s. 54F of the Act, she has not furnished any documentary evidence for having re-invested the sale proceeds in acquiring the new residential house within the time limit allowed under section 54F of the Act. Therefore, the AO disallowed the deduction claimed by the assessee under section 54F of the Act. Against which the assessee filed appeal before the Ld. CIT(A).

2.2. Before the Ld.CIT(A) the assessee produced the photographs of the new residential house as a proof of acquiring the new asset and stated

that she had submitted the photographs of the new residential house before AO and the AO has not considered the evidences placed before him at the time of completion of assessment. She also submitted the valuation report determining the value of the residential house as on 31/03/2018 at Rs.1,26,77,000/-. The Ld. CIT(A) forwarded the submissions made by the assessee along with the valuation report and the photographs to the AO and the AO in reply submitted the remand report stating that the assessee did not furnish photographs of new house before him at the time of assessment proceedings and hence the question of non considering the photographs does not arise. He further stated that the same was furnished only along with the valuation report before the Ld. CIT(A). The assessee also submitted the copy of bank account before the Ld. CIT(A) showing the sale consideration received and the payment of purchase consideration through the bank. In addition to the above, the assessee also furnished the photo copies of receipts for electricity deposits for connection dated 03/04/2017 and copy of the gruha pravesham invitation card dated 19/03/2017 before the CIT(A) as an evidence for acquiring the new asset. The Ld. CIT(A) accepted the assessee's contention regarding the construction of the house and observed that there was no evidence furnished by the assessee regarding the construction of house such as plan approval and completion certificate etc. however, observed from the valuation report dated 31st March, 2018 and the report of the Income tax inspector that the total area of site was

3000 Sq. ft. on which the assessee had constructed six residential houses with AC sheet roof having separate entrance to each house with a common passage area and separate electric meters for each dwelling unit. From the valuation report and the inspection report of the Income tax Inspector, the Ld. CIT(A) further found that the assessee has constructed six separate houses and not one residential house. Since, there was an amendment w.e.f 1st April, 2015 and the provisions of section 54F of the Act permits deduction of only one residential house, the Ld. CIT(A) held that the assessee is entitled for deduction only one house but not all the six residential houses. Therefore the Ld. CIT(A) allowed 1/6th of investment amounting to Rs. 21,61,739/- in the new residential house and confirmed the balance amount of addition. Hence, the assessee is in appeal before this Tribunal.

3. During the appeal of hearing, the Id. AR argued that the assessee has constructed only one residential house with six residential units. Though there were six residential units, the house is allotted one Katha number issued by BBMP, hence, argued that six residential units of the house with multiple entrances cannot make one residential house in to six houses. The Ld.AR further argued that the assessee is permitted to construct the different units in a single large residential house so as to allow multiple tenements. The Ld. AR further argued that to treat each unit as a separate residential house the undivided share of land required to be allotted to each unit. In the instant case the entire land is held by the

assessee. Therefore, submitted that all the six residential units required to be considered as a single house and accordingly submitted that the assessee is entitled for deduction under section 54F of the Act, thus, argued that the Ld. CIT(A) erred in allowing only 1/6th of constructed area and the Ld.CIT(A) ought to have allowed the entire investment made by the assessee in the residential house. The ld. AR relied on the decision of the Co-ordinate Bench of ITAT in the case of Shri Bhatkal Ramarao Prakash vs. ITO in ITA No.2692/Bang/ 2018 dated 04/01/2019.

4. On the other hand, the Ld. DR submitted that the assessee constructed six different residential houses with different entrances, independent electric meters and six separate kitchens. The Ld. DR further submitted that when each residential unit is having the separate entrance, separate electricity meter and separate kitchen each unit constitute independent residential house and the same cannot be held as a single residential house. Therefore, argued that the Ld. CIT(A) has rightly held that the assessee had constructed six independent residential houses and allowed 1/6th of deduction and no interference is called for in the order of the Ld. CIT(A). The ld. DR requested to uphold the order of the Ld. CIT(A) and dismiss the appeal of the assessee.

5. We have heard the rival submissions and perused the material placed on record. In the instant case, the assessee has sold the property of house site bearing No.12 (Old site No.12, Site No.13, site No.2, Site

No.3A) situated at 14th Main Road, Brindavan Nagar, Ward-2, Jallahali, Bangalore and measuring 3611 Sq. ft. for a consideration of Rs. 1,28,70,000/- and the market value of the said property was Rs. 1,39,03,000/-. With the said sale consideration, the assessee has purchased the new residential house site for an amount of Rs. 75,00,000/- bearing No.D-14,Khata No.26/9 in the jurisdiction of BBMP ward No.150,Bellandur ward layout known as Green Ville sector-4 on 17/04/2014 and constructed a residential house on the said house site and claimed the deduction under section 54F of the Act. Before the AO the assessee did not produce the proof for purchase of house site as well as for construction of residential house. During the appeal hearing the assessee has submitted the photos of new house along with copies of electricity deposit receipts and valuation report. The Ld.CIT(A) found from the valuation report that the assessee had constructed a building comprising ground with floor 4 one BHK units and two residential units with hall and kitchen in addition to one store room. All the units were occupied by different tenants. The total site area was 3000 Sq. ft. with AC sheet roof having separate entrance to each house and a common passage with six to seven electric meters. Each unit is having separate electric meters. From the valuation report, it is further observed by the Ld. CIT(A) that it was not one residential house and multiple residential units. These facts are not disputed by the assessee. The Id. AR argued that these six residential units cannot constitute six independent residential

houses. In the instant case, each unit has separate meter, separate kitchen and separate entrance which constitutes a separate residential house. Whatever may be the size of the house if the house is capable of serving the family the same required to be considered as separate residential house, even though it is having one Khata. The question of attaching the undivided share of land comes in to picture only when the house is sold. w.e.f 1st April, 2015 as per the amendment made to the act, the assessee is entitled for deduction u/s 54F of the Act only for one house. In the instant case, as per the information placed before us, the assessee had constructed six different residential houses with separate entrances, separate electric meters and the separate kitchen.

6. The land AR relied on the decision of Co-ordinate Bench of ITAT 'A' Bench, Bangalore in the case of Shri Bhatkal Ramarao Prakash supra, where the assessee has purchased residential house consisting of ground floor and first floor which constitutes single house and bifurcated into two door numbers for ground floor and first floor with common entrance only to earmark the share of each beneficiary. The property otherwise constituted a single property with two different door numbers. In the circumstances, the ITAT held that the assessee had purchased only one property and not two residential houses, thus the facts of the case relied upon by the assessee are distinguishable from the assessee's case. It cannot be held that six residential houses which are capable of being inhabited independently by each family with all amenities such as separate

entrance, kitchen and separate electric meter as one single residential house. We are unable to accept the argument of the Ld.AR that all the six residential houses should be taken as single residential house. Therefore we hold that assessee is entitled for deduction under section 54F of the Act only for one residential house and the Id. CIT(A) rightly allowed the deduction under section 54F of the Act for one residential house and disallowed the balance amount. Accordingly we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 5th December, 2019.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT
Bengaluru, Dated: 05-12-2019
EDN

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

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