

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA 1068/Bang/2019
Assessment Year : 2015 - 16

Asst. Commissioner of Income Tax, Circle - 6(3) (1), Room No. 438, 4 th Floor, BMTc Building, Koramangala, Bengaluru - 560 095.	Vs.	Shri. Sandeep Bhujanga Shetty, No - B, SNS Chambers, 274, Sankey Road, Sadashivanagar, Bengaluru - 560 080. PAN NO : AACPS 9801 M
APPELLANT		RESPONDENT

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ITA 1070/Bang/2019
Assessment Year : 2015 - 16

Shri. Sandeep B Shetty, No - 13, SNS Chambers, 274, Sankey Road, Sadashivanagar, Bengaluru - 560 080. PAN NO : AACPS 9801 M	Vs.	Asst. Commissioner of Income Tax, Circle - 6(3) (1), 4 th Floor, BMTc Building, 6 th Block, Koramangala, Bengaluru - 560 095.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Manjeet Singh, Addl. CIT - DR
Respondent by	:	Shri. S. Ramasubramanian, C A

Date of Hearing	:	16-01-2020
Date of Pronouncement	:	06-03-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals have been filed by revenue and assessee against order dated 15/03/2019 passed by Ld. CIT(A), Bangalore for assessment year 2015 – 16 on following grounds of appeal:

ITA No.1068/B/2019 (Revenue's Appeal)

- 1 *The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the cases.*
- 2 *On the facts and in the circumstances of the case, whether the Ld. CIT(A) is justified in allow the cost of construction to be exempt u/s. 54 of the IT Act as the assessee had commenced the construction of the house prior to the date of transfer of the original asset. Attention is drawn to CBDT circular No. 667 dated 18.10.1993 which states that the aggregate cost to qualify as a deduction u/s. 54F only if the net proceeds of sale are invested in the construction of the new asset.*
- 3 *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.*
- 4 *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

ITA No.1070/B/2019 (A's Appeal)

- 1 *That the order of learned Commissioner of Income-tax (Appeals) is bad in so far it is prejudicial to the interests of the appellant and erroneous in law and against the facts and circumstances of the case.*
- 2 *That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not allowing the cost of land of Rs. 6,77,14,490 as exemption u/s. 54F of the Act on the ground that the land was purchased prior to the date of sale of original asset.*
Additional Ground
- 3 *That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not considering the total cost of construction of Rs. 6,63,64,068 incurred for allowing exemption u/s. 54F of the Act.*
- 4 *That the learned lower authorities erred in law and on facts in not providing the additional deduction of Rs. 2,79,64,068/- being the construction cost incurred after filing the return of income and before expiry of three years from the date of sale of original asset.*

2. Brief facts of the case are as under:

Assessee is an individual and filed its return of income on 22/08/2015 declaring total income of Rs.4,41,70,750/-. It was observed that, assessee declared income under the head income from salary, business and profession, capital gains and other sources. The case was selected for scrutiny and statutory notices were issued to assessee in response to which representative of assessee appeared before Ld. AO and filed replies dated 07/06/2017, 17/11/2017, 17/12/2017 and 11/12/2017.

3. During the course of assessment proceedings, from details furnished by assessee, Ld. AO observed that, assessee undertook sale and details of exemptions claimed u/s. 54F filed. It was observed that, assessee had claimed exemption to the tune of Rs. 3,84,00,000/- for construction of new residential house. Ld. AO observed that, assessee executed two sale deed dated 07/08/2014 and 07/01/2015 for sale of land. A portion of consideration that accrued from sale was claimed to be exempt u/s.54F. Assessee furnished details of cost incurred for construction of new residential house and claimed exempt u/s. 54F.

4. Ld. AO observed that, assessee started construction of house from 30/01/2014, which is well ahead of realisation of capital gain from sale undertaken by assessee, and therefore there he was of the view that there was violation of condition to claim exemption u/s. 54F of the Act.

Aggrieved by order of Ld. AO, assessee preferred appeal before Ld. CIT(A).

5. Before Ld. CIT(A) assessee raised additional grounds, wherein it was pleaded that a sum of Rs. 6,77,14,490/- spent in acquiring the plot of land for construction of his new residential house ought to have been included in the total cost of acquisition of new asset, and that cost of acquisition of new asset should have been determined at Rs.10,77,13,557/-.

6. Ld. CIT(A) after considering additional grounds and submissions made by assessee in respect of the same, called for remand report from Ld. AO. In remand report Ld. AO was of the opinion that, it is necessary that house should have been constructed within a period of 3 years from the date of transfer of capital asset and as assessee has not satisfied the requirements u/s. 54F was to be denied.

7. Ld. CIT(A) however held that, assessee was entitled to cost of construction to be exempt u/s. 54 of the Act, as assessee commenced the construction of house prior to the date of transfer of original asset, in lieu of Circular No. 667 dated 18/10/1993 issued by CBDT.

Aggrieved by order of Ld. CIT(A), both revenue as well as assessee are in appeal before us now.

Assessee raised following Additional Grounds:

- 1 *That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not considering the total cost of construction of Rs. 6,63,64,068 incurred for allowing exemption u/s. 54F of the Act.*
- 2 *That the learned lower authorities erred in law and on facts in not providing the additional deduction of Rs. 2,79,64,068/- being the construction cost*

incurred after filling the return of income and before expiry of three years from the date of sale of original asset.

8. It has been submitted that, these additional grounds were not raised before authorities below due to mere oversight and that no new facts needs to be analysed for adjudicating the same. Ld. AR submitted that, additional grounds may be admitted in view of decision of *Hon'ble Supreme Court* in case of *CIT vs National Thermal Power Corporation* reported in 229 ITR 383 and *Jute Corporation of India Ltd., vs CIT* reported in 187 ITR 688.

On the contrary, Ld. Sr. DR objected for admission of the same.

We have perused submissions advanced by both sides in light of records placed before us.

9. Admittedly in order to adjudicate additional grounds, no new facts need to be investigated upon. It is also observed that, this issue was discussed by assessee in written submission filed before authorities below though a specific ground was not raised, we therefore do not find any reason, not to admit these grounds.

Accordingly, the additional grounds raised, reproduced hereinabove are admitted.

All grounds raised by assessee as well as revenue intermingle with each other and are interconnected, we therefore dispose them all together.

10. Ld. AR submitted that, assessee sold two parcels of land for price of Rs.8,16,55,200/- one on 07/08/2014 and other on 07/01/2015, both near Kempegowda International Airport, which he was acquired way back in 1980 – 81. Capital gains that

resulted from the sale was computed at Rs.7,82,70,817/-. Ld. AR submitted that, assessee on 20/12/2012 purchased a vacant plot of land in Bangalore for purpose of constructing new residential house and in acquiring the same, he invested a sum of Rs.6,77,14,490/-. Assessee started construction of new residential house in the plot of land, which he acquired in 2012-13, for which he engaged architect to design the house and supervise the construction. It is submitted that, entire sum of Rs.6,77,14,490/- was utilised for acquiring the land, and further sum of Rs.3,99,99,067/- was spent on constructing the house. Thus, in all, an amount of Rs.10,77,13,557/- was invested in acquiring the new residential house.

11. Ld. AR submitted that, assessee claimed benefit u/s. 54F of the Act in respect of amount spent for construction of new residential house. He accordingly, claimed exemption to the extent of Rs.3,84,00,000/-, which was arrived at by applying total capital gains in the same proportion as the amount spent on construction of the new residential house without considering the amount spent on land to the net consideration received on sale of two parcels of land. Ld. AR further submitted that, on the balance amount of capital gains, that is Rs.3,98,70,817/- benefit u/s. 54F was not claimed and it was offered to tax.

12. Ld. AR now submitted that, for purpose of section 54F(1), cost incurred up to the date of completion of construction of the house should be taken into account. In support Ld. AR placed reliance on decision of this *Tribunal* in case of *DCIT vs. Shobha Developers* in *ITA No. 1410/Bang/2013*. Ld. AR placed

reliance on decision of *Hon'ble Karnataka High Court* in case of *CIT vs Jay Subramanya Bhat* reported in 165 ITR 571 and *CIT vs Ramachandra Rao* reported in 277 CTR 522 in support of his contentions. It is submitted that, *Hon'ble Court* in these decisions answered question in favour of assessee that; *Where assessee invests entire sale consideration and construction of residential house within 3 years from the date of transfer can he be denied exemption under section 54F of on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under section 139 (1) of the act?*

13. Further Ld. AR submitted that, assessee purchased site for a consideration on 20/12/2012 and constructed the house on the site and claimed section 54F of the Act. The sales of capital asset giving rise to capital gains were made on 07/08/2014 and 07/01/2015. Ld. CIT(A) also held that, land purchased more than one year prior to the date of transfer of capital asset is not eligible, whereas assessee submitted that, land purchased even one year prior to the transfer of capital asset is eligible, by relying upon decision of *Hon'ble Madras High Court* in case of *CIT vs Aryamma Sundaram* reported in 407 ITR 1, wherein *Hon'ble court* answered following question in favour of assessee which reads as under;

Whether in computation of cost of new asset completion in section 54 (1) of the income tax act, the cost of land can be segregated from the cost of constructed house property?

14. Ld. AR placed reliance upon decision of coordinate Bench of this *Tribunal* in *R. M. M. Athreya vs ITO* in ITA No.

467/B/2013 (placed at page 54 to 62 of paper book) and decision of this *Tribunal* in case of *GopiLal Laddha vs ACIT* reported in 62 SOT 59.

On the contrary, Ld. Sr. DR placed reliance upon orders passed by authorities below.

We have perused submissions advanced by both sides in light of records placed before us.

15. In the present facts of the case, it is submitted that, assessee is eligible to claim benefit of section 54F in relation to capital gains amounting to Rs.7,82,70,817/-. It is the contention of assessee before us that, instead of considering total amount of Rs.10,77,13,557/- spent for the new asset, assessee took into account only Rs.3,99,99,067/- being the amount spent on construction. Thus, in the return the claim of section 54F was only Rs.3,84,00,000/- as against Rs.7,82,70,817/-

On these facts the issue that needs to be addressed is:

- Whether assessee could avail benefit under section 54F if the construction of new asset commenced before the sale of old assets;
- Whether the amount paid for land used for new asset should be considered for purpose of section 54F;
- Whether additional deduction of Rs.2,79,64,068/- being construction cost incurred after filing the return of income but before expiry of 3 years from the date of sale of original assets land should be considered while computing exemption under section 54F even though assessee failed to claim it in the return of income;

16. Insofar as issues No.1 and 2 noted hereinabove is concerned, exemption under section 54F on utilisation of capital gain for purchase of residential house or construction of a residential house is as per subsection 1. Subsection 2 provide the mechanism of the capital gain was not appropriated by the assessee towards purchase of new asset within one year before or 2 years after the date on which the transfer took place or has within period of 3 years after the date constructed a residential house being the new asset

Section 54F of the act is a beneficial provision of promoting the construction of residential house. Therefore the provision has to be construed liberally for achieving the purpose for which it was incorporated in the statute. The words used in this section are “purchased” or “constructed”. For such purpose, capital gain realised should have been invested in a residential house.

On a liberal interpretation, the condition preceded and for claiming benefit under the provision is that capital gain realised from sale of capital asset should have been invested either in purchasing a residential house or and constructing a residential house.

17. In the present facts of case assessee utilised part of sale consideration earned from sale of 2 parcels of land in construction of residential house, which started on 13/01/2014 (which is within one year prior to the sale of capital asset) and, construction was completed in financial year 2016-17 (which is before expiry of 3 years from the sale of capital asset). Admittedly

assessee has used sum of Rs.3,99,99,067/- towards construction of new asset and balance has been offered to tax.

18. Under these circumstances, we do not find any violation of requirement to claim exemption u/s. 54F, as per decisions relied upon by Ld.AR in case of *Hon'ble Jurisdictional High Court* in case of *CIT vs J.R Subramanya Bhat (supra)* and *CIT Vs. Ramachandra Rao (supra)*, assessee is eligible to claim exemption under section 54F. We therefore direct Ld. AO is directed to compute the capital gains considering claim in consonance to decisions of *Hon'ble Karnataka High Court* mentioned herein.

Accordingly ground **1&2** of assessee's appeal stands allowed whereas revenue's appeal stands dismissed.

19. So far as 3rd issue raised by assessee in ground No. 3-4 by way of additional ground is concerned, is concerned, it is submitted that assessee did not consider the cost of acquiring the land on which the new asset is constructed while computing capital gains at the time of filing original return of income. Assessee before us now submits that assessee is eligible for an additional deduction of Rs.2,79,64,068/- being the construction cost incurred after filing the return of income and before expiry of 3 years from date of sale of original assets.

20. Ld. AR submits that, it is not fair to deny assessee a relief purely on technicalities when otherwise assessee is entitled to the same. Placing reliance on decision of *Hon'ble Supreme Court* in case of *Goetz (India) Ltd vs CIT* reported in (2006) 157 *Taxmann 1* Ld.AR submits that assessee must be granted this

additional deduction though not claimed in the original return of income. Ld. Sr. DR where mentally opposed for this proposition as assessee could have revised its claim by filing revised return at the time of assessment proceedings. He submitted that facts considered by Hon'ble Supreme Court in case of Goetz (India) Ltd (supra) was different. He submitted that in case of Goetz (India) Ltd, assessee therein had sought to claim deduction by way of letter before assessing officer at the time of assessment proceedings whereas in present facts of the case assessee is seeking as relief before this *Tribunal*. It is also been submitted by Ld. Sr. DR that the land was purchased by assessee during the year 2012-13 and assessee is not establishing whether such purchase was out of capital gain that arose from sale of another capital asset or not. It has been submitted that merely making a claim which has not been verified cannot be allowed.

We have perused submissions advanced by both sides in light of records placed before us.

21. It is observed that, as rightly argued by Ld. Sr. DR that, one has to verify the manner in which assessee invested in the vacant plot. Also, that this issue has not been considered by Ld.AO, and therefore in our view it is appropriate to set aside this issue back to Ld. AO. Needless to say, that assessee shall be granted proper opportunity of being represented in support of this claim.

Accordingly, Additional ground raised by assessee stands allowed for statistical purposes,

In the result, appeal filed by assessee stands allowed as indicated above and appeal filed by revenue stands dismissed.

Order pronounced in the open court on 6th March, 2020.

Sd/-
(B. R. BASKARAN)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 6th March, 2020.
/MK/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal.
Bangalore.

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	04-03-2020		Sr.PS
3.	Draft proposed & placed before the second member	05-03-2020		JM/AM
4.	Draft discussed/approved by Second Member.	05-03-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	05-03-2020		Sr.PS/PS
6.	Kept for pronouncement on	06-03-2020		Sr.PS
7.	Date of uploading the order on Website	06-03-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	06-03-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS