

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No. 2493/Bang/2019
Assessment year: 2016-17

Smt. Subbalakshmi Kurada #14, Siri Manor, AR Gopalaswamy Layout, JP Nagar, 2 nd Phase, Bengaluru - 560078 PAN: APBPK 4083R	Vs.	The Assistant Commissioner of income Tax, Circle - 3(1)(2) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri V.Srinivasan, Advocate
Respondent by	:	Shri Rajendra Chandekar, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.02.2020
Date of Pronouncement	:	08.05.2020

ORDER

Per B R Baskaran, Accountant Member

The appeal filed by the assessee is directed against the order dated 25.11.2019 passed by Ld CIT(Appeals)-3, Bengaluru and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld CIT(A) in restricting the deduction claimed u/s 54 of the Act to 50% of the claim made on the reasoning that the new residential house has been purchased in the name of assessee and his son.

2. We heard the parties and perused the record. During the year under consideration, the assessee sold a residential house property for a sum of Rs.12.75 crores on 06-11-2015. She purchased another residential house property on 17-02-2016 for Rs.11.02 crores. The new house property was purchased in the joint name of the assessee and her son Shri Kurada Sagar Chakravarthy. The assessee claimed deduction of Rs.8.47 crores u/s 54 of the Act towards the cost of new residential house property against the long term capital gain arising on sale of original house property. Since the new residential house property has been purchased in the name of assessee and her son, the AO restricted the deduction u/s 54 of the Act to 50%, i.e., he allowed deduction to the extent of Rs.4.23 crores only. The Ld CIT(A) also confirmed the same and hence the assessee has filed this appeal.

3. We notice that an identical issue has been considered by the co-ordinate bench in the case of Shri Bhatkal Ramarao Prakash vs. ITO (ITA No.2692/Bang/2018 dated 04.01.2019). In the above said case, the assessee therein had purchased new residential house in his name, his wife and son. The AO restricted the claim made u/s 54F of the Act to 1/3rd of the cost of new house property. The co-ordinate bench followed the decision rendered by Hon'ble Karnataka High Court in the case of DIT(Intl.) vs. Mrs. Jennifer Bhida (2011)(15 taxmann.com 82)(Kar.) and held that the assessee is entitled to full deduction u/s 54F of the Act. The relevant observations made by the co-ordinate bench in the case of Shri Bhatkal Ramarao Prakash (supra) are extracted below:-

“22. The next issue is as to whether the deduction u/s.54F of the Act has to be restricted to only 1/3rd of the cost of acquisition of the new asset for the reason that the Assessee purchased the property along with the name of his wife and son shown as purchaser in the document under which the property was purchased.

23. The stand of the Revenue is that to claim deduction u/s.54F of the Act, the purchase of the new asset should be only in the name of the transferor i.e., the Assessee. To the extent the capital gain is invested in the joint name of the Assessee's wife and son, the deduction cannot be allowed. On such reasoning the revenue authorities took the view that even assuming the deduction u/s.54F of the Act has to be allowed to the Assessee, such deduction should be restricted to 1/3rd of the cost of the new asset. The stand of the Assessee on the other hand is that Sec.54F mandates that the new asset should be purchased by the Assessee and it does not stipulate that the house should be purchased in the name of the Assessee only.

24. The view of the revenue finds support in the decision of the Hon'ble Bombay High Court in the case of Prakash Vs. ITO 312 ITR 40 (Bom) wherein it was held that to claim deduction u/s.54F of the Act, it is necessary and obligatory to have investment made in residential house in the name of the Assessee only and not in the name of any other person. The view of the Assessee finds support in the decision of Hon'ble Karnataka High Court in the case of DIT (Intl.) Vs. Mrs. Jennifer Bhide (2011) 15 taxmann.com 82 (Karn.) wherein it was held that there is no requirement that investment u/s.54EC should be in the name of Assessee only. In that case new asset was purchased in the name of the Assessee and her husband. The AO allowed deduction u/s.54EC only to the extent of 50% on the reasoning that deduction will be allowed only to the extent of investment made in the name of the Assessee. The Hon'ble Karnataka High Court held that the entire consideration had flow from Assessee and no consideration had flown from her husband. Merely because the husband's name is also mentioned in the purchase document, the Assessee could not be denied the benefit of deduction. Similar view has been taken in the case of CIT Vs. Kamal Wahal (2013) 30 taxmann 34 (Delhi), Laxmi Narayan Vs. CIT (2018) 89 Taxmann 334 (Raj.) & CIT Vs. Gurnam Singh (2008) 170 Taxman 160 (P & H).

25. The law is well settled that where two views are possible on an issue, the view favourable to the Assessee should be followed. Moreover, the decision of the Hon'ble Karnataka High Court in the case of Mrs. Jennifer Bhide (supra) is in favour of

the Assessee. Following the said decisions, we hold that the Assessee should be entitled to the benefit of deduction u/s.54F of the Act, to the whole extent of investment in purchase of new asset, even though the property has been purchased in the joint names of Assessee, his wife and son. We hold accordingly.”

4. Before us, the Ld A.R furnished a statement showing the manner of payment of consideration for purchase of new residential house. He submitted that the entire sale consideration on sale of original house was received in the bank account of the assessee on 28-09-2015, 01-10-2015 and 06.11.2015. The assessee initially made fixed deposits out of those proceeds to the tune of Rs.11.50 crores. Subsequently, those fixed deposits were encashed on 08-02-2016 and the maturity proceeds were credited in the very same bank account. The assessee has made entire payment for purchase of new house property from her bank account on the following dates:-

08-02-2016	Reinvestment in new property	20,00,000
08-02-2016	“ “ “ “	20,00,000
08-02-2016	“ “ “ “	20,00,000
15-02-2016	Stamp duty, Transfer duty and fee	66,15,200
16.02.2016	Reinvestment in new property	1,98,29,500
16.02.2016	“ “ “ “	3,32,80,000
16.02.2016	“ “ “ “	3,32,80,000
16.02.2016	TDS u/s 194IA	1,76,40,000

		11,66,44,700
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The assessee has also furnished copy of bank statement and the Ld A.R submitted that the above said payments are duly reflected in the bank account of the assessee. Accordingly, the Ld A.R submitted that the entire purchase consideration has flown from the assessee only. Accordingly he

submitted that the decision rendered by Hon'ble Karnataka High Court in the case of Mrs. Jennifer Bhide (supra), which was followed in the case of Shri Bhatkal Ramarao Prakash (supra) shall squarely to the facts of the present case.

5. The Ld D.R, on the contrary, supported the order passed by Ld CIT(A). We have noticed that the entire consideration towards purchase of new residential house has flown from the bank account of the assessee. The Hon'ble Karnataka High Court has held in the case of Mrs. Jennifer Bhide that the deduction u/s 54 of the Act should not be denied merely because the name of assessee's husband is mentioned in the purchase document, when the entire purchase consideration has flown from the assessee. Accordingly, following the decision rendered by Hon'ble Karnataka High Court in the case of Mrs. Jennifer Bhide (supra) and the decision rendered by the co-ordinate bench in the case of Shri Bhatkal Ramarao Prakash (supra), we hold that the assessee is entitled to full deduction u/s 54 of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction u/s 54 of the Act as claimed by the assessee.

6. In the result, the appeal of the assessee is allowed.

Pronounced in the open court on this 8th day of May, 2020.

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Sd/-

(B R BASKARAN)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 8th May, 2020.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.