

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

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA No.3223/Bang/2018
Assessment Year: 2009-10

Y.C. Gopinath No.9, 3 rd Cross, Nehru Nagar Sheshadripuram Bangalore-560020 PAN NO : AIFPC5962Q	Vs.	ITO Ward-6(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri S.N. Shyanbhog, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	23.09.2020
Date of Pronouncement	:	24.09.2020

ORDER

PER GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against CIT(A) Order dated 31.10.2018. The relevant assessment year is 2009-10.

2. The Ld. A.R. had pressed only ground Nos.3 to 5. The grounds 3 to 5 reads as follows:

3. *The CIT(A)-2 has denied the exemption u/s 54F for the capital gain arising on transfer of 60% of land for builders against cost of construction of flats for 40% share of your Appellant. The CIT(A)-2 has held that appellant is not entitled to exemption u/s 54F of the IT Act on the multiple number of flats received by him.*

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4. *The CIT(A)-2 has held that the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs. K.G. Rukminiyamma (2011) 331 ITR 211 is not applicable to the facts of the appellant's case, as in the said case, a residential house was demolished and flats were constructed through joint development agreement. In the case of your appellant, the vacant land was given for joint development for construction of flats and hence the said decision is not applicable in your appellant's case as per CIT(A)-2, which is not correct. The said decision is applicable in the case of your appellant too, and your appellant is entitled for exemption u/s 54F of the Act on all the flats received by him for transfer of 60% land to builders instead of one flat as held by CIT(A)-2.*

5. *The Hon'ble Income Tax Appellate Tribunal, Bangalore, in the case of Sri B.J. Badrinath Vs. ITO Ward 4(3)(1) ITA No.2938/Bang/2018 dated 16.11.2018, has held that the decision in the case of CIT Vs. K.G. Rukminiyamma applies for exemption u/s 54 and also 54F of the I.T. Act.*

3. Brief facts of the case are as follows:

Assessee along with his three brothers had inherited a property from their father. The assessee and co-owners of the property had entered into a joint development agreement on 14.2.2009. In the re-assessment order completed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 ['the Act' for short] (Order dated 28.3.2013), the A.O. calculated total long term capital gains of Rs.3,96,08,490/-. The assessee's share being 1/4th, capital gains was assessed in assessee's hand at Rs.99,02,125/-

4. Aggrieved by the assessment order, assessee filed appeals to the first appellate authority. The assessee submitted before the first appellate authority that capital gains is not assessable in the year of entering into joint development agreement but only when the flats are received by the assessee as per the joint development agreement. Alternatively, it was submitted that assessee was entitled to benefit of section 54F of the Act in respect of the 3 flats, which assessee will receive as per the joint

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development agreement. The CIT(A) held that assessee is liable for long term capital gains in the year of entering into joint development agreement. As regards the claim of deduction u/s 54F of the Act, the contention raised by the assessee was rejected. The relevant finding of the CIT(A) with regard to rejection of claim of deduction u/s 54F of the Act reads as follows:

5.5 As regards the ground taken by the appellant that deduction u/s 54F to be allowed relying on jurisdictional High Court decision is concerned, I have compared the facts of the case with that of Rukamaniamma. In the case of Rukamaniamma an existing house was demolished and constructed number of flats by the developer and 50% of them were received by her in lieu of the building given to the developer for development. Whereas in the appellant's case it was a land owned by 4 people entered into development agreement together with the developer and in lieu of transfer of such land each land owner received certain number of flats. Thus, the facts of the case relied on by the appellant are not squarely applicable to the facts of the appellant's case therefore, this ground is dismissed.

5. Aggrieved by the order of CIT(A), assessee has filed this appeal before the Tribunal. The Ld. A.R. relied on the grounds raised. The Ld. D.R. strongly supported the orders passed by the Income tax authorities.

6. We have heard the rival submissions and perused the material on record. The Hon'ble Karnataka High Court in the case of Commissioner of Income Tax Vs. K.G. Rukmani reported in 331 ITR 211 had decided in an identical issue in favour of the assessee. The assessee in the case considered by Hon'ble jurisdictional High Court had a property in Bangalore and she had entered into a joint development agreement. As per the joint development agreement, assessee was to receive four flats from the builder. In th return of income, assessee declared nil capital gains on the strength of deduction claimed u/s 54 of the Act. The A.O. held that assessee had earned capital gains which is

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taxable. On appeal, the CIT(A) held that assessee was entitled to the benefit of section 54 of the Act. The order of the CIT(A) was upheld by the Tribunal. On further appeal by the revenue before the Hon'ble High Court, it was contended that assessee was entitled to only exemption/deduction u/s 54 of the Act in respect of one flat and in respect of the remaining 3 flats, assessee was not entitled to the benefit. The Hon'ble High Court rejected the contentions raised by the revenue. The Hon'ble High Court held all the flats were situated in a residential building and the four residential flats constitute "a residential house". Accordingly, the view taken by the Tribunal was confirmed by the Hon'ble High Court.

7. The Bangalore bench of the Tribunal in the case of Sri B.J. Badrinath Vs. ITO in ITA No.2938/Bang/2018 (order dated 16.11.2018) had held that ratio of the judgement of the Hon'ble jurisdictional High Court in the case of CIT Vs. K.G. Rukminiyamma (supra) applies to also 54F of the Act since both section i.e. 54 & 54F of the Act are pari materia. Moreover, in the case of other co-owners, it has been submitted by the Ld. A.R. that claim of deduction u/s 54F of the Act was allowed by the A.O. This assertion made by the Ld. A.R. was not controverted by the Ld. D.R.

8. The amendment to section 54 & 54F, restricting the claim of deduction to one residential unit was introduced by Finance (No.2) Act, 2014 w.e.f. 1.4.2015 (i.e. from AY 2015-16). Since we are concerned with assessment year 2009-10, the amendment brought out by Finance (No.2) Act, 2014 does not have application for the instant case. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24th Sept, 2020

Sd/-
(A.K. Garodia)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bangalore,
Dated 24th Sept, 2020.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.