

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2064 & 2065/Bang/2019
Assessment Year : 2015-16

1)Smt. Munilakshmi,(2064) 2)Smt. Lakshmi Devi (2065) No.17, Near Karagadamma Temple, Kote Kengeri, Bengaluru-560 060. 1)PAN – CLAPM 6313 H 2)PAN – AGBPD 9317 L	Vs.	The Income-tax Officer, Ward-3(2)(3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Kiran M, C.A
Respondnet by	:	Shri S Sundar Rajan, Addl. CIT (DR)

Date of Hearing	:	03-09-2020
Date of Pronouncement	:	21-09-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assessee is against separate orders dated 31/07/2019 passed by Ld. CIT (A)-3, Bangalore, for assessment year 2015-16 on following grounds of appeal:

ITA No.2064/Bang/2019

	<i>The impugned Appellate order dated: 3 1-07-2019 passed the Ld. CIT(A), Bangalore-3 is opposed to law, facts circumstances of the case.</i>	
2	<i>The Id. CIT(A) has erred in holding that a sum of Rs.1,37,00,000/- being a part of the sale consideration is agreeable to tax in the hands of the Appellant without appreciating the fact that the Appellant was entitled to 1/6th share of the sale proceeds of Rs.66,66,666/- attributable to her coparcenery share out of the total sale consideration of Rs.4,00,00,000/-.</i>	Rs 38,70,260/-
3	<i>The Ld. CIT(A) has erred in holding that the Appellant was not entitled for deduction admissible u/s. 54F(1)(a) of the Act without appreciating the fact that the provision of section 4F(1)(b) needs to be read together and not in isolation.</i>	Same as above
4	<i>The Ld. CIT(A) has erred in directing the AO to gross up the consideration at Rs. 1,39,00,000/- by including TDS of Rs.2,00,000/- as against Rs.1,37,00,000/- being a part of the consideration as specified in the sale deed.</i>	Same as above
5	<i>The Ld. CIT(A) has erred in holding that the conditions for availing the deduction u/s. 54 and 54F are different and the decision rendered u/s. 54 cannot be made applicable to claim ie deduction u/s. 54F.</i>	Same as above
6	<i>The Appellant craves leave to add, alter, amend and delete an of the grounds at the time of hearing.</i>	38,70,260/-

ITA No.2065/Bang/2019

1	<i>The impugned Appellate order dated: 3 1-07-2019 passed the Ld. CIT(A), Bangalore-3 is opposed to law, facts circumstances of the case.</i>	
2	<i>The Id. CIT(A) has erred in holding that a sum of Rs.1,37,00,000/- being a part of the sale consideration is agreeable to tax in the hands of the Appellant without appreciating the fact that the Appellant was entitled to 1/6th share of the sale proceeds of Rs.66,66,666/- attributable to her coparcenery share out of the total sale consideration of Rs.4,00,00,000/-.</i>	Rs 45,93,160/-
3	<i>The Ld. CIT(A) has erred in holding that the Appellant was not entitled for deduction admissible u/s. 54F(1)(a) of the Act without appreciating the fact that the provision of section 4F(1)(b) needs to be read together and not in isolation.</i>	Same as above
4	<i>The Ld. CIT(A) has erred in directing the AO to gross up the consideration at Rs. 1,39,00,000/- by including TDS of Rs.2,00,000/- as against Rs.1,37,00,000/- being a part of the consideration as specified in the sale deed.</i>	Same as above
5	<i>The Ld. CIT(A) has erred in holding that the conditions for availing the deduction u/s. 54 and 54F are</i>	Same as above

	<i>different and the decision rendered u/s. 54 cannot be made applicable to claim ie deduction u/s. 54F.</i>	
6	<i>The Appellant craves leave to add, alter, amend and delete an of the grounds at the time of hearing.</i>	45,93,160/-

Brief facts of case are as under:

2. On perusal of records, we note that, issue alleged by assessee is in both appeals relate to share in sale consideration attributable to the respective assessee's in property sold situated at survey No. 81/2 measuring check. 1 acre 20.04 Guntas in Kengeri Village, Kengeri Hobley, Bangalore South Taluk. In submissions before authorities below, both assessee's claimed that, they are entitled to 1/6th share, in the total property under Hindu succession Act and that, they have sold the joint property along with their Mother, 1 sister and sons of their Brothers for total consideration of Rs. 4 crore under registered sale deed dated 27/07/2014 in favour of M/s.Vasthu Properties.
3. Assessee's also claimed deduction under section 54F towards investment in new residential property.
4. Ld.AO verification of documents filed by assessee observed that, assessee was entitled to 1/4th share as against 1/6 share claimed to have been received.
5. Insofar as claim under section 54F was concerned, Ld.AO observed that, assessee invested in construction of residential property amounting to Rs.16,44,772/- in the name of her son, and purchased agricultural land jointly with her sister Smt.Muniamma (assessee before us) amounting to Rs.1,03,78,070/-.

6. Ld.AO, accordingly, rejected claim under section 54F and considered sale consideration in the hands of assessee's being 1/4th share of total sale consideration.

7. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT(A).

8. Ld.CIT(A) proceeded on the footing that, son of owners were never held it to be part of the property, and that the ownership of the land sold was held by assessee, her mother and 2 sisters. Ld.CIT(A) thus held that, assessee was entitled to 1/4th share being Rs.1,37,00,000/- of total sale consideration as against Rs.66,66,666/- declared by assessee.

9. Ld.CIT(A) held as under:

“4.2 During appellate proceedings the appellant has made detailed submissions. The appellant has argued that one of the appellant's sisters was having two sons and they too had equal right over the land sold and as such there were 6 co-owners of the property. However a perusal of the Judgment and Decree dt 29.05.2003 in civil suit O.S. No 369/2001, and the sale deed dated 22.07.2014 shows that the grandsons were never held to be owners of any part of this property. The ownership was of four persons only being the appellant, her mother and two sisters. In fact, the two grand children, being two children of Smt. Lakshmi Devi, signed the sale deed as consenting witness and as per clause 12 of the sale deed, they agreed that the four vendors (appellant, her mother and two sisters) were the absolute owners of the property. Further the appellant received amount of Rs 1,37,00,000/- as her share in the property as per the instructions of all the co-owners. This is clearly indicated in clause 3 of the sale deed. As regards TDS, the appellant and one of her sisters, who were having PAN were given credit of Ks 2,00,000/- each and as such their Form 26AS showed the receipt of Ks 2,00,00,000/- and TDS of Rs 2,00,000/- each. Considering above the action of the AO in treating the sale consideration at Rs 1,37,00,000/- is upheld and the grounds of appeal 2 and 3 of the appellant are dismissed.”

10. In Respect of claim under section 54F, Ld.CIT(A) was of the opinion that, exemption cannot be granted to assessee

as the property purchased was in the name of her son and investment was made in agricultural land.

11. Aggrieved by additions confirmed by Ld.CIT(A), assessee is in appeal before us now.

12. At the outset Ld.AR submitted that, suit for partition in OS No. 369 of 2001 was filed in the Court of Additional City Civil Judge Bangalore, by Smt. Bhagya, daughter-in-law of late Narasimha Alias K.Muniyappa. It has been submitted that, Judgment and Decree was passed by Hon'ble City Civil Court dated 29/05/2003, according to which, all legal heirs of late Narasimha Alias K.Muniyappa was entitled to 1/6th share of land, admeasuring 1 acre 20.04 guntas. He submitted that, according to the order by Hon'ble City Civil Court, sale consideration has to be divided amongst, assessee her mother 2 sisters and wife of deceased brother being Smt. Bhagya.

13. Ld. A.R. submitted that, this aspect has not been considered by authorities below, because of which, addition has been made in the hands of assessee by considering 1/4th share of sale consideration. He placed reliance on orders passed by the Hon'ble City Civil Court placed at page 37-59 of paper book.

14. Ld.Sr.DR placed reliance on observations by Ld.CIT(A) in para 4.2 of impugned order.

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

16. On perusal of sale deed placed at page 16-36, we note that, original vendors to the agreement, were assessee along

with her mother and 2 sisters. It is also recorded in sale deed that, by virtue of judgment and decree dated 29/05/2003, widow of Late M.Murthy and her son Prakash were also considered to be holding share in the said property sold by assessee, her mother and 2 sisters. Merely because sale consideration was distributed amongst assessee her mother and 2 sisters, will not dissolve the right of widow of Late M.Murthy and her son Prakash. However amount disbursed to these legal heirs is not clear from the sale agreement filed in the paper book. Under such circumstances we find it necessary to send back this issue to Ld. AO for verification in respect of share received by widow of Late M.Murthy and her son Prakash from sale price of land at measuring 1 acre 20.04 Gunta, bearing survey No. 81/2.

17. We direct Ld. AO to call for these people to enquire upon amount disbursed to them and accordingly compute share received by assessee's before us for purposes of capital gains.

Accordingly this issue raised by assessee stands allowed for statistical purposes.

18. In respect of claim under section 54F towards investment in property in the name of a son, we are of the opinion that, strict interpretation cannot be given to exemption provisions. As we have already remitted the issue in respect of sale consideration to be computed in the hands of assessee to Ld.AO, this issue also is remanded to Ld.AO to

determined claim under section 54F in accordance with share computed in the hands of assessee.

19. We also make it clear that, investment made by assessee jointly with her sister and agricultural land cannot be considered for exemption under section 54F and accordingly rejected. Ld. AO may consider investment by assessee's in respect of residential property to the extent of share computed in their hands of assessee. Assessee's are directed to furnish all relevant details/evidence in support of their claim to substantiate investment in Residential Property.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

20. Facts and issues raised by assessee in ITA No. 2065/B/2019 are similar and identical. Applying are observation *mutatis mutandis*, we remand issues raised Ld.AO to consider the claim in accordance with directions hereinabove.

In the result appeal is filed by assessee is before us stands allowed for statistical purposes.

Order pronounced in the open court on 21st Sept, 2020.

Sd/-
(A.K GARODIA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st Sept., 2020.
/Vms/

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	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		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