IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.2367/Bang/2019 : Asst.Year 2015-2016

Sri.Haider Noman Kohrakiwala No.28, 4th Main Road, Gokulam 2nd Stage, V.V.Mohalla Mysuru – 570 002. **PAN : AJRPK8867B.**	Vs.	The Asst.Commissioner of Income-tax, Circle 1(1) Mysuru.
(Appellant)		(Respondent)

Appellant by :Sri.V.Srinivasan, AR
Respondent by :Sri.Manjeet Singh, DR

Date of Hearing : 07.10.2020		**Date of Pronouncement : 13.10.2020**

O R D E R

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 30.08.2019. The relevant Assessment Year is 2015-2016.

2. The grounds raised read as follows:

> *"1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
>
> *2. The learned CIT(A) is not justified in upholding the disallowance of Rs.15,41,827/- in respect of the claim made u/s 54F of the Act on the ground that the appellant has not invested the sale proceeds in the capital gains account scheme as required u/s 54F of the Act, under the facts and circumstances of the appellant's case.*
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> *3. The learned CIT(A) ought to have appreciated that the appellant had incurred expenditure on registration of the sale deed of Rs.4,33,200/- on 05/07/2017 and a further sum of Rs.8,00,000/- on 09/08/2017 for furnishing the new apartment with wardrobes, kitchenette etc., which amount aggregating to Rs.12,33,200/- was spent within a period of 3*

years from the date of transfer of the original asset i.e., 14/08/2014 and hence, the same ought to have been considered for purpose of working out the deduction u/s 54F of the Act in pace of the balance estimated sum of Rs.16,00,000/- claimed by the appellant in the return of income under the facts and in the circumstances of the appellant's case.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234A, 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

5. For the above and other grounds that may be urged at the time hearing of the appeal, your appellant humbly prays that the appeal may be awarded costs in proceeding the appeal and also order for the refund of the institution fees as part of the cost."

3. Briefly stated the facts of the case are as follows:

Assessee is an individual. He sold his vacant site on 14.08.2014 for Rs.1.60 Crores. In the return of income filed on 17.11.2015, the assessee admitted total income of Rs.75,88,070/-. Assessee had claimed deduction under section 54F of the Income Tax Act, 1961 amounting to Rs.90,58,232/- on acquisition of a residential property. The investment was made in in two stages (1) Rs.78 lakhs on 27.09.2014 and (2) estimated investment of Rs.16 lakhs which was subsequently reduced to Rs.12,33,200/- towards registration expenses and for doing kitchenette and wardrobe to rooms, etc. The payment made towards expenditure of Rs.12,33,000 were incurred in July 2017 i.e., after a period of two years from the date of sale of vacant site.

4. The AO in the Assessment Order completed under section 143(3) of the Act (order dated 20.11.2017) had restricted the

claim of deduction under section 54 of the Act to Rs.75,16,405/- proportionately on Rs.78 lakhs. The AO ignored the expenditure incurred in July 2017 of Rs.12,33,200/- for the following two reasons:

> *"(i) Even if the assessee's claim was to be admitted the expenditure should have been incurred on or before 14.8.2016 (with in a period of 1 year before or two years after the date on which the transfer takes place) in present case the said expenditure is incurred only in July – August 2017 when the proceeding was under way and ….*
>
> *(ii) the said expenditure cannot be admitted u/s 54F considering it as the cost of construction of the house as the amount was not deposited in capital gains account scheme before the date of furnishing Return of Income under section 139 of the Act."*

5. Aggrieved by the Assessment order in restricting the claim of deduction under section 54F of the Act, the assessee preferred an appeal before the first appellate authority. The CIT(A) confirmed the view taken by the AO. The relevant finding of the CIT(A) reads as follows:

> *"4. During the course of appellate proceedings the AR of the appellant has put forth arguments that the sale proceeds were not deposited in capital gains scheme was only a technical lapse, as the amount was invested in acquiring the residential house the same is eligible for deduction u/s 54F. I have considered the submissions made and also the Assessment Order passed by the AO carefully. The AO has reproduced the provisions of sec.54F in his order and given a finding that the deduction u/s 54 is allowed to the extent of Rs.75,16,405/-, and remaining amount of Rs.15,41,827/- was added back to the total income under the head Capital Gains, on the premise that all the conditions mentioned in the Sec.54F of the Act, for claiming the deduction were not fulfilled. I have noticed that, the AO has worked out the deduction proportionately and allowed to the extent of Rs.75,16,405/- and in the absence of documentary evidences for having incurred expenditure further the balance amount of Rs.15,41,827/- was added back. I do*

> *not find any infirmity in the findings given by the AO and therefore no interference is needed. The grounds of appeal are therefore not allowed."*

6. Aggrieved by the order of CIT(A), the assessee preferred an appeal before the Tribunal. The assessee has filed a Paper Book of 78 pages *inter alia*, enclosing therein computation of total income, sale deed dated 14.08.2018, written submissions before the CIT(A), judicial pronouncements relied on, copies of the receipt for payment of Rs.8 lakhs to M/s. Mas Furniture, evidences relating to payment of stamp duty for registration, etc. The learned AR took us through the written submissions submitted before the CIT(A) and contended that none of the contentions raised before CIT(A) were considered and he had merely affirmed the order of the AO. It was submitted AO was not right in his observation that assessee had purchased an apartment and not constructed the apartment, hence due date was 2 years (i.e., 14.08.2016) and not 3 years from the date of sale of original asset. The learned AR submitted booking of a flat with a builder is a case of construction and not purchase of residential flat and therefore time limit period of 3 years is application. In this context, learned AR relied on judgment of the Hon'ble Delhi High Court in the case of *Smt. Bindra Kumar, reported in 253 ITR 343*. In so far as the second observation of the learned AO that the assessee has not deposited capital gains amount in capital gains accounts scheme before the date of furnishing of the return under section 139 of the Act, it was submitted that assessee has expended the entire consideration of Rs.12,33,200/- within the period of 3 years from the date of sale of vacant site which has given rise to capital gain taxation.

In this context, the learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Fathima Bai v. ITO (ITA No.435 of 2004 judgment dated 17th October, 2008)* and *CIT & Anr. v. K.Raachandra Rao [(2015) 277 CTR (Kar.) 523].*

7. Learned DR strongly supported the orders passed by the Income Tax Authorities.

8. We have heard the rival submissions and perused the materials on record. The A.O. had held that assessee had purchased an apartment and not constructed the apartment. Hence, the due date was 2 years (i.e. 14.8.2016) and not 3 years from the date of sale of original asset (Vacant site). Assessee had produced copy of agreement to sale at pages 48 to 61 of the paper book filed. The assessee had entered into a composite agreement with the builder to purchase the undivided share of land and for construction of a residential apartment. The assessee was the original owner of the apartment. The agreement to sell between the assessee and the builder has taken place much prior to completion of the construction of the residential unit. In such circumstances, various judicial pronouncements have held it a case of construction of an apartment and not a case of purchase of apartment. Hence, it was held that the time period of 3 years is applicable. The Mumbai Tribunal in the case of *Mr. Kishore H Galaiya Vs. ITO in ITA No.7326/Mum/2010 (order dated 13.6.2012)* has held that booking of a flat with the builder is a case of construction and not purchase of residential flat and therefore, the time period 3 years is applicable. The Delhi

Tribunal in the case of *CIT Vs. R.L. Sood (2000) 108 Taxman 227* had held that a payment of substantial amount in terms of purchase agreement within 4 days of sale of his old house, assessee acquired substantial domain over the new residential flat within specified period. It was concluded by the Delhi Bench of the Tribunal that it could be said that assessee complied with the requirements of section 54 of the Act and merely because the builder failed to hand over the possession of flat within the specified period, assessee could not be denied the benefit of benevolent provisions of section 54 of the Act. The Delhi High Court in the case of *CIT Vs. Smt. Brinda Kumari 353 ITR 343* have held that purchase of a house property in a Multistoried building by assessee was "construction of building". In the light of above judicial pronouncements, the A.O. is not correct in holding in the facts and circumstances of the case that assessee had purchased an apartment. On the contrary, it is a case of construction of an apartment when assessee had entered into a composite agreement with the builder to purchase the undivided interest in land and for construction of a residential apartment, therefore, a period of 3 years will have to be applicable and not 2 years as held by the A.O.

9. The other reasoning of the A.O. not to grant deduction u/s 54F of the Act in respect of a sum of Rs.12,33,200/- was that assessee did not deposit capital gains amount in the capital gains account scheme before the date of furnishing of return of income u/s 139 of the Act. The Hon'ble Jurisdictional High Court in the case of *CIT Vs. K. Ramachandra Rao (2015) 277*

CTR (Kar) 522 has held that when assessee invest the entire sale consideration in construction of a residential house within the period stipulated u/s 54F(1) of the Act, then section 54(4) of the Act is not attracted and therefore, the exemption u/s 54F of the Act cannot be denied on the ground that he did not deposit the said amount in the capital gains account scheme before the prescribed due date. A similar view was held in the judgement of the Hon'ble Karnataka High Court in the case of *Smt. Fatima Bai in ITA No.435/Bang/2004 (Judgement dated 17.10.2008).* In the instant case, assessee had expended Rs.12,33,200/- in July, 2017 i.e. well within period of 3 years from the date of sale of original asset. Therefore, going by the dictum laid down by the Hon'ble jurisdictional High Court in the case of K. Ramachandra Rao (supra) though the assessee has not deposited capital gains amount in the capital gains account scheme within the prescribed time, since the impugned expenditure was incurred within a period of 3 years from the date of sale of original asset, the assessee was entitled to proportionate deduction u/s 54F of the Act.

10. Assessee has produced proof of payment of Rs.8 lakhs to M/s. Mas Furniture. The details of the evidence of payment of the same are enclosed at pages 46 & 47 of the paper book filed by the assessee. M/s. Mas Furniture had acknowledged the receipt of the amount and has stated that amount received from assessee was towards furnishing of apartment of the assessee in Sankalap Central Park. Similarly, evidence for payment of stamp duty (Rs.4,33,200/-) have been furnished by the assessee in the paper book (pages 44 & 45). The stamp

duty is part of the cost of the apartment and expenditure incurred for furnishing the apartment is a cost of improvement. Moreover, the amount of Rs.12,33,200/- whether it has been incurred or not was never in doubt by the A.O. In light of the above reasoning and judicial pronouncements cited (supra), we hold that assessee is entitled to proportionate deduction u/s 54F of the Act on Rs.12,33,200/-. It is ordered accordingly.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this day of 13th October, 2020.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 13th October, 2020.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-Mysuru.
4. The Pr.CIT, Mysuru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore