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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**
**AND**
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.768/Bang/2016
(Assessment Year: 2006-07)

Shri Lakshminarasimha,
No.1686, 4th T Block, Jayanagar,
Bengaluru.
PAN ACZPL 9998H ….Appellant

Vs.

Income Tax Officer,
Ward 4(1), Bangalore. ……Respondent.

| | |
|---|---|
| Assessee By: | Shri S.V. Ravi Shankar, Advocate. |
| Revenue By: | Shri Kannan Narayan, JCIT (D.R) |

| | |
|---|---|
| Date of Hearing : | 10.12.2020. |
| Date of Pronouncement : | 18.12.2020. |

## O R D E R

**PER SHRI CHANDRA POOJARI, A.M. :**

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Bangalore Dt.19.01.2016 for the Assessment Year 2006-07.

2. At the time of hearing, the assessee has not pressed the main grounds raised before us. Accordingly, all the main grounds are dismissed as not pressed. The

assessee also raised additional ground with regard to reopening of assessment and granting of deduction under Section 54F of the Income Tax Act, 1961 ('the Act').

3. At the time of hearing, the learned Authorised Representative has not pressed the ground relating to reopening of assessment. Accordingly the ground relating to reopening of assessment under Section 147 is dismissed as not pressed.

4. With regard to deduction under Section 54F of the Act, the contention of the assessee is that this ground is raised as additional ground and emanated from the order of the lower authorities. There is no necessity of investigation of any facts and prayed that the same may be admitted for adjudication.

5. The facts of the case are that the assessee has executed Joint Development Agreement with the builder of M/s.Shudha Developments, Bangalore jointly with three brothers with equal share of land bearing Sy. No.41, 46/12, 70 situated at Someshwara Layout, Bilekahalli, Begur Hobli, Bengaluru SouthTaluk. As per this agreement, inter alia, the assessee transferred undivided share of 60% in the above said land and the builder agreed to construct and deliver 40% of super built up area in the form of apartments along with similar percentage of car parking and other benefit in the constructed area. This consideration was subject to capital gains tax in the assessment year under consideration. Now the contention of the ld.AR is that since the assessee got allotted flats and it should be considered as investment in terms of 54F of the Act and it is to be granted. The assessee failed inadvertently to raise this ground and the same be considered. The learned Departmental Representative objected to the admission of additional grounds.

6. The ld. AR placed reliance on the Hon'ble Supreme Court judgement in the case of NTPC Ltd. Vs. CIT 229 ITR 383 (SC) and in view of the precedence, we admit this additional ground.

7. In principle, we are in agreement with the contention of the learned Authorised Representative that the assessee is entitled for exemption u/s. 54F of the Act and all flats situated in single building to be considered as one residential house and deduction u/s. 54F is to be granted. This issue was considered by this Tribunal in the case of Chandrashekar Veerabhadraiah Vs. ITO in ITA No.2293/Bang/2019 dt.07.12.2020 wherein it was held in paras 9 to 13 as under :

" 9. We have heard both the parties and perused the material on record. Section 54F of the Act reads as follows:

"54F. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or 74[two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset); the capital gam shall be dealt with in accordance with the following provisions of this section, that is to say,— (a) if the cost of the new assets is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45; (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45".

9.1 Now the contention of DR is that the building is having multiple residential units. The assessee is entitled for deduction in respect of only one residential unit.

10. We have gone through the case records. Actually, this was the single piece of property bearing Sy.No.47/8 (Eastern Portion), Doddabommasandra, Chamundeshwari Layout, Vidyaranyapura, Yelahanka Hobli. The area of land is East to West 25ft, North to South 93ft, totally 2,325 sq.ft. The assessee constructed residential building consisting of the following:

"The building is having Ground, First & Second Floor. Ground floor consists of a parking area with 2 BHK of 2 units. First floor consists of a 2BHK of 3 units. Second floor consists of a 1BHK of 5 units. All the units are Rented out except first floor is fully occupied by the owner."

11. According to the DR, there are multiple residential units w.e.f. 01.04.2015, the assessee is entitled for deduction to the extent of value of only one residential unit. The claim of the assessee is that the

assessee invested in single residential unit and is eligible for deduction under section 54F of the Act on the entire value of the building and relied on judgment on judicial High Court in the case of K. G. Rukminiamma 331 ITR 211 wherein it was held that the phrase "a" residential house would mean "one" residential house is not correct. The expression "a" residential house should be understood in a sense that building should be of residential house in nature and "a" and should not be understood to indicate a singular number. Section 54/54F uses the expression "a residential house" and not "a residential unit". Section 54F requires the assessee to acquire "a residential house" and so long as the assessee acquires the building, it may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently, used as an independent residence, the requirement of Section should be taken to have been satisfied. There is nothing in these Sections which requires a residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in this Section which requires that the residential house should be in built in a particular manner, it seems to us that the Income Tax Authorities cannot insist upon that requirement. A person may construct a house according to his plans, requirements and compulsions. A person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post retirement. One may build a house consisting of four bedrooms (all in same or in different floors) or in such a manner than an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. The physical structuring of the new residential house, whether it is lateral or vertical, cannot come in the way of considering the building as a residential house. The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction u/s 54/54F. It is neither expressly nor by necessary implication prohibited.

12. We are therefore of the opinion that the assessee in principle, is entitled for deduction under section 54F in respect of investment made in impugned property subject to production of other relevant evidence by the assessee before the A.O. In the present case, the assessee has not filed relevant evidences for incurring the cost on new residential house before the A.O. Hence, we inclined to restore the issue to the file of A.O. for quantification purpose the deduction u/s 54F of the Act. The assessee is directed to produce all relevant evidences in support of the claim of deduction u/s 54F of the Act.

13. In the result, appeal of the assessee is allowed for statistical purposes."

In view of the above judgment, we are of the opinion that, in principle, the assessee is entitled for deduction u/s.54F of the Act in respect of investment made in multiple flats subject to production of relevant evidence by the a. before the Assessing Officer. Accordingly, the assessee shall furnish all the evidence in support of the claim of deduction u/s. 54F of the Act. The Assessing Officer has to

satisfy himself the fulflment of other conditions laid down in Section 54F of the Act for granting the deduction u/s. 54F of the Act and ordered accordingly.

8. In the result, the assessee's appeal is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

| | |
|---|---|
| Sd/- | Sd/- |
| **(SMT. BEENA PILLAI)** | **(CHANDRA POOJARI)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated: 18.12.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore