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

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

ITA No.768/Bang/2019
Assessment year: 2015-16

Smt. Girija Varadaraju, 544, 5th Main Road, Kengeri Satellite Town, Bengaluru – 560 060. **PAN: AKDPR 3008A**	Vs.	The Income Tax Officer, Ward 3(2)(3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Shri Kannan Narayanan, Advocate

Date of hearing	:	20.07.2021
Date of Pronouncement	:	06.08.2021

O R D E R

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the CIT(Appeals)-3, Bengaluru dated 19.02.2019 for the assessment year 2015-16.

2. The assessee has raised the following grounds:-

"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 deduction under Section 54F of the Income Tax

Act, 1961 under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] ought to have appreciated that the appellant had invested proceeds from capital gains in construction of residential property as required under Section.54F of Income Tax Act, 1961.

4. The learned CIT [A] ought to have appreciated that the judgement of the Hon'ble Karnataka High Court Commissioner of Income tax Vs. K.Ramachandra Rao 56 Taxmann, 163(Karnataka), Commissioner of Income Tax Vs. P.R.Seshadri 329 ITR 377 (Karnataka) retied upon in the appellate order passed actually supports the stand of the appellant for the claim of deduction U/s.54F of Income Tax Act, 1961 and thus the assessment made without giving deduction U/s.54F deserves to be vacated.

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

6. For the above and other grounds that may be urged It the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

3. The facts of the case are that the assessee has received certain immovable property mentioned in pages 3 & 4 of the assessment order from her spouse Mr. Mirle Varadaraj as gift and such properties were sold in the previous year 2014-15 relevant to AY 2015-16 for a consideration of Rs.4,42,12,000. The assessee's spouse had owned a site No.6368/22/1A1/3/1, Volegerahalli, BBMP Ward No.130, Bangalore. The assessee's contention is that out of her sale consideration of Rs.4,42,12,000, she has invested an amount of Rs.3,37,47,415 upto 31.10.2017 and thereafter invested the remaining amount of sale consideration in the construction of new residential house which is owned

by her spouse, Mr. Mirle Varadaraj. Accordingly the assessee claimed this amount as an investment in the residential house for exemption u/s. 54F of the Income-tax Act, 1961 [the Act]. However, the AO denied the said exemption on the reason that the asse had not deposited the net sale consideration in the capital gain account scheme on or before the due date for filing return of income u/s. 139(1) of the Act. On appeal, the CIT(Appeals) confirmed the order of AO. Against this, the assessee is in appeal before us.

4. We have heard both the parties and perused the material on record. The main contention of the ld. AR is that the assessee has utilized Rs.3,37,47,415 out of the net consideration of Rs.4,42,12,000 in the construction of new residential house in her spouse's name. Since the assessee has invested the above amount within the period stipulated u/s. 54F of the Act in the construction of new residential house in the name of her spouse, exemption u/s. 54F has to be granted. He relied on the decision of Hon'ble High Court of Karnataka in the case of *CIT v. K. Ramachandra Rao, 277 CTR 522 (Kar)*.

5. It was submitted that if the actual investment is made within the period stipulated u/s. 139(1), though the assessee has not deposited in the capital gain account scheme, the exemption u/s. 54F cannot be denied on the reason that construction has not been completed in all respects and it was not fit for occupation for residential purposes. According to the ld. AR, once it is demonstrated that the consideration received on transfer of long term capital asset has been invested either in purchasing the residential house or in construction, though construction is not complete; exemption is to be granted. He relied on the Tribunal in the case of *Sri Sudheer Valsala Sreekumaran in ITA No.393/Bang/2020 dated 20.12.2019.* He also relied on the judgment of Hon'ble High Court of Karnataka in *CIT v. P.R. Seshadri, 329 ITR 377 (Kar)* wherein it was held that even though

ownership of the landed property is in the name of assessee's spouse, investment by assessee in construction of residential house would not disentitle the claim for exemption u/s. 54F of the Act. It was similarly held in DIT (IT) v. *Mrs. Jennifer Bhide, 349 ITR 80 (Kar)* as follows:-

> "A careful reading of section 54 as well as section 54EC makes it clear that when capital gains arise from the transfer of long term capital asset to an assessee and the assessee has, within the period of one year before or two years after the date on which the transfer took place purchase or has, within the period of three years after the date of transfer, construct residential house, then instead of capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the provisions made under the section which grants exemption from payment of capital gains as set out thereunder. Therefore, in the entire section 54, the purchase to be made or the construction to be put up by the assessee should be there in the name of the assessee, is not expressly stated. Similarly, even in respect of section 54EC, the assessee has at any time within a period of six months after the date of such transfer invested the whole or any part of the capital gains in the long term specified asset then she would be entitled to the benefit mentioned in the said section. There also, it is not expressly stated that the investment should be in the name of the assessee. Therefore, to attract section 54 and section 54EC what is material is the investment of the sale consideration in acquiring the residential premises or constructing a residential premises or invest the amounts in bonds set out in section 54EC. Once the sale consideration is invested in any of these manner, the assessee would be entitled to the benefit conferred under this provision. In the absence of an express provision contained in these section that the investment should be in the name of the assessee only, any such interpretation would amount to Court introducing the said word in the provision which is not there. It amounts the courts legislating when the Parliament has deliberately not used those words in the said section. [Para 7]

> In the instant case, the assessee has purchased the property jointly with her husband. She has invested the money in rural bonds jointly with her husband. It is nobody's case that her husband contributed any portion of the consideration for acquisition of the property as well as bonds. The source for acquisition of the property and the bonds is the sale consideration. It is not in dispute. Once the sale consideration is utilized for the purpose mentioned under sections 54 and 54EC, the assessee is entitled to the benefit of those provision. As the entire consideration has flown from the assessee and no consideration has flown from her husband, merely because either in the sale deed or in the bond her husband's name is also mentioned, in law he would not have any right. In that view of the matter, the assessee cannot be denied the benefit of deduction of the aforesaid amount. The Tribunal, on proper appreciation of the material on record, has rightly allowed the appeal and set aside the order passed by the assessing authority as well as the Appellate Commissioner.[Para 8]"

6. On the contrary, the ld. DR relied on the orders of lower authorities and relied on the judgment of Hon'ble Supreme Court in the case of *Commissioner of Customs (Imports) v. Dilip Kumar, Civil Appeal No.3327/2007 dated 30.7.2018* wherein it was held that while giving benefit to the assessee, the provision needs to be interpreted strictly and in case there is ambiguity, the benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue. Accordingly, it was submitted by the ld. DR that assessee has not invested the net consideration in the capital gain account scheme within the time stipulated for filing return of income u/s. 139(1) of the Act and the benefit of exemption u/.s 54F cannot be given. Similarly, investment in the property in the name of spouse of assessee also cannot be considered for exemption u/s. 54F of the Act.

7. In our opinion, the arguments of the ld. DR is against the ratio laid down by the Hon'ble High Court of Karnataka in the case of *CIT v. K. Ramachandra Rao (277 CTR 522)* and in the case of *P.R. Seshadri (329*

ITR 377) wherein both the arguments of the ld. DR were considered and it was decided in favour of assessee. Being so, in principle, we agree with the contention of the ld. AR that even though the assessee has not deposited the consideration received on sale of long term capital asset in the capital gain account scheme within the due date prescribed u/s. 139(1) of the Act, the assessee is entitled for exemption u/s. 54F of the Act if the assessee has invested the net consideration in accordance with the provisions of section 54F of the Act in acquiring or construction of new residential house. Therefore, the contention of the ld. DR that the assessee has not deposited the amount in the capital gain account scheme as stipulated and not entitled to the benefit of exemption, even though she has invested the money in construction of new residential house is not correct. On this reason, the revenue cannot deny the benefit of exemption u/s. 54F of the Act.

8. The next contention of the ld. DR is that the assessee invested in the construction of new house, not in her name but in the construction of new residential house in the name of spouse. In our opinion, this issue has already been decided by the Hon'ble High Court of Karnataka in the case of *P.R. Seshadri (supra)* and held that if the assessee invested the net sale consideration in the time allowed in construction of new house in the landed property owned by the assessee's spouse, that will not disentitle the claim of deduction u/s. 54F of the Act. Further, it is clarified that there should be direct nexus of investment by the assessee in the residential house owned by assessee's spouse. In other words, if it was given for some other purpose to her husband and if there is no nexus between the these two, then exemption u/s. 54F cannot be granted. However, the lower authorities have not examined the exact amount of net consideration invested in the construction of new residential house and the time limit in which it was invested by the assessee. In our opinion, these facts are to

be examined by the AO so as to grant deduction u/s. 54F. Accordingly, in the interest of justice, we are inclined to remit the issue to the file of the AO to verify whether the claim of amount invested in the construction of new house on the landed property owned by the assessee's spouse has actually been invested therein. However, needless to say that the AO cannot deny the exemption u/s. 54F on the reason that the constructed house is not fit for occupation. There is no such stipulation in section 54F. Accordingly, the issue is remitted to the AO for fresh consideration with the above directions after providing opportunity of being heard to the assessee.

9. Charging of interest u/s. 234A and 234B of the Act is mandatory and consequential in nature.

10. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 6th day of August, 2021.

Sd/-	Sd/-
(BEENA PILLAI)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 6th August, 2021.
/*Desai S Murthy /*

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.