

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.485/Bang/2019
AssessmentYear:2013-14

S. Ramesh No.166, 7 th B Main Road 16 th Cross, J.P. Nagar 4 th Phase Bengaluru 560 078 PAN NO :AFYPR4870G	Vs.	ITO Ward-4(3)(5) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Siddesh S. Gaddi, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	21.09.2021
Date of Pronouncement	:	24.09.2021

ORDER

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 25.1.2019 passed by Ld. CIT(A)-4, Bengaluru and it relates to the assessment year 2013-14. The grounds of appeal urged by the assessee read as under:

- 1. “The learned Assessing Officer had erred in passing the order as passed by him and the learned CIT(A) has erred in confirming the same. The orders passed by lower authorities is bad in law, and are liable be quashed in toto*
- 2. In any case the learned Assessing officer has erred in denying exemption u/s. 54F of the Act, to the appellant and learned Commissioner of Income-*

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tax (Appeals) has erred in confirming the same. On proper appreciation of facts and law applicable, the appellant is entitled to exemption u/s. 54F of the Act, and the same is to be allowed to appellant.

- 3. In any case and without prejudice, the learned Assessing officer had erred in holding that while computing income from capital gains, the appellant is not entitled to deduction for brokerage and commission of Rs. 1,70,000/- and cost of improvement of Rs. 1,25,630/-and the learned CIT(A) has erred in confirming the same. On proper appreciation of facts and law applicable, it is clear that the appellant had correctly claimed the deductions while computing capital gain and the same in any case are allowable as deduction while computing capital gain.*
 - 4. The learned Assessing officer has erred in disallowing interest of Rs. 3,04,990/- claimed u/s. 24(b) of the I.T. Act, 1961 and the learned Commissioner of Income-tax (Appeals) has erred in confirming the same. On proper appreciation of the facts and law applicable it is clear that the appellant is entitled for deduction of this amount and the same is to be allowed to the appellant.*
 - 5. The learned Assessing officer has erred in disallowing the loss from profession of Rs.1,43,074/- on the ground that the same is not substantiated .On the facts of the case and law applicable the loss in profession of Rs. 1,43,074/- was correctly claimed and isallowable as deduction and same is to be so allowed.*
 - 6. The Assessing Officer had also erred in levying Interest U/s. 234A,234B and 234C of I.T. Act, 1961. The appellant denies the liability to pay interest. The interest having been levied erroneously is to be deleted.*
 - 7. In the view of the above and other grounds to be adduced at the time of hearing, it is requestedthat the impugned orders be quashed or atleast it be held that the appellant is entitled to deduction u/s. 54F of the Act, the deduction u/s. 24(b) be allowed and the loss on profession be allowed and alternatively, the deduction for brokerage and cost of improvement be allowed while computing capital gains and interest levied be also deleted.”*
2. All the above grounds of appeal are directed against the deduction claimed by the assessee u/s 54F of the Income-tax Act,1961 ['the Act' for short]. The facts relating to the issue are stated in brief. The assessee initially filed his return of income for

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the year under consideration on 27.3.2014 and the same was processed u/s 143(1) of the Act. Subsequently, it was noticed by the AO that the assessee has sold a vacant site bearing No.5A.C-318 situated at 3rd Block, Hennur Road, Banaswadi Road Extension, Bengaluru on 30.8.2012 for a consideration of Rs.85 lakhs. It was noticed that the assessee has not declared any capital gain in the return of income filed for assessment year 2013-14. Hence, the A.O. reopened the assessment by issuing notice u/s 147 of the Act. In response thereto, the assessee filed return of income on 24.11.2016 declaring Nil capital gain after claiming deduction u/s 54 of the Act.

3. With regard to claim for deduction u/s 54 of the Act, it was submitted that the assessee has paid a sum of Rs.80 lakhs vide cheque No.169772 drawn on Corporation Bank, Banaswadi Branch, Bengaluru for purchasing a commercial complex for a sum of Rs.1,06,00,000/- vide sale agreement dated 19.4.2012. It was submitted that the above said sum was paid to M/s. Vikram Structures Pvt. Ltd. (VSPL). The assessee also submitted that he did not wish to purchase a property in the commercial complex and accordingly, entered into another agreement dated 15.5.2013 with VSPL for purchase of a residential apartment bearing No.B-401, B Block, Pemma Gowda Street, MuniapappaPalaya, Marappa Garden, Bengaluru by transferring the advance amount of Rs. 80.00 lakhs paid to VSPL. Before the AO, the assessee submitted that he is making claim u/s 54F of the Act in respect of advance amount of Rs.80.00 lakhs paid for purchase of residential flat.

4. The A.O. conducted enquiries through Inspector, who reported as under:-

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- (a) The assessee Shri S. Ramesh does not have any ownership building in the commercial complex developed by VSPL.
- (b) The residential flat B-401 has been sold by the developer VSPL on 10.2.2017 to another person named Mr. Kamal Tej, i.e., the assessee has not purchased the residential flat as claimed by him.

5. In view of the above, the A.O. issued summons to the assessee u/s 131 of the Act and recorded sworn statement from him. For the purpose of this appeal, the question No.6 and answer given thereto are relevant and hence they are extracted below:

Q.No.6 Please furnish the details of your fixed assets and the sources of income received by you?

Ans: The residential property situated at No.166 7th B Main Road, 16th Cross, J.P. Nagar, 4th Phase, Bangalore 560 078 consists of three independent houses. Out of this, one is self-occupied and the other two have been let out for rent. The monthly rent received of Rs.2,750/- for each house, totally to Rs.66,000/- per annum for both the houses. This rent received has already been declared as income from house property in the return of income filed for A.Y. 2013-14.

I am also received salary income from M/s. Arihant Education & Research Foundation, New Delhi. Further, I have professional income from Management Consultancy receiving from M/s. Axheleon IT Services Pvt. Ltd. and M/s. Hibiscus Technology Solutions Pvt. Ltd., and other companies as and when services provided. This income is being received through cheques/on-line transfer after due deduction of TDS. This income is declared in the return of income. Apart from the above, I have no other income.”

6. The A.O. also recorded sworn statement from the Managing Director of M/s. VSPL named Shri Vikaram Prabhakar. In the sworn statement Shri Vikram Prabhakar stated that the assessee had initially cancelled the agreement for purchase of commercial office space and entered into another agreement for purchase of flat No.B-401, Marappa Garden, Bengaluru. He further submitted that, later on, the assessee cancelled the agreement entered for purchase

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of residential flat at Marappa Garden and agreed for purchasing the commercial office space on 15.12.2017.

7. Before the A.O. the assessee reiterated his submissions that he has paid the amount of Rs.80 lakhs to M/s. VSPL for purchase of a residential flat and hence, it is eligible for deduction u/s 54F of the Act. The assessee also submitted that the builder VSPL has given contradictory statement in order to suit his convenience and his statements are not true. In view of divergent claims, the A.O. issued summons to both the assessee and the Managing Director of VSPL Mr. Vikram Prabhakar. However, Shri Vikram Prabhakar did not appear before the A.O on the appointed day.

8. In view of the above said factual findings, the A.O. disallowed deduction claimed u/s 54F of the Act on the following two reasons:

- a) The flat No.B-401 at VSPL Gardenia, Marappa Garden, Bengaluru which is claimed to have been booked by the assessee has actually been sold by the builder to another person named Mr. Kamal Tej. Hence, in effect, the assessee has not made any investment in purchase/construction of any residential house.
- b) The assessee himself has admitted that the existing residential property owned by him at No.166, 7th B Main Road, 16th Cross, J.P. Nagar 4th Phase, Bengaluru consisted of 3 independent houses out of which one is self-occupied and other two have been let out for rent. Since the assessee is having more than one residential house, the conditions prescribed u/s 54F of the Act has been violated. It is pertinent to note that, in order to avail deduction u/s 54F of the Act, the assessee should not own more than one residential house other than the new residential house.

9. Before Ld. CIT(A), the assessee submitted that M/s. VSPL has sold another residential property to the assessee, vide sale deed dated 19.12.2018 registered in favour of the assessee and the said apartment is located at No.A-001, Block 'A', First Floor, Ward-11, Industrial Sub-hub, 3rd Cross, 2nd Stage, Yeshwantpur, Bengaluru. However, the Ld. CIT(A) took the view that the assessee is changing his stand to suit his convenience and the submissions made by the assessee is only an afterthought. The Ld CIT also held that the assessee himself has admitted before the AO that he is owning three residential houses, which makes him ineligible for deduction u/s 54F of the Act. Accordingly, he confirmed the rejection of deduction claimed u/s 54F of the Act.

10. We heard the parties and perused the record. We noticed that the AO has rejected the claim for deduction u/s 54F on two reasons.

(a) With regard to the first reason that the assessee has not purchased/constructed any new residential house, we notice that the assessee has submitted before Ld CIT that M/s VSPL, to whom advance of Rs.80.00 lakhs was given, has finally executed a sale deed dated 19-12-2018 in favour of the assessee selling a residential apartment no. A001 in Block A, 1st Floor, Vaishnavi Mandara, Situated at Ward 11, Industrial suburb, 3rd Cross, 2nd Stage, Yeshwantpur, Bangalore having PID No.11-59-46 for a sale consideration of Rs.80 lakhs. (refer page 9 of order of CIT(A).) We have noticed that the assessee has paid the amount of Rs.80.00 lakhs on 22.4.2013, while the vacant plot was sold on 30-8-2012, meaning thereby, the assessee has invested the a sum of Rs.80 lakhs, out of sale consideration of Rs.85.00 lakhs in

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purchasing a new residential property. The fact that the assessee got the property only in 2018 is due to reasons beyond the control of the assessee, which has been narrated in the earlier paragraphs. Hence the assessee should not suffer for the delinquency of the builder and accordingly we are of the view that the assessee should be granted deduction u/s 54F of the Act for the amount of Rs.80 lakhs given to the builder within the prescribed time, subject to fulfillment of other conditions. Since there was no occasion for the AO to examine details of purchase of new property, we are remitting this issue for examining the details of purchase of new residential house property.

(b) With regard to the second reason that the assessee is owning three residential houses, the Ld A.R submitted before us that the assessee owns only one house and it has got three residential units. He submitted that the assessee has wrongly mentioned as three houses while giving sworn statement instead of three residential units. He submitted that the house owned by the assessee has got two floors. The ground floor is used by the assessee and the first floor has been let out to two tenants. The assessee invited our attention to the building plan and some other documents. Accordingly the Ld A.R contended that there is no violation of sec.54F of the Act on this aspect. In our view, this fact also requires examination at the end of the AO. If the assessee owns only one residential property, which consisted of three residential units, in our view, it should be considered as one residential house only. In this regard, we derive support from the decision rendered by the co-ordinate bench in the case of

Shri Bhatkal Ramarao Prakash vs. ITO (ITA
No.2692/Bang/2018 dated 04-01-2019).

11. In view of the above, we set aside the order passed by Ld CIT(A) and restore this issue to the file of the AO for examining the above said two points in the light of discussions made supra.

12. The assessee has also raised some other issues with regard to the computation of deduction u/s 54F of the Act. Since the main issue is restored to the file of the AO, we restore all other issues to his file for fresh examination.

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

Order pronounced in the open court on 24th Sept, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 24th Sept, 2021.
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.