

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

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

**ITA. No. 751/Bang/2019
Assessment Year: 2013-14**

Sri. N. Prathap Kumar, Prop: Prathap Electricals, No. 32/2, 5 th Main, Chamarajpet, Bengaluru – 560 018. PAN: ADZPK5497K	vs.	The Assistant Commissioner of Income Tax, Circle – 5 (2) (1), Bengaluru.
(Appellant)		(Respondent)

For Assessee:	Shri G.S. Prashanth, CA
For Revenue :	Smt. H. Kabila, Addl. CIT (DR)

Date of Hearing :	23.08.2021
Date of Pronouncement :	11.10.2021

ORDER

PER BEENA PILLAI, JM.

Present appeal has been filed by assessee against order dated 26/02/2019 passed by the Ld.CIT(A)-5, Bangalore on following grounds of appeal:

<i>Sl. No.</i>	<i>GROUNDS OF APPEAL</i>	<i>Tax Effect in Rs.</i>
1.	<i>a) The orders of the authorities below in so far as it is against the appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of</i>	-

	<p><i>the appellant's case.</i></p> <p><i>b) The appellant denies himself to be assessed on a total income of Rs.62,61,360/- as against the income returned by the appellant of Rs.1,24,96,436/- on the facts and circumstances of the case.</i></p>	
2.	<p><i>a) The authorities below erred in denying exemption claimed under section 54F of the Act of Rs.62,35.074/- under the facts and circumstances of the case.</i></p> <p><i>b) The authorities below erred in not appreciating that the appellant had not obtained the possession of the impugned six flats at any point in time and consequently the appellant did not own more than one residential house under the facts and circumstances of the case.</i></p>	19,26,640/-
3.	<p><i>The authorities below failed to appreciate that the mandatory conditions of "transferee being in possession" and "willingness to perform" as envisaged under section 53A of the Transfer of Property Act, 1882 was not satisfied in the case instant and thus there could have been no possession to result in deemed ownership under the facts and circumstances of the case.</i></p>	-
4.	<p><i>The learned CIT(A) grossly erred in treating the appellant as the owner of six flats when the appellant was neither in possession nor a deed of conveyance was registered in his favour under the facts and circumstances of the case.</i></p>	-
6.	<p><i>a) The authorities below failed to appreciate the fact that the construction was not reasonably completed as per terms of the contract and accordingly the developer failed to perform his part of contract under the facts and circumstances of the case.</i></p> <p><i>b) The authorities below further failed to appreciate that the developer had not adhered to the conditions in the contract</i></p>	-

	<i>for issuance of notice indicating the date of handing over the possession to the appellant and consequently the developer had not performed his part of the contract and thus the provisions of section 53A of the Transfer of Property Act do not apply.</i>	
7.	<i>The appellant denies himself liable to be levied to interest under sections 234B and 234C of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with sections 234B and 234C of the Act.</i>	7,28,300/-
8.	<i>The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.</i>	-
9.	<i>In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.</i>	-

Brief facts of the case are as under:

2. Assessee derives income from house property, business, capital gains and other sources. The assessee filed its return of income for year under consideration on 30/09/2013 declaring total income of Rs.62,61,362/-. Accordingly, notice under section 143(2) was issued along with notice under section 142(1) of the Act. In response to statutory notices, representatives of assessee appeared before the Ld.AO and filed requisite details as called for.

3. The Ld.AO observed that assessee claimed deduction under section 54. Assessee was asked to furnish details of the capital

gains and exemptions claimed in the computation of income. Assessee accordingly vide letter dated 4/12/2016 filed working of capital gains reflecting sale of land and sale of super built up area resulting in long term capital gain of Rs.62,35,074/- and short term capital gain on transfer of 3 flats of Rs.11,81,295/-. The Ld.AO noted that, long-term capital gain of Rs.62,35,074 was claimed as exemption under section 54F. The Ld.AO called for evidences in respect of capital gains and also proof of exemption claimed under section 54F.

4. The assessee furnished details of joint development agreement in respect of 34 Guntas of land bearing survey No.157/3 at Begur Village, Bangalore. As per the agreement assessee was to receive 42% of the constructed super built up area, as against undivided share that was surrendered by assessee. The Ld.AO observed that on surrendering of 21,475 ft.² of undivided interest in the land, assessee was to get 32,840 ft.² of super built up area in the apartment complex which resulted in 24 flats coming to assessee's share.

5. The Ld.AO noted that, assessee sold 3 flats falling in his share from the JDA during the year under consideration resulting in long term capital gains. Assessee purchased property on 25/06/2015 from M/s Apranje Jewellers Pvt Ltd. The Ld.AO asked assessee to furnish bank account statement evidencing investment and house property for claiming exemption under section 54 and to justify the claim as assessee was already in possession of 4 flats as per the JDA. From the submissions filed, the Ld.AO noted that amount of Rs.65 Lacs was deposited in the capital gains account scheme in

Canara bank on 30/07/2013 which was said to have been utilised for purchase of property for a consideration of Rs.3.60 crores on 25/06/2015 being the new asset. The Ld.AO was of the opinion that assessee was already in possession of flats that have come into his share from the JDA and therefore the deduction claimed under section 54F is incorrect. The assessee was called upon as to why the deduction under section 54F should not be disallowed under such circumstances.

6. In response to the said notice, assessee submitted a letter from the developer stating that the development work was completed by April 2011 and 24 flats were allotted to assessee which started selling from July 2011. It was submitted that out of 24 flats, 15 flats were sold during the previous year 2011-12 and 3 flats were sold during the relevant year under consideration. It was also stated by the developer that the possession of the flats were never handed over to assessee but possession was given directly to the ultimate purchaser of the flat the developer further submitted that remaining 6 flats were not delivered to the assessee but were handed over to the ultimate buyers.

7. The Ld.AO on perusal of the submissions by assessee was of the opinion that, possession of the flats having directly handed over to the ultimate purchaser does not in any way alter the ownership of the flats. It was held that, once development work was completed by April 2011 and the flats started to be sold, it deemed to have been handed over to assessee. It was the opinion of the Ld.AO that, once development of the property is completed the right over the flats falling into assessee's share vests in him. The Ld.AO held that, the

unsold flats are nothing but more than one's self occupied property and therefore provisions of section 54F stands violated as on the date of purchase of new asset during the year under consideration. The Ld.AO thus denied the exemption claimed by assessee under section 54F amounting to Rs.62,35,074/-.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

8. The Ld.CIT(A) upheld the action of Ld.AO. The Ld.CIT(A) also emphasised that the conditions stipulated in the JDA is very clear regarding effective ownership embedded in assessee's share. The Ld.CIT(A) held that assessee all along had substantial ownership in more than one flat during the year under consideration, that exceeded the requirement under section 54F of the Act.

Aggrieved by the order of the Ld.CIT(A) assessee is in appeal before us now.

9. We have heard both sides in light of records placed before us.

It is the case of assessee that as on the date of purchase of new asset, assessee did not own any flats other than the new asset. It is submitted by assessee that possession of new flats were not handed to assessee and therefore sec. 53A of Transfer of Property Act did not apply.

10. The Ld.DR submitted that as on date of purchase of new asset, assessee owned 6 residential units and that effective ownership was held by assessee. He thus argued that assessee do not fulfill the necessary condition to claim benefit u/s. 54F of the Act as assessee was owner of multiple houses as on date of purchase of new asset.

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

11.1 Admittedly as per the JDA, assessee received 42% of constructed multistoried residential apartments with corresponding car parking, garden usable area. It was also agreed in the JDA that assessee would handover the original documents of title to the developer on the execution of the JDA which is a registered document. Assessee was thus allotted 24 residential units upon completion.

11.2 During assessment year 2012-13 the developer sold 15 flats belonging to assessee.

11.3 Subsequently, for assessment year 2013-14 being the relevant assessment year under consideration, the developers sold 3 flats. Assessee invested the capital gains arising from the sale of 3 flats during the year under consideration. It was submitted that assessee acquired a residential property on 25/05/2013 for sale consideration of Rs.3,60,00,000/- against which sum of Rs.3,27,93,600/- was paid from the capital gains account scheme. At the time of purchase of new asset, assessee was holding on to 6 residential units in the constructed premises as per the JDA.

11.4 We have perused the joint development agreement placed at pages 30 to 44 of paper book, wherein, the sale consideration determined as against the transfer of right title and interest in the land by assessee for the purposes of development was 42% of the constructed premises being 24 residential units. In the Assessment Year under consideration, assessee is owner of 6 flats that are unsold under the JDA. In addition to this, assessee the owner of

following residential properties as per statement of income for A.Y. 2013-14 placed at page 2 of the paper book.

<u>INCOME FROM HOUSE PROPERTY</u>	1899250
<u>SELF OCCUPIED HOUSE</u>	
ADDRESS : 32, PROP.PRATHAP ELECTRICALS. 3RD CROSS. 16 C MAIN. 4TH BLOCK. KORAMANGALA, BANGALORE, KARNATAKA-560025	
ANNUAL VALUE	NIL
LESS: INTEREST U/S 24(b)	<u>-150000</u>
 <u>LET OUT</u>	
NAME OF TENANT SAMPANGIRAMNAGAR BUILDING ADDRESS . 73. SAMPANGIRAMNAGAR BUILDING, 1 ST CROSS, SAMPANGIRAMNAGAR, BANGALORE. KARNATAKA-560019	
ANNUAL VALUE	1440000
LESS: STANDARD DEDUCTION U/S 24(a)	<u>-432000</u>
TAXABLE INCOME FROM HOUSE PROPERTY	<u>1008000</u>
 <u>LET OUT</u>	
NAME OF TENANT TVS AUTOMOBILE ADDRESS KOODLUGATE. BANGALORE. KARNATAKA- 560068	
ANNUAL VALUE	1487500
LESS: STANDARD DEDUCTION U/S 24(a)	<u>-446250</u>
TAXABLE INCOME FROM HOUSE PROPERTY	<u>1041250</u>

The above properties are in addition to the new property purchased for the year under consideration baring No. 769, 80 Feet Road, 4th Block, Koramangala, Bangalore – 560 034.

11.5 We therefore do not find any infirmity in the view taken by the Ld.CIT(A) that assessee owned multiple flats as on date of purchase of new asset. The relevant assessment year being 2013-14, the amendment would be applicable to the present facts and assessee won't be entitled to the benefit u/s. 54F.

Assessee has raised additional grounds that does not arise out of the order passed by the Ld.CIT(A).

Accordingly the issues raised by assessee stands dismissed.

In the result appeal filed by assessee stands dismissed.

Order pronounced in the open court on 11th October, 2021.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated: 11th October, 2021.
/MS/

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