

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

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.1945/Bang/2019 : Asst.Year 2015-2016

Sri.P.Krishna Reddy No.14, 82, MIG Flats CBlock, Domlur 2 nd Stage Bangalore – 560 071. PAN : ABHPK9985G.	v.	The Assistant Commissioner of Income-tax Circle 3-3-1 Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.K.R.Vasudevan, Advocate
Respondent by : Smt.Priyadarshini Besaganni, JCIT-DR

Date of Hearing : 03.02.2022	Date of Pronouncement : 03.02.2022
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ORDER

Per Padmavathy S, AM

This appeal at the instance of the assessee is directed against the order of the CIT(A) dated 19.07.2019. The relevant assessment year is 2015-2016.

2. The assessee filed the return of income for the assessment year 2015-2016 on 26.08.2015 showing a gross total income of Rs.1.64,76,510 including *inter alia* income from capital gain of Rs.1,55,80,045. The assessee had claimed deduction u/s 54F of the Income Tax Act, 1961 (“the Act”) amounting to Rs.1,81,73,160 towards investment made in house property. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act by the learned Assessing Officer (AO) ACIT, Circle 3(3)(1) vide order dated 31.10.2017 wherein the A.O. has disallowed the entire deduction claimed u/s 54F of the Act.

3. The assessee filed an appeal before the CIT(A), who confirmed the order of the A.O.

4. Aggrieved by the order of the CIT(A), the assessee is before us raising the following grounds:-

“1. That, the order of the Learned CIT(A), in so far as is prejudicial to the interest of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. That the order of the learned CIT(A) confirming the action of the AO, suffers from legal infirmity and does not stand the test of law and therefore the confirmation of the disallowance made is not tenable.

3. The learned CIT(A) erred in confirming the order of the AO, disallowing the deduction claimed U/s 54F of the Income Tax Act.

4. The learned CIT(A) erred in not adjudicating on the legal principle raised that the reference to "one residential house" connotes to "one residential house" on the date of transfer of the asset and not on the new residential units received in terms of the sharing agreement, to be received on a future date;

5. The learned CIT(A) erred in deciding the issue by making surmises and conjectures like, the appellant is deemed to have owned the 14 flats, which was to be received on a much later date;

6. The learned CIT(A) erred in not appreciating that the judicial decision of the jurisdictional High court cited by the appellant is squarely applicable to the facts of the case and had tried to distinguish the same by surmises and conjectures like they are applicable only for small houses converted to small buildings etc., which are nowhere mentioned in the decisions;

7. The learned CIT(A) erred in not appreciating that flats received as share under a JDA are eligible for deduction u/s 54F, as the transaction is not related to the number of flats but to the percentage of built-up area vis-a-vis the undivided share of land

8. The learned CIT(A) erred in disregarding the decision of

the Jurisdictional High Court, wherein on similar set of facts, deduction u/s 54F was allowed on one residential flat from out of four flats received by the landlord as part of sharing in Joint Development Agreement.

9. *The learned CIT(A) failed to appreciate the fact that the appellant has fulfilled the condition of investment in residential property and therefore it is entitled for full deduction u/s 54F*

For these and other reasons which may be adduced at the time of hearing it is prayed that the relief claimed in the grounds of appeal be allowed.

The appellant craves for leave, add, delete from or amend the ground of appeal.”

4. **The brief facts of the case:**

The assessee had entered into a Joint Development Agreement (JDA) with LGCL Urban Home (India) LLP, a Limited Liability Partnership on 30.07.2014 to develop property bearing No.234/134/134 BBMP Khata No.134, measuring 28.1 guntas situated at Kadubeesanahalli Village, Varthur Hobli, Bangalore South Taluk. As per the JDA and the consequent sharing agreement executed on 14.08.2015, the assessee was entitled to 47% of the total saleable super built up area in the residential complex so developed and thereby, the assessee was allotted 14 flats in the residential complex as per the sharing agreement. In the return of income, the assessee has claimed deduction u/s 54F of the Act against one of the flats allotted as per the JDA and sharing agreement.

5. The Assessing Officer while assessing the income of the assessee disallowed the claim made by the assessee u/s 54F of the Act on the ground that `on the date of transfer of the

original asset' the assessee was the owner of 14 residential houses that he was receiving as consideration, The AO was of the view that the assessee owns 13 other residential houses in admission to the one house which he wants treated as the 'new asset' for purposes of exemption u/s 54 of the Act. Basis this the AO concluded that the assessee's case would squarely fall within the purview of the first point of proviso to section 54F and as a consequence the assessee's claim for exemption under that section was legally unsustainable.

6. Before the CIT(A), the assessee made the submission that the proscription of "one residential house" is related to the time of transfer of the original asset and therefore, it does not relate to the new residential units to be received in future in terms of the sharing agreement. With regard to several independent units being treated as "a residential house", the assessee submitted before the CIT(A) several decisions including the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Smt.K.G.Rukminiamma (2011) 196 Taxman 87.

7. The CIT(A) after considering the submissions of the assessee confirmed the disallowance of claim u/s 54F of the Act stating that –

(i) the plot of open land is involved in the JDA and not a house;

(ii) the plot was converted into apartment complex in which the assessee received 14 flats towards his share of 47% of the

built up area and all the flats are numbered separately under independent residential unit and hence cannot be considered as a single unit;

(iii) as per the amended section 54F of the Act, the benefit of section 54F will be applicable to one residential house in India; and

(iv) the case laws cited are in the context of the situation prior to amendment and in the context of small house converted into small building consisting of few units used as independent residential units.

8. Aggrieved by the order of the CIT(A), the assessee filed this appeal before the Tribunal.

9. Before us, the learned AR submitted that the CIT(A) has misunderstood the facts and the legal provision due to the following:-

(i) Section 54F clearly states that it applies to transfer of a capital asset, not being a residential house. Hence, it is applicable to transfer of open land and not to transfer of house, as observed by CIT(A).

(ii) There is nothing in Section 54F to even remotely suggest that it is applicable to small house converted into small building consisting of few units. In fact, it does not apply to transfer of residential house.

(iii) The assessee has claimed deduction u/s 54F only on one flat and NOT on all the 14 flats, as understood by the CIT(A).

(iv) It would appear that the CIT(A) has confused Section 54F with Section 54 and therefore has adjudicated wrongly, on wrong understanding of facts.

10. The learned AR also submitted that the proviso to section 54F of the Act does not apply to the new asset. The proviso introduced in section 54F of the Act provides that the assessee will not get the deduction if he owns more than one residential unit, specifically exempts new asset. The learned AR also submitted that there are several judgements of the Co-ordinate Bench of the Bangalore Tribunal wherein the deduction u/s 54F has been allowed on flats obtained under JDA. Some of the decisions relied are as follows:-

- (i) Mrs.S.Suma v. ITO (ITA No.568/Bang/2018)
- (ii) Late Sri C.N.Gommateswara vs. ITO (ITA No.1205/Bang/2014)
- (iii) Smt.Nethravathi v. ITO (ITA No.2630/Bang/2017)
- (iv) Sri Ganga Poorna Prasad v. ACIT (ITA No.41/Bang/2020)
- (v) Late Susan Cherian v. ITO (ITA No.2818/Bang/2018).

11. The learned Departmental Representative, on the other hand, supported the order of the CIT(A).

12. We have heard the submissions of both the parties and perused the evidence submitted.

13. The issue before us for consideration –

- (i) Whether all the 14 flats received by the assessee as part of JDA together constitutes “new asset” based on principles laid down by various judicial pronouncements
- (ii) Whether the assessee is restricted to claim deduction u/. 54F as per the provisio to the said section
- (iii) Whether the assessee is entitled to claim deduction for “one residential flat” received under JDA as per the amended provisions of section 54F.

14. It is more or less a settled principle that when an assessee receives several independent units in a building i.e. residential flats, as part of the JDA they would constitute “a residential house”, and would be eligible for deduction u/s. 54 /54F There are judgments rendered by the our co-ordinate Bench of the Bangalore Tribunal.

14.1 In the case of Mrs.S.Suma (Supra) the Tribunal held as under:-

“18. As far as the deduction u/s. 54F of the Act on the question whether if under a JDA multiple flats are given to the owner whether deduction u/s.54F of the Act can be given, the decision of the Hon’ble High Court of Karnataka and the other decision cited before us supports the plea of the assessee that deduction u/s. 54F of the Act cannot be denied on the ground that multiple flats are obtained by the assessee. The ld. DR in this regard had placed reliance on the decision of the Hon’ble High Court of Karnataka in the case of CIT v. Late Khubchand M Makhija, ITA No.496/2007 dated 18.12.2013.

19. We have given careful consideration to the rival submissions. We find that the facts of the Assessee's case are similar to the case of Smt.K.G.Rukminiamma (supra) decided by the Hon'ble Karnataka High Court. In the case of K.G.Rukminiamma, the facts were, on a site measuring 30' x 110' the assessee had a residential premises. Under a joint development agreement she gave that property to a builder for putting up flats. Under the agreement 8 flats are to be put up in that property and 4 flats representing 48% is the share of the assessee and the remaining 52% representing another 4 flats is the share of the builder. So the consideration for selling 52% of the site was 4 flats representing 48% of built up area and the 4 flats are situated in a residential building. The Court held that the 4 flats constitute 'a residential house' for the purpose of sec 54. The 4 residential flats cannot be construed as 4 residential houses for the purpose of sec 54. It has to be construed as "a residential house" and the assessee is entitled to the benefit accordingly. In that view of the matter, the Court held that the Tribunal as well as the appellate authority were justified in holding that there is no liability to pay Capital Gains tax as the case squarely falls under sec. 54 of the Income Tax Act, 1961.

20. As far as the decision of the Hon'ble Madras High Court in the case of V.R. Karpagam, Income Tax Appeal No.301 of 2014. judgment dated 18/8/2014 is concerned, the facts were similar to the case of the assessee. The assessee in the case of V.R.Karpagam entered into an agreement with M for development of a piece of land owned by it. As per agreement, assessee was to receive 43.75% of built up area after development, which was translated into five flats. The Assessee claimed exemption u/s 54F on the value of five flats. The AO granted benefit of capital gains in respect of one flat and the CIT(A) affirmed findings of AO holding that claim of assessee u/s 54F for all five flats could not be admitted, but however, he took the view that the assessee would be entitled to benefit of s. 54F in respect of one single flat with largest area. In appeal, the Tribunal held that assessee was eligible for exemption u/s 54F on all five flats received by her in lieu of land she had parted with and the word "a" appearing in s. 54F should not be construed in singular, but should be understood in plural. Hon'ble Madras High Court upheld the order of the Tribunal. It was also held that amendment was made to s. 54F with regard to word "a" by Finance (No.2) Act, 2014 with effect only from 01.04.2015 withdrawing deduction for more than one flat (residential house). Post amendment, viz., from 01.04.2015, benefit of s. 54F will be applicable to one residential house in India. However, prior to said amendment, a residential house would include multiple flats/residential units. Similar decisions were rendered on identical facts by the Hon'ble Madras High Court in the case of CIT vs Gumanmal Jain [2017] 80 taxmann.com 21 (Mds).

21. As far as the decision of the Hon'ble Karnataka High Court in the case of Khubchand Makhija (supra) is concerned, as rightly pointed out by the learned counsel for the Assessee, the facts of the aforesaid case are clearly distinguishable from the facts of the case of the Assessee and the

facts of the case of K.G.Rukmaniamma (supra) decided by the Hon'ble Karnataka High Court. In the case of the Late Khubchand M Makhija (Supra), the facts were that one residential house was sold and the Long Term Capital Gain on such sale was used to buy two independent residential houses. This aspect has been noticed by the Hon'ble Court in paragraph 15 & 16 of the judgment in the case of Khubchand M.Makhija (supra) wherein the distinguishing facts between the facts of K.G.Rukminiamma (supra) and the facts of the case in Khubchand M.Makhija (supra) were brought out by the Hon'ble Karnataka High Court.

22. In the light of the law as explained in the various judicial pronouncements referred to above, we are of the view that the CIT(Appeals) ought to have allowed deduction claimed by the assessee either u/s. 54 or 54F of the Act.

14.2 Similar view is taken in the case of Sri C N Gommateswara (Supra) wherein the Tribunal held as under:-

“6. Ground No.4 : Exemption u/s.54F of the Act.

6.1 In respect of Ground No.4 (supra), learned Authorised Representative for the assessee placed reliance on the decisions of the Hon'ble Karnataka High Court in the case of K.G. Rukminiamma reported in 331 ITR 211 (Kar) and Anand Basappa reported in 309 ITR 329 (Kar). Reliance was also placed on the decision of the Hon'ble Madras High Court in the case of V.R. Karpagam in T.C. (Appeal) No.301/2014 dt.18.8.2014. The learned Authorised Representative submitted that in view of the above judicial pronouncements, the assessee was entitled to claim exemption under Section 54F of the Act in respect of all the four residential flats, received from the builder, as per the JDA, which together constituted “a “ residential house for the purpose of Sec. 54F of the Act.

6.2 Per contra, the learned Departmental Representative for Revenue submitted that the assessee was not entitled to exemption under Section 54F of the Act and placed reliance on the decision of the Hon'ble Karnataka High Court in the case of Khoobchand M Makhija (2014) 43 taxmann.com 143 (Kar) and the decision of the co-ordinate bench of this Tribunal in the case of Arun Kumar Nathan in ITA No.1041/Bang/2017 dt.25.10.2017.

6.3.1. We have heard the rival contentions, perused and carefully considered the material on record; including the judicial pronouncements cited. From an appreciation of the facts of the case on hand, it is seen that the assessee had received four residential flats in the same apartment complex that was the subject matter of JDA by the Developer. We find that in a similar fact situation, a co-ordinate bench of this Tribunal in the case of Smt. Nethravathi in ITA No.2630/Bang/2017 dt.25.4.2018 has considered the provisions of Sec.54F of the Act and the very same judicial pronouncements relied upon by both parties in the context of the assessee

receiving more than one residential flat in the same complex upon development by virtue of JDA; and held in para 11 as under :

“11. We have given careful consideration to the rival submissions. We find that the facts of the Assessee's case are similar to the case of Smt.K.G.Rukminamma (supra) decided by the Hon'ble Karnataka High Court. In the case of K.G.Rukminamma, the facts were on a site measuring 30' x 110' the assessee had a residential premises. Under a joint development agreement she gave that property to a builder for putting up flats. Under the agreement 8 flats are to be put up in that property and 4 flats representing 48% is the share of the assessee and the remaining 52% representing another 4 flats is the share of the builder. So the consideration for selling 52% of the site was 4 flats representing 48% of built up area and the 4 flats are situated in a residential building. The Court held that the 4 flats constitute 'a residential house' for the purpose of sec 54. The 4 residential flats cannot be construed as 4 residential houses for the purpose of sec 54. It has to be construed as "a residential house" and the assessee is entitled to the benefit accordingly. In that view of the matter, the Court held that the Tribunal as well as the appellate authority were justified in holding that there is no liability to pay Capital Gains tax as the case squarely falls under sec. 54 of the Income Tax Act, 1961. As far as the decision of the Hon'ble Madras High Court in the case of V.R. Karpagam (supra) is concerned the facts were similar to the case of the assessee. The assessee in the case of V.R.Karpagam entered into an agreement with M for development of a piece of land owned by it-As per agreement, assessee was to receive 43.75% of built up area after development, which was translated into five flats. The Assessee claimed exemption u/s 54F on the value of five flats. The AO granted benefit of capital gains in respect of one flat and the CIT(A) affirmed findings of AO holding that claim of assessee u/s 54F for all five flats could not be admitted, but however, he took the view that the assessee would be entitled to benefit of s 54F in respect of one single flat with largest area. In appeal, tribunal held that assessee was eligible for exemption u/s 54F on all five flats received by her in lieu of land she had parted with and word 'a' appearing in s 54F should not be construed in singular, but should be understood in plural. The Madras High Court upheld the order of the Tribunal. It was also held that amendment was made to s 54F with regard to word 'a' by Finance (No.2) Act, 2014 w.e.f only from 01.04.2015 withdrawing deduction for more than one flat (residential house). Post amendment, viz., from 01.04.2015, benefit of s 54F will be applicable to one residential house in India. However, prior to said amendment, a residential house would include multiple flats/residential units. Similar decisions were rendered on identical facts by the Hon'ble Madras High Court in the case of CIT vs Gumanmal Jain [2017] 80 taxmann.com 21 (Mds). As far as the decision of the Hon'ble Karnataka High Court in the case of Khubchand Makhija (supra) is concerned, as rightly pointed out by

the learned counsel for the Assessee the facts of the aforesaid case are clearly distinguishable from the facts of the case of the Assessee and the facts of the case of K.G.Rukmaniamma (supra) decided by the Hon'ble Karnataka High Court. In the case of the Late Khubchand M Makhija (Supra), the facts were that one residential house was sold and the Long Term Capital Gain on such sale was used to buy two independent residential houses. This aspect has been noticed by the Hon'ble Court in paragraph 15 & 16 of the judgment in the case of Khubchand M.Makhija (supra) wherein the distinguishing facts between the facts of K.G.Rukminiammal(supra) and the facts of the case Khubchand M.Makhija (supra) were brought out by the Hon'ble Karnataka High Court. In the present case all the 13 flats were situate in the same premises and, therefore, the decision rendered in the case of Smt. K.G Rukminiamma (Supra) will apply. In the light of above judicial pronouncements on identical facts and circumstances of the case of the assessee we are of the view that the Assessee is entitled to deduction u/s.54F of the Act on all the 13 flats and there was no capital gain chargeable to tax in the hands of the assessee. We hold and direct accordingly and allow the appeal of the Assessee.”

6.3.2 Respectfully following the decision of the co-ordinate bench of this Tribunal in the case of Smt. Nethravathi (supra), on the above legal position, we hold that the assessee is entitled to exemption under Section 54F of the Act in respect of all four flats received by the assessee in the same apartment complex by virtue of the development by the Builder and terms of the JDA. We, therefore, set aside the impugned order of the learned CIT (Appeals) on this issue and direct the Assessing Officer to allow exemption under Section 54F of the Act in respect of the four flats received by the assessee. It is accordingly ordered. Consequently, Ground No.4 of assessee's appeal is allowed as indicated above.”

15. The same is taken in the case of Smt.Netravathi and Sri Ganga Poorna Prasad (supra) by the co-ordinated bench of ITAT Bangalore

16. The basic principle that emerge from these judicial pronouncements of the Tribunal is that the assessee is entitles to claim deduction u/s.54F on all flats obtained under JDA and they are to be considered as “a residential unit”. In other words all the residential units received under JDA need to be treated as “new asset”. Hence we respectfully

follow the judgments of the Co-ordinate Bench of the Bangalore Tribunal and conclude that all the 14 assets allotted to the assessee as part of JDA and sharing agreement is to be considered together as “new asset” for the purpose of section 54F of the Act.

17. Now on the issue of whether proviso to section 54F of the Act restricts the assessee to claim deduction under the said section, we will look at the proviso to section 54F –

54F. (1) Subject to the provisions of

Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

- (i) owns more than one residential house, **other than the new asset**, on the date of transfer of the original asset; or
- (ii) purchases any residential house, **other than the new asset**, within a period of one year after the date of transfer of the original asset; or
- (iii) constructs any residential house, **other than the new asset**, within a period of three years after the date of transfer of the original asset; and

From the proviso reproduced above it becomes clear that the exemption is not applicable to the asset “other than new assets”.

18. If we are to consider the proviso along with the principles emerging from the above judicial pronouncements, it becomes clear that the assessee would be entitled to the deduction u/s 54F for all the units received under JDA on the premise that all 14 flats are to be treated as “new asset”.

19. Coming to the third issue of whether the assessee is right in claiming the deduction u/s. 54F for “one residential flat” -

Section 54F got amended effective 01/04/2015 i.e. from assessment year 2015-16 and in assessee's case the amended provisions will be applicable. In the amended provisions the words "residential house" is substituted with "one residential house" whereby when the assessee receives more than one residential unit as part of JDA he can claim deduction in respect of only one unit and not all units. In the given case the assessee has correctly applied the amended provisions and had claimed deduction for only one flat out of the total 14 flats received as part of JDA.

20. In conclusion, based on the principles laid out by the judicial pronouncements, and that the proviso clearly excludes new assets i.e. all the 14 flats received by the assessee, we are of the view that the assessee is entitled to claim section 54F of the Act in respect of "one residential house" as per the amended proviso to section 54F of the Act, which is applicable in the case of the assessee. Hence we allow the appeal in favour of the assessee and direct the lower authorities to give the benefit of deduction u/s.54F to the assessee.

21. During the course of hearing before us, the learned DR submitted that the method of cost of acquisition computed by the assessee for claiming deduction u/s 54F of the Act is not clear and warrants reexamination. We have observed that both the A.O. and the CIT(A) have not raised any contention in this regard questioning how the cost of acquisition is computed. Hence, we are not in a position to consider this

completely different contention raised by the learned DR before us. We are of the considered view that this will not have any impact on our decision to allow the deduction u/s 54F of the Act claimed by the assessee as it is not raised as a point in the current appeal proceedings.

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

Order pronounced on this 03rd day of February, 2022.

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Bangalore; Dated : 03rd February, 2022.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore