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

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

ITA No.1755/Bang/2013
Assessment Year: 2008-09

Y. Manjula Reddy D-1102 Sterling Terrace apartments Kathriguppe Main road Banashankari 3rd Stage Bangalore 560 070 **PAN NO :ABLPR5569H**	**Vs.**	ITO Ward-10(2) Bangalore
APPELLANT		**RESPONDENT**

ITA No.1780/Bang/2013
Assessment Year: 2008-09

ITO Ward-10(2) Bangalore	**Vs.**	Y. Manjula Reddy Bangalore 560 070
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri Padam Chand Khincha, A.R.
Respondent by	**:**	Shri Sankar Ganesh K., D.R.

Date of Hearing	**:**	09.02.2022
Date of Pronouncement	**:**	28.04.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the order passed by Ld. CIT(A)-5, Bengaluru and they relate to the assessment year 2008-09.

2. These appeals were earlier disposed of by this bench of Tribunal vide its order dated 2.12.2016. The assessee challenged the order passed by the Tribunal by filing appeal before Hon'ble High Court of Karnataka. The Hon'ble High Court has restored the matter back to the file of the Tribunal with the following observations:-

> "*8. From close scrutiny of the order passed by the Tribunal, it is evident that the tribunal while deciding the appeal preferred by the revenue has adjudicated only grounds 2 and 3 and has not adjudicated the ground with regard to the claim of assessee under Section 54F of the Act in the light of law laid down by Delhi High Court in 'CIT Vs. GITA DUGGA', (2013) 257 CTR (DEL.) 208. The Tribunal has failed to adjudicate the grounds raised by the assessee in her appeal. The impugned order therefore, cannot be sustained in the eye of law. It is accordingly quashed. The matter is remitted to the tribunal to decide the appeal preferred by the assessee as well as the revenue afresh in accordance with law laid down by this Court in NAVIN JOLLY, GITA DUGGAL, M. GEORGE JOSEPH, M/S. JENNIFER BHIDE AND KAMALA WAHAL supra. It is therefore, not necessary for us to answer the substantial questions of law."*

We notice that the Hon'ble High Court has directed the Tribunal to decide the appeals afresh.

3. At the time of hearing, both the parties admitted that the tax effect involved in the appeal filed by the revenue is below the monetary limit as prescribed by the CBDT in its circular No.17/2019 dated 8.8.2019. Accordingly, the appeal of the revenue is dismissed in limine.

4. The only issue urged in the appeal of the assessee relates to partial rejection of deduction claimed u/s 54F of the Income-tax Act,1961 ['the Act' for short].

5. The facts relating to the issue are stated in brief. The assessee is an individual and she filed her return of income for the year under consideration on 29.9.2008 declaring a total income of Rs.9,06,860/-. The assessee had earned long term capital gain of Rs.1,56,85,225/- on sale of a land and claimed exemption u/s 54F of the Act from it to the extent of Rs.1,56,33,870/-. Accordingly, the assessee offered net long term capital gain of Rs.51,355/-.

6. The A.O. examined the long-term capital gain declared by the assessee. It was noticed that the assessee along with 3 other persons had sold a property on 27.10.2007 for a consideration of Rs.5.35 crores. The assessee's share out of the above said consideration was Rs.1,60,50,000/-. The assessee claimed that she has purchased a residential house property in a project named "M/s. Prestige Ozone" for a sum of Rs.1,72,29,993/-. Accordingly, she claimed deduction u/s 54F of the Act to the extent of Rs.1,56,33,870/-.

7. The A.O. examined the details of purchase of the property at Prestige Ozone. The A.O. noticed that the initial agreement was entered by the assessee's husband Shri Y.C. Rami Reddy with M/s Prestige Properties on 5.5.2004 for construction of building at a cost of Rs.46,35,610/-. Subsequently, a sale deed was registered on 24.2.2007 for purchase of plot No.8 having extent of Rs.6,108 sq.ft. for a consideration of Rs.39,67,933/-, on which the above said construction has happened. The said sale deed was executed in favour of Shri Y.C. Rami Reddy and the assessee herein. The assessee claimed that she has reimbursed all the payments made by her husband to him and she also incurred further expenses for interior design, etc. Accordingly, the assessee claimed that the entire cost of purchase was met by her and further, the property was purchased by her from her husband. The breakup details of

total expenses incurred in connection with this property was stated as under:-

Cost of land as per agreement dt 5.5.04	*Rs.39,69,933.00*
Cost of Construction as per agreement dt. 5.5.2004	*Rs.46,35,210.00*
Common Maintenance Charges as per clause 8(b)	*Rs.87,500.00*
Common Maintenance Charges as per cluse 8(d)	*Rs.87,500.00*
Payment made to Prestige and other structural changes	*Rs.34,17,560.00*
Payment made to Morph Design vide letter dt 6.3.2007 for changes in the villa	*Rs.30,66,252.00*
Material purchased and supplied by the assessee	*Rs.7,89,677.00*
Cost of registration of land on 24.02.2007	*Rs.3.77,540.00*
Other costs	*Rs.8,98,421.00*
Total cost	***Rs.1,72,29,993.00***

8. The A.O. examined the cost of purchase of property furnished to him and noticed that the assessee could not furnish evidence with regard to the expenses incurred on interiors, etc. Accordingly, the A.O. held that the cost of acquisition should be taken as Rs.91,57,683/- only as given below:-

1. *Cost of land vide sale deed dt 24.2.2007 – Rs.39,69,933.00*
2. *Cost of construction vide agreement dt.5.5.2004 – Rs.46,35,210.00*
3. *Common maintenance charges vide clause 8(b)&(d) - Rs. 1,75,000.00*
4. *Cost of registration of land on 24.2.2007 - Rs. 3,77,540.00*

Total cost of acquisition - Rs.91,57,683.00

9. The A.O. also examined the claim of the assessee for deduction u/s 54F of the Act. The A.O. took the view that the assessee is not eligible for deduction u/s 54F of the Act for the following reasons:-

1. The assessee has already held 50% share in the Prestige Ozone building and hence, there was no necessity for her to pay the full consideration of Rs.1.72 crores to her husband.
2. The husband has relinquished his right in favour of the assessee on 3.1.2008 by way of an unregistered document, which was subsequently registered on 25.1.2010. Accordingly, the assessee cannot be considered to have

purchased new house within one year before the date of transfer.

3. The assessee has got more than one residential house at the time of sale of the land as given below:-
    a) Property at 19/1, Outer Ring Road, Penathur Junction, Bangalore
    b) A residential house in Ooty.
4. The assessee has also advanced money to purchase another flat at M/s. Prestige Knotting Hill on 8.6.2007. Purchase of another new house within 3 years is in violation of third proviso to Section 54F of the Act, which would disentitle the assessee for deduction u/s 54F of the Act.
5. The assessee became absolute owner of the building in Prestige Ozone only on 25.1.2010.

Accordingly, the A.O. rejected the claim for deduction u/s 54F of the Act.

10. Before Ld. CIT(A), the assessee filed detailed submissions. The assessee also submitted that the sale consideration should be reduced by an amount of Rs.26,75,000/-. It was submitted that the above said amount represented sale value of a portion of land gifted by assessee's son to her. However, in the assessment of the assessee's son, the above said amount of Rs.26.75 lakhs was included for computing capital gain disregarding the claim of gift to the assessee herein. Accordingly, it was prayed that the above said amount should be reduced from the value of sale consideration offered by the assessee, since it has already been assessed in the hands of the assessee. Since the assessee has made detailed explanations with regard to the various observations made by the A.O, the Ld. CIT(A) called for a remand report from the A.O.

11. The assessee submitted she does not own the property mentioned in her return of income as located at Outer Ring Road. It was submitted that the rental income shown against that property was actually received from the property purchased in Prestige Ozone and the mistake has happened due to typographical mistake. We notice this fact was accepted by the tax authorities.

12. (a) With regard to the residential flat located in Ooty, the A.O. observed in the remand report that it consisted of 3 residential buildings and hence, the condition prescribed in section 54F of the Act is violated.

(b) The AO reiterated that the assessee has given advance for purchase of a flat at Prestige Nottingghill, which is a violation of the one of the conditions prescribed in sec. 54F of the Act. Hence the assessee is not eligible for deduction.

(c) The AO accepted the fact that the sale consideration of Rs.26.75 lakhs was assessed in the hands of the assessee's son.

13. In the reply to the remand report, the assessee submitted that the assessing officer is taking the view that there are three residential house properties in Ooty for the first time. It was submitted that it is a single building having three units in ground floor, 1st and 2nd Floor. The assessee also submitted that she has furnished bills for interior works to the maximum extent possible and she could not furnish evidences to the extent of Rs.16,97,098/-, which agreed for disallowance.

14. The Ld. CIT(A) after considering the remand report as well as the reply given by the assessee to the remand report gave his decision as under:-

a) The residential flat located at Ooty is a single residential building consisted of 3 residential units. Accordingly, he held

that the residential building at Ooty should be considered as a single house property.

b) With regard to advance given by assessee for purchase of flat at Prestige Knotting Hill, the Ld. CIT(A) held that mere giving advance will not result in acquisition of any house property. Hence, it cannot be said that the third proviso to section 54F of the Act is violated.

15. With regard to the cost of acquisition of the building, the Ld. CIT(A) took the view that

(a) the expenditure incurred on interiors, renovation, furnishing, etc. after registration of plot i.e. after 24.2.2007 cannot be taken as part of cost of acquisition.

(b) the assessee has purchased only 50% of right from her husband on 27.10.2007 and she has already held 50% earlier. The Release deed given by husband of the assessee was registered on 25.1.2010, which is 3 years from the date of sale of original property. Accordingly, the Ld. CIT(A) took the view that, irrespective of the amount of payment made to her husband, the assessee can be said to have acquired only 50% of the property on 25.1.2010, which falls within 3 years from the date of sale of original property. Accordingly, he took the view that the deduction u/s 54F of the Act shall be available to the assessee only to 50% of cost of acquisition of asset.

(c) Since the Ld CIT(A) took the view that the expenses incurred after 24.2.2007 cannot be considered as part of acquisition of property, he computed the cost of acquisition as under:-

Cost of construction	-	Rs.46,35,610/-
Cost of land as per sale deed	-	Rs.43,47,473/-
Maintenance charges	-	Rs. 1,75,000/-
Total	**-**	**Rs.91,58,083/-**

Accordingly, the Ld CIT(A) held that the assessee is eligible for deduction u/s 54F of the Act only in respect of 50% of the cost of property, i.e., 50% of Rs.91,58,083/-, i.e., Rs.45,79,042/-.

16. Aggrieved by the order passed by Ld CIT(A), both the parties have filed appeals before the Tribunal. We have already dismissed the appeal of the Tribunal, since the tax effect involved therein was less than the monetary limits prescribed by CBDT for pursuing its appeals. Hence the issues urged by the assessee are only need to be adjudicated. Following issues are contested by the assessee:-

(a) Whether the Ld CIT(A) was justified in ignoring expenditure of Rs.81,71,910/- incurred on the new house property for computing deduction u/s 54F of the Act.

(b) Whether Ld CIT(A) was justified in holding that the assessee is entitled to claim deduction to the extent of 50% of the cost of acquisition computed by him.

17. From the facts discussed above, we noticed that the agreement for the purchase of property was first entered by the assessee's husband in 2004. However the sale agreement for transfer of plot was registered only on 24.2.2007 and it was registered in the name of the assessee and her husband. Accordingly, the AO/Ld CIT(A) has taken the view that the assessee was already entitled to 50% of the right in the property. The Hon'ble Karnataka High Court has held in the case of Mrs. Jennifer Bhide (2011)(15 taxmann.com 82)(Kar) that the deduction u/s 54 of the Act should not be denied merely because the name of assessee's husband is mentioned in the purchase document, when the entire purchase consideration has flown from the assessee. In the instant case also, the plot was purchased in the name of the assessee and her husband. Hence, what is required to be examined is the question, viz., who has funded the acquisition?.

Admittedly, in the instant case, the assessee's husband had advanced money initially. Subsequently, the admitted fact is that the assessee has reimbursed the money to her husband and finally, it is the assessee who has actually given funds for the acquisition of the property. We notice that the Ld CIT(A) has taken the view that the funds given by the assessee should not be taken in account and in our view, the said view of the Ld CIT(A) is not, in our view, correct in law.

18. The deduction u/s 54F of the Act only induces an assessee to make investment in residential house property. If the assessee has herein has given money for acquisition of the property either directly to the builder or as reimbursement to her husband, then the assessee should be given benefit of deduction u/s 54F of the Act for the cost of acquisition.

19. The next impediment in the minds of the tax authorities was that the plot was purchased jointly in the name of the assessee and her husband and hence it should be held that both held 50% right each and hence the assessee could have purchased only her husband's share only. We are unable to agree with this logic. There is no dispute that the assessee has actually given funds for the acquisition of the property. When the assessee's husband has not given money for purchase of property, how it can be held that her husband was owner of 50% of the property merely for the reason that his name appears in the conveyance agreement and also in the rental agreement. The deduction under sec.54F of the Act shall be given only to the person who has invested the money. In the instant case, it is the assessee who has invested the money and hence the assessee should be given deduction u/s 54F of the Act for the money invested by her.

20. The next issue is with regard to the cost of acquisition. The assessee claimed the cost of acquisition to be Rs.1,72,29,993/-. During the remand proceedings, the assessee herself has agreed for reduction of cost of acquisition by Rs.16,97,098/-, since she could not prove the incurring of expenses to that extent. Hence the cost of acquisition as per the assessee now stands at Rs.1,55,32,895/-. There is no dispute that the assessee has invested the money to the above said extent in acquisition of the property.

21. The Ld CIT(A) has taken the view that the amount spent after the date of registration of land, i.e., 24.02.2007 for interiors, renovation, furnishing etc cannot be part of acquisition. The Hon'ble Karnataka High Court has held in the case of Mrs. Rahana Siraj (2015)(58 taxmann.com 333)(Kar) that the money spent in additions, alterations, modifications and improvements on the new asset to make it habitable would be eligible for benefit of deduction u/s 54F of the Act. Accordingly, we set aside the view so taken by Ld CIT(A) as it is contradictory to the binding decision of jurisdictional High Court. Accordingly, we hold that the assessee is eligible for deduction u/s 54F of the Act in the amount spent on interiors, renovation, furnishing etc.

22. In view of the foregoing discussions, we hold that the deduction u/s 54F of the Act should be computed on the above said amount of Rs.1,55,32,895/- and direct the AO accordingly.

23. In the result, the appeal filed by the assessee is treated as allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 28th Apr, 2022.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(B.R. Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated 28th Apr, 2022.
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.