

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. S.PADMAVATHI, ACCOUNTANT MEMBER**

<i>Appeal Nos. and Assessment Year</i>	<i>Appellant</i>	<i>Respondent</i>
ITA No.449/Bang/2021 2015-16	Shri. Nagaraj Desirazu (HUF), 37/19, Tripurasri, 9 th Main, RMV Extn, Bengaluru – 560 080. PAN: AAAHN 3676 F	ACIT – 6(3)(1), Bengaluru.
ITA No.633/Bang/2021 2015-16	Shri. Desirazu Sundara Siva Rao, 37/19, Tripurasri, 9 th Main, RMV Extn, Bengaluru – 560 080. PAN: AAAHR 7509 F	-do-
SP No.111/Bang/2021 (in ITA No.449/Bang/2021) 2015-16	Shri. Nagaraj Desirazu (HUF), Bengaluru – 560 080. PAN: AAAHN 3676 F	-do-

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Smt. Priyadarshini Baseganni, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.06.2022
Date of Pronouncement	:	24.06.2022

ORDER

Per N. V. Vasudevan, Vice President :

ITA No.449/Bang/2021 is an appeal by the assessee against the order dated 26.07.2021 of the NFAC, Delhi, relating the Assessment Year 2015-16. ITA No.633/Bang/2021 is also an appeal by the assessee against the order dated 29.09.2022 of the NFAC, Delhi, relating the Assessment Year

2015-16. The issues involved in these appeals are common. They were heard together and deemed it convenient to pass a common order.

2. The first issue that arises for consideration in both these appeals is as to whether the AO was justified in examining the benefit of exemption under section 54F of the Income Tax Act, 1961 (hereinafter called 'the Act') claimed by the assessee, when the case of the assessee was selected for computer assisted scrutiny selection (CASS) under the limited scrutiny category.

3. The assessee in both these appeals are by father and son i.e., Shri. Desirazu Sundara Siva Rao and Shri. Nagaraj Desirazu. They together with owned property measuring to an extent of 68,868/- sq. ft. bearing municipal No.19, 9th Main Roa, Rajmahal Vilas, Sadashivanagar, Bengaluru (hereinafter referred to as 'the property'). They entered into a Joint Development Agreement (JDA) with M/s. Vista Spaces Estates LLP. As per the terms of the JDA dated 20.07.20214, the assesseees Shri. Desirazu Sundara Siva Rao and Shri. Nagaraj Desirazu were entitled to the following build up area in the flats to be constructed by the developer.

“2. The Second Party has furnished a set of sanction of Licence and Building Plan to the First Party. Based on the said sanctioned plan, the parties have agreed that the entire Ground, First and Second Floor along with the garden area shall be allotted to the share of the First Party in the following manner:

- a) 50% of the super built-up area of the Ground Floor -
Mr. NAGARAJ DESIRAZU
- b) 50% of the super built-up area of the Ground Floor -
Mr. D. Sundarasiva Rao

- c) Entire super built-up area of the First Floor - Mr. NAGARAJ DESIRAZU
d) Entire super built-up area of the Second Floor- Mr. D. Sundarasiva Rao

3. Further, the entire Third and Fourth floor and 2000 sq.ft., of terrace area shall be allotted to share of the Second Party. It is made clear that the Second Party or anyone claiming through or under them shall not be permitted to put-up any construction, addition of any nature (except a removable temporary structure) or make any changes or alterations in the terrace area measuring 2000 square feet allotted to it hereunder, including undertaking any additional civil work/ construction to any portion of the structure of the building. It is further agreed that the 2000 square feet of terrace area being allotted to the Second Party shall always form part of and be a portion the DEVELOPER'S CONSTRUCTED AREA or proportionate portion thereof or as the case the Second Party deems it fit, but however under no circumstances shall the Second Party or its successors-in-interest/title be entitle to deal with, use or otherwise dispose off this 2000 square feet of terrace area independently i.e., Without being • or forming part of the correspondcing super built-up area forming part of DEVELOPER'S CONSTRUCTED AREA or portion thereof as the case may be. It is hereby clarified that the balance terrace area available will be part of common area available for the benefit of all other unit/apartment owners in the Residential Building.”

4. In the return of income filed for Assessment Year 2015-16, Shri. Nagaraj Desirazu computed capital gain on account of JDA as follows:

INCOME FROM CAPITAL GAINS :	Rs	Rs.
Part Sale consideration received on Development of Plot situated at Bangalore	19285000	
Less Cost of land with indexation FY 1988-89 - Cost 1864'1024/161	11856	
	<hr/>	
	19273144	
Less Deduction U/s 54F -Transfer of property	8560899	
Less . Deduction U/s. 54 EC - Capital gain		
Bonds in Rural Electrification Bonds (11.3 15)	5000000	5712245
	<hr/>	

5. Similarly, Shri. Desirazu Sundara Siva Rao computed capital gain on account of JDA for Assessment Year 2015-16 as follows:

Schedule 1			
<u>Long term capital gain</u>			
<u>Immovable property other than residential</u>			
Date of transfer	17-Oct-14		
Sale consideration	1,92,85,000		
<u>Acquisition details</u>	Financial Year	Cost	Indexed Cost
Cost of Land-1862*1024/161	1988-89 1,862	1,862	11,843
Capital Gain	<u>1,92,73,157</u>		
<u>Less: Exemptions</u>	Invested		
	Date	Amount	Exemption
54 F Transfer of property other than house property		85,66,165	85,60,904
54 EC. Investment in bonds		50,00,000	<u>50,00,000</u>
Taxable Capital gain			<u>57,12,253</u>

6. As can be seen from the aforesaid computation of capital gain by both the assesseees, they had claimed deduction while computing capital claim exemption under section 54F of the Act. The case of both the assesseees were picked up for CASS. The reasons for selection of both the cases under limited scrutiny was for examination of :

‘Deduction claimed under the head capital gains’

It was the case of the AO in the assessment proceedings that as per the terms of the JDA, the assessee was entitled to built up area which consisted of more than one residential house and he invoked the provisions of the first proviso to section 54F(1) of the Act, which reads thus:

"Provided that nothing contained in this subsection shall apply where the assessee owns on the date of the transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income

from which is chargeable under the head "Income from house property", other than the new asset."

According to the AO, as per the JDA, the assessee was entitled to more than 2 residential houses i.e., flats and therefore the deduction under section 54F of the Act cannot be allowed to the assessee.

7. In reply to the proposal of the AO as above, the assessee submitted that he was entitled to as share of Land Owners one residential house consisting of 3 units. It was the plea of the assessee that though there were three units they have to be regarded as one residential house only. The sum and substance of the stand taken by the assessee was that it had obtained 3 flats but as per the JDA, they were to be regarded as one residential house and therefore deduction under section 54F of the Act cannot be denied to the assessee.

8. The AO, however, held that the assessee cannot be allowed the benefit under section 54F(2) of the Act because of the proviso to Sec.54F(1) of the Act. Following were the relevant observations of the AO in this regard:

"7. The submission of the assessee has been perused. In the present scenario, the assessee claims one of the residential units to be new asset for the purpose of investment. However other residential units are also accruing to assessee as a result of Joint Development Agreement. In this regard, it is pertinent to mention proviso to subsection (1) of section 54F which reads as,

"Provided that nothing contained in this sub-section shall apply where the assessee owns on the date of the

transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset."

In the present scenario the assessee has within period of 3 years from date of transfer of original asset is constructing other two residential houses (as a result of joint Development agreement) with income chargeable under the head "Income from House Property" apart from new asset for which exemption under section 54F is claimed. The same is in violation of proviso to sub-section of section 54F. This is in violation of section 54F of Income tax act.

8. *Also, the judicial pronouncements cited by assessee in case of Commissioner of Income Tax V/s. D Ananda Basappa (2009) 309 ITR 329, Commissioner of Income Tax V/s Gumanmal Jain, (2017) 394 ITR 666 (Madras) have been perused. However, facts of the above cited cases are different from the present one. The judicial pronouncements of Honourable High Court of Karnataka and Honourable High court of Madras pertain to assessment years earlier to A.Y 2015-16 wherein rationale for term 'a residential house' used in section 54 and 54F has been pronounced by the honourable courts, However, in the present year under consideration, the act has been amended wherein the word 'a residential house' has been substituted by 'one residential house'. The assessee has claimed one residential house as a result of joint development agreement as new asset under section 54F. It also irrefutable fact that by virtue of Joint Development agreement, assessee is in possession of other residential house the income from which is chargeable under the head "Income from House Property" within period of 3 years from date of transfer, other than new asset. It could not be stand of assessee that on one hand benefit of new asset investment can be availed for one of the residential house arising out of Joint Development agreement and on the other hand conveniently ignoring the other-residential houses resulting to assessee as a result of joint*

development agreement so as to be complaint with conditions stipulated in section 54F. Thus assessee is in violation of proviso to sub-section (1) of section 54F and also condition stipulated in sub-section (2) of section 54 as proposed in show-cause notice. In light of the above discussions the assessment is proceeded with by denying the benefit exemption under section 54F of Income tax act. Also, penalty proceedings u/s 271(1)(c) of Income Tax Act, 1961 is being initiated for filing inaccurate particulars of income.”

9. Aggrieved by the orders of the AO, both the assessee filed appeal before the CIT(A). The main contention of the assessee before the CIT(A) was that the case of the assessee was selected for limited scrutiny viz., examining the claim of deduction under the head “capital gains”. The provisions of section 54F of the Act are examined and provisions cannot be regarded as deduction provisions. As per the tenor of the limited scrutiny it is only deduction under section 48 of the Act that can be subject matter of limited scrutiny and not exemption under section 54 of the Act. It was submitted that as per circular F.No.DGIT(Vig.)/HQ/SI/2017-18 dated 30.11.2017, the AO cannot extend the scope of limited scrutiny without the approval of the Commissioner and therefore the order passed by the AO should be quashed.

10. On the above submission, the First Appellate Authority held that the deduction under section 54F of the Act was also subject matter of limited scrutiny and therefore the objection raised by the AO is unsustainable. No other issues were agitated by the assessee before CIT(A).

11. Aggrieved by the order of the CIT(A), assessee has preferred the appeal before the Tribunal raising the same plea that the case was selected for limited scrutiny and exemption under section 54F of the Act could not be

subject matter of the limited scrutiny. In this regard, the assessee has relied on the following decisions. Income Tax Appellate Tribunal, Jaipur Bench dated 05-12-2019 in the case of Late Smt. Gurbachan Kaur Vs. DCIT, Circle-2, Jaipur and 27-02-2020 in the case of Sri. Sita Ram Swamy Vs. The Income Tax Officer, Ward 4(5), Jaipur wherein the Hon'ble I.T.A.T. quashed the orders passed by both the DCIT and the I.T.O. for expanding the Limited Scrutiny.

12. We have considered the submissions of the learned Counsel for the assessee who reiterated the stand of the assessee as was put forth before the CIT(A). The stand taken by the assessee is based on a very technical reading of the purpose for which the case of the assessee was picked up for limited scrutiny. It is no doubt true that the provisions of section 54F of the Act are exemption provision in the sense that the charge to tax on capital gain does not operate. However, in the computation of total income filed by the assessee, what was claimed was deduction while computing capital gain was deduction u/s.54F of the Act and this is the reason why the same expression has been used in the notice issued while taking up the case for limited scrutiny. The notice issued while taking up a case for scrutiny cannot be read as a piece of legislation and it cannot be expected to use the exact expression as found in section 54F of the Act when the case is taken up for limited scrutiny. The intent and purpose of limited scrutiny was only to examine the deduction claimed by the assessee under section 54F of the Act as per the computation of the total income. This would be evident from a look at all the circumstances of the case. The Assessee cannot be heard to say that in the case of the assessee which was taken up for limited scrutiny,

the AO can examine only allowing deduction under section 48 of the Act because of the use of the words “deduction claimed in computing capital gain” used in the limited scrutiny. In our view the stand of the Assessee if permitted will be too technical and defeat the very purpose of the assessee’s case being taken up for limited scrutiny. We therefore reject the plea of the assessee in this regard and confirm the order of the First Appellate Authority. In so far as the decisions cited by the learned Counsel for the assessee is concerned, the case of Smt. Gurbachan Kaur (supra) was taken up for limited scrutiny for examining the issue of deduction claimed under section 54 of the Act. But the AO took up the question of the determination of the fair market value of the property as on 01.04.1981 and which was held to be beyond the scope of the selection of the case for limited scrutiny. This case totally stands on a different footing on the facts of the present case. In so far as the decision in the case of Shri. Sita Ram Swamy (supra) is concerned, the case of the assessee was selected for limited scrutiny to examine the capital gain on sale of the property. In that assessment, an addition of Rs.10 lakhs was made under section 69 of the Act on account of unexplained investment in the property and this was held to be beyond the scope of limited scrutiny and therefore the assessment was quashed. This case also stands on a different footing as per the facts of the case. We are therefore of the view that the grievances projected by the assessee in this regard was rightly rejected by the Revenue authorities.

13. Learned Counsel for the assessee has filed an application seeking to raise the following additional grounds:

1. *The authorities below are not justified in disallowing the claim of exemption u/s 54F of Rs. 85,60,899/-being the deduction*

claimed towards the residential units falling to the share of the appellant in terms of the JDA dated 20/06/2014 under the facts and in the circumstances of the appellant's case.

2. *The learned CIT[A] ought to have appreciated that the appellant had received 50% of the built-up area in the ground floor along the entire built-up area in the first floor, which constituted one residential house and therefore, the view adopted by the learned A.O. that the appellant had more than one residential house and was thus not entitled to the benefit of the deduction u/s 54F of the Act is completely opposed to the judicial position under the facts and in the circumstances of the appellant's case.*

14. The additional ground being a legal ground is admitted for adjudication keeping in mind the principle laid down by the Hon'ble Supreme Court in the case of NTPC Ltd., 229 ITR 283 (SC). As can be seen from the aforesaid additional ground, the plea of the assessee is that whatever area it got from the developer under the JDA has to be regarded as one residential unit and exemption under section 54 of the Act should be allowed to the assessee. In this regard, learned Counsel for the assessee drew our attention to the terms of the JDA clause 4 which we have extracted in the earlier part of this order. According to him, Mr. Naragaju Desirazu was entitled to 50% of super built up area in the ground floor and entire super built up area in the first floor and Shri. Desirazu Sundara Siva Rao was likewise entitled to 50% of the super built up area in the ground floor and entire super built up area in the second floor. According to the terms of the agreement, the assessee bargained for only a built-up area and it has to be regarded as one residential area for the purpose of claiming deduction under section 54F of the Act. In this regard, we find that neither before the AO nor before the CIT(A) such a plea was taken. In fact, the plea before the

AO was that the assessee should be allowed the benefit of deduction of exemption atleast in respect of one residential unit and it has been submitted that for the convenience, the built-up area was divided into 3 units and that cannot be basis that the assessee got 3 residential houses. In order to decide this issue, it would be necessary to examine the plan and the manner in which the construction of the 3 units has been done and how the property has been assessed and enjoyed by the assessee. We therefore deem it fit and proper to remand this issue to the AO for fresh consideration after affording opportunity of being heard to the assessee. Thus, both the appeals of the assessee are treated as partly allowed for statistical purposes.

SP No.11/Bang/2021

15. Since the appeals have been dismissed, the Stay Petition becomes infructuous and is accordingly dismissed.

16. In the result, appeals by the assessee are treated as partly allowed for statistical purposes and Stay Petition is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PADMAVATHI S)
Accountant Member

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

Bangalore,
Dated: 24.06.2022.
/NS/*

Copy to:

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|-------------|---------------|
| 1. Assessee | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.