

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

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

<b>ITA No. 2812/Bang/2018</b>
<b>Assessment Year : 2015-16</b>

The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.	<b>Vs.</b>	Shri Bollinni Gurappa Naidu, No. 42, 3 <sup>rd</sup> Block, 6 <sup>th</sup> Cross, Thyagraj Nagar, Bangalore – 560 028. <b>PAN: AHKPB8977G</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri Srinivas Rao Bandaru, JCIT DR

Date of Hearing	:	12-07-2022
Date of Pronouncement	:	12-07-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by the revenue against order dated 20/07/2018 passed by Ld.CIT(A)-5, Bangalore for A.Y. 2015-16 on following grounds of appeal:

**2. Brief facts of the case are as under:**

2.1 Assessee filed its return of income for A.Y. 2015-16 on 31.03.2017 declaring total income of Rs.22,20,040/-. The case was selected for limited scrutiny through CASS and the statutory

notice u/s. 143(2) was issued. Subsequently notice u/s. 142(1) along with questionnaire was issued.

2.2 The Ld.AO observed that assessee had income from property, Business, Capital Gain and Income from other sources filed his return of income on 31.03.2017 declaring an income of Rs.22,20,040/-. It was observed that the assessee sold 9 residential flats and also commercial properties, and invested in residential site on 02.11.2015, for the construction of residential houses. The Ld.AO disallowed the exemption claimed u/s 54 and Sec 54 F as below and concluded the assessment on 28.12.2017.

Exemption disallowed u/s 54	Rs. 2,43,05,932/-
Exemption disallowed u/s 54F	<u>Rs. 77,54,059/-</u>
	<u>Rs. 3,20,59,991/-</u>

2.3 Aggrieved by the above disallowances, the assessee filed appeal before the Ld.CIT(A).

2.4 Before the Ld.CIT(A), assessee submitted that he had invested Rs.5,25,00,000/- on or before 02/11/2015 in a residential site for construction of residential property, the details of which were furnished as under:

a.	15.09.2014	Rs. 30,00,000/-	
	15.09.2014	<u>Rs. 30,00,000/-</u>	
			Rs. 60,00,000/- (FY 2014-2015)
b.	10.04.2015	Rs. 50,00,000/-	
	10.04.2015	<u>Rs. 50,00,000/-</u>	
			Rs.1,00,00,000/- (FY 2015-2016)
c.	<u>02.11.2015</u>		Rs. 3,65,00,000/-(FY 2015-2016)
		<u>Total</u>	<u>Rs. 5,25,00,000/-</u>

2.5 Assessee submitted that the said amount was more than the capital gains earned and assessee had claimed section 54 in

respect of the same. It was submitted that the cost of the land has to be considered as an integral part of the residential house.

2.6 Assessee thus submitted that the net consideration for the purpose of section 54F has been appropriated towards the purchase of plot and also towards construction of residential house and that the aggregate cost should be considered for determining the quantum of deduction u/s. 54/54F. Assessee had placed reliance on the Circular No. 667 dated 18/10/1993 in support of its contention. Based on the assessee's submissions, the Ld.CIT(A) observed and held as under:

*"6. I have carefully considered the above written submissions filed and the case laws relied on by the appellant in substantiating his claim. The fixed assets Schedule filed before me has also been perused. On perusal it is seen that there is only one residential property in Thyagaraja Nagar appearing the fixed assets schedule and all others are commercial buildings, site and agricultural lands and therefore the finding of the Assessing Officer that the appellant had more than one residential property other than new asset on the date of transfer of the original asset is not justified. The conditions to be fulfilled to claim exemption U/s.54 of the Act are that the tax payer should purchase another house within a period of one year before or two years after the date of transfer of old house or should construct another house within a period of three years from the date of transfer and in case till the date of filing the return of income if the assessee is not in a position to purchase or construct another house, then the benefit of exemption can be availed by depositing the unutilised amount in capital gains deposit account scheme in any branch of public sector bank, in accordance with Capital Gains deposit accounts scheme, 1988. However the Assessing Officer observed that the appellant has not claimed/proved to have any such capital gain deposit accounts. Also the assessee has not proved the commencement of any construction of residential house. Hence, the entire deduction claimed U/s.54 and 54F in respect of both the property is not acceptable and the assessment concluded after addition of Rs. 3,20,59,991/- (Rs. 2,43,05,932/- claimed U/s.54 and Rs. 77,54,059/- U/s.54F). However*

*the appellant submitted that he had invested Rs.5,25,00,000/- in the site to construct a residential property within a period of three years as specified in the said sections of the Act and therefore eligible for claiming deduction U/s.54 and 54F of the Act. I have carefully considered the submissions and also the details of investments made on various dates and found that the appellant had invested from 15/09/2014 to 02/11/2015 in the site a sum of Rs.5,25,00,000/- with the intention to construct a residential house out of the sale proceeds of the properties sold. The appellant relied on Jurisdictional High Court in the case of Fathima Bai v. I T 0 (2010) 32 (1) I T C L 97 (Karn — HC) for the preposition that he had utilised the capital gains for the purpose of purchase/construct a residential property before the extended due date U/s.139(4) of the Act wherein it was held that the investment in the new asset be made before the initial due date and not the extended due date is an untenable contention. Further the appellant has substantiated that the construction of the residential house has been completed within the specified period. It is pertinent to note here that sections 54 and 54F of the Act are beneficial provisions for promoting the construction of residential house and requires to be construed liberally for achieving that purpose. The intention of the legislature was to encourage investments in the acquisition of residential house. The Hon'ble Supreme Court held in the case of Bajaj Tempo Ltd. Vs CIT reported in 196 ITR, 188 as follows: "A provision in taxing statute granting incentive for promoting growth and development should be construed liberally, the restriction on it too has to be construed so as to advance objective of the provision and not to frustrate it."*

*In view of the factual as well as legal matrix of the case, I hereby allow the grounds raised by the appellant."*

2.7 Aggrieved by the above observations of the Ld.CIT(A), revenue is in appeal before this Tribunal.

3. The Ld.CIT.DR at the outset submitted that the additional evidences in support of assessee's claim towards completion of the construction of the residential house within the time specified u/s. 54 was admitted without calling for a remand report by the Ld.CIT(A). He submitted that this issue needs to be verified as the

Ld.CIT(A) has not carried out any verification in respect of the same.

4. He submitted that various details in respect of allowability of the claim were furnished before the Ld.CIT(A) by the assessee and the Ld.AO has not got any opportunity to verify these details. The Ld.DR thus prayed for the issue to be remanded to the Ld.AO. The Ld.AR did not object for the remand to the Ld.AO. Considering the submissions, we remand this issue to the Ld.AO keeping all the contentions open. The Ld.AO is directed to consider the claim in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

**In the result, the appeal filed by revenue stands allowed for statistical purposes.**

Order pronounced in open court on 12<sup>th</sup> July, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 12<sup>th</sup> July, 2022.  
/MS /

**Copy to:**

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore