

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH : COCHIN**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.610/Coch/2022
Assessment Year : 2014-15

Smt. Rose George Kollanur, 7/384, Kollanur House, Kallekundur Road, Vettikattiri Post, Cheruthuruthy, Thrissur – 679 531. PAN : ECBPK 8337R	Vs.	The Income Tax Officer, Ward 2(2), Thrissur.
APPELLANT		RESPONDENT

Assessee by	:	Shri V Ramnath, CA
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

Date of hearing	:	06.12.2022
Date of Pronouncement	:	19.12.2022

ORDER

Per Padmavathy S, Accountant Member:

This appeal is against the order of CIT (Appeals), National Faceless Assessment Centre, Delhi [NFAC] dated 16.3.2022 for the assessment year 2014-15. The assessee raised the following grounds of appeal:-

“The amount of Rs. 74,86,271/- has been levied as additional capital gain and an exemption of only Rs. 17,81,324/- under Section 54F of the Act has been allowed which is opposed to facts, circumstances and the law applicable to this case.

2. The Learned Income Tax Officer has failed to notice the fact that a substantial portion amounting to Rs. 98,20,984/- had

been paid to M/s Varapradha Real Estates Pvt. Ltd., Hyderabad as investment in the construction of a residential property within three years of the date of transfer of the original asset.

3. The claim has been denied solely on technical grounds that the net sale proceeds has not been deposited in the Capital Gains Deposit Account Scheme within the due date of filing of the return. The decision of the Hon'ble High Court of Karnataka in CIT vs. K Ramachandra Rao ITA No. 74 of 2014 points to the fact that the exemption under Section 54 F must be allowed since the assessee has invested the entire sale proceeds for construction of residential property which is within the mandated three years from the date of transfer of original asset. The judgment in the case of Nipun Mehrotra vs. ACIT 2008 197 ITR 110 Bang, reinforced this point and exemption was granted on the same grounds. There are additional precedents which include I.T.O. vs. R. Srinivas I.T.A. No. 79/Bang/2014 and I. TO vs. Hiralal K Jain ITA No. 1176/Mds/2010. Moreover, it is not disputed by the A.O. that the assessee has invested the capital gains in a residential property within three years from the date of transfer of original asset.

4. For these and such other grounds that may be adduced at the time of hearing the additions made by the Learned Assessing Officer may be deleted and the tax and the interest thereon may be struck down.”

2. The assessee along with her husband sold a property inherited jointly by them measuring 200 cents of land to various persons on 27.8.2013 for a sale consideration of Rs.2,10,00,000. The assessee has entered into a contract with M/s. Varaprada Real Estate P. Ltd., Hyderabad for construction of a residential flat. An amount of Rs.98,20,984 was paid towards the construction of the flat on various dates. The assessee computed her share of capital gain to be Rs.95,61,000 and accordingly claimed the entire amount as a deduction u/s. 54F. The assessee filed a return of income for the AY 2014-15

disclosing an income of Rs.2,93,410 on 25.11.2015. The case was selected for scrutiny under cash and statutory notices were duly served on the assessee. The AO denied the benefit of deduction u/s. 54F to the assessee on the ground that the assessee has not deposited the unutilised amount towards purchase of the new asset in the capital gains account scheme on or before the due date for filing the return of income u/s. 139(1). Accordingly, the AO made an addition of Rs.74,86,271 while completing the assessment u/s. 143(3). Aggrieved, the assessee filed the appeal before the CIT(A), who upheld the order of the AO. Aggrieved, the assessee is in appeal before the Tribunal.

3. The ld. AR submitted that the assessee has claimed the deduction u/s. 54F based on the fact that the assessee has paid the amount of Rs.98,20,984 within 3 years from the date of transfer of original asset. The disallowance by the AO is made merely for the reason that the sale proceeds are not deposited in the capital gain account scheme before the due date for filing the return. The ld. AR also submitted that the deduction u/s. 54F cannot be denied for the reason that the amount is not deposited in the capital gain account scheme in a case where the amount is utilised fully towards purchase/construction of the new asset within the time limit as specified in section 54F. In this regard, the ld. AR relied on the decision of Karnataka High Court in the case of CIT v. K. Ramachandra Rao, ITA No.74/2014.

4. The ld. DR relied on the orders of the lower authorities.

5. We have heard the rival submissions and perused the material on record. It is a given fact that the assessee has paid an amount of Rs.98,20,984 towards construction of a new flat out of the sale proceeds on various dates as per below details:-

S. No.	Bank Name	Cheque Details	Date	Payment Details	Amount in Rs.	Receipt No.	T.D.S. paid in Rs.	Form 16B
1.	ICICI Bank	036682	28.09.2013	Booking	100000	247		
2.	ICICI Bank	600822	28.09.2013	Part of Booking	98000	247		
3.	TDS	Online	30.09.2013	TDS	2000	249	2000	Received
4.	ICICI Bank	036676	21.10.2013	Part of Booking	770353	256		
5.	TDS	Online	21.10.2013	TDS	7782	259	7782	Received
6.	ICICI Bank	036686	28.06.2014	Part	968354	321		
7.	ICICI Bank	Online	20.07.2014	TDS	9782	426	9782	Received
8.	ICICI Bank	036689	24.12.2014	Part	733601	538	7031	Received
9.	ICICI Bank	088355	16.05.2015	Part	733601	776	7031	Received
10.	ICICI Bank	088358	19.09.2015	Part	972604	951		
11.	HDFC	Online	19.09.2015	TDS	9820	953	9820	Received
12.	ICICI Bank	088360	20.11.2015	Part	1966302	1067	18750	Received
13.	ICICI Bank	088362	04.01.2016	Part	983151	1176	9375	Received
14.	ICICI Bank	088363	20.01.2016	Part	983151	1198	9375	Received
15.	ICICI Bank	545867	20.02.2016	Part	491575	1307	4688	Received
16.	ICICI Bank	545870	20.06.2016	Final	990908	1396	9371	Paid
17.	Total				9820984			

6. From the above, it is noticed that the assessee has made the payment within 3 years from the date of transfer of the original asset. We also notice that the Hon'ble Karnataka High Court in the case of *K.*

Ramachandra Rao (supra) has considered a similar issue of deduction u/s. 54F in case where the amounts are not deposited in the capital gains account scheme before the due date for filing the return of income, but is spent within the stipulated period towards acquisition of new assets. The relevant extract of the decision are as below:-

“4. Re.Point No. 1 Section 54(F) deals with capital gains on transfer of certain capital assets not to be charged in case, of investment on house. It reads as under:

54F. Capital gain on transfer of certain capital assets not to be charged income of investment in residential house.—

(1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or [two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

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

(b) the income from such residential house, other than the one residential house owned on the date, of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation. - For the purposes of this section - ** ** "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of [two years] after the date of the transfer of the original asset, 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, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to

long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under.. " section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then, —

(i) the amount by which —

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1),

exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.'

Section 54F(1) provides, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee within a period of one year before or two years after the date on which the transfer took place, : purchased or has within a period of three years after that date constructed a residential house, the capital gain shall be dealt with in accordance with the said provision. This is subject to the provisions of Subsection (4).

Sub-section (4) stipulates if the amount of net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which transfer of the original asset took place or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under Section 139 of the Act shall be deposited by him before furnishing such return in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under Section 139(1) of the Act in an account in any such bank or institution as specified and utilized in accordance with any scheme which the Central Government may, by notification in the official gazette framed in this behalf.

Sub-section (4) is attracted only to a case where the sale consideration is not utilized either for purchase or for construction of a residential house. It has no application to a case where the assessee invests the sale consideration derived from the transfer either in purchasing the property or constructing the residential house within the period stipulated in Section 54F(1). The proviso to Section 54F puts an embargo on the JYOTI application of Section 54F to cases which are mentioned in the said proviso. That is to be eligible for the benefit under Section 54F(1) the assessee should not be owning more than one residential house other than the new asset acquired or he should not purchase any residential house other than the new asset within a period of one year after the date of transfer of residential asset or constructs any residential house other than the new asset within a period of three years after the date of transfer of the

residential asset. In the entire scheme there is no prohibition for the assessee putting up construction out of sale construction received by such transfer of a site which is owned by him as is clear from the language used. It is open for the assessee to put up a residential construction or to purchase a residential house. It is not the requirement of law that he should purchase a residential site and then put up construction. Therefore, in the instant case admittedly the assessee has purchased a vacant site on 31.3.2001. He sold the original asset on 27.8.2003 on which date he was already owning a site. In fact even before sale of the original asset he had started construction on such site by availing loan from the Bank. In terms of Section 54F(1) all investments made in the construction of the residential house of the said site within a period of one year prior to 27.8.2003 would be eligible for exemption under Section 54F(1). Similarly all investments in the said construction after 27.8.2003 within a period of three years therefrom is also eligible for exemption. Therefore, the argument that such investment in putting up a residential construction cannot be made on a site owned by him to be eligible for exemption is without any substance. Both the Appellate Authorities have rightly extended the benefit to the assessee and there is no error committed by them which calls for interference.

4.1 Re.Question No.2 : "As is clear from Sub-section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he wants to claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."

5. For the aforesaid reasons both the substantial questions of law are answered in favour of the, assessee and against the Revenue. Therefore, we do not see merit in any of the appeals. Accordingly, all the four appeals are dismissed.”

7. The facts of the assessee’s case are similar where the assessee has invested the entire amount of capital gains towards acquisition of new asset before the stipulated period u/s. 54F. Therefore, respectfully following the above decision of the Hon’ble Karnataka High Court, we hold that the assessee is entitled for deduction u/s. 54F on the entire amount paid towards construction of the new flat and accordingly the addition made in this regard is deleted.

8. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 19th day of December, 2022.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 19th December, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar,
ITAT, Bangalore/Cochin.