

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

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

ITA No.309/Bang/2023
Assessment Year: 2013-14

Smt. Rehana Abdul Jabbar D.No.11-74, Iqbal Mansion Main Road, Surathakal Mangaluru 575 014 Karnataka PAN NO : AHNPA6571C	Vs.	ACIT (Intl. Taxation) Mangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, A.R.
Respondent by	:	Shri Nischal B., D.R.

Date of Hearing	:	19.07.2023
Date of Pronouncement	:	20.07.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) for the assessment year 2013-14 dated 24.2.2023. The assessee has raised following grounds of appeal:-

1. *“The orders of the authorities below in so far as they are against -the appellant, are opposed to law. equity. weight of evidence, probabilities, facts and circumstances of the case.*

2. *The learned CIT[A] is not justified in sustaining the disallowance of Rs. 2,73,674/- in respect of Interest claimed by the appellant u/s 24[b] of the Act under the facts and in the circumstances of the appellant's case.*

3. *The learned CIT[A] is not justified in sustaining the disallowance of the exemption claimed u/s 54F of the Act of Rs. 26,06,966/- towards the acquisition of a new residential house at Falnir, Mangalore under the facts and in the circumstances of the appellant's case.*

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4. *The learned CIT[A] is not justified in sustaining the addition of Rs. 48,00,000/- as unexplained cash credits under the facts and in the circumstances of the appellant's case.*

5. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies herself liable to be charged to interest u/s. 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*

6. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

2. The assessee has raised following additions grounds of appeal:-

1. *Without prejudice to the grounds raised in the original grounds of appeal, the learned A.O./ CIT[A] ought to have appreciated that the amount of capital gains arising from transfer of the original asset not charged u/s 45 as a result of the deduction claimed u/s 54F of the Act, ought to have been brought to tax as deemed "Capital Gains" only after the expiry of 3 years where the appellant had not constructed / purchased any residential house as per the conditions of Section 54F of the Act under the facts and in the circumstances of the appellant's case.*

2. *The appellant craves leave to add, alter, amend, substitute, change or delete any of the grounds of appeal.*

3. *For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed and justice rendered.*

3. We have heard the both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above additional grounds. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional ground for the purpose of

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adjudication as the action of the assessee is bonafide and accordingly the additional grounds are admitted.

4. First ground in this appeal is with regard to disallowance of Rs.2,73,674/- in respect of interest claimed by assessee u/s 24(b) of the Income-tax Act,1961 ['the Act' for short].

5. Facts of the case are that the assessee had claimed deduction u/s 24(b) of the Act with regard to interest paid on loan borrowed from SBM, Kadri, Mangalore by way of mortgage of the property. The assessee also claimed interest on a term loan for the 'Crystal Arcade' property availed from SBI, PB Branch. The AO noted that these loans were availed subsequent to the purchase of respective properties and by way of mortgage of the property itself, years after it is purchased and it also noted by the lower authorities that payment of purchase of property not made from these loans and impugned interest payment was disallowed. Against this assessee is in appeal before us.

6. We have heard the rival submissions and perused the materials available on record. U/s 24(b) of the Act, interest paid on borrowed capital used for acquisition of the house property is allowable as a deduction. In the present case, assessee is not able to prove that loans were availed and used for the purpose of acquisition of house property and on which interest was paid. In view of this, the claim of the assessee cannot be allowed and disallowance made by the lower authorities is justified. This ground of assessee's appeal is dismissed.

7. Next ground in this appeal is with regard to claim of deduction u/s 54F of the Act at Rs.26,06,966/-. Further, the

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assessee has raised additional ground stating that capital gain arising from the transfer of original asset needs to be charged u/s 45 of the Act in the event of denial of deduction u/s 54F of the Act and capital gain ought to have been brought to tax as deemed capital gain only after expiry of 3 years if the assessee has not constructed/purchased any residential house as per the conditions stipulated in section 54F of the Act. Since both grounds are inter-related, we consider these two grounds collectively.

8. Facts of the issue are that during the year under appeal, the assessee had sold the property located at Crystal Arcade, Balmatta Road, Mangalore on 06.12.2012 for a consideration of Rs.62,50,000/-. While computing the capital gains from the aforesaid sale, she had claimed a deduction of Rs.26,06,966/- u/s 54F of the Act towards reinvestment in residential house property at Kadri village, Mangalore. However, due to certain reasons, she was not able to construct a residential house on the aforesaid property. During the course of assessment proceedings, she therefore made an alternative claim u/s 54F towards reinvestment of a sum of Rs.3,00,00,000/- in a residential house located at Falnir, Mangalore.

8.1 The claim for deduction u/s 54F of the Act was made in the original return filed u/s 139(1) of the Act on 02.08.2013 itself, with the intention of constructing a residential house at Kadri village. However, as the aforesaid construction did not materialize, the assessee reinvested the proceeds in a residential house property located at Falnir, Mangalore vide sale deed dated 15.09.2015. The ld. A.R. further submitted that the said residential house has been acquired within 3

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years from the date of sale of the property located at Crystal Arcade and therefore the assessee is in compliance with all the conditions laid down in section 54F of the Act. It was further submitted by the Id. A.R. that the assessee is also the owner of only the one residential house property located at Falnir, Mangalore. Thus, the denial of the deduction u/s 54F of the Act merely on the ground that the claim has to be made in the return of income and that the funds have to be deposited into CGDA Scheme was unjustified.

8.2 In the remand report, the AO has stated that the assessee has not furnished any additional evidences for her claim of deduction u/s 54F and that she had not fulfilled the provisions mentioned in section 54F of the Act while claiming the exemption. In the rejoinder, the assessee reiterated that her claim was allowable in as much as the claim had been made even in the return of income filed u/ s 139[1] of the Act and only the property in which the aforesaid amount was reinvested was changed. However, the Id. AO denied the deduction u/s 54F of the Act. Against the order of AO, the assessee went in appeal before the Id. CIT(A).

8.3 The Id. CIT(A) observed that a plain reading of the above section indicates that the assessee has not complied with the requirements for claiming the exemption u/s 54F of the Act. The date of transfer of the Crystal Arc property as stated in the sale deed was 5.12.2012. The assessee was to have either purchased a residential house within one year before or within two years of this date or should have constructed a new residential house within three years of this date. The first limb is not satisfied in that the assessee

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did not purchase a residential house within the time limit specified. She has stated that she had intended to construct a house on the Kadri land, for which time would have been available up to 15.12.2015. However, she did not construct a residential house within three years of the transfer but instead purchased a residential house at Falnir. The description of this property as mentioned in the sale deed dated 15.9.2015 is as follows:

*NON-AGRICULTURAL IMMOVABLE HOUSE PROPERTY,
held on Mulgeni right situated in Attavara village of
Mangalore Taluk, Balmatta Ward, within the limits of
Mangalore City Corporation, within the registration sub-
district of Mangalore City, District of Dakshina Kannada and
comprised in:*

<u>R.S. No.</u>	<u>T.S. No.</u>	<u>KISSM</u>	<u>EXTENTA.C.</u>	<u>PORTION</u>
461A1	121 1A1	Converted	C017	Middle

*containing a Residential building bearing Door Number
16-11-612, together with all all mamul easementary rights
appurtenant thereto.*

8.4 Thus, the Id. CIT(A) also observed that it is clear from the above that the assessee has purchased a residential house well after the time-limits specified in the section. Further, as noted by the AO, she had also not deposited the capital gains in the account designated for the purpose, as required u/s 54F(4) of the Act. In view of the above factual matrix, the assessee's claim for exemption u/s 54F of the Act was not admitted by the Id. CIT(A) and dismissed this ground of assessee. Against this, the assessee is in appeal before us.

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8.5. Now the contention of the Id. A.R. is that assessee has acquired non-agricultural land along with 4 other co-owners at a value of Rs.4 crores on 14.12.2012 situated at Kadri village, Mangalore Taluk, Mangalore. However, assessee is not able to construct the house within the stipulated time due to certain reasons and thus, the assessee re-invested the proceeds in residential house property located at Falnir, Mangalore vide sale deed dated 15.9.2015. It is submitted that said residential house has been completed within 3 years from the date of sale of the original property sold on 6.12.2012 situated at Crystal Arcade as the purchase was made on 15.9.2015. According to the Id. A.R., the assessee has satisfied the requirement of section 54F of the Act and since the assessee had genuine reason for not constructing building within due date as prescribed by section 54F of the Act, though intention of assessee was to construct residential house building, deduction u/s 54F of the Act is to be granted to the assessee. Further, it was submitted that even if the assessee is not entitled for deduction u/s 54F of the Act in the assessment year under consideration, the capital gain arising from the transfer of assets situated at Crystal Arcade, Balmatta Road, Mangalore cannot be brought to tax in the assessment year under consideration since the assess is having period to construct new house up to 3 years after the date on which transfer took place.

9. We have heard the rival submissions and perused the materials available on record. In the present case, assessee sold the property situated at Crystal Arcade, Balmatta Road, Mangalore on 6.12.2012 for a consideration of Rs.62.5 lakhs. Later assessee purchased the new property on 14.12.2012 along with 3 co-owners for a consideration of

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Rs.4 crores. This property is non-agricultural property measuring about 1.47 acres. The contention of the assessee's counsel is that this is a residential property and assessee wants to construct residence in this property. Due to circumstances beyond her control, assessee failed to construct the residential house in this property within the stipulated time and later the assessee purchased new property on 15.9.2015 situated at Falnir, Mangalore. The said residential house has been acquired within 3 years and as such, the deduction u/s 54F of the Act is to be granted and this provision is to be interpreted liberally as this is a beneficial provision. The land purchased by assessee on 14.12.2012 is non-agricultural property and it cannot be said that assessee purchased this with an intention to construct the new residence and the investment in this land cannot be construed as investment in purchase of residential house property within the meaning of section 54F of the Act. The said property is an open land meant for residence. We could have liberally construed the provisions of section 54F of the Act so as to accord deduction had it been the residential property. However, this is a non-agricultural land, measuring in acres cannot be meant for construction of the residence. On other hand, it is an empty non-agricultural land. As rightly pointed out by the ld. D.R., till the date of purchase of new residential property on 15.9.2015, the assessee has to deposit the consideration received on sale of capital asset in a capital gain deposit scheme of any National bank before due date of filing return of income, which has not been done and till investing in new residential property on 15.9.2015. However, we find that the assessee not at all deposited the said money in a capital gain

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deposit scheme of any National bank. Thus, the claim of assessee that assessee is having intention to invest in new residential property have no merit and as such, the provisions of section 54F of the Act cannot be considered liberally in this case. This ground of assessee's appeal is dismissed.

10. The next argument of ld. A.R. is that even though assessee has not made investment in residential property before due date of filing return of income, the claim of assessee u/s 54F of the Act cannot be denied as the assessee has the time limit of 1 year before or 2 years after the date on which the transfer took place, purchase, or, within the period of 3 years after the date constructed residential house. Hence, the ld. A.R. pleaded that if the assessee is not fulfilling these requirements only after 3 years, deduction claimed u/s 54F of the Act could be brought to tax and not in this assessment year the deduction claimed u/s 54F of the Act cannot be brought to tax. In our opinion, this argument of the ld. A.R. is totally misconceived. We have to see the intention of the assessee in this assessment year under consideration. If the intention of the assessee was not to retain the cash, but to invest in construction of new residential house property and the delay was beyond the control of the assessee, then the assessee has to keep the consideration in a separate capital gain deposit scheme of any nationalized bank before the date of filing the return of income. In the present case, assessee has not adhered to this. On the other hand, assessee used the funds to purchase some non-agricultural land along with 3 other persons for a consideration of Rs.4 crores. Purchase of this non-agricultural land cannot be considered as an assessee's

intention to buy or construct a new residential house. If the intention of the assessee was to invest in as per section 54(2) of the Act or invested in construction of new residential house within the stipulated time, then assessee is entitled to claim deduction u/s 54F of the Act and the AO could postpone the taxing of the deduction claimed by the assessee u/s 54F of the Act. However, in the present case, there was no circumstances which show the assessee's intention to invest in new residential property. On the other hand, the assessee has purchased some non-agricultural land and making a plea that assessee was not able to construct new house in the said non-agricultural land due to circumstances beyond the control of the assessee. First of all, the said non-agricultural land cannot be said that property meant for construction of residential house and also the assessee was not able to demonstrate what are the circumstances provoked the assessee in not constructing new house during the stipulated period. Hence, in our opinion, the ld. AO is justified in disallowing the claim of the assessee u/s 54F of the Act and charging the same to tax. This additional ground of assessee is also dismissed.

11. Next ground of appeal is with regard to addition of Rs.48 lakhs as unexplained cash credit. The assessee has deposited Rs48 lakhs to the bank account. An enquiry from the AO, assessee stated the source of the said cash deposited as below:

Sl. No.	Date	Amount (Rs.)	Source	Name & Address and his/her relationship
1	10.08.2012	50,000	Used or Old house hold articles sold	N.A
2	11.08.2012	25,000	Excess cash in hand redeposit to account	N.A
3	17.08.2012	15,000	Old TV sale	N.A
4	03.09.2012	3,00,000	Gift from mother	Mrs Zubaida Banu, Iqbal Mansion, Surthkal, Mangalore.

5	06.09.2012	2,00,000	Gift from sister	Mrs. Zafeera, Adams, Bikarnakatte, Mangalore
6	03.11.2012	2,00,000	Gift from sister	Mrs. Naushad, flat no.703, Hermitage, Falnir, Mangalore
7	03.11.2012	2,00,000	Gift from sister	Mrs. Naushad, flat no.703, Hermitage, Falnir, Mangalore
8	07.11.2012	1,00,000	Gift from mother	Mrs. Zubaida Banu, Iqbal Mansion, Surthkal, Mangalore.
9	09.11.2012	3,00,000	Gift from Brother-in-law	Mr. Nazim, flat no.703, Hermitage, Falnir, Mangalore
10	10.11.2012	2,00,000	Gift from brother	Mr. Abdul Khader, Iqbal Mansion, Surthkal, Mangalore
11	19.11.2012	2,00,000	Gift from brother	Mr. Abdul Khader, Iqbal Mansion, Surthkal, Mangalore
12	21.11.2012	2,00,000	Gift from Brother	Mr. Nissar Ahmad, Iqbal Mansion, Surthkal, Mangalore
13	22.11.2012	3,00,000	Gift from Mother-in-law	Mrs. Bifathimma, Flat No. 102, Dynasty Apartments, Valencia, Mangalore
14	11.12.2012	6,00,000	Gift from Brother-in-law	Mr Sirajuddin Mulky Shafi (working in Soudi Arabia as on IT Engineer)
15	13.12.2012	1,55,000	Gift from sister	Mrs. Zafeera, Adams, Bikarnakatte, Mangalore
16	13.12.2012	1,75,000	Gift from Brother -in-law	a) Samshuddin Mohammed (working in Saudi Arabia) -4.50 lakhs b) Iqbal Ahmed, Flat No. 1008, Dynasty Apartments, Valencia, Mangalore Rs. 4.00Lakhs c) Abdul Jaleel, Flat No,1008, Dynasty Apartments, Valencia, Mangalore, Rs. 4.00 lakhs



				d) Sikander Shafi (working in Saoudi Arabia)
17.	14.12.2012	5.00lakhs	Gold Jewellery sale	NA

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11.1 The AO observed that the above sources of credit is not supported by any evidence including confirmation letters from the concerned authorities. Before the AO, the assessee was not able to prove the identity and creditworthiness of the parties and genuineness of the transactions. Hence, he made addition of Rs.48 lakhs. Before the Id. CIT(A), assessee submitted copies of few confirmation letters along with copies of the donors' identity proofs such as Aadhar cards and Passport copies and in few cases and filed income tax return copies of the creditors. These are forwarded to the Id. AO by Id. CIT(A). In remand report, the Id. AO submitted that in certain cases, the signatures of the donors do not match with the submission made at the time of assessment proceedings. Further, it was observed by the AO that for the financial year 2012-13, the assessee had stayed in India during 31.7.2012 to 12.9.2012 and 1.12.2012 to 5.1.2013 and as per confirmation letter furnished by the assessee, most of the cash was received from the relatives during the month of November, 2012 when the assessee was not in India. Further, assessee has not furnished the details of cash receipts of Rs.19,000/- from sale of household equipment and Rs.5 lakhs from the sale of gold jewellery. Hence, the claim of the assessee was rejected by the Id. CIT(A). Hence, the assessee is in appeal before us.

12. We have heard the rival submissions and perused the materials available on record. In our opinion, if the cash has been deposited into the assessee's bank account during her absence in India, it cannot be denied on the reason that money has been received by the assessee directly to the assessee's account during his absence from India and being so, the argument of the Id. AO that most of the cash received from the relatives during the month of November, 2012 when she was not in India is having no merits. As such, the credence cannot be given to the confirmation letter filed by

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the assessee is not justified. To that extent, we agree with the Id. A.R. that in her absence in India, she might have received cash from her relatives. However, the assessee has to prove the identity, creditworthiness of creditors and genuineness of the transactions. In this case assessee submitted before the lower authorities that assessee has received a gift from her mother, sister, brother, brother-in-law, mother-in-law, etc. and assessee is not able to file requisite evidence before the AO. Since the assessee is a non-resident and she was not able to gather requisite documents and confirmation in short time available before AO, in our opinion, the issue relating to the receipt of gift from various relatives is to be remitted to the file of AO for fresh consideration. Accordingly, we remit this issue relating to gifts received from various parties to the file of AO for fresh consideration.

12.1 Further, with regard to receipt of sale proceeds on old household articles and TV, the assessee has not filed any evidence. This claim of assessee cannot be accepted. With regard to deposit of Rs.25,000/-, which is emanated from past savings, in our opinion, credit to be given to that extent since it is a nominal amount saved by assessee. This issue is partly allowed for statistical purposes.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 20th July, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 20th July, 2023.
VG/SPS

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**