IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "A" BENCHES, BANGALORE

BEFORE MRS. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No. 656/Bang /2023
Assessment Year: 2011-12

Shri. Gobindram Chandramani Vivek, 674, 1st Stage, 1st Cross, Indiranagar, Bengaluru-560038 Karnataka	v.	Income Tax Officer, Ward-1(1), BMTC, Games College, 80ft Road, Koramangala Bangalore-560095 Karnataka
PAN:AAVPV4296N		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashok A Kulkarni, Advocate
Revenue by:	Ms. Neha Sahay, JCIT
Date of hearing:	03.09.2024
Date of pronouncement:	13.09.2024

O R D E R

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, has arisen from the appellate order dated 07.07.2023 passed by learned Commissioner of Income-tax(Appeals), NFAC,Delhi (hereinafter called "the CIT(A)") (vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1054203908(1)), for the assessment year 2011-12, which appeal before ld. CIT(A), NFAC in turn has arisen out of the assessment order dated 27.02.2014 passed by ld. Assessing Officer(hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961.

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Bangalore Benches, Bangalore, which reads as under:-

"1. The impugned Appellate Order is passed in violation of the principles of natural justice.

2. The NFAC committed an error in upholding disallowance of interest paid on borrowings to acquire the subject property which was sold.

3. The NFAC failed to appreciate that the deduction claimed u/s 24(b) in computing income from House Property is different and the deduction of interest claimed in computing capital gains is different, as such none of them exclude the operation of the other.

4. The NFAC ought to have allowed the interest on borrowed amount as deduction in computing capital gains.

5. The NFAC erred in not granting relief u/s 54 as all the conditions necessary for grant of relief in respect of the long term capital gains are fulfilled.

6. It should have been appreciated that only the unutilized amount has to be invested in a special account u/s 54(2) and when there is such utilization before the date of filing u/s 139, which includes 139(4), the requirement of deposit in special account does not arise.

7. The NFAC ought to have appreciated that the mere ownership of more than one house is of no relevance while granting relief either u/s 54 or 54F.

8. On a proper appreciation of the facts of the case and the circumstances in which the transactions which Shri. Rajappa entered into, there is no justification what so ever for adding the sum of Rs. 1,45,43,000/-(said to be Rs.1,49,41,000/-) as income from undisclosed source where such an amount had not at all been invested by the assessee as alleged by the AO in the light of the facts stated.

9. The NFAC has not decided the ground of appeal raised before it relating to addition of Rs.1,49,41,000/- as unexplained investment in the property.

10. The Appellant craves for leave to add, to delete from or amend the grounds of appeal."

3. The brief facts of the case are that assessee filed his return of income belatedly on 29th March, 2013 under section 139(4), declaring total income of Rs. 8,32,830/-. The return of income was selected for framing scrutiny assessment by Revenue under CASS. Statuary notices under section 143(2) and 142(1) were issued by the AO, during the course of assessment proceedings.

3.2 There are three issues arising in this appeal , raised by the assessee vide grounds of appeals filed with ITAT. The first issue concerns with disallowance of deduction

u/s 54 and 54F of the 1961 Act. The AO observed that the assessee has sold a residential property on 03.03.2011 for total consideration of Rs. 2,74,00,000/-, and claimed exemption under section 54 amounting to Rs. 1,64,74,870/-. The AO rejected the claim of the assessee for exemption u/s 54 as the assessee has not utilized the capital gains for the purchase or construction of new asset, and also that the assessee has not deposited the capital gains for construction or purchase of a new asset in the 'Capital Gain Accounts Scheme' with the Bank within the time allowed i.e. the due date prescribed under section 139(1) of the Act viz. 31.07.2011 in the instant case. As per the AO , the assessee purchased two residential houses on 25.04.2010, and hence, the assessee was owning more than one house on the date of transfer of original asset, and thus, the assessee has also not met this condition as stipulated u/s 54F, the assessee is not eligible for deduction u/s 54F also. The AO elaborately discussed the conditions stipulated u/s 54 and 54F of the 1961 Act in its assessment order. The AO came to conclusion that the assessee having not met the conditions of Section 54 and 54F , is thus not eligible for deduction u/s 54 or 54F of the 1961 Act.

4. Aggrieved by the denial of deduction u/s 54 and/or 54F by the AO, the assessee filed first appeal with ld. CIT(A). The assesseee has filed his return of income belatedly u/s 139(4) on 29.03.2013 , and the assessee has purchased residential house on 28.02.2013 for Rs. 1,64,74,780/- . The due date of filing of return of income u/s 139(1) was 31.07.2011, while the due date for filing return of income belatedly u/s 139(4) was 31.03.2013. The claim of the assessee for exemption under section 54 of the Act was rejected by the ld. CIT(A) on the grounds that the assessee has not deposited the unutilized capital gains with the 'Capital Gain Account Scheme' maintained with the bank on or before the due date of filing of return of income under section 139(1) of the Act. The ld. CIT(A) relied upon the **judgment and order of Hon'ble Supreme Court in the case of *Tarulata Shyam And Ors v. Commissioner Of Income-Tax (1977) 108 ITR 345(SC) and the***

judgment and order of Hon'ble Bombay High Court in the case of Humayun Suleman Merchant v. CCIT reported in (2016) 387 ITR 421(Bom.). Similarly, ld. CIT(A) disallowed the alternative claim of the assessee for deduction u/s 54F on the grounds that the assessee purchased two residential houses on 25.04.2010, and hence , on the date of transfer of original asset, the assessee was in possession of more than one residential house. The assessee had , however, stated before ld. CIT(A) that these two properties were merely registered in his name as a measure of security. The assessee further stated that during the financial year 2007-08, the assessee had entered into an agreement with one Sri Rajappa , for purchase of Agricultural Land at Anekal, and had paid Rs. 81.90 lacs. The assessee submitted that the said Anekal did not hand over the said lands as agreed upon in the agreement to sale dated 11.01.2007 and despite several request and reminders, the said Rajappa did not get the said land at Anekal registered or converted in the assessee's name. Therefore, in order to safeguard his interest, the assessee got the two properties at Mavelli , Bangalore , belonging to Sri Rajappa, registered in his name.These contentions of the assessee were rejected by ld. CIT(A).

5. Aggrieved, the assessee has now filed an appeal before the Tribunal, and has raised Ground Nos. 5 to 7 in connection therewith. It is the contention of the ld. counsel for the assessee that the assessee has made substantial compliance by making investment in residential property on or before the due date of filing of the return of income under section 139(4) of the Act. The assessee had made investment of Rs. 1,64,74,870/- on 28th February, 2013 which was prior to filing of his return of income on 28.03.2013 u/s 139(4), while the last date of filing of the return of income under section 139(4) was 31st March, 2013. It is claimed by the ld. counsel for the assessee that substantial compliance has been made by making investment in the new residential house on or before the date of filing of the return of income under section 139(4). It was submitted by ld. Counsel for the assessee that no amount was deposited by the assessee in the Capital Gain Deposit Scheme

with the banks on or before the due date of filing of return of income under section 139(1). Our attention was drawn to the provisions of Section 54. The ld. counsel for the assessee relied upon the judgment and order of Hon'ble Karnataka High Court in the case of ***CIT v. K. Ramachandra Rao (2015) 56 taxman.com 163(Kar.HC),*** and also the judgment and order of Hon'ble Karnataka High Court in the case of ***Fathima Bai v. Income Tax Officer, (2009) 32 DTR 243(Kar.)***. Further, reliance was placed by the assessee on the order of Bangalore-Tribunal , dated 09.12.2020 in the case of ***Ramaiah Dorairaj v. Income Tax Officer*** in ITA No. 1899/Bang/2018, as well the order dated 31.10.2012 of the ITAT, Chennai Benches in the case of ***ACIT v. Shri C. Ramabrahmam*** in ITA No. 943/Mds/2012. It is also submitted by ld. counsel for the assessee that the assessee is restricted its claim towards deduction under section 54 of the Act only , and so far as alternative claim of deduction being made by the assessee under section 54F of the Act, the assessee is withdrawing its claim of deduction under section 54F of the Act . The ld. Counsel for the assessee signed in Form No.36 in the relevant column of grounds of appeal, signifying assessee's intention to withdraw its claim of deduction u/s 54F.

6. The ld. JCIT-DR for the Revenue, on the other hand, vehemently argued that no deduction u/s 54 can be allowed to the assessee as it has not filed his return of income within the due date as prescribed under section 139(1), and rather return of income was filed belatedly under Section 139(4). It was submitted that section 54 clearly stipulates that for claiming deduction under Section 54 wherein the amount is not so utilized prior to the due date as prescribed u/s 139(1) for purchasing the new residential house property, the amount is to be deposited with the 'Capital Gain Account Scheme' with bank within the due date as prescribed under section 139(1) of the Act, which as per ld. JCIT DR , the assessee failed to do so. Prayers were made by ld. JCIT DR to deny deduction under Section 54 of the Act. At this stage, the judgment and order of the Constitutional Bench of Hon'ble Supreme Court in the case of ***Commissioner of Customs(Imports) v. Dilip Kumar & Company(Civil***

Appeal No. 3327 of 2007) was referred to, and both the rival parties made their contentions for or against the allowability of deduction under section 54 of the Act in view of the decision of Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of ***Commissioner of Customs(Imports) v. Dilip Kumar & Company(Civil Appeal No. 3327 of 2007).*** The assessee sought liberty from the Divisions Bench to file case laws to support its contentions, which was granted. The assessee has now filed paper book-3, and has relied upon the judgment and order of Hon'ble Supreme Court of India in ***Government of Kerala v. Mother Superior Adoration Convent , reported in (2021) 126 taxmann.com 68(SC)*** *and decision of ITAT, Bangalore Bench in the case of* ***Shri M N Sheshagiri , Mysore v. The ITO, dated 27.01.2020 in ITA no.2203/Bang/2019*** *and also ITAT, Bangalore order in* ***Smt. Tehera Begum v. The ITO, dated 31.01.2020 in ITA No. 613/Bang./2019.***

7. We have considered rival contentions and perused the material on record including cited case laws. The background of the whole issue is enumerated in the preceding para's 4-6 of this order, and are not repeated. As Admitted by both the parties, the facts are undisputed between rival parties. The claim of deduction u/s 54F stood withdrawn by the assessee itself, and hence we are not required to adjudicate the same in view of concession granted by the assessee itself. Now, the dispute between the rival parties is within narrow compass, and entails interpretation of provisions of Section 54 of the 1961 Act. At this stage, it will be relevant to reproduce the provisions of Section 54 of the 1961 Act, which reads as under:

> ***"Profit on sale of property used for residence.***
>
> ***54.*** *[(1)] [[Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset [***], being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (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, one residential house in India], then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i)	*if the amount of the capital gain [is greater than the cost of [the residential house] so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or*
(ii)	*if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:*

*[**Provided** that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India, and where such option has been exercised,—*

(a)	*the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India" had been substituted;*
(b)	*any reference in this sub-section and sub-section (2) to "new asset" shall be construed as a reference to the two residential houses in India:*

***Provided further** that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.]*

Following third proviso shall be inserted after the second proviso to sub-section (1) of section 54 by the Finance Act, 2023, w.e.f. 1-4-2024 :

Provided also *that where the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account for the purposes of this sub-section.*

[***]

[(2) The amount of the capital gain 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 utilized 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 ***[****, subject to the third proviso to sub-section (1)****]*** *be deemed to be the cost of the new asset :*

Provided *that if 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 not so utilised shall be charged under section 45 as the 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 such amount in accordance with the scheme aforesaid.*

Following second proviso shall be inserted after the existing proviso to sub-section (2) of section 54 by the Finance Act, 2023, w.e.f. 1-4-2024 :

Provided further *that the capital gains in excess of ten crore rupees shall not be taken into account for the purposes of this sub-section."*

7.2 It is an admitted position between both the parties that the assessee has sold residential flat on 3rd March 2011 in Residential Building 'Mantri Classic' situated at ST Bed, Koramangala , Bengaluru for Rs. 2,74,00,000/- . The assessee did not file his return of income within due date prescribed u/s 139(1) for the impugned

assessment, the due date being 31.07.2011. The assessee admittedly did not deposited the long term capital gain arising on sale of aforesaid residential flat with 'Capital Gain Account Scheme' with notified banks/institutions on or before the due date of filing of return of income u/s 139(1), as is stipulated u/s 54(2). The assessee purchased residential house for a total consideration of Rs. 1,64,74,870/- on 28.02.2013(date of transfer of original asset being on 03.03.2011) i.e. within two years allowed for seeking exemption of long term capital gains earned on transfer of original asset vide Section 54, which date of purchase of new asset was also a date prior to extended due date of filing of return of income u/s 139(4). The assessee claimed exemption u/s 54 on long term capital gains earned on transfer of original asset in his belated return of income filed with Revenue u/s 139(4) on 28.03.2013 i.e. within the due date prescribed u/s 139(4), which is an extended time line for filing of return of income in case the tax-payers fail to file their return of income within the due date prescribed u/s 139(1).

7.3 The assessee has relied upon the judgment and order of Hon'ble Supreme Court in the case of ***Government of Kerala v. Mother Superior Adoration Convent, reported in (2021) 126 taxmann.com 68(SC),*** to support his stand. The assessee has also relied upon jurisdictional High Court judgment and order dated 14.07.2014 in the case of ***CIT v. K Ramachadra Rao , reported in (2015) 56 taxmann.com 163(Kar. HC)*** , Hon'ble Jurisdictional High Court judgment and order in the case of ***Fathima Bai v. ITO , reported in (2009) 32 DTR 243(Kar HC)*** , and order dated 09.12.2020 of ITAT, Bangalore in the case of ***Shri Ramaiah Dorairaj v. ITO, in ITA No. 1899/Bang/2018*** , to support its contentions.

7.4 Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of ***Dilip Kumar & Co.(supra), judgment and order of Hon'ble Supreme Court in the case of Collector of Central Excise v. Parle Exports Private Limited (1989) 1 SCC 345(SC) and judgment and order of Hon'ble Supreme Court in the case of Union of India v. Wood Papers Limited (1990) 4 SCC 256.*** As has been held by

Hon'ble Supreme Court **,** the exemption provisions are to be interpreted strictly and thus to be strictly construed, and any ambiguity in strict interpretation is to be decided in favour of Revenue. In taxing statute, there is no equity and there is no room for indentment. If the simple, plain and literal language of the statute is clear and unambiguous , then the same is to be applied, howsoever harsh the consequence may be. However, while interpreting charging section and bringing to subject to tax is also to be strictly construed but any ambiguity is to be decided in favour of subject. While interpreting exemption provision, a distinction is to be created in two stages, the first stage being eligibility of the subject to seek exemption and the onus is on the subject to prove its eligibility to get exemption by strictly construing the exemption provisions and rule of strict interpretation shall apply. While crossing hurdle at the first stage, wherein the onus being on the subject to demonstrate its eligibility to get the exemption/deduction by strict interpretation of taxing statute . But, once the first stage of hurdle being crossed and the subject becomes eligible to claim exemption , then the exemption provision is to be liberally construed by allowing full play to seek the objective to be achieved of the said provision under the Statute. Thus, at the first stage of applicability and eligibility of the subject to get exemption, the ambit and the scope of exemption provision could not be widened and has to be strictly construed , but once that hurdle is crossed , the exemption provision is to be liberally construed to give full effect to its intended purposes. The reason for strictly construing the exemption provision at the first stage is that these exemption provisions have tendency to increase the burden on the unexempted class , as the Revenue foregone owing to exemption provisions shall increase if not strictly construed and any ambiguity is to be decided in favour of Revenue. Thus, for the applicability of the deduction/exemption clause, the eligibility conditions are to be strictly met by the assessee. But, when the eligibility conditions are met , then the exemption/deduction provisions are to be liberally construed to achieve its manifest purposes.

7.5 Coming back to the instant case, the provision of Section 54 was enacted to give exemption to individuals or HUF's from long term capital gains arising on sale of residential house property in case when long term capital gain on transfer of original asset (being a residential property being long term capital asset transferred by the individual or HUF hereafter called as 'original asset') is invested in purchase or construction of new residential property within prescribed time as stipulated u/s 54, in order to encourage individuals or HUF's to invest in residential properties , on meeting of stipulated conditions as prescribed u/s 54 . The assessee is an individual who has earned long term capital gains on sale of residential flat being a long term capital asset held by the assessee . The assessee has filed return of income u/s 139(4) on 28.03.2013 in which the assessee has claimed the benefit of deduction u/s 54, as the assessee has made investment in new residential house within two years from the date of transfer of original asset which also falls before the extended due date of filing of return of income u/s 139(4). The conditions as per Section 54 stipulates that the assessee has to be an individual or HUF, which condition the assesseee duly fulfilled in the instant case. Further, the assessee has to make investment of long term capital gains earned on sale of residential property(original asset) by making purchase of one residential property , within one year prior to sale of original asset or within 2 years from the date of sale of original asset , or has to construct one residential property within 3 years from the sale of residential property(the assessee also met this condition as it purchased residential flat within 2 years of sale of original asset viz. the original asset was sold on 03.03.2011 and new residential flat was purchased on 28.02.2013). Section 54 stipulates that the new asset is to purchased or constructed, as the case may be prior to furnishing of return of income to be filed u/s. 139. It no where stipulates that the said return of income is to be filed within due date prescribed u/s 139(1), and even belated return filed within extended due date falls u/s 139(4) , which sub-section(4) also falls within Section 139. The assessee complied with these conditions. Thus, the assessee has substantially complied with the provisions of the

1961 Act, as the assessee is individual(satisfying this condition u/s 54) and has duly declared long term capital gain in return of income filed u/s 139(4) , and taken exemption u/s 54 by investing in purchase of new residential flat within stipulated time of 2 years from the date of transfer of original asset (satisfying this condition also-sale of original asset on 03.03.2011 while purchase of new residential flat on 28.02.2013). The only thing which assessee did not complied with is to deposit the capital gains arising from the sale of original asset in the 'Capital Gain Accounts Scheme' with notified banks or institutions on or before the due date of filing of return of income u/s 139(1), as is stipulated u/s 54(2). In our considered view , the assessee having made compliance to cross the hurdle at the first stage by proving its eligibility for deduction/exemption u/s 54 and has discharged its onus by making investment by way of purchase of residential house within stipulated time period of 2 years from the date of transfer of original asset as mandated u/s 54 , and that too before filing of return of income u/s 139(4) , having also claimed such deduction/exemption u/s 54 in the return of income filed u/s 139(4), the non deposit of unutilized capital gain in Capital Gain Account Scheme with notified banks/institutions shall not be fatal to its claims subject to verification that there was no diversion of funds received on the sale of original asset, and the intention to invest in new asset was manifested by the assessee by retaining the long term capital gains on transfer of original asset which ultimately were invested in purchase of new asset as is required u/s 54, and in the interim the assessee might not have deposited the aforesaid long term capital gains on the transfer of original asset received by him in the 'Capital Gain Account Scheme' with the notified banks/institutions . Once the first stage of hurdle is cleared, the exemption provision is to be widely construed to give full effect to its intended purposes. The mandatory conditions having fully met and the assessee proving its eligibility to claim deduction/exemption u/s 54 , in our considered view, the condition of deposit with banks and/or institutions with 'Capital Gain deposit Scheme' on or before due date u/s 139(1) , in such cases where otherwise the assessee has invested by way of

purchase of new residential house with in 2 years and that too on or before the due date of filing of return of income u/s 139(4) and the return of income also having being filed by the assessee within the extended time limit i.e. due date of filing of return of income u/s 139(4) wherein the exemption/deduction u/s 54 was claimed in the return of income filed by the assessee and the proceeds received towards long term capital gains on the transfer of original asset having not been diverted for some other purposes but ultimately utilized for the purchase of new assets, and thus in such situation non-compliance thereof of non deposit of unutilized amount of capital gains with banks/institutions in 'Capital Gain Deposit Scheme' shall not be fatal to claim of deduction u/s 54 and shall not debar the assessee from claiming exemption/deduction u/s 54 as the assessee complied by making actual investment by way of purchase in residential property within 2 years from the date of transfer of original asset which date was also date prior to extended time line u/s 139(4) and having actually filed his return of income within extended time line u/s 139(4) and other conditions also having been met. So far as whether or not diversion of funds took place to the tune of long term capital gains received by the assessee on transfer of original asset requires verification by the AO. This being a beneficial provision to encourage the assessee being individuals or HUF, to own their own residential house property and to reinvest the long term capital gains arising from sale of residential house property into new residential house property within stipulated prescribed time lines , and the assessee having crossed first hurdle of having proved its eligibility i.e. the assessee being individual having earned long term capital gains arising on sale of residential property and have invested in the purchase of residential house within two years from the date of transfer of original asset which also falls before the due date of filing of return of income u/s 139(4) and having also filed his return of income with Revenue u/s 139 as stipulated u/s 54 i.e. within extended due date stipulated u/s 139(4) as sub-section (4) of Section 139 also falls within Section 139, the eligibility to claim deduction u/s 54 stood proved by assessee , and now the full effect is to be given to this beneficial provision to

achieve its intended purposes of encouraging investments by individuals or HUF's to own their own residential houses by reinvesting capital gains arising from the transfer of residential house property , and in our considered view failure to deposit of unutilized amount of capital gain arising on transfer of original asset with 'Capital Gain Account Scheme' with notified banks/institutions will not debar the assessee from claiming deduction u/s 54 being a beneficial provision to encourage investment in residential house property by individuals or HUF's, as substantial compliance having been made by the assessee by purchasing new residential property within stipulated time prescribed for filing of return u/s 139(4), provided there is not diversion for some other purposes of long term capital gains received on the transfer of original asset. Thus, as adjudicated and held by Co-ordinate Bench in the case of ***Shri Ramaiah Dorairaj(supra)*** which has been relied upon by the assesee himself, the issue is remitted to the file of the AO for fresh consideration, to see the end utilization of long term capital gains arising on transfer of original asset. Thus, the appeal of the assessee on this issue is allowed for statistical purposes. We order accordingly.

8. The second issue concerns itself with the allowability of interest paid on housing loan amounting to Rs.18,38,292/- towards cost of apartment. The AO observed that the assessee has already claimed deduction under section 24(b) of Rs. 4,53,628/- as interest on housing loan while computing his income from the house property. Thus, the AO disallowed the deduction claimed by the assessee under Section 48 towards cost of acquisition to the tune of Rs. 18,38,292/- being interest on housing loan, as the assessee has already availed deduction of interest under section 24(b) of the Act.

9. Aggrieved, the assessee filed first appeal with Ld. CIT(A), and the Ld. CIT(A) dismissed the appeal of the assessee on the ground that the interest paid to bank for acquiring capital asset would be eligible as part of cost of acquisition provided that the assessee should not have claimed the deduction towards interest paid on

housing loan to bank under section 24(b) , but, since the assessee has claimed the deduction under section 24(b) with respect to the interest on housing loan, it amounts to double deduction of the same amount which is not allowed. The ld. CIT(A) relied upon the judgment and order of Hon'ble Supreme Court in the case of ***Escorts Limited v. Union of India (1993) 199 ITR 43(SC) .*** The ld. CIT(A) affirmed the assessment order passed by the ld. Assessing Officer .

10. Aggrieved, the assessee has now filed appeal before the Tribunal . It was submitted by ld. Counsel for the assessee that there is no double deduction as both the deductions operate on different field as interest on housing loan is allowed as deduction under section 24(b) , while interest paid on the housing loan is added to cost of acquisition for computing capital gain chargeable to tax under section 48, and hence it is not a double deduction. Our attention was drawn to Section 48 of the Act , and to the newly inserted proviso to Section 48, in which it is categorically stated that once deduction under section 24(b) is claimed towards interest on housing loan, then the said interest on housing loan cannot be added to the cost of acquisition u/s 48 while computing capital gains. It was submitted that the residential property being original asset was sold on 3rd, March, 2011 , while the new residential house was purchased on 28th February, 2013.

10.2 The ld. JCIT-DR submitted that double deduction is not permissible. The intent of law is that the double deduction is not allowed under section 24(b) towards interest paid on housing loan as well while computing cost of acquisition u/s 48 of the Act for the purposes of computing capital gains chargeable to tax . It was submitted that since, there was misuse of the provisions of law and hence this loophole was plugged by the Parliament by introducing first proviso to Section 48 clause (ii).

10.3 The assessee, in rejoinder, relied upon the judgment and order of Hon'ble Supreme Court in the case of ***CIT(A) v. Rajasthan & Gujarati Charitable Foundation (2018) 402 ITR 441(SC).***The ld. Counsel for the assessee also relied

upon the order of the ***ITAT, Channai in the case of ACIT v. Shri C Rambhahmam , ChEnnai, in ITR No. 943/Mds/2012, order dated 31.10.2012.*** The ld. Counsel for the assessee submitted , without prejudice, that he is conceding that deduction should be allowed to the tune of Rs. 13,84,664/- instead of Rs.18,38,292/- , by deducting interest on housing loan claimed as deduction u/s 24(b) to the tune of Rs.4,53,628/- , and it was submitted that a new proviso which is added to section 48 of the 1961 Act clause (ii) is prospective in nature.

11. We have considered rival contentions and perused the material on record including cited case laws. The background of the dispute between rival parties is enumerated in para 8-10 supra. The dispute is in narrow compass, whether interest paid on housing loan for acquiring a capital asset can be added towards cost of acquisition u/s 48 while computing capital gains chargeable to income-tax arising from sale of capital asset. The interest on housing loan is allowed as deduction u/s 24(b) of the Act , subject to conditions and monetary ceiling prescribed therein. The assessee having availed the said deduction u/s 24(b) towards interest on housing loan on acquisition of capital asset, cannot claim double deduction of the same interest on housing loan by making addition to cost of acquisition of capital asset u/s 48 for computing capital gains chargeable to income-tax. So much so as that if income cannot be doubly taxed , there cannot be double deduction on account of same expenditure, unless the statute itself specifically provide for higher weighted deductions , say for example u/s 35. Once, the assessee has availed deduction u/s 24(b) on account of interest paid on housing loan , there could not be again addition of the same interest on housing loan to the cost of acquisition u/s 48 for computing capital gains chargeable to income-tax, as the said increased cost of acquisition is deducted while computing capital gains chargeable to income-tax. The income is chargeable to tax u/s 4, which is a charging section. Scope of Income is defined u/s 5. The heads of income is enumerated u/s 14. There are five heads of income, namely income from Salaries, Income from House Property , Profits and Gains of

Business of Profession, Capital Gains, and lastly Income from other sources. Thus, the income is to be brought to income-tax under these five heads, the object being to compute income chargeable to income-tax under the charging Section 4. Thus, once interest on housing loan on acquisition of capital asset is allowed u/s 24(b), then the same cannot be allowed by adding to cost of acquisition of capital asset u/s 48 in order to compute capital gains chargeable to income-tax. It will lead to double deduction as the object of computing income chargeable to tax under the head *'Income from House Property'* as well '*Income from Capital Gains'* is to compute total income chargeable to income-tax under the charging section under the different heads of income as stipulated u/s 14 , and hence double deduction is not permissible unless specifically provided by the statute. There is an authority on this principle vide Hon'ble Supreme Court judgment and order in the case of ***Escorts Limited v. UOI (1993) 199 ITR 43(SC)***, and the ratio decidendi of the aforesaid decision will be squarely applicable in the instant issue before us. Thus, once the deduction of interest on housing loan u/s 24(b) is claimed , there is no question of its being added to cost of capital asset u/s 48 while computing cost of acquisition which would go on to reduce capital gains chargeable to income-tax u/s 48, as it will lead to double deduction. As contended by ld. DR, there was a misuse by claiming double deduction on this count, and law makers brought first proviso to clause (ii) to Section 48 by Finance Act, 2023 wef 01.04.2024. This first proviso is to clarify the law as it always stood, which is supported by the judgment and order of Hon'ble Supreme Court in the case of ***Escorts Limited(supra)*** . The ld. Counsel for the assessee has also himself submitted, of course without prejudice, that deduction claimed u/s 24(b) of interest on housing loan to the tune of Rs. 4,53,628/- may not be added to the cost of acquisition of the capital asset u/s 48. Under the facts and circumstances, in our considered view, the assessee cannot be allowed double deduction firstly by allowing deduction on account of interest paid on housing loan on acquisition of capital asset u/s 24(b) and secondly of the same interest on housing loan being added to the cost of acquisition of capital asset u/s 48 to be

deducted from full value of consideration while computing income chargeable to tax under the head Capital gains. We direct AO to make enquiry as to the interest on housing loan claimed as deduction u/s 24(b) in the impugned assessment year as well in the preceding years, and in case the interest on housing loan is claimed as deduction u/s 24(b) in the current year and /or preceding years, then the same shall not be added to the cost of acquisition for the purposes of Section 48 for computing income chargeable to tax under the head Capital gains, otherwise it would lead to double deduction of the same expenses viz. interest on housing loan on acquisition of capital asset, which is not permissible. The assessee reliance on judgment and orders of ***Rajasthan and Gujarati Charitable Foundation(supra)*** , in our humble considered view is not correct, as it was in context of computing firstly, application of income for charitable purposes by claiming , inter-alia, deduction of entire cost of capital assets u/s. 11 from the income derived from property held under trust wholly for charitable purposes in the case of charitable organizations and for determining accumulation of income required thereof keeping in view provisions of Section 11 , and secondly while computing the income in commercial parlance by taking into effect depreciation expenses on such capital assets under Section 32 of the 1961 Act. Section 11 falls within Chapter III which concerns itself with 'Income which do not form part of total income'. This claim of deduction towards the cost of capital assets acquired as application of income u/s 11 , as well simultaneously computing income of charitable trust or institutions in commercial parlance after claiming deduction of depreciation expenses on such capital asset as provided u/s 32, is now barred by introduction of Section 11(6) of the 1961 Act by Finance Act , 2014 w.e.f. 01.04.2015, wherein it is stipulated that in respect of any asset, acquisition of which has been claimed as an application of income under Section 11 in the same or any other previous year, the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of such asset. But, in the instant case, both the deductions viz. allowing interest on housing loan u/s 24(b), as also allowing it to be added to the

cost of acquisition of capital asset u/s 48 for computing income chargeable to income-tax, is certainly a double deduction both going to reduce taxable income chargeable to income-tax u/s 4 albeit under different heads of income specified u/s 14. The ratio of decision of Hon'ble Supreme Court in the case of ***Escorts Limited(supra)*** shall be squarely applicable, and double deduction is not permitted. Thus, in our considered view, the assessee be allowed interest on housing loan for acquisition of capital asset while computing cost of acquisition u/s 48 for computing capital gains chargeable to tax so far as such interest on housing loan on acquisition of capital asset is not claimed as deduction u/s 24(b) by the assessee, and that is what the assessee is also now contending, albeit without prejudice. Thus, the AO is required to verify whether or not interest on housing loan on the acquisition of capital asset was claimed as deduction by the assessee u/s 24(b) in the current year as well in the preceding years, and then allow the claim set up by the assessee for inclusion of interest on housing loan in the cost of acquisition of the capital asset u/s 48 accordingly after excluding aforesaid double deduction .The assessee will be given opportunity of being heard by the AO. The issue is restored to the file of the AO accordingly. We order accordingly.

11. The third issue relates to the addition made by the AO and as confirmed by ld. CIT(A), on account of allegation of unexplained investment made by the assessee in two residential house properties on 24.05.2010. The ld. Assessing Officer observed that as per AIR information, the assessee has purchased two properties during the Financial Year 2010-11. The first Property being New No. 12, Mavalli, Upparalli Road, measuring 2659 square feet , for Rs. 87,26,000/- and the second property at 11/1 Upparalli Road, Mavalli, Bangalore measuring 1406 square feet , for Rs. 58,17,000/-. The assessee submitted that these two properties were merely registered in his name as a measure of security. The assessee submitted that during the Financial Year 2007-08, he has entered into an agreement with one Sh. Rajappa for purchase of agricultural land at Anekal and has paid Rs. 81.9 Lac to said Sh.

Rajappa, but the said Rajappa did not handed over the said agricultural lands as agreed upon in the agreement to sell dated 11th January, 2007. Several requests were made to Sh. Rajappa , but Sh. Rajappa did not get the Anekal land converted or registered in name of the assessee . Thus, in order to safeguard his interest, the assessee got these two properties situated at Mavalli, Bangalore belonging to Sh. Rajappa registered in his name. The assessee also submitted that later on Sh. Rajappa filed two Suits in the City Civil Court claiming that the assessee has registered these two properties by force. The assessee also submitted that later on after filing of the suit, the compromise was reached between him and Shri Rajappa, and the Court held that the registration is null and void. The assessee was asked by the AO to file the compromise deed and on perusal of the same, the ld. Assessing Officer observed that the compromise does not reveal anything about Sh. Rajappa returning the money of Rs.81.9 Lacs. The AO also observed that the assessee is still the owner of the properties at Mavalli as per the sale deeds, wherein it has been mentioned that the assessee has paid cash for the purchase. Thus, the ld. Assessing Officer held that these purchase of properties as reported in AIR are genuine transactions of the purchase of properties, and the assessee is unable to explain the sources for the same. Therefore, the total consideration paid for the purchase of the properties were brought to tax by the AO as an unexplained investment made by the assessee in the aforesaid two properties , to the tune of Rs. 1,49,41,000/-.

12. Aggrieved, the assessee filed first appeal with Ld. CIT(A) , and challenged the addition to the tune of Rs. 1,49,41,000/- made by the AO towards unexplained investment in the two properties vide Ground Nos. 6 & 7 in memo of appeal. The Ld. CIT(A) observed that the two houses at Mavalli were registered in the name of the assessee for Rs. 81,90,000/-. The Ld. CIT(A) relied upon the judgment and order of Hon'ble Supreme Court in the case of ***Balbir Singh Maini 398 ITR 531(SC).*** The ld. CIT(A) referred to the provisions of Section 2(47)(v) of the 1961 Act, and Section 53A of the Transfer of Properties Act , and concluded that in the instant case **,** the

transfer was complete on the registration of aforesaid two properties in the name of the assessee. The Ld. CIT(A) further observed that the assessee himself has admitted that these two properties were registered in the name of the assessee which means that the transfer is complete. The ld. CIT(A) observed that even if the properties were registered back to previous owners subsequently, there is no doubt that the assessee was owning more than two residential properties which were registered in his name and section 54F is not available in such cases. The ld. CIT(A) referred to the provisions of Section 54 and 54F, and disallowed the claim of deduction u/s 54 and 54F.

13. Aggrieved, the assessee filed second appeal with Tribunal, challenging the addition of Rs. 1,49,41,000/- made by the AO as later confirmed by ld. CIT(A) with regard to unexplained investment in two residential properties situated at Mavalli, vide ground number 8 and 9 raised in the memo of appeal filed with ITAT. At the outset, ld. counsel for the assessee submitted that the Ld. CIT(A) has not properly adjudicated this issue as ld. CIT(A) mistook that these two assets are related to the claim of deduction under section 54F of the Act , while there is no such claim of the assessee under section 54F of the Act with respect thereto these two properties at Mavalli, rather an addition was made by the AO to the tune of Rs. 1,49,41,000/- on account of unexplained investment. It was further submitted by ld. Counsel for the assessee that the assessee has now filed following additional evidences(PB/Page 91-189) before ITAT for the first time u/r 29 of Income Tax(Appellate Tribunal) Rules, 1963 which are important for adjudicating this issue, in the paper book filed with ITAT , which are as under:-

> *"1. Copy of GPA between Smt. Jayashree in favour of the appellant.*
>
> *2. Copy of letter filed before Income Tax Officer, Ware-1(1), Bengaluru dated 29.01.2014.*
>
> *3. Copy of the judgment of the City Civil & Sessions Judge, Bengaluru.*
>
> *4. Copy of the petition filed before the Hon'ble High Court of Karnataka at Bengaluru.*

5. Copy of the letter dated 17.10.2023 filed before the jurisdictional Assessing Officer requesting the statement recorded during the assessment proceedings."

13.2 It is the say of the ld. counsel for the assessee that none of the authorities below have scrutinized / verified these additional evidences which are now filed for the first time before ITAT , and these documents which are now filed as additional evidences for the first time before ITAT, are vital for adjudication of this issue of unexplained investment by the assessee to the tune of Rs. 1,49,41,000/- in these two properties at Mavalli. An application dated 06.02.2024(page 190-191/PB) for admission of additional evidences is filed by the assessee under Rule 29 of Income Tax Appellate (Tribunal) Rules, 1963, and prayers were made to admit these additional evidences. The prayer is also made to set aside and restore the matter back to the file of the ld. Assessing Officer for denovo determination of this issue , after considering and verification of these additional evidences filed by the assessee for the first time before ITAT . It was submitted that the assessee has given advance amount of Rs. 81.90 lacs to one Sh. Rajappa in financial year 2007-08 for purchase of agricultural land, and said Mr. Rajappa could not transfer the aforesaid agricultural land in the name of the assessee, and as a security his two residential properties at Mavalli were got registered by the assessee in his name. These two properties were ultimately returned back under the order of the Court. It was submitted that under the Court directions, the sale was declared null and void. Prayers were made by ld. Counsel for the assessee to restore the matter back to the file of ld. Assessing Officer for denovo determination of this issue after considering the additional evidences filed for the first time before ITAT.

13.3 The ld. JCIT-DR submitted that Revenue did not have objection if the matter is restored back , keeping in view additional evidences filed by the assessee.

14. We have considered rival contentions and perused the material on record. The AO had made additions to the tune of Rs. 1,49,41,000/- towards unexplained

investment made by the assessee during the impugned assessment year, in two residential properties situated at Mavalli. The ld. CIT(A)/NFAC mistook the said additions made by the AO on account of unexplained investment, as being claim of deduction u/s 54F. As per documents placed by the assessee on record, there were several court cases surrounding these transactions , wherein claims and counter claims were made by the parties to the transactions. There is compromise arrived at between the parties to the dispute, and suit(s) were decreed in terms of compromise in ***O.S.No. 4571 of 2010 and O.S. No.8724 of 2010*** , in the Court of Civil Judge, Bangalore. There was a decree issued in money suit by Court of the XLIV Additional City Civil & Session Judge , Bengaluru in ***O.S. No. 5260/2012*** , dated 07.11.2022 in ***Shri Vivek Chandiramani v. Smt. S. Jayashree & Ors*** . As per the documents submitted by the assessee in its paper book filed with the ITAT, the matter is now pending with Hon'ble High Court of Karnataka in RFA No. 266/2023 in ***Smt. S. Jayashree v. Shri Vivek Chandiramani & Ors***. The assessee has now filed before ITAT additional evidences u/r 29 of ITAT Rules, 1963, as under:

> *"1. Copy of GPA between Smt. Jayashree in favour of the appellant.*
>
> *2. Copy of letter filed before Income Tax Officer, Ware-1(1), Bengaluru dated 29.01.2014.*
>
> *3. Copy of the judgment of the City Civil & Sessions Judge, Bengaluru.*
>
> *4. Copy of the petition filed before the Hon'ble High Court of Karnataka at Bengaluru.*
>
> *5. Copy of the letter dated 17.10.2023 filed before the jurisdictional Assessing Officer requesting the statement recorded during the assessment proceedings."*

14.2 These aforesaid additional evidences are claimed by the assessee to be vital for proper determination of this issue as these documents goes to the root of the matter. We admit these additional evidences. Thus, in the interest of justice and without commenting on the merits of the issue, we restore the issue to the file of the AO for fresh determination of the issue on merits in accordance with law. The AO shall give proper opportunity to the assessee in set aside proceedings. At the cost of

repetition , we once again reiterate and clarify that we have not commented on the merits of the issue arising in this appeal, and all contentions are kept open. The appeal of the assessee on this issue is allowed for statistical purposes. We order accordingly.

15. In the result, the appeal of the assessee is allowed for statistical purposes, in the manner indicated in this order.

Order pronounced on .09.2024 in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-	Sd/-
[BEENA PILLAI] **JUDICIAL MEMBER**	**[RAMIT KOCHAR]** **ACCOUNTANT MEMBER**

DATED: 13/09/2024
sh

Copy forwarded to:
1. Appellant –
2. Respondent –
3. CITDR ,
4. CIT,
5. The CIT(A)

By Order

Assistant Registrar,
ITAT, Bangalore