

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

**IT(IT)A No. 1032/Bang/2023**

**Assessment Year : 2011-12**

Shri Vadagur Narayanappa Premachandra, No. 50, Lakeshore Homes, Central Jail Road, Bengaluru – 560 035. <b>PAN: AQYPP8865G</b>	<b>Vs.</b>	The Assistant Commissioner of Income Tax, International Taxation, Circle – 2(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Balram R.Rao, Advocate
Revenue by	:	Shri Sridhar .E, CIT-DR

Date of Hearing	:	24-10-2024
Date of Pronouncement	:	20-01-2025

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the orders of the Ld.CIT(A), Bengaluru – 12 dated 23/11/2023 in respect of the A.Y. 2011-12 on the following grounds of appeal:

*“1. On the facts and in circumstances of the case the learned CIT(A) erred in upholding order of the Assessing Officer passed u/s. 143(3) r.w.s. 147 of the Income Tax Act in the manner in which he did.*

*2. On the facts and in circumstances of the case the learned CIT(A) failed to appreciate that the order passed u/s. 143(3) r.w.s. 147 of the Act did not bear a DIN*

*number. on the aforesaid assessment order thereby making the order invalid.*

*3. On the facts and in the circumstances of the case the Learned CIT(A) failed to appreciate that the non-quoting of the DIN number in the Assessment Order was violation of the CBDT Board's circular in Circular No. 19/2019 dated 14.08.2019.*

*4. On the facts and in the circumstances of the case the Learned CIT(A) erred in upholding the claim of Long-Term Capital Gains Amounting to Rs. 1,09,87,638/- disregarding the vast submissions made by the appellant.*

*5. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.”*

**2.** The brief facts of the case are that the assessee along with the other co-owners had entered into a Joint Development Agreement (JDA) on 11/03/2021 with the builder M/s. Balaji Constructions and handed over the land to the extent of 1,35,461 sq.ft. for the development and construction of flats. As per the JDA, the share of the owners are 39% and the share of the builder is 61%. As per the JDA, the builder should hand over approximately 56 flats to the owners as their respective share for surrendering their rights in the said land. The AO reopened the assessment for the reason that the assessee had entered into the JDA but not filed any return of income declaring any long term capital gains for the A.Y. 2011-12.

**3.** Thereafter, the assessee filed his return of income and computed the long term capital gain based on the value of the land given to the builder at the rate of Rs. 800/- per sq.ft. But while taking the area of the land, the assessee had taken a lesser area of 74,628 Sq.ft. instead of 82,631 Sq.ft. In the computation, the assessee had arrived the sale consideration as Rs. 5,97,02,408/- which was not accepted by the AO. The AO took the area of land as 82,631 Sq.ft. and arrived the long term capital gains at Rs. 2,19,75,275/- as against the long term capital gains computed by the assessee at Rs. 1,55,72,725/-. The assessee at the time of assessment, had submitted that as per the settlement deed, the family members had handed

over the developer a total extent of land of 1,35,461 Sq.ft. including 13,120 Sq.ft. which belonged to the other parties. The assessee further submitted that the actual area of land handed over by the owners to the builder was 1,22,341 Sq.ft as per the JDA. The AO rejected the claim made by the assessee and relied on the terms contained in the JDA in which the area of the land has been mentioned as 1,35,461 Sq. ft. The AO also not accepted the alleged settlement deed executed for the reason that it does not mention who is the owner of the balance area of 13,120 Sq.ft. The AO also doubted about the settlement deed executed on 12/08/2016 since the same was executed after the period of six years from the date of the execution of the JDA. The AO also alleged that the settlement deed was not a registered one and therefore not accepted the settlement deed. The assessee also replied to the show cause notice that the assessee's share is only 25% of the property surrendered and therefore the capital gains accrued to him was only Rs. 38,93,178/-. The AO not accepted the case of the assessee for the reason that the assessee as well as his brother are the owners of the land and therefore their share would be 50%. The AO also not accepted the claim of the assessee that the entire capital gains is eligible for exemption u/s. 54 of the Act for the reason that the new asset has been constructed after a period of 3 years from the date of transfer of the land under the JDA.

**4.** As against the order of the AO the assessee filed an appeal before the Ld CIT(A) and contended that the assessee's share is only 25% and not 50% since the land owners are 4 persons and further contended that the sale consideration received by the assessee towards his share is also eligible for deduction since the construction has been commenced before the period prescribed under the Act and the entire consideration was invested in the new construction. The Ld.CIT(A) had rejected all the contentions raised by the assessee by holding that the assessee and his brother are having equal rights and absolute title over the property since the official proceedings for converting the land for residential purposes were in the name of the brothers. The Khatha also stood in the name of the assessee as well as his brother.

**5.** The Ld.CIT(A) relied on the said details available in the JDA as well as in the proceedings made by the authorities and come to the conclusion that the assessee and his brother are the owners and therefore both have equal shares i.e. at 50:50 and on that basis, held that the computation made by the AO is in order. The ld CIT also relied on the valuation report submitted by the Valuation Officer u/s 55A of the Act since the assessee had accepted the valuation fixed by the Valuation officer at the initial stage. In respect of the other contention that the assessee is entitled for exemption u/s. 54 of the Act, the Ld.CIT(A) had not accepted the same for the reason that the construction of the new asset was well beyond the period of three years stipulated in Section 54. As against the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal.

**6.** At the time of hearing, the Ld.AR filed two paper books containing pages 1 to 118 and enclosed the various documents and contended that the computation of long term capital gains made by him is in order. The Ld.AR also filed two compilations of the orders and judgments of the Tribunals and Hon'ble High Courts in support of their proposition that the assessee is entitled for deduction since the entire amount received by them were utilised in the construction of flats and therefore entitled for deduction u/s. 54 of the Act. The Ld.AR also drawn our attention to the JDA and the partition deed and other documents to show that the owners of the property are the assessee, his Father, brother and sister. It was further contended that as per the partition deed dated 18/03/2016, the constructed flats were handed over to the respective owners and the owners sold their share of property to the buyers and hence the plea that the assessee is having a share of 1/4<sup>th</sup> on the land transferred to the builder is correct and therefore the computation made by the assessee is also correct. The ld AR further submitted that one of the owner, his father also gave a power of attorney in favour of the assessee and his brother in order to do the formalities with the authorities and therefore for the sake of convenience only the Khatha was obtained in the name of the assessee and submitted that the conclusion arrived by the authorities below based on the Khatha is not correct. Further

contended that the Khatha is not a title to the property. The Ld AR further submitted that no documents were available to show that the other two owners had relinquished their rights over the property and therefore treating the assessee as well as his brother as owners of the property is not correct. The Ld AR further submitted that the builder had commenced the construction activities immediately and therefore it is deemed that the entire sale consideration was invested in the project and therefore the assessee is entitled for deduction u/s 54 of the Act and prayed to allow the appeal.

**7.** The Ld.DR relied on the orders of the lower authorities and further contended that the Katha stood in the name of the assessee as well as his brother and therefore the assessee is entitled for 50% share in the land given to the builder. The Ld DR further submitted that the construction was completed after the period of 3 years and therefore the assessee was not entitled for the relief u/s 54 of the Act and prayed to dismiss the appeal.

**8.** We have heard the arguments of both sides and perused the materials available on record.

**9.** The Ld.AR made a submission that they are not pressing ground nos. 1 to 3 and therefore we are not adjudicating the said grounds and dismiss the same as not pressed.

**10.** Now we adjudicate the other grounds raised in this appeal. In this appeal there are two issues involved.

The first issue to be decided is what is the share of the assessee in order to compute the LTCG.

The second issue is whether the assessee is entitled for deduction u/s 54 of the Act on the ground that the entire sale consideration received are invested in the construction of the new property.

**11.** We have perused the JDA dated 11/03/2011 in which the assessee, his father, his sister and his brother in the capacity of owners had executed

the said JDA and therefore the owners are 4 persons. Subsequent partition deed executed between themselves on 18/03/2016 also evidenced that the four persons are the owners of the land and they executed a partition deed between themselves for dividing the property which was constructed by the developer and handed over to them according to their shares. The said partition deed was also duly registered. In the partition deed, there are several schedules in which the shares of the each owners were clearly mentioned. It is the case of the assessee that for the development and construction of the property, the assessee and his brother got the power of attorney executed by their father and based on that, the Khatha alone changed for the sake of convenience. Even though the necessary signatures in the various applications filed before the development authorities were obtained from all the owners, the assessee and his brother were authorised to do the formalities relating to the said development and construction. The JDA is a registered document and the partition deed is also a registered document and on the basis of two documents, it is clear that the owners of the land are four persons and not two persons as alleged by the AO. We are not agreeing with the view expressed by the lower authorities since the other co owners had also received their shares based on the JDA as well as the partition deed. Further it is to be noted that no person would share the property with the third parties if they have no title over the property. From the perusal of the documents we are able to arrive a conclusion that the property belongs to the four persons. Further, we also took note of the argument that in the assessment made on the assessee's brother, the AO had taken 25% as his share and computed the LTCG. But in the assessee's case, the AO had taken 50% as his share. We are not able to appreciate the logic behind this.

**12.** The AO as well as the Ld.CIT(A) had relied on some documents and relied on some proceedings issued by the authorities and on that basis, both the authorities had come to the conclusion that the assessee and his brother are the owners. As already observed, for the sake of convenience, the assessee and his brother were authorised to change the katha in their

names and apply for various purposes in connection with the said development or construction of the property.

**13.** On a careful consideration of the documents enclosed in the paper books, we found that the land belonged to four persons and based on that only the JDA was executed with the builder and after a substantial construction was over, a partition deed was executed between themselves demarcating the properties of each of the owners. The Builder has invested their money and constructed the flats and gave the share of the owners free of cost in lieu of the land given by the owners. We have also perused the unregistered settlement deed and we found that it is an additional document filed by the assessee to show that the property handed over to the builder was jointly owned by the four persons. We are in agreement with the argument that the title of the property cannot be decided on the basis of Khatha as held by the various Courts, when the assessee was able to establish the ownership of the lands by way of JDA and Partition Deed. The mere reliance on the Khatha issued by the authorities is not legally correct. The AO has also not produced any documents to show that the assessee and his brother are the owners except the Khatha. The ownership of the immovable property could not be transferred without executing any registered document. In the present case on hand there is no such documents were available to show that the assessee as well as his brother are the owners. In such circumstances we do not accept the reasoning given by the AO for arriving the share of the assessee at 50%. Further the assessee was also not able to explain why he has adopted a lesser area of land while computing the long term capital gains. If the assessee's contention that his share is 25% and therefore long term capital gains should be computed on his share alone, some more enquiry is to be conducted by the authorities. We are of the view that one such enquiry may be carried out with the sister of the assessee as well as his father and if they are able to show that they have sold their respective shares to various buyers, the dispute arose in this appeal would be solved. We therefore restore this matter to the file of the AO to call for the details from the

assessee as well as his father and sister to prove that they sold their respective shares separately in favour of the buyers which they got based on the partition deed. On enquiry, if it is found that all the four owners have separately sold their respective shares of property, then the assessee's claim is to be accepted and in that event, the assessee is correct in computing the long term capital gains by taking his share as 25%. We also direct the AO to take into consideration the assessment made on the assessee's brother while deciding the share of the assessee.

**14.** The second issue raised by the assessee is that the entire money received by him were utilised in the construction of the building and therefore he is eligible for deduction u/s. 54 of the Act. If the contention is proved by way of documents, the same can be accepted and the exemption can be granted. Before that, the assessee should furnish all the details about the date of commencement of work to show that the entire consideration was invested in the construction of the flats well before the period prescribed under the Statute. We are not able to ascertain the said facts from the documents filed before us. Therefore it requires further examination and on examination it was found that the entire consideration was invested in the project with in the period of 3 years then the assessee's contention may be correct. In support of this proposition the assessee also relied on the orders of the Tribunal as well as the High Courts.

**15.** We have perused the order of the Coordinate Bench of this Tribunal in the case of ACIT vs. Dilip Ranjrekar reported in (2018) 98 taxmann.com 362 relied on by the assessee in support of their above proposition which was later on affirmed by Hon'ble Jurisdictional High Court, wherein it was held as follows;

*"It was apparent from facts that non-completion of the construction of the flat by the builder within the stipulated period was beyond the control of the assessee. In view of the decision of the Jurisdictional High Court in the case of CIT v. Smt. B.S. Shanthakumari [2015] 60 taxmann.com 74/233 Taxman 347 (Kar.) and CIT v. Sambandam Udaykumar [2012] 19 taxmann.com 17/206 Taxman*

*150/345 ITR 389 (Kar.) the assessee cannot be denied exemption under section 54 to the extent of investment in the new property, even though the construction of the new asset is not completed within the eligible period of 3 years from the date of sale/transfer of the original asset.”*

**16.** The Hon’ble Jurisdictional High Court has affirmed the above order of the Coordinate Bench of this Tribunal and held as follows in ITA No. 217 of 2018 dated 05.12.2018 in the case of PCIT vs. Shri Dilip Ranjrekar

*“3. In the instant case, the investment is made in a new property. The construction was not completed within a period of three years as narrated in [Section 54](#) of the Act. The delay was not because of the assessee, but beyond his control, since the construction was put up by the builder. He has invested the amount of Rs.2,26,82,097. Therefore, following the aforesaid judgment, the Tribunal rightly held that the said investment is made towards construction of the property. Therefore, it requires to be exempted. Under these circumstances, we do not find any error in arriving at such a conclusion. Therefore, we are of the view that the said substantial question of law would not arise for consideration in this appeal.”*

**17.** We have also gone through the judgment of the Hon’ble Madras High Court reported in 302 ITR 286 (Mad) in the case of CIT vs. Sardarmal Kothari and Anr., cited by the assessee in which it was held as follows:

*“Held, dismissing the appeals, that admittedly the assessee had purchased the land by investing the capital gains and had constructed residential houses. Circular No. 667 dated October 18, 1993 ([1993] 204 ITR (St.) 103), did not stipulate that the construction would have to be completed in order to have the benefit under section 54F of the Act. In order to get the benefit under section 54F of the Act, the assessee need not complete the construction of the house and occupy it ; it was enough if the assessee established the investment of the entire net consideration within the stipulated period.”*

**18.** In view of the above said order / judgements, we are of the view that the assessee is entitled to claim deduction u/s. 54 of the Act if the assessee is able to establish the fact that the construction was commenced within the period prescribed under the Act. If the assessee is able to establish the said fact, then as per section 54 of the Act, the assessee is entitled for said

deduction. Based on the records filed by the assessee, we are not able to ascertain the said facts. In order to ascertain the said facts, we are remitting this issue also to the AO to decide the issue afresh based on the documents produced by the assessee and if the AO is found that the construction was commenced within the period of 3 years, but the same was completed after the period of 3 years, then the assessee is entitled for deduction irrespective of the completion of the construction.

**19.** With the above directions, we are remitting both the issues to the AO for deciding the issues in accordance with law and also based on the findings given above. The assessee is at liberty to furnish the details before the AO and the AO is directed to consider all the documents and decide the issues after granting a reasonable opportunity of being heard to the assessee.

**20.** In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> January, 2025.

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 20<sup>th</sup> January, 2025.  
/MS /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore