

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, COCHIN**

Before Shri Inturi Rama Rao, Accountant Member

ITA No.384/Coch/2024 : Asst.Year 2011-2012

Raphael John (Deceased) (Represented by Legal Heir Johny Raphael) Prop :Acromed Surgicals Adam Bazar, Thrissur – 680 001. PAN : AEOPJ0218D.	v.	The Income Tax Officer Ward 2(3) Thrissur.
(Appellant)		(Respondent)

Appellant by : --- None---
Respondent by : Smt.Leena Lal, Senior AR

Date of Hearing : 03.02.2025	Date of Pronouncement : 06.02.2025
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ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Assessment Centre / Commissioner of Income-tax (Appeals) [“CIT(A)” for short] dated 28.02.2024 having DIN & Order No.ITBA/APL/S/250/2023-24/1061678156(1) for the assessment year 2011-2012.

2. Briefly stated the facts of the case are that the assessee is an individual and engaged in the business of surgical implants under the name and style of M/s.Acromed Surgicals. The assessee filed return of income for the assessment year 2011-2012 on 27th September, 2011 declaring total income of Rs.2,04,480. Against the said return of income, the assessment was completed by the Assessing Officer, i.e., the Income Tax Officer, Ward-2(3), Thrissur (“the AO” hereinafter)

vide order u/s.143(3) of the Act dated 3rd March, 2014 assessing the total income at Rs.20,94,140.

3. While doing so, the AO had denied exemption u/s.54F of the Income-tax Act, 1961 (“the Act” hereinafter) in respect of capital gain of Rs.18,89,662 on the ground that the assessee constructed multiple residential houses, whereas the assessee is entitled for only one residential house. The AO further observed that during the previous year relevant to the assessment year under consideration, the assessee sold property situated in Palakkad admeasuring about 7500 sq.ft. for a total consideration of Rs.51,86,600. The long term capital gain on the sale of the said land worked out to Rs.18,89,662. The capital gains were sought to be exempt u/s.54F of the Act on the ground that the sale consideration received on the sale of a commercial building at Palakkad was invested in construction of residential apartment complex in the ancestral land in Chembukavu. The AO was of the opinion that exemption u/s.54F is available in respect of one residential unit only, and therefore, denied the exemption.

3. Being aggrieved by the above assessment order, the assessee filed appeal before the CIT(A) and contended that the expression “a” residential house implied u/s.54F of the Act denotes a multiple house, by placing reliance on the following judicial pronouncements:-

- (i) CIT v. B.Ananda Basappa (2009) 309 Itr 324 (Kar.)
- (ii) CIT v. Smt.K.G.Rugmani Amma ITA No.783/2008 dated 27.08.2010
- (iii) CIT v. Gita Duggal ITA 1237/11 (Delhi)

Not convinced by the contentions of the assessee, the CIT(A) confirmed the action of the AO.

4. Being aggrieved by the order of the CIT(A), the assessee is in appeal before us in the present appeal. When the appeal was called for, none appeared on behalf of the assessee despite due service of notice. Therefore, I proceed to dispose of the appeal on merits.

5. The learned Sr.DR placed reliance on the decision of the coordinate bench of the Tribunal in the case of *M.S.Amaresan v. ACIT (2021) 186 ITD 715 (Chennai-Trib.)* and submits that the assessee is not eligible for exemption u/s.54F as the assessee has constructed multiple residential units.

6. I have heard the learned Senior DR and perused the material available on record. The solitary issue in the present appeal that arises for my consideration is whether the CIT(A) is justified in denying exemption u/s.54F of the Act. Undisputedly, the facts of the case are that the capital gains arising on sale of commercial building were invested in construction of residential building having multiple residential units. The assessee sought exemption of the capital gains u/s.54F by stating that “a” residential house would include multiple residential units. However, the AO was of the opinion that the assessee is only entitled for exemption in respect of one residential unit. Accordingly, AO denied the claim for exemption u/s.54F of the Act. On appeal before the CIT(A), the CIT(A) confirmed the action of the AO. In my considered opinion, the issue raised in this appeal is squarely covered by the judgment of the Hon’ble Madras High Court in the case

of CIT v. V.R.Karpagam (2015) 373 ITR 127 (Mad.), wherein it was held vide para 4.3 as under:-

“9. It is relevant to note herein that an amendment was made to the above said provision with regard to the word 'a' by the Finance Act (No.2) Act, 2014, which will come into effect from 1-4-2015. the said amendment read as follows:—

'32a. Words "constructed, one residential house in India" shall be substituted r constructed a residential house by the Finance (No.2) Act, 2014, with effect from 1-4-2015'.

10. The above-said amendment to Section 54F of the Income-tax Act, which will come into effect only from 1-4-2015, makes it very clear that the benefit of Section 54F of the Income-tax Act will be applicable to constructed, one residential house in India and that clarifies the situation in the present case, i.e. post amendment, viz., from 01-4-2015, the benefit of Section 54F will be applicable to one residential house in India. Prior to the said amendment, it is clear that a residential house would include multiple residential units as in the present case where the assessee has got five residential flats. We may also mention here that all the Authorities below have clearly understood that the agreement signed by the assessee with M/s. Mount Housing infrastructure Ltd. is that the assessee will receive 43.75% of the build up area after development, which is construed as one block which may be one or more flats.. In that view of the matter what was before the Assessing Office is only equivalent to 56.25% of land transferred, equivalent to 43.75% of built up area received by the assessee. This built up area got translated into five flats. Hence we are of the opinion that the transaction in this case was not with regard to the number of flats but with regard t the percentage of the built up area, vis-à.-vis. the Undivided Share of Land.

In similar circumstances this Court, by order dated 4-1-2012, in T.C.(A) No. 656 of 2005 held as follows:

"The above provision refers to residential house meaning thereby that even if there are four different flats and if it is considered for the property assessed as one unit and one door number is given, it should be construed as a residential unit, namely, one unit. In that sense the said provision is available to tile assessee".

7. It is only from assessment year 2015-2016 by an amendment by Finance Act, 2014 the word “a” was substituted by the words “constructed, one residential house in India”. It is further clarified that the said amendment would come into force from 01.04.2015 making it very clear that the benefit of sec.54F of the I.T.Act would be available in respect of multiple units prior to assessment year 2015-2016. Thus, in view of the above legal position, I am of the considered opinion that the assessee is entitled for deduction u/s.54F of the Act. The decision of the co-ordinate bench in the case of M.S.Amaresan v. ACIT (supra) have no application as in that case, the multiple units are situated in the same location. Therefore, I direct the AO to allow the claim of the assessee made u/s.54F of the Act.

8. In the result, the appeal filed by the assessee is allowed.
Order pronounced on this 06th day of February, 2025.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Cochin; Dated : 06th February, 2025.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT, Cochin.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin