

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.733/Bang/2014  
(Assessment Year : 2009-10)

Income-tax Officer,  
Ward – 7 (1), Bangalore

..Appellant

v.

Sri. C. Nanjundaiah,  
No.777, 1<sup>st</sup> Cross, 2<sup>nd</sup> Main, Chowdeswari Layout,  
Marathahalli, Bangalore 560 037  
PAN : AFWPC9144G

..Respondent

Assessee by : Shri. Naginchand Khincha, CA  
Revenue by : Dr. P. K. Srihari, Addl.CIT

Heard on : 30.06.2015

Pronounced on : 03 .07.2015

**ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :**

In this appeal filed by the Revenue directed against an order dt.17.02.2014, of CIT (A) - II, Bangalore, it has taken altogether five grounds of which, grounds 1, 4 and 5 are general needing no adjudication.

02. Vide its grounds 2, grievance raised by the Revenue is that claim for deduction u/s.54F of the Act, for a sum of Rs.10,01,000/- disallowed by the AO was allowed by the CIT (A). In its ground 3, grievance of the Revenue is that

deduction was allowed to an extent of Rs.58,70,233/- utilised for construction of a new house, whereas assessee had submitted evidence only to the extent of Rs.10,54,169/-.

03. Facts apropos are that assessee, a coowner of property along with his family members inter-alia consisting of one Shri. Kiran Kumar and Shri. Chetan Kumar, filed his return for the impugned assessment year declaring income of Rs.8,710/-. The property held under coownership with the above mentioned persons was sold by the assessee during the previous year. Assessee had admitted long-term capital gains of Rs.1,98,768/- from the sale of this property against which, a set off of Rs.2,01,817/- was claimed for short-term capital loss. In the computation of income filed along with the return, assessee showed his share in the sale consideration as Rs.70,70,000/-. Against the said amount assessee claimed deduction u/s.54F of the Act, for a sum of Rs.10,01,000/- deposited in capital gains account scheme and for expenditure of Rs.58,70,232/- in a new residential property. AO was of the opinion that in respect of the claim of deposit in capital gains account scheme, such deposits were made beyond the due date of filing the return and did not qualify for deduction u/s.54F of the Act. Vis-a-vis the claim of investment in new residential property, AO noted that assessee had purchased a site bearing No.390, in NGEF Layout, Rajarajeshwari Nagar, Bangalore, on 17.06.1999 and had spent Rs.10,54,169/- for construction of a residential house therein. In other words, as per the AO, against the claim of expenditure of Rs.58,70,232/-

for construction of new house, assessee could produce bills for Rs.10,54,169/-. Thus the claim of deduction u/s.54F of the Act, was disallowed but for a sum of Rs.10,54,169/-.

04. Aggrieved assessee moved in appeal before the CIT (A). Argument of the assessee before the CIT (A) was that even though the amount of Rs.10,01,000/- was deposited in the Capital Gains Account Scheme, beyond the due date of filing the return, still the claim was allowable u/s.54F of the Act, in view of the judgment of Hon'ble jurisdictional High Court in the case of Fatima Bai v. ITO (32 DTR 243). Vis-a-vis the claim of cost of construction of Rs.58,78,232/-, submission of the assessee was that it had actually expended such amount. CIT (A) was appreciative of these contentions. According to him, in view of the judgment of Hon'ble jurisdictional High Court in the case of Fatima Bai v. ITO (supra), even deposits made beyond the due date of filing the return could be considered for a claim u/s.54F of the Act. Vis-a-vis expenditure incurred for construction of new residential house, as per the CIT (A), assessee had produced evidence.

05. Now before us Ld. DR strongly assailing the order of CIT (A) submitted that deposits in capital gains account scheme, beyond the due date of filing the return of income was not eligible for deduction u/s.54F of the Act. Vis-a-vis the allowance given by the CIT (A) for cost of construction, Ld. DR submitted that assessee had not furnished any evidence but for the sum of Rs.10,54,169/-.

06. Per contra, Ld. AR in support of the order of CIT (A) submitted that question whether deposits in Capital Gains Account Scheme beyond the due date for filing the return would be eligible for claim of deduction u/s.54F of the Act, had come up before the Tribunal in the case of coowners of the same property, namely, Kiran Kumar and Chetan Kumar in ITA.6/Bang/2014, dt.31.10.2014 and ITA.423/Bang/2014, dt.05.12.2014. According to the Ld. AR this Tribunal had held in favour of the assesseees in these cases. In so far as the question of expenditure was concerned, Ld. AR submitted that evidence was produced before the lower authorities, but the AO had not given proper consideration to it. As per the Ld. AR, CIT (A) was justified in giving relief on both counts.

07. We have perused the orders and heard the rival contentions. In so far as the question of availability of deduction u/s.54F of the Act, in respect of deposits made by the assessee in Capital Gains Account Scheme, beyond the due date for filing the return, the issue was before this Tribunal in the cases of the coowners, namely Kiran Kumar (supra) and Chetan Kumar (supra). In the case of Chetan Kumar (supra), this Tribunal had held as under :

*“07. We have perused the orders and heard the rival contention. Assessee had placed the deposits in the designated bank account on 11.11.2009. Impugned assessment year being A. Y. 2009-10, time available for filing the return of income u/s.139(1) was 31st July 2009, and u/s.139(4) was 31.03.2011. Hence if we consider the former date, the deposits were out-of-time, whereas if we considered the latter date it was within time. Be that as it may, there is no dispute that the amounts were utilized by the assessee for purchasing a house property on 28.08.2010. Sub-section 4 of Section 54F reads as follows :*

*Sec.54F (4) The amount of the net consideration which is not appropriated by the assessee towards' the purchase of the new asset made within one year before the date on which the transfer of original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return( such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139) in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:*

*Provided that 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 by which--*

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

*(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,*

*shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and*

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

*Sub-section (2) of Section 54 reads as follows :*

*Sec.54 (2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new assets made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return (such deposit*

*being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139) in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:*

*Provided that 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.*

*Though the above sub sections are not literal reproductions, with regard to the wordings relatable to the stipulation on time limit for placing the deposits in a designated scheme, are pari-materia. Hon'ble jurisdictional High Court, in its judgement in the case of Fathima Bai (supra), had held as under :*

*"The s. 54(1) declares that when the assessee sells any long-term capital asset, the assessee should purchase the building within one year before the transfer or within two years after the transfer by investing capital gains. In which event the assessee will not be liable for capital gain tax.*

*The s. 54(2) declares that within one year from the date of transfer if the capital gain is not invested in purchase of building, he should deposit the amount in the 'Capital Gain Account Scheme' or else the assessee should invest the capital gain before filing of return within the permitted period under s.139. In which event, the assessee will not be liable to pay capital gain tax.*

*The s. 139(4) declares that the assessee should file returns within the time prescribed, if he fails to file returns, he may file returns for any previous year at any time before expiry of one year from the end of relevant assessment year.*

*In the instant case, the due date for filing of return is 30th July, 1988. Under s. 139(4) the assessee was entitled to file return in the extended time, which is within 31st March, 1990.*

*The extended due date under s. 139(4) would be 31st March, 1990. The assessee did not file the return within the extended due date, but filed the return on 27th Feb., 2000. However, the assessee had utilised the entire capital gains by purchase of a house property within the stipulated period of s. 54(2) i.e., before the extended due date for return under s. 139. The assessee technically may have defaulted in not filing the return under s.139(4). But, however, utilised the capital gains for purchase of property before the extended due date under s. 139(4). The contention of the Revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention."*

*As to whether the same reasoning could be applied to section 54F(4), stands answered by the coordinate Bench in its decision in the case of Shri. Raghu H. Kabadi (supra). Relevant paras of this order is reproduced hereunder :*

*"5.6.1 We have heard both parties at length and perused and carefully considered the material on record. There is no dispute in respect of the facts that in the period under consideration, viz., Assessment Year 2008-09, the assessee sold the property at Kamalanagar for a consideration of Rs.32,50,000 on 14.1.2008 and that this property was purchased by him on 28.7.1995 for Rs.3,60,000. It is also not in dispute that the assessee had made investments in the construction of a residential property at Magadi Road. The dispute is with respect to the computation of LTCG on sale of the Kamalanagar property and primarily with regard to the claim of exemption under section 54F of the Act. While the assessee claimed that the entire amount of LTCG computed at Rs.25,44,093 was exempt under section 54 F of the Act since that amount and more had been invested in the construction of the Magadi Road property, the authorities below restricted the exemption under section 54F of the Act to Rs.6,93,885 re-computing the LTC& by accepting the assessee's investment in construction of residential property only upto the due date for filing the return of income for Assessment Year 2008-09 i.e. as on 30.9.2008, which was Rs.8,86,417, since the assessee had not deposited the balance unutilized portion of the sale consideration of Kamalanagar property in a specified account under the Capital Gains Account Scheme.*

*5.6.2 We find from the record that there is no dispute that the residential property at Magadi Road was constructed within the time specified under section 54F of the Act. The proposition canvassed by the assessee that he had to utilize the sale consideration to the extent of capital gains, for investment in the construction residential property at Magadi Road before the date of furnishing the return of income under section 139(4) of the Act finds support in the decision of the Hon'ble High Court of Karnataka in*

*the case of Fatima Bal (supra). In this case, their Lordships have held that since the assessee utilized the purchase of property before the extended date under Section 139(4) of the Act, the contention of revenue that the deposit in the capital account scheme should have been made before the period specified under section 139(1) of the Act and not as per the extended due date under section 139(4) of the Act is an untenable contention. Similar views have also been taken by the co-ordinate bench of this Tribunal in the case of Nipun Mehrotra (supra), relied on by the learned Authorised Representative following the decision of the Hon'ble Gauhati High Court in the case of Rajesh Kumar Jalan (supra) wherein it has held that section 139 mentioned in section 54F(4) of the Act not only includes section 139(1) of the Act, but will also include all sub-sections of section 139. Perusal of the above section shows that the assessee has to utilize the amount of capital gains for the purchase or construction before the due date for filing the return under section 139(4) of the Act. We find that this decision of the co-ordinate bench of the ITAT in the case of Nipun Mehrotra (supra), covers this issue squarely in favour of the assessee as we shall now see. On a perusal of the facts of the case on hand, it is seen that the due date for filing of the return of income under section 139(4) of the Act by the assessee for Assessment Year 2008-09 was 31.3.2010. As per the details filed by the assessee before the authorities below and noted by the learned CIT(Appeals) at para 3.5 on pages 5 and 6 of her order, the assessee by letter dt.30.11.2010 filed on 6.12.2010 before the Assessing Officer has submitted that before 31.3.2010 he had invested sum amounting to Rs.35,58,500 in the construction of the residential property at Magadi Road property along with a copy of his bank account. This amount is more than the sale of Rs.32,50,000 he received for the sale of Kamalanagar property. In this view of the matter, since the assessee's claim is that he has invested the entire amount of sale consideration before the due date under section 139(4) of the Act, the requirement of his depositing amounts in Capital Gains Account Scheme does not arise. In view of the above binding judicial precedents laid down by the Hon'ble Karnataka High court in the case of Fatima Bai (supra); in the case of Rajesh Kumar Jalan (supra) and of the co-ordinate bench of this Tribunal in the case of Nipun Mehrotra (supra), we respectfully following them hold that the assessee is entitled to exemption under section 54F of the Act in respect of the amount spent / invested on construction of the Magadi Road residence upto the date of filing the return under section 139(4) of the Act. In coming to this finding, we have taken note of and respectfully followed the finding of the co-ordinate bench of this Tribunal in the case of Laxminarayana Asranna (supra) that there could be no estoppel against the assessee on the question of operation of law and therefore acquiescence by the assessee cannot take away from the exemption he was entitled to under section 54F of the Act."*

*8. Though learned DR has argued that literal meaning of sub-section 4 of Section 54F would not warrant the above interpretation, we, even if we are persuaded to accept this contention, cannot do so, since judicial discipline and rule of precedence requires us to go by the wisdom of higher judicial hierarchy. In the result we are of the opinion that assessee has to succeed in this appeal.*

Accordingly, we are of the opinion that the CIT (A) was justified in directing the AO to consider such deposits as eligible for deduction u/s.54F of the Act.

08. However, with regard to the claim of assessee that a sum of Rs.58,70,232/- was expended for construction of a new building at site No.390 in NGEF Layout, Rajarajeshwari Nagar, Bangalore, AO has given a clear finding that supporting evidence to the extent of Rs.10,54,169/- alone was produced by the assessee for expenditure incurred up to 31.07.2009. As against this, CIT (A) has, without giving details as to what were the evidences produced by the assessee before him, given complete relief to the assessee. We are of the opinion that this issue regarding the actual expenditure incurred by the assessee in the construction of new house requires a fresh look by the AO. We hasten to add that Section 54F of the Act, gives an outer time period of 3 years for construction of the new house. We, therefore, set aside the orders of the lower authorities in this regard and remit it back to the file of the AO in accordance with law. Assessee will be free to produce evidence to show that actual investment made in the residential house was Rs.58,78,235/-. Ordered accordingly. In the result, ground 2 of the Revenue stands dismissed, whereas ground 3 is treated as allowed for statistical purposes.

09. In the result, appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 03rd day of July, 2015.

Sd/-

(SMT. P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)  
ACCOUNTANT MEMBER