

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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

AND

SHRI. S. JAYARAMAN, ACCOUNTANT MEMBER

I.T.A No.1537/Bang/2014
(Assessment Year : 2011-12)

Deputy Commissioner of Income-tax,
(International Taxation) Bengaluru .. Appellant

v.

Smt. Meghana Samant,
E-3, Dramila Apartments, Mangalore Hill,
Vasco-da-Gama 403711 .. Respondent
PAN : AFXPS7323A

Assessee by : Smt. Sheethal, Advocate
Revenue by : Shri. G. Kamaladar, Standing Counsel

Heard on : 20.02.2017
Pronounced on : 23.02.2017

ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

This is an appeal filed by the Revenue against the order of the CIT (A) -IV, Bengaluru, dt.17.10.2014, for the assessment year 2011-12.

02. Smt. Meghana Samant , the assessee, is a non-resident individual having income from house property, capital gains and other sources. During the year, she derived income from sale of shares as capital gains , on which she claimed deductions of ; Rs. 50 lakhs on the investment made in REG Bonds & Rs. 96.95 lakhs deduction u/s.

54F which consisted of an investment made, jointly with her spouse, in a residential flat between 03.8.2010 & 08.10.2010 at Rs.19.28 lakhs & Rs.78,00,000 , the unutilised sum , deposited in the capital gains account as on the due date of filing of return. The AO held that the condition for giving credit to the amount paid/ invested in the new asset as well as the amount kept in the capital gains account would arise only where the cost of the new asset is not fully met within the specified date. In such circumstances, the partial payment made towards the new asset along with the monies kept in the capital gains account to be used for meeting the balance investment in the new asset only be eligible for deduction u/s 54 F. Since in this case, the assessee has made the investment in full in the new asset ie in the residential flat, and there is no further amount payable in respect of that new asset , the AO did not allow the claim of deduction on Rs.78,00,000 u/s 54F. Aggrieved, the assessee filed an appeal before the CIT (A). The CIT (A), after analyzing the decision of the Hon'ble Allahabad in the case of Ranjit Narang 317 ITR 322(ALL) gathered that three conditions laid down u/s. 54F for availing exemption / deduction are :-

- (i) Purchase / construction of the property within specified time.
- (ii) Unutilised portion to be deposited in the scheme as prescribed within specified time.
- (iii) Unutilised portion to be offered to tax as income u/s. 45 of previous year in which the period of three

years from the date of transfer of the original asset expires.

03. The CIT (A), inter alia, held that although the Allahabad Honble High Court dealt with the Law applicable during a particular assessment year, supra, it has thrown light on the third condition clearly specifying that the amount which has not been used u/s. 54F has to be offered as income in the third year. At no stage, does this section lay down the condition that it is mandatory for the assessee to purchase property equal to or more than the value of net consideration. The scheme of the section itself takes care of any revenue leakage by inserting a condition that any un-utilized portion of the net consideration shall be brought to tax after a specified period of time. The assessee has fulfilled the first two conditions. It was claimed that the capital gain arose in the A.Y. 2011-12 and taxes have been paid on the un-utilized portion of the net consideration in March 2014 and capital gains have been offered in the relevant assessment year. Thus, the CIT (A) directed the AO to verify this fact and if the finding is in the affirmative, the assessee is entitled to exemption / deduction u/s. 54F in this assessment year. Aggrieved against this decision, the Revenue filed this appeal with following grounds :

1. The order of learned CIT(Appeals) is opposed to law, equity, facts and circumstances of the case.
2. The learned CIT(Appeals) has erred in law by not appreciating that once the transaction to purchase new asset is completed u/s 54F(1), the provision of section 54F(4) will not apply.
3. The learned CIT(Appeals) has erred holding that the assessee is eligible for claim of deduction u/s 54F(4) for the amount invested in Capital Gain Account Scheme in addition to the investment made in one new asset u/s 54F(1).
4. The learned CIT(Appeals) has erred in not appreciating the position of law that, Section 54F(4) comes into play only in cases where net consideration is not was appropriated towards purchase or construction of new asset.
5. The learned CIT(Appeals) has erred in not appreciating the position of law that, as per proviso to section 54F(1), the assessee is barred from purchase or construction of any other residential house, other than new asset.
6. The learned CIT(Appeals) has erred in not appreciating the position of law that amount deposited in Capital Gain Account Scheme can be withdrawn only for purchase or construction of residential house, thus meant for violation of conditions laid down proviso to section 54F(1), therefore void ab-initio.

04. The DR took us through the assessment order and submitted that the CIT (A) has not appreciated the fact that the assessee has purchased the flat on 08.10.2010 itself , the full consideration has been paid, there is no need to keep the amount in capital gains account to pay to the sellers of that flat in subsequent dates and supported the AO's order. On the other hand, the AR submitted that the assessee intended to purchase the adjacent portion and have a bigger flat but unfortunately could not do so. In the facts and circumstances, the assessee has admitted the capital gains on the

unutilised portion in her return filed for a y 2014-15 on 18.7.2014 in accordance with the provisions of section 54F and paid the taxes accordingly. In this regard, the AR sought our attention to the intimation u/s 143(1) dt 25.03.2016 for ay 2014-15 and also to the order passed by the AO consequent to the C'sIT (A) order dt 12.01.2015 wherein the AO, as directed by the CIT (A) , verified and found that the assessee has complied with the provision of Sec.54F. Thus, the AR supported the order of the CIT (A).

05. We heard the rival submissions and gone through relevant orders and material. Sub-section 4 of section 54 F is extracted as under :

“(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 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 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."

From the above facts and position of law, it is clear that the amount deposited by the assessee under sub-section 4 of section 54 which was not utilised wholly or partly by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1). Then, it shall have to 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. Accordingly, the assessee claimed to have admitted it as income in ay 2014-15. Thus, the CIT (A) on the above facts correctly applied the ratio of the Hon'ble Allahabad High Court, supra, and directed the AO to verify this fact and if the finding is in the affirmative, allow the exemption / deduction u/s. 54F in this assessment year. The AO in his consequential order dt 12.01.2015 has allowed the deduction . Hence, the grounds of Revenue's appeal fail.

O6. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 23rd day of February, 2017.

Sd/-

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

(S. JAYARAMAN)
ACCOUNTANT MEMBER

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income Tax
4. The Commissioner of Income Tax (A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar