

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH-SMC " A "**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A. No.74/Bang/2017 (Assessment Year : 2005-06)		
Shri Mallappa Sharanappa Udnoor, Kusnoor Village, Tq.;& Dist. Kalaburagi. PAN AAKHM 7653 K	Vs.	Income Tax Officer, Ward (2), Kalaburagi.
Appellant		Respondent.

Appellant By : Shri Shreehari Kutsa, C.A. Respondent By : Shri AR.V.Sreenivasan, JCIT (D.R)
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Date of Hearing : 22.03.2017.

Date of Pronouncement : 05.05.2017.

ORDER

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.31.10.2016 of Commissioner of Income Tax (Appeals) for the Assessment Year 2005-06.

2. The assessee has raised the following grounds :

1. The Order of the learned Commissioner of Income-tax Appeals, passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.
2. The Appellant denies himself liable to be assessed at a total income as determined by the learned AO as against the total income to which the Appellant is taxable under the law on the facts and circumstances of the case.
3. The authorities below failed to appreciate that no income is chargeable to tax in the hands of the Appellant on the facts and circumstances of the case.
4. The learned CIT(A) is not justified in holding that the Appellant is not eligible to claim exemption under section 54 and 54F on the facts and circumstances of the case.
5. The learned CIT(A) failed to appreciate that the provisions of section 54 and 54F are beneficial provisions and are therefore to be interpreted in favour of Assessee.
6. The learned CIT(A) ought to have appreciated that mere non-deposit of sale proceeds in the Capital Gains Scheme Account shall not deprive the Appellant of the benefit of exemption on the facts and circumstances of the case.

7. Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax, the Appellant Company denies itself liable to be charged to interest under sections 234A& 234B of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under sections 234A& 234B is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.
8. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
9. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.

3. The only issue arises in this appeal of the assessee is regarding denial of benefit of Sections 54B & 54F of the Income Tax Act, 1961 (in short 'the Act') in respect of the investment made by the assessee without making the deposits in the capital gain account within the period as prescribed under the section. The assessee sold agriculture land for a consideration of Rs.73,91,250 having 1/3 rd share amounting to Rs.25.53.750. The assessee did not file return of income within the due date as per Section 139. The Assessing Officer passed assessment order under Section 144 of the Act. The matter was carried to this Tribunal and vide order dt.23.12.2008 in ITA No.1021/Bang/2008, the Tribunal remanded the matter to the Assessing Officer with the direction to take all

factual and legal issue in the case. The Assessing Officer accordingly passed the fresh assessment order dt.31.12.2009 and assessed the Long Term Capital Gain at Rs.18,86,920. The assessee claimed exemption under Section 54B / 54F of the Act which was denied by the Assessing Officer that the assessee did not deposit the capital gain in the capital gain account before the due date of filing of return i.e. 31.7.2005. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) but could not succeed.

4. Before the Tribunal, the learned Authorised Representative of the assessee has submitted that the assessee filed the details of investment made in agriculture land and investment made in the construction of residential house. He has further contended that since the assessee has invested in the agriculture land on 12.7.2006 and also construction of residential house before 31.3.2007 therefore when the investment was within the time period as allowed under Section 54B & 54F of the Act then the claim of deduction cannot be disallowed only on the ground that the assessee did not deposit the capital gain in the capital gain account. The learned Authorised Representative has relied upon the decision of Hon'ble jurisdictional High Court in the case of **CIT Vs. Samandam Udaykumar 345 ITR 389** as well as the decision dt. 15.2.2016 in

the case of **CIT Vs. C. Gopaldaswamy** in ITA No. 303/2016 and submitted that the Hon'ble High Court has held that if the investment is made within the due date then the benefit of Section 54 / 54F cannot be denied.

5. On the other hand, the learned Departmental Representative has relied upon the orders of the authorities below as well as the decision of Hon'ble Bombay High Court in the case of **Humayun Suleman Merchant Vs. CCIT** 387 ITR 421.

6. Having considered the rival submissions as well as the material on record, it is noted that the assessee has not deposited the capital gain arising from transfer of land in the capital gain account however, it is undisputed that the assessee made investment of Rs.59,555 in agriculture land and of Rs.12,20,000 in construction of house within the time period as prescribed under Section 54B and 54F of the Act. Both these investments were made prior to the time period prescribed under Section 139(4) i.e. 31.3.2007. Therefore when the primary and substantial condition as prescribed under Section 54B and 54F are satisfied by investing the capital gain within the time period then deposit of the amount in the capital gain account is not a pre-requisite

condition as held by the Hon'ble jurisdictional High Court in the case of **CIT Vs.**

Samandam Udaykumar (supra) held in paras 10 & 11 as under :

“ **10.** A reading of the aforesaid provision makes it very clear that if a capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within the period of one year before or two years after the date on which transfer took place purchased or has within a period of three years after that date constructed a residential house, if the cost of the new asset is not less than the net consideration in respect of the original asset the whole such capital gain shall not be charged under section 45 of the Act. However, if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to be whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration shall not be charged under section 45 of the Act.

11. Section 45 of the Act makes it very clear that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save or otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H is chargeable to income tax under the head 'capital gains' and shall be deemed to be income of the previous year in which the transfer took place. The aforesaid sections which form part of section 54 of the Act are cases where capital gain on transfer of capital asset not to be charged in those cases. Section 54F of the Act is a beneficial provision of promoting the construction of residential house. Therefore, the said provision has to be construed liberally for achieving the purpose for which it was incorporated in the statute. The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section are 'purchased' or 'constructed'. For such purpose, the capital gain realized should have been invested in a residential house. The condition precedent for claiming benefit under the said provision is the capital gain realized from sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of section 54F of the Act. Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under section 54F of the Act. The essence of the said provision is whether the assessee who received capital gains has invested in a residential house. Once it is demonstrated that the consideration received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the

transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from the said benefit.ö

The said view of Hon'ble jurisdictional High Court has been further reiterated in the subsequent decision dt.15.2.2016 in the case of **CIT Vs. Sri C. Gopalswamy** (supra). Accordingly, in view of the binding precedent of Hon'ble jurisdictional High Court the claim of benefit under Section 54B & 54F is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 5th May, 2017.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Bangalore,
Dt.05.05.2017.

*Reddy gp

Copy to :

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2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
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Assistant Registrar
Income Tax Appellate Tribunal
Bangalore.