

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I. T. A. No.79/Bang/2014
(Assessment Year : 2008-09)

Income Tax Officer,
Ward 14(1), Bangalore.

.... Appellant.

Vs.

Shri R. Srinivas,
No.4/1, Raghavendra Nilaya,
3rd Cross, Maruthi Layout, Adj.
AECS Layout, Bangalore-560 037.

.... Respondent.

C.O. No.69/Bang/2014
(In ITA No.79/Bang/2014)
(Assessment Year 2008-09)

Revenue By : Shri P. Dhivahar, JCIT (D.R.)
Assessee/C.O. By : Shri Ganesh Rao, Advocate.

Date of Hearing : 7.1.2015.
Date of Pronouncement : 4.3.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Mysore Dt.13.9.2013 for Assessment Year 2008-09. The assessee has also preferred Cross Objections in respect of the impugned order of the learned CIT (Appeals).

2. The facts of the case, briefly, are as under :-

2.1.1 In the course of assessment proceedings for Assessment Year 2009-10, the Assessing Officer noticed that the assessee had not filed his return of income for Assessment Year 2008-09 though as per the 26AS statement, the assessee had received an amount of Rs.5,63,303 during the F.Y. 2007-08. Since income exigible to tax for Assessment Year 2008-09 had escaped assessment, the Assessing Officer initiated proceedings under Section 147 of the Income Tax Act, 1961 (in short 'the Act') by recording reasons for the same and thereafter issued notice under Section 148 of the Act dt.21.12.2011 to the assessee requiring him to file his return of income. In response thereto, the assessee filed his return of income on 12.1.2012 declaring total income of Rs.4,90,220 comprising, inter alia, of salary from BAeHAL Software Ltd. and HCL Technologies where he was employed during the year under consideration.

2.1.2 In the course of assessment proceedings, the Assessing Officer noticed that there was a credit of Rs.1,25,00,000 on 18.1.2008 in the assessee's bank account with Bank of India. On being queried in regard to the same, the assessee explained that this amount was the amount received in lieu of relinquishment of right in property w.r.t. the Memorandum of Agreement between the assessee along with three other persons to M/s. Kristal Projects (India) Ltd., Bangalore. Examination of the Memorandum of Agreement dt.12.12.2007 with Kristal Projects (India) Ltd. showed that the assessee along with three other persons viz. Smt. Savithramma, Smt. H.R. Mala, Sri R. Lokesh have agreed to relinquish their respective rights in 50% share in the property at Survey No.97 & 98 of Hoody village, K.R. Puram Hobli, Bangalore measuring 2 acres 26 $\frac{1}{2}$ guntas and 2 acres 26

guntas respectively for a total amount of Rs.5,75,00,000; of which Rs.1.25 Crores credited to the assessee's bank account was a part. When the Assessing Officer proposed to tax this amount as capital gains, the assessee contended that in order to assess the same under capital gains, the conditions prescribed in sections 2(14), 2(47) r.w.s. 45 and 54 are to be satisfied and since the property in respect to which he relinquished his rights was agricultural land, the proceeds of Rs.1.25 Crores received by him were exempt.

2.1.3 The Assessing Officer did not accept these contentions of the assessee as the schedules thereto did not indicate the said property to be agriculture land and further the same had been transferred to a company for development into residential apartments. The Assessing Officer also noted that the further sale deeds dt.24.2.2005 between Smt. Bibi Aleema, Sri Syed Ibrahim and M/s. Kristal Projects (India) Pvt. Ltd., mention the said property to be converted land. In this factual matrix, the Assessing Officer came to the view that what is relinquished is the right in respect of converted land, which was acquired through judgment and decree dt.29.11.2003 as per order in O.S. No.6497/92 and therefore rejected the assessee's claim that the said land was agricultural.

2.1.4 When the Assessing Officer embarked on the computation of capital gains, the assessee filed a computation of income; including computation of capital gains at Rs.1,20,10,964 after appropriating legal fees for litigation of Rs.1,25,000, cost of acquisition as on 1.4.1981 at Rs.50,000, cost of improvement at Rs.88,736 and claimed exemption under Section 54F of the Act in respect of the entire capital gains on the

ground that the entire gains have been invested in the purchase of site and construction of a new residential property. In respect of his claim for exemption under Section 54 / 54F of the Act, the assessee claims to have purchased a site for Rs.52,08,174 on 3.4.2008 within 3 months of the sale consideration and has shown cost of construction plus site cost at Rs.1,72,46,000. The Assessing Officer however rejected the assessee's claim for exemption under Section 54 / 54F of the Act on the ground that, since as per the Valuation Report filed by the assessee the commencement of construction of the new property was from 1.5.2009, which is after the due date for filing the return of income u/s. 139(1) of the Act for Assessment Year 2008-09 i.e. 31.7.2008, the assessee ought to have, but failed to invest the unutilized portion of the capital gains in a Capital Gains Account Scheme, of the Government. The assessment was accordingly completed under Section 143(3) r.w.s. 147 of the Act vide order dt.27.2.2013, wherein the income of the assessee was determined at Rs.75,33,100 as against the returned income of Rs.4,90,220 in view of, inter alia, the assessee's claim for exemption of Rs.70,16,326 under Section 54 / 54F of the Act being rejected.

3. Aggrieved by the order of assessment for Assessment Year 2008-09 dt.27.2.2013, the assessee preferred an appeal before the learned CIT (Appeals), Mysore challenging the Assessing Officer's action in denying the assessee's claim for exemption under Section 54 / 54F of the Act amounting to Rs.70,16,326. The learned CIT (Appeals) disposed of the appeal vide the impugned order dt.13.9.2013 allowing the assessee relief in respect of its claim for exemption under Section 54F of the Act, by following the

decision of the co-ordinate bench of the ITAT, Bangalore in Nipun Mehrotra V ACIT (2008) 297 ITR (AT) 110 (Bang) and directed the Assessing Officer to verify the assessee's claim of expenditure of Rs.1,28,62,774 invested in the new property and to allow the expenditure up to 31.3.2010 as exemption under Section 54F of the Act.

4. Aggrieved by the order of the CIT (Appeals), Mysore dt.13.9.2013 for Assessment Year 2008-09, the Revenue has preferred this appeal raising the following grounds :-

"1. The CIT (Appeals) erred in giving relief to the assessee in ITA No.383/Salary/CIT(A)-V/12-13.

2. In this case, the assessee did not file the return of income voluntarily, but, he filed it only after issue of a notice under Section 148.

3. Only when it was noticed during scrutiny proceedings that the assessee received Rs.1.25 Crores on relinquishment of right in the property at Sy. No.97 & 98 of Hoodi Village, KR Puram Hobli, Bangalore, the assessee put forth his claim for deduction under Section 54 / 54F.

4. The due date of filing of return for A.Y. 2008-09 was 31.7.2008, whereas the commencement of construction of the building as claimed by the assessee was 1.5.2009.

5. In order to avail of the benefit under Section 54(1) and (2), the assessee was bound to deposit the amount in a scheme framed by the Central Govt. The assessee had failed to adhere to the scheme. Therefore, the relief claim was denied by the Assessing Officer. The CIT (Appeals) relying on the decision of ITAT, Bangalore Bench in the case of Nipun Mehrotra Vs. ACIT (297 ITR-AT-110) allowed relief to the assessee by allowing the claim under Section 54F, considering the return filed under Section 139(4).

6. The assessee ought to have deposited the money within the due date of filing of return of income under Section 139(1). The conclusion drawn by the CIT (Appeals) regarding the expiry of due date of filing of return of income under Section 139(4) cannot be accepted.

7. The other decision relied upon by the assessee during appellate proceedings is in the case of Smt. Fatima Bai Vs. ITO, Ward 5(4), Bangalore in ITA No.435/2004 (KHC). In the above case, SLP was not filed before the Apex Court only because of the prescribed monetary limits.

8. A scheme has been devised by the legislature to grant relief in accordance with Section 54(1) and (2) of the IT Act, 1961. The same has to be followed strictly. The failure to comply with the same would not entitle the assessee to claim exemption.

Such compliance is mandated by the provisions and a substantial question of law would arise.

9. It is very clear from a plain reading of section 54(2) of the IT Act 1961 that the deposit in Capital Gain Scheme should be made in any case not later than the due date applicable in the case of the assessee for furnishing of the return of income under sub-section (1) of section 139.

10. Hence the decision of CIT (Appeals) to consider the last date of filing of return of income under Section 139(4) is opposed to law.

11. On these and any other grounds that may be urged at the time of hearing, the Hon'ble ITAT is pleaded to quash the order of CIT (Appeals)."

5. The assessee has also filed Cross Objections (C.O.) which are as under :-

"1. The CIT (Appeals)'s order in ITA No.383/12-13 dated 13.9.2013, holding that the long term capital gains of Rs.70,16,326 arising out of gross consideration of Rs.1,25,00,000 should be exempt under Section 54F of the Act, since the Respondent had invested a sum of Rs.1,28,62,774 in construction of residential flats upto 31.3.2010, even though he had invested the amount in 'Capital Gains Accounts Scheme' may be confirmed.

OR

The Hon'ble ITAT may hold that in view of the City Civil Judge's order dt.30.01.1997, drawing up the Sale Deed Decree in O.S.No.3486/1995, the actual sale took place in the year ended on 31.3.1997 and the long term capital gains, if any, should be assessed for the Assessment Year 1997-98 and not for the Assessment Year 2008-09.

2. For these and such other grounds which may be urged at the time of hearing, it is prayed that the reliefs, as prayed for, may be granted."

6. **Exemption under Section 54 / 54F of the Act.**

6.1 Though Revenue has raised as many as 11 grounds in this appeal, a perusal thereof indicates that the only issue raised is in respect of challenging the order of the learned CIT (Appeals) as being erroneous in allowing the assessee's claim for deduction under Section 54 / 54F of the Act by following the decisions of the Hon'ble High Court of Karnataka in the case of Fatima Bai V ITYO in ITA No.435/2004 / 32 DTR 243 (Kar) and of the co-ordinate bench of the ITAT, Bangalore in the case of Nipun Mehrotra (supra).

The learned Departmental Representative was heard in support of the grounds raised (supra) and submitted that the learned CIT (Appeals) while granting relief, to the assessee under Section 54F of the Act, the provisions of sections 54(1) and 54(2) of the Act have not been properly and strictly applied. It was submitted that in order to avail the benefit of exemption under Section 54F of the Act, since the assessee commenced construction of the new property only on 1.5.2009, the assessee ought to have deposited the amount of capital gains in the Capital Gains Account as per the Scheme framed by the Govt. on or before 31.7.2008, being the due date for filing the return for Assessment Year 2008-09 under Section 139(1) of the Act. The learned Departmental Representative vehemently argued that the conclusion of the learned CIT (Appeals), to allow the assessee's claim for exemption under Section 54F of the Act by considering the expiry of the due date for filing the return of income, as 31.3.2010, as per the provisions of section 139(4), was erroneous. The learned Departmental Representative submitted that in view of the above arguments, the order of the learned CIT (Appeals) be reversed and that of the Assessing Officer, rejecting the assessee's claim for exemption under Section 54F of the Act, be restored.

6.2 Per contra, the learned Authorised Representative strongly supported the impugned order of the learned CIT (Appeals) in allowing the assessee's claim for exemption under Section 54F of the Act and in this regard following the binding decisions of the Hon'ble High Court of Karnataka in the case of Fatima Bai (supra) and of the co-ordinate bench of the Tribunal in the case of Nipun Mehrotra (supra). The learned Authorised

Representative reiterated the submissions put forth before the learned CIT (Appeals).

It is submitted by the learned Authorised Representative that the assessee continues to claim there is no transfer or sale on the period relevant to Assessment Year 2008-09 for levy of capital gains as the transfer / sale was concluded on 30.1.1997, by virtue of the order of the XV Addl. City Civil Judge in O.S. No.3486/1995 r.w. Execution Case No.803/1996. The learned Authorised Representative further submits that if, as held by the authorities below, the transfer has taken place by virtue of the Memorandum of Agreement dt.12.12.2007, when the assessee relinquished its right in respect of the said property at Survey No.26 & 27, Hoody village, K.R. Puram Hobli, Bangalore, then the LTCG worked out at Rs.70,16,326 is exigible to tax in Assessment Year 2008-09. It is further submitted that the entire gains is exempt under Section 54F of the Act since an amount of Rs.1,28,62,774 has been invested in the construction of the new property from 1.5.2009 to 31.3.2010, which as has been held by the learned CIT (Appeals), following the decisions of Fatima Bai (supra) and Nipur Mehrotra (supra), is within the time limit permitted under Section 139(4) of the Act. The learned Authorised Representative submitted that in view of the above, revenue's appeal on this issue is liable to be dismissed.

6.3 We have heard both parties and perused and carefully considered the material on record, including the judicial decisions cited and placed reliance upon. The issue, before us, for consideration is the assessee's claim for exemption under Section 54 / 54F of the Act.

6.4 At the outset, on an appreciation of the facts on record, we concur with the finding of the learned CIT (Appeals) that there is no merit in the arguments put forth by the assessee that the transfer of the assessee's right in the property at Survey Nos.26 & 27, Hoody village, K.R. Puram Hobli, Bangalore took place in 1997. As per the facts on record, the assessee's father and uncle Sri Sekharan were before the Courts for sharing of the said property. Finally, the said property was transferred through Memorandum of Agreement dt.21.12.2007 on mutual consent. Therefore, it is clear that what was sought to be sold by the assessee's uncle in 1997 was not valid in the eye of law and the fact that the said property was transferred through the Memorandum dt.12.12.2007 proves that the real transfer took place on 12.12.2007 when the assessee relinquished his right for the consideration of Rs.1.25 Crores and not in 1997 as contended by the assessee. We, therefore, find no merit in this alternate claim put forwarded by the assessee in its Cross Objection at S.No.1 and accordingly dismiss the same.

6.5.1 Now that it has been held that the assessee's property was transferred vide Memorandum dt.12.12.2007 when the assessee relinquished his rights in the said property for a consideration of Rs.1.25 Crores credited in the assessee's bank account on 18.1.2008, the said consideration is exigible to tax as capital gains in the year under consideration i.e. Assessment Year 2008-09. In this regard, the assessee computed the LTCG on transfer of his share of the said property at Rs.70,16,326 and claimed that the entire capital gains was exempt under Section 54 / 54F of the Act. It was submitted by the assessee that the consideration received was invested in the purchase of a site on

3.4.2008 for Rs.52,08,174 and the balance was invested in the cost of construction incurred in putting up the new residential property thereon between 1.5.2009 and 31.3.2010. The details of the investments made out of the sale consideration of Rs.1.25 Crores is computed as under by the assessee :-

1) Purchase of site on 3.4.2008	Rs.52,08,164
2) Building Construction commenced from 1.5.2009 to 31.3.2010	
a) Ground Floor	Rs.25,87,500
b) First Floor.	Rs.24,79,000
c) Second Floor	Rs.25,87,500
Total Investment Upto 31.3.2010 :	Rs.1,28,62,774.

6.5.2 The assessee's contention is that since the concerned assessment year was 2008-09, the time limit to utilize the capital gains for making the deposit or to invest the capital gains in the construction of the new residential building is 31.3.2010, as per the provisions of section 139(4) of the Act. In support of this proposition, the assessee placed reliance on the decision of the co-ordinate bench of this Tribunal in the case of Nipur Mehrotra (supra); the decision of the Hon'ble Gauhati High Court in the case of Rajesh Kumar Jalan reported in 286 ITR 274 and of the Hon'ble High Court of Karnataka in the case of Fatima Bai (supra).

6.5.3 The fact that the assessee has invested the entire sale consideration / capital gains in the purchase of the site and in the construction of the residential property thereon by 31.3.2010 is not disputed. The dispute raised by revenue is that since the assessee failed to invest the capital gains of Rs.70,16,326 before the due date of filing the return of income for Assessment Year 2008-09 i.e. 31.7.2008, as laid down u/s. 139(1)

of the Act or to deposit the same by this date, i.e. 31.7.2008, in the Capital Gains Account Scheme of the Govt., the assessee is not eligible for exemption under Section 54 / 54F of the Act. In this regard, we find the co-ordinate bench of the ITAT, Bangalore in the case of Nipun Mehrotra (supra) held that if the sale consideration / capital gains is utilized for the purchase or construction of the new asset before the date of filing the return under Section 139(4) of the Act, the assessee is entitled to exemption under Section 54F of the Act. In the case on hand, the facts clearly establish that the assessee has utilized the sale consideration / capital gains for a) purchase of a residential site for Rs.52,08,164 on 3.4.2008 and b) for cost of construction of the Ground to 2nd floor of the residential construction of the Ground to 2nd floor of the residential building upto 31.3.2010 amounting to Rs.72,91,836. In this factual matrix, we are of the opinion that the assessee is eligible for exemption under Section 54F of the Act. In coming to this finding we draw support from the decision of the co-ordinate bench of the Tribunal in the case of Nipun Mehrotra (supra), wherein following the decision of the Hon'ble Gauhati High Court in the case of Rajesh Kumar Jalan (supra), it was held that when the sale consideration / capital gains has been utilized for the purchase or construction of the new asset before the due date for furnishing the return of income under Section 139(4) of the Act, the assessee is entitled to exemption under Section 54F of the Act. The learned CIT (Appeals) in the impugned order has, also observed that the claim for exemption, in respect of the other co-sellers of the said property, has been allowed by the Department. In this view of the matter, following the decision of the co-ordinate bench of the ITAT, Bangalore in Nipun

Mehrotra (supra), we find that revenue has failed to controvert the decision of the learned CIT (Appeals) and therefore uphold the impugned order of the learned CIT (Appeals). Consequently, the grounds at S.Nos.1 to 11 raised by revenue are dismissed.

7. In respect of the assessee's Cross Objections; at para 5.3.2 of this order we have already dismissed the alternate plea raised by the assessee at Ground No.1. Further, on a perusal of the Grounds 1 and 2 of the assessee's C.O., we find that they are supportive of the findings in the impugned order of the CIT (Appeals). In view of the fact that revenue's appeal has already been dismissed by us in this order (supra), these C.Os 1 and 2 are rendered infructuous and are accordingly dismissed.

8. In the result, both the Revenue's appeal and the assessee's C.O. for Assessment Year 2008-09 are dismissed.

Order pronounced in the open court on 4th March, 2015.

Sd/-
(P. MADHAVI DEVI)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp
Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore