

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF FEBRUARY, 2012

PRESENT

THE HON'BLE MR.JUSTICE N KUMAR

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

INCOME TAX APPEAL NO.175 OF 2011

BETWEEN:

- 1 THE COMMISSIONER OF INCOME-TAX
C.R.BUILDING
QUEENS ROAD
BANGALORE.
- 2 THE DY. COMMISSIONER OF INCOME TAX
CIRCLE-1(1)
C.R.BUILDING
QUEENS ROAD
BANGALORE. ...APPELLANTS

(BY SRI: K V ARAVIND, ADVOCATE)

AND:

SRI SAMBANDAM UDAYKUMAR
NO.35, M G ROAD
BANGALORE - 560 001. ...RESPONDENT

(BY SRIYUTHS: S PARTHASARATHI AND
P DINESH, ADVOCATES)

THIS INCOME TAX APPEAL FILED UNDER SECTION
260-A OF THE INCOME TAX ACT, 1961, ARISE OUT OF THE
ORDER DATED 21.1.2011 PASSED IN ITA

NO.634/BANG/2010 FOR THE ASSESSMENT YEAR 2006-2007 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE, IN ITA NO.634/BANG/2010 DATED 21.1.2011 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER, CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY

THIS INCOME TAX APPEAL COMING ON FOR ADMISSION THIS DAY, N. KUMAR, J., DELIVERED THE FOLLOWING:-

JUDGMENT

The revenue has preferred this appeal against the order passed by the Tribunal granting benefit to the assessee, upholding the order of the commissioner under Section 54F of the Income Tax Act, 1961, (For short, hereinafter referred to as, 'the Act').

2. The assessee Sri.Sambandam Uday Kumar filed his return of income for the year 2006-07 on 11.10.2006 declaring an income of ₹2,13,68,271/-. The case was selected for scrutiny. Notices under Section 143 (2) and 142 (1) were issued to the assessee. In response to the above notice, the authorised representative of the assessee appeared and submitted

pending. Therefore the assessing authority came to the conclusion that the construction is not complete even after lapse of three years of time from the date of transfer of the said shares on which the capital was derived. The assessee has only entered into an agreement of sale for construction with M/s. Adarsh Developers and paid an advance of ₹1,23,26,050/- as on 31.03.2006 towards the cost investing in house property. Therefore he held that the assessee has neither purchased the property within the period of two years nor constructed the property within the period of three years after the date of transfer of the asset, on which the capital gain was derived, and Section 54F of the Act is not applicable to the assessee. Therefore after taking into consideration the tax paid, he raised a demand for ₹32,31,701/-.

3. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals). After considering the various judgments

relied on, the Appellate Commissioner held that the house which the assessee intends to purchase/construct is not even fit to be called as a house, not to speak of residential house. It is neither been purchased nor constructed in the true sense of the term. Hence the assessee is not eligible to the benefit under Section 54F of the Act. Therefore, he dismissed the appeal. Aggrieved by the said order, the assessee preferred an appeal to the tribunal.

4. The Tribunal held that the material on record discloses that there was no dispute with regard to the fact that the assessee had invested ₹2,16,61,670/- as on 31.10.2006 within twelve months from the date of realization of sale proceeds of shares. The builder's letter set out the details of payment made by the assessee to the builder. Further, it disclosed that substantial construction was completed as on 12.11.2008 i.e., within three years period from the date of sale of shares giving rise to capital gain and only

stipulated period of three years for availing of the benefit?"

7. Learned counsel for the revenue assailing the impugned order of the Tribunal contended that the undisputed material on record discloses that within the period of three years stipulated under section 54F of the Act, the building is not complete in all respects. It was not in a position to occupy, no sale deed had been executed in terms of the agreement and therefore the Tribunal was not justified in extending the benefit under section 54F of the Act.

8. Per contra, learned counsel for the assessee submitted that no doubt the building was not complete in all respects and the sale deed was not executed within three years, but within the period of three years, the assessee has invested a sum of ₹2,16,61,670/- in construction of the building. After three years period, sale deed is executed in his favour. He has been put in possession and he is living in the said premises. In

those circumstances, the Tribunal was justified in extending the benefit of section 54F of the Act to the assessee and therefore no case for interference is made out.

9. Section 54F of the Act provides for exemption from payment of capital gain on transfer of certain capital assets in case the consideration for transfer is invested in acquiring the residential house. It reads as under:

54F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

(1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the

following provisions of this section, that is to say, -

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) 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 the 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 :

Provided that nothing contained in this sub-section shall apply where

- (a) the assessee, -
 - (i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or
 - (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
 - (iii) constructs any residential house, other than new asset, within a period of three years

after the date of transfer of the original asset; and

- (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".*

Explanation : For the purposes of this section, - "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

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

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



construct a residential house in order to become eligible for exemption. In the cases on hand, it is not in dispute that the assesseees have purchased the lands by investing the capital gain and they have also constructed residential houses. In order to establish the same, the assesseees submitted before the CIT(A) several material evidences, viz., invitation card printed for the house warming ceremony to be held on 12th July, 2003. The assesseees have also produced the completion certificates from the municipal authority on 30th Jan., 2004. On the basis of the above documents, the CIT(A) concluded that the requirement of the statutory provision has been complied with by the assesseees and that was reconfirmed by the Tribunal in the orders impugned."

13. The said Judgment of the Madras High Court has been affirmed by the Apex Court and the appeal was dismissed at the stage of preliminary hearing in CC Nos.3953-3954/2009 decided on 6.4.2009.

14. In the instant case, the material on record discloses that the assessee had invested ₹2,16,61,670/- as on 31.10.2006 within twelve months from the date of realization of sale proceeds of shares. The developer

acknowledging the said amount has given particulars of the stage of construction. According to him, only minor fittings like window shutters and some electrical work were required to be made. In fact, the report of the inquiry conducted by the Department also discloses the flooring work, electrical work, fitting of door and window shutters were still pending. The assessee has produced before the authorities the registered sale deed dated 7.11.2009 showing the transfer of the property in his favour. The said document discloses marble tiles flooring has been done, electricity, water and sanitary connections have been given, wood used is teak in respect of doors and windows. The assessee has been put in possession of the property and he is in occupation. Therefore, the assessee has invested the sale consideration in acquiring a residential premises and has taken possession of the residential building and is living in the said premises. The object of enacting



section 54 of the Act i.e., to encourage investment in a residential building is completely fulfilled.

15. In that view of the matter, the Tribunal was justified in extending the benefit of section 54F of the Act to the assessee and the said order does not suffer from any infirmity which calls for interference.

16. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue.

The appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE