

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.63/Bang/2013
Assessment year : 2009-10

The Income Tax Officer, Ward 4(1), Bangalore.	Vs.	Smt. B.S. Shanthakumari, No.187, 8 th Main, Byrasandra, 1 st Block East, Jayanagar, Bangalore – 560 022. PAN: AMZPS 1706Q
APPELLANT		RESPONDENT

Appellant by	:	Shri A. Sundararajn, Jt. CIT(DR)
Respondent by	:	Shri H.V. Gowthama, C.A.

Date of hearing	:	25.10.2013
Date of Pronouncement	:	13.11.2013

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal is filed by the revenue against the order dated 02.11.2002 of the CIT(Appeals)-II, Bangalore relating to A.Y. 2009-10.

2. The grounds of appeal raised by the revenue reads as follows:-

“1) The order of Ld. CIT(A) is clearly opposed to law as far as the findings are perverse, contrary to the facts and circumstance of the case and hence not sustainable.

2) The Ld. CIT(A) has erred in deleting the addition made on account of denial of relief u/s 54F to the tune of Rs 46,66,562/- without appreciating and giving a concrete finding against the admitted fact that the assessee failed to adhere to the conditions laid down under section 54F.

3) The Ld. CIT(A) has erred in not appreciating the fact that the assessee has not produced any documentary evidence to show that there was a construction of new house building.

4) The Ld. CIT(A) has further erred in concluding that a site purchase and obtaining plan for construction of new house is enough for the assessee to claim relief u/s 54F ignoring the very intended and legislated provisions of the said section.”

3. The assessee is an individual. During the previous year, the assessee sold property bearing No.1355 in the layout formed by Ministry of Communication Employees' Co-operative Housing Society Ltd. at Dr. Shivaram Karanth Nagar, Bangalore on 06.10.2008. The capital gain on sale of the aforesaid property was invested by the assessee in purchasing another house site on 13.10.2008 at Site No.108, Nagarabhavi II Stage, I Block Extension, Bangalore measuring 2400 sq.ft. The Assessee claimed deduction u/s.54F of the Act on the capital gain on sale of the Shivaram Kant Nagar property. The revised computation of capital gains filed by the Assessee and considered by the AO in the order of assessment was follows:

Sale of Property	Rs. 50,00,000
Less: Indexed cost of acquisition	
$\frac{2,75,000 \times 480}{582}$	<u>Rs. 3,33,437</u>
	Rs. 46,66,562
Less: Investment on the property	<u>Rs. 48,68,665</u>
Capital gain/(Loss) on sale of property	

4. As per provisions of Sec.54F, the assessee should construct the residential house within 3 years from the date of sale of the property or invest in a residential house within 2 years. The provisions of Sec.54F is reproduced as under:

“54F (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 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; and

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset.

5. To verify the claim of the Assessee that she invested the capital gain in construction of a residential house, the AO issued summons, u/s 131 of the I.T. Act, 1961, to the assessee on 11.11.2011 posting the case on 14.11,2011. In response to the summons, assessee's husband Shri N Chandrappa, appeared on behalf of the assessee. His statement was recorded on 18.11.11. The relevant portion of the question and answer is reproduced as under:-

Q.No.2 Please furnish the details of income of your wife?

Ans: My wife was deriving income from house property during the P.Y 2008-09 to the extent of Rs.2,16,000/- and interest income of Rs.60,250/-. During F.Y 2008-09, she sold one residential vacant site No.1355 in a layout formed by the Ministry of Communications Employees' Housing Society Ltd., at Yelahanka Hobli, Bangalore North Taluk, presently named as Dr. Shivaram Karanth Nagar, Bangalore, measuring East to West 60 feet and North to South 40 feet for a consideration of Rs.49/50 lacs and the registered value is Rs.28,80,000/- whereas I have taken the actual sale

consideration for calculation of LTCG. This property was purchased on 31.07.2004 for a consideration of Rs.2,52,000/- and claimed cost inflation index of Rs.3,33,437/- and claimed exemption u/s 54F to the tune of Rs.46,66,562/- . This amount was invested in purchase of another site at No.108, in layout formed by Bangalore Development Authority, situated at Nagarabhavi 2nd Stage, 1st Block Extension, Bangalore, measuring East to West: 60 feet, North to South: 40 feet.

Q.No.3. You have given an answer to Q.No.2 that you have invested the sale consideration for purchase of site at Nagarabhavi and claimed exemption u/s 54F. For claiming exemption under this section, you should have constructed a residential house within a period of 3 years after the date of transfer of the property. Have you constructed the residential house within 3 years which expires on 12.10.2011 ?

Ans: I got the construction Plan approved by the BBMP on 02.06.2010. But, due to certain financial constraints, I could not complete the construction within the stipulated period.

6. On the basis of the statement of the husband of the Assessee, the AO was of the view that the assessee has not satisfied the conditions laid down in Sec.54F of the Act for claiming deduction from chargeable capital gain. The AO on the basis of answer to Q.No.3 came to the conclusion that the Assessee did not complete construction of the residential house within a period of 3 years by not constructing the residential house within three years from the date of sale of the property. As per the sale deed the property at Shivaram Karanth Nagar, Bangalore was sold by the Assessee on 06.10.2008. The period of 3 years from that date expires on 05.10.2011. According to the AO, the assessee has not constructed the residential

house within the period stipulated in Sec.54F of the Act. Hence, the claim made by the assessee u/s 54F was rejected and the entire capital gains of Rs.46,66,562/- was brought to tax by the AO under the head Long Term Capital Gains.

7. Aggrieved by the order of AO, the assessee filed appeal before the CIT(Appeals). Before the CIT(A), it was submitted that the period of three years from the date of sale of the property within which construction of a residential house should be made by the assessee to claim deduction u/s. 54F of the Act would expire on 05.10.2011. The assessee pointed out that she got plan sanctioned for the construction of the house on 02.06.2010. It was also pointed out that because of financial constraints, the construction started before 05.10.2011, but could not be completed. The evidence regarding the progress of construction (in the form of photographs) at the time when the proceedings were pending before the CIT(A) were also furnished. The assessee pointed out that to claim deduction u/s. 54F of the Act, it is not a condition that the construction of the house should have been completed within the stipulated period of three years and that if it is proved that the consideration received on transfer of the asset giving rise to capital gains had been invested in the construction of residential house, the assessee is entitled to benefit of section 54F of the Act, though the construction is not complete in all respects. In support of the stand taken by the assessee, reliance was placed on the decision of the Hon'ble Karnataka High Court in the case of *CIT v. Sambandam Udaykumar*,

251 CTR 317 (Karn.), wherein the Hon'ble High Court had taken the following view:-

“ 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.

In the instant case, the material on record discloses that the assessee had invested Rs. 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.

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.”

8. The CIT(Appeals) after considering the decision of the Hon'ble Karnataka High Court referred to above, observed as follows:-

“3.5 In this regard, the Hon'ble High Court of Karnataka has quoted with approval the decision of the Hon'ble High Court of Madras in the case of CIT v. Sadarmal Kothari (302 ITR 286) on similar set of facts, which has also been affirmed by the Hon'ble Supreme Court by dismissing the departmental appeal against the said judgement at the stage of preliminary hearing in CC.Nos.3Y53-3954/2009 dated 6.4.2009.

3.6 The facts in the appellant's case under consideration are substantially the same as those in the case of CIT V. Sri Sambandam Udaykumar (supra). Therefore, respectfully following the judgement of the jurisdictional High Court in the said case, I hold that, though the residential building of the appellant under construction is not complete within the stipulated period due to circumstances beyond the control of the appellant, she cannot be denied the benefit envisaged in section 54F of the Act. The AO is, therefore, directed to allow the appellant's claim for deduction of Rs.46,66,562/- u/s 54F of the Act.”

9. Aggrieved by the order of the CIT(Appeals), the revenue has preferred the present appeal before the Tribunal.

10. Before us, the Id. DR submitted that in the case of *Sambandam Udaykumar (supra)* decided by the Hon'ble Karnataka High Court, the construction was almost complete and therefore the Hon'ble High Court

give a liberal interpretation. In this regard, our attention was drawn to para 14 of the aforesaid decision, where factually the building was almost complete. The Id. DR submitted that as far as the assessee in the present case is concerned, she had invested only a sum of Rs.2.5 lakhs in digging out a borewell and purchase of sand and cement. The assessee had entered into an agreement for construction on 12.05.2011 and therefore it cannot be said that there was substantial compliance of the provisions of section 54F warranting grant of relief to the assessee. Besides the above, reference was made to the decision of the ITAT Lucknow Bench in the case of *Rita Gaur v. DCIT, 90 ITD 24 (Luck)*, wherein it was held that deduction u/s. 54F cannot be allowed when the capital gain is invested in purchase of a residential plot and that construction of the house within the specified period over the plot purchased has to be made to get deduction u/s. 54F of the Act.

11. We have considered the submissions of the Id. DR. In our view, the order of the CIT(Appeals) does not call for any interference. It is clear from the order of the CIT(A) that the assessee had commenced construction of the building within a period of three years from the date on which the property on the transfer of which capital gain arose. In fact even at the stage of purchasing the plot of land on which construction was put up by the Assessee, the entire capital gain had been invested. The intention of the assessee was to construct a residential house and in this regard, we find that the assessee had applied for a sanction of the building plan and

got sanction of the building plan as early as on 02.06.2010. The construction, however, could not be completed by the assessee, though construction had been started. The Hon'ble Karnataka High Court, in the decision rendered in the case of *Sambandam Udaykumar (supra)*, had taken a view that under the provisions of section 54F of the Act, the condition precedent was that the capital gain realized from sale of capital asset should have been parted by the assessee and invested in constructing a residential house. If the money is invested in constructing the residential house, merely because the construction was not complete in all respects and was not in a condition to be occupied within the stipulated period, that cannot be a ground for rejecting the benefit of deduction u/s. 54F to the assessee. The Hon'ble Court observed that the essence of the provisions of section 54F is whether the assessee who received the capital gain has invested in the house. Once if it is demonstrated that the consideration received on transfer has been invested in construction of the residential house, then though the construction is not complete in all respects and as required under law, the assessee should be given the benefit of section 54F. A reading of the aforesaid decision of the Hon'ble Karnataka High Court would show that there is no particular stage of completion of construction that is contemplated. It is not in dispute that the assessee later completed the construction and has occupied the residential house. In such circumstances, we are of the view that no fault can be found with the order of the CIT(Appeals) allowing benefit of deduction u/s.

54F of the Act to the assessee. We therefore confirm the order of the CIT(A) and dismiss the appeal of the revenue.

12. The Id. counsel for the assessee has raised some alternative contentions before us with regard to the year in which the capital gain ought to have been brought to tax. According to him the capital gain cannot be brought to tax in AY 09-10 because of the provisions of Sec.54F of the Act and that only in the year of default of compliance with conditions u/s.54F of the Act, capital gain can be brought to tax. We have not gone into those contentions in view of our conclusions as above.

13. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 13th day of November, 2013.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 13th November, 2013.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar/Sr.Pvt. Secretary,
ITAT, Bangalore.