

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C'

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

I.T. A. No.1356/Bang/2012
(Assessment Year : 2009-10)

Shri Gopilal Laddha,
No.270-B, C/o Mahesh Industries,
Mysore Road, Bengaluru-560 026

.... Appellant.

Vs.

Asst. Commissioner of Income Tax,
Circle 2(1), Bangalore.

..... Respondent.

Appellant By : Shri K Y Ningoji Rao.
Respondent By : Shri A. Sundararajan.

Date of Hearing : 5.9.2013.
Date of Pronouncement : 31.10.2013.

O R D E R

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

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-I, Bangalore dt.6.8.2012 for Assessment Year 2009-10.

2. The facts of the case, in brief, are as under :

2.1 The assessee, an individual, filed his return of income for Assessment Year 2009-10 on 21.9.2009 declaring total income of Rs.26,48,610. The return was processed and the case was subsequently taken up for scrutiny. The assessment was completed by an order under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dt.22.12.2011

wherein the income of the assessee was determined at Rs.75,68,465 as against returned income of Rs.26,48,610, in view of the following additions / disallowances :

- (i) Disallowance of the assessee's claim for set off of Long Term Capital Loss (LTCL) on sale of listed securities of Rs.3,22,314 against Long Term Capital Gain (LTCG) arising on sale of land.
- (ii) Recomputation of the LTCG on sale of land and restriction of the Exemption under section 54F to Rs.6,23,433 as against Rs.46,11,166 claimed by the assessee.

2.2 Aggrieved by the order of assessment for Assessment Year 2009-10 dt.22.12.2011, the assessee preferred an appeal before the CIT(Appeals) - I, Bangalore. The learned CIT (Appeals) dismissed the assessee's appeal by order dt.6.8.2012.

3. Aggrieved by the order of the CIT(Appeals) - I, Bangalore for Assessment Year 2009-10 dt.6.8.2012, the assessee is now in appeal before us raising the following grounds :

" 1. That the impugned order of assessment is liable to set aside in so far as the impugned order made by the Respondent Officer is regular, incorrect, improper, unlawful and opposed to facts of the case and law.

2. The learned CIT (Appeals) erred in upholding the order of the Assessing Officer disregarding the fact that the appellant had complied with the conditions stipulated u/s. 54F(1) of the Income Tax Act, 1961.

3. That the learned Assessing Officer erred in restricting the exemption u/s.54F to Rs.6,23,433 as against the sum of Rs.30,41,414 claimed by the appellant disregarding the provisions of the Income Tax Act and the facts and circumstances of the case.

4. That the learned Assessing Officer erred in restricting the investment qualifying for exemption u/s.54F to Rs.6,89,350 as against the sum of Rs.50,98,720 claimed by the appellant disregarding the fact that the appellant had complied with the condition stipulated u/s.54F(1) of the Income Tax Act, 1961.

5. That the learned Assessing Officer erred in disallowing the set off of long term capital loss of Rs.3,22,314 incurred on sale of long term listed shares disregarding the provisions of section 70 of the Act.

6. That the learned Assessing Officer erred in reckoning the returned income of Rs.27,98,530 as against Rs.26,48,610 actually returned by the appellant.

7. That the Assessing Officer erred in levying the interest of Rs.2,20,341 u/s.234B though the appellant is not liable there for and as such the same is liable to set aside.

8. That the Respondent Officer erred in levying the interest of Rs.24,674 u/s.234C though the appellant is not liable there for and as such the same is liable to set aside."

4. The Ground at S.No.1 is general in nature and not being urged before us, no adjudication is called for thereon.

5.0 **Exemption u/s.54F of the Act.**

5.1 The Grounds at S.Nos.2 to 4 challenge the orders of the authorities below in restricting the assessee's claim for exemption under section 54F of the Act to Rs.6,23,433 as against Rs.46,11,166 claimed by the assessee by totally disregarding the facts on record evidencing that the assessee had complied with the provisions of the Act in order to be allowed the exemption under section 54F of the Act as claimed.

5.2.1 As per the details that emanate from the record, the assessee was one of the joint owners of a property situated at No.327/6, Mysore Road, Bangalore which was acquired by the Karnataka Industrial Area Development Board (KIADB) for the Bangalore Metro Rail Corporation Ltd. (BMRCL). On completion of the process of acquisition of the said land, BMRCL paid the assessee compensation of Rs.84,64,701 as per its letter dt.28.7.2008. The assessee purchased a flat for a total cost of Rs.50,98,720 (inclusive Rs.4,09,370 for amenities) under Registered Sale Deed dt.11.9.2008. In the return of income for the relevant period, the assessee declared net LTCG of Rs.25,81,526 thereon which was revised to Rs.30,41,414, thereby claiming exemption of Rs.46,11,166 u/s.54F of the Act.

5.2.2 The Assessing Officer on examination of the assessee's computation of LTCG and exemption of Rs.46,11,166 claimed u/s.54F of the Act found that the assessee had booked a flat on 19.1.2006 and then taken a loan of Rs.40 lakhs from Syndicate Bank, Yeshwantpur Branch,

Bangalore, which was sanctioned on 24.5.2006, for investment in the purchase of the said flat. The Assessing Officer noted that as per the assessee's admission, an amount of Rs.44,70,852 was paid in this connection by 31.3.2007 i.e. more than a year prior to the acquisition of the new asset. In these circumstances, the Assessing Officer held that the proven cost of the new asset is only Rs.46,89,350 since the balance amount of Rs.4,09,370 paid towards electrical, water and sanitary connections and deposits do not qualify for being considered for exemption u/s.54F of the Act. The Assessing Officer was also of the view that since the assessee invested Rs.40 lakhs out of the Housing Loan from Syndicate Bank in the purchase of the new asset viz. the flat, only Rs.6,23,433 qualified for exemption and accordingly worked out the exemption under section 54F of the Act at Rs.6,23,433 and accordingly the exemption u/s.54F of the Act was allowed to this extent only as against Rs.46,11,166 claimed.

5.2.3 On appeal, the learned CIT (Appeals) dismissed the assessee's appeal holding that the assessee is not eligible for exemption under section 54F of the Act as claimed.

5.3 The learned Authorised Representative was heard at length on the assessee's claim for exemption under section 54F of the Act in the case on hand. The arguments put forth before us were a reiteration of those put forth before the learned CIT (Appeals) and reproduced in that order at pages 6 to 14 of his order. In this regard the learned Authorised Representative submitted that as per section 54F(1), the only condition required to be satisfied for the assessee to avail the exemption thereunder was that the assessee should within a period of one year before or two years after the date of transfer, purchase or within a period of three years construct a residential property. It is submitted by the learned Authorised Representative that there is no dispute with regard to the fact that the assessee received compensation of

Rs.84,61,701 as compensation for acquisition of the land i.e. the old asset acquired for the Bangalore Metro on 21.7.2008. The learned Authorised Representative further submitted that there was also no dispute with regard to the fact that the assessee acquired a residential flat at Gokulam, Kanakpura Road, Bangalore for Rs.50,98,720 by registered sale deed dt.11.9.2008 and therefore has satisfied the conditions required for being allowed exemption u/s.54F of the Act as claimed at Rs.46,11,166. The learned Authorised Representative contended that since various courts have held that the only condition to be satisfied is that the new residential property should be purchased within the specified period of one year before or with two years after the sale of the old capital asset, which has been done by the assessee in the case on hand, the assessee is entitled to be allowed exemption under section 54F of the Act. The issues raised by the authorities below to deny the assessee the said exemption u/s.54F viz. (i) that the booking for the said flat was made by the assessee on 19.1.2006; (ii) that a loan of Rs.40 lakhs was taken from Syndicate Bank on 24.5.2006 towards investment in the said flat being more than one year, prior to sale acquisition of the said property on 21.7.2008, the learned Authorised Representative submits, is not material, since the assessee has acquired the new property i.e. the flat, only on 11.9.2008 by Registered Sale Deed and not before that. The learned Authorised Representative submits that all acts by the assessee to book the said flat in 2006 and availing of housing loan for investing therein in 2006 do not confer ownership of the said property in the said flat. In this view of the matter, the assessee prays that he is entitled to be granted exemption u/s.54F of the Act as claimed by it. In support of the assessee's claim for deduction u/s.54F of the Act, the learned Authorised Representative inter alia relied on the following judicial pronouncements :

(i) CIT V Arvinda Reddy T N (1979) 120 ITR 46.

(ii) ITO V K C Gopalan (2000) 107 Taxman 591 (Kar)

(iii) Fatima Bai V ITO (2009) 32 DTR 243 (Kar).

5.4 The learned Departmental Representative placed strong reliance on the orders of the authorities below and prayed for dismissal of the grounds raised by the assessee in respect of the assessee's claim for exemption u/s.54F of the Act.

5.5.1 We have heard both parties at length and perused and carefully considered the material on record. The issue before us for adjudication is with regard to the quantum of exemption allowable as the assessee u/s.54F of the Act. Section 54F(1) of the Act reads 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 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,”

5.5.2 As per the facts that emanate from the record, the assessee was one of the joint owners having 50% share of an industrial property bearing No.327/6 at Mysore Road purchased on 20.10.2004. Proceedings for the acquisition of the said land was initiated by KIADB, purportedly from BMRCL (Bangalore Metro) and the assessee received compensation of Rs.84,61,701 on acquisition thereof on 21.7.2008 from BMRCL. The assessee purchased a flat at Gokulam, Kanakpura by Registered Sale Deed dt.11.9.2008 for a sale consideration of Rs.50,98,720. In the return of income the assessee declared net LTCG of Rs.25,81,526 which was subsequently revised to Rs.30,41,414 as per the working given hereunder :

No.	Particulars	As per Return (Rs.)	As Revised (Rs.)
i)	Compensation received	84,61,701	84,61,712
ii)	Less : Cost inflation index	7,81,455	8,09,132
iii)	Long Term Capital Gains	76,80,246	76,52,580
iv)	Less : Exemption		
a)	u/s. 54	50,98,720	46,11,166
b)	u/s.54F : <u>50,98,720x76,52,580</u> 84,61,712		
v)	Net Long Term Capital Gains	25,81,526	30,41,414

5.5.3 There is no dispute that the LTCG on this transaction is Rs.76,80,240. How the Assessing Officer on examination of the assessee's claim for exemption under section 54F of the Act, restricted the assessee's claim from Rs.46,11,166 to Rs.6,23,433 for the reasons that :-

- (i) though the asset i.e. the flat was purchased by the assessee by Regd. Sale Deed dt.11.9.2008, the booking was made on 9.1.2006 and
- (ii) a Housing Loan of Rs.40 lakhs was taken from Syndicate Bank on 24.5.2006 which was invested in the said property before 31.3.2007

We do not agree with the view of the authorities below that both these investments amounting to Rs.44,70,852 being made more than one year prior to the date of receipt of compensation of Rs.84,61,701 for the asset, on 21.7.2008, the assessee would not be eligible for exemption under section 54F of the Act to the extent claimed but only for Rs.6,23,133. In our view, the amounts paid by the assessee on booking of the asset i.e. flat at Gokulam, Kanakpura Road on 9.1.2006 and the housing loan of Rs.40 lakhs availed from Syndicate Bank for investment in the purchase thereof have not vested the assessee with ownership of the new asset. The

assessee has been vested with the ownership of the new flat at Gokulam, Kanakpura Road only by virtue of the Registered Sale Deed dt.11.9.2008. In this view of the matter, we find that the authorities below have erred in restricting the exemption under section 54F of the Act to Rs.6,23,433. Rather, we are of the view that the assessee is entitled to exemption under section 54F of the Act to the extent of Rs.46,11,166 as claimed by it and the net LTCG on sale of the above property would be Rs.30,41,414 as given in the revised computation of LTCG (supra). The Assessing Officer is directed to allow the assessee exemption under section 54F of the Act accordingly.

6. **Set off of Long Term Capital Loss (LTCL) on sale of securities : Rs.3,22,314.**

6.1 In the Ground raised at S.No.5, the assessee contends that the Assessing Officer erred in disallowing the set off of LTCL of Rs.3,22,314 incurred on sale of listed shares, against LTCG on sale of immovable property to BMRCL disregarding the provisions 70 of the Act. The learned Authorised Representative submits that the provisions of section 70(3) of the Act which deals with set off of loss from one source against the income from another source under the same head does not exclude the loss on sale of listed securities involving STT as contemplated under section 10(68) of the Act. Hence the LTCL on sale of listed securities is liable to be set off against LTCG on sale of immovable property. It is further submitted by the learned Authorised Representative that even sub-sections (1) and (3) of section 71 of the Act which deal with set off of losses does not exclude capital loss arising on sale of listed securities as contemplated u/s.10(38) of the Act. Similarly, it is submitted that, even under section 74 of the Act which deals with set off of losses under the head Capital Gains, it does not exclude capital loss arising from sale of listed securities as contemplated u/s.10(38) of the Act. The learned Authorised

Representative contends that where the Legislature intended to exclude any kind of losses from being set off, they have done so specifically and therefore, it is evident that the exemption given under section 10(38) does not mean that the loss incurred on such shares as contemplated under section 10(38) of the Act can be denied being allowed set off under sections 70, 71 and 74 of the Act. In view of this, the learned Authorised Representative prays that the LTCL of Rs.3,22,314 be allowed to be set off against the LTCG on sale of immovable property as contemplated u/s.70(3) of the Act. In support of this proposition, the learned Authorised Representative relied on the decision of the co-ordinate bench of the Mumbai Tribunal in the case of Ramamurthy (GK) V JCIT (2010) 2 ITR (Trib) 139 (Mum).

7.2 Per contra, the learned Departmental Representative supported the orders of the authorities below.

7.3 We have heard both parties and perused and carefully considered the material on record. Admittedly the assessee, in the period under consideration, incurred a loss of Rs.3,22,314 in respect of listed securities the income of which is exempt. 10(38) of the Act and which the assessee sought to set off against the LTCG arising on sale of immovable property in the same period. Both the authorities below were of the view that since any income by way of capital gains arising from the sale of listed securities being exempt under section 10(38) of the Act, consequently the LTCL arising from sale of such securities also cannot be set off against LTCG on sale of land. In the cited case viz. G.K. Ramamurthy (supra) of the co-ordinate bench of the Mumbai Tribunal, it was held that under the scheme of the Act, income which does not form part of the total income under Chapter III of the Act does not enter the computation of total income under any of the heads of income mentioned under section 14 of the Act and the question

of aggregating them under Chapter VI and setting them off under section 70(3) does not arise. We find that though this case is cited by the learned Authorised Representative, the ratio of the decision therein does not come to the rescue of the assessee. Following the reasoning of the co-ordinate bench of the Mumbai Tribunal in the case of *G.K. Ramamurthy* (supra), we are of the view that the set off of LTCL on sale of listed securities, whose income is exempt under section 10(38) of the Act, against LTCG on immovable property as claimed by the assessee, is contrary to law and the intention, object and purpose of the Legislation in introducing clause 10(38) of the Act. In this view of the matter, we reject ground No.5 raised by the assessee and confirm the orders of the authorities below.

8. **Total income declared by assessee.**

8.1 In the Ground raised at S.No.6, the assessee contends that the Assessing Officer erred in adopting the returned income at Rs.27,98,530 as against Rs.26,48,610 actually declared by the assessee in the return of income for Assessment Year 2009-10 filed on 21.9.2009. The learned Authorised Representative also submitted that though this matter was raised in the appeal before the CIT(Appeals) as ground No.5, the learned CIT (Appeals) failed to address this ground.

8.2 Both sides have been heard in the matter. On a perusal of the records before us, we find that as contended by the learned Authorised Representative, the assessee had in fact raised this issue at ground of appeal at S.No.5 before the learned CIT (Appeals), which he has failed to address. In this view of the matter, we restore this ground to the file of the CIT(Appeals) with the direction to dispose off the ground No.5 raised in the appeal before him after examination and verification of the claim of the assessee in respect of adoption of the correct figure of

income as returned in the return of income for Assessment Year 2009-10. It is ordered accordingly.

9. **Charging of Interest under section 234B of the Act : Rs.2,20,341.**

9.1 In the Ground at S.No.7, the assessee challenges the action of the Assessing Officer in charging him interest under section 234B of the Act for Assessment Year 2009-10. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. In this view of the matter, we uphold the Assessing Officer's action in charging the aforesaid interest in the case on hand. The Assessing Officer is, however, directed to recompute the interest chargeable under section 234B of the Act, if any, while giving effect to this order.

10. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 31st October, 2013.

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