

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD**

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA.No.422/Hyd/2013
Assessment Year 2009-2010

Vittal Krishna Conjeevaram Secunderabad – 500 025 PAN ANJPC7070J (Appellant)	vs.	Income Tax Officer, Ward 10(4) Hyderabad (Respondent)
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ITA.No.423/Hyd/2013
Assessment Year 2009-2010

Anand Krishna Conjeevaram Secunderabad – 500 025 PAN AMRPC4593H (Appellant)	vs.	Income Tax Officer, Ward 10(4) Hyderabad (Respondent)
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ITA.No.424/Hyd/2013
Assessment Year 2009-2010

Vinod Krishna Conjeevaram Secunderabad – 500 025 PAN AMWPC0506D (Appellant)	vs.	Income Tax Officer, Ward 10(4) Hyderabad (Respondent)
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For Assessee	: Shri K.K.Gupta, A.R.
For Revenue	: Shri R.Laxman, D.R.

Date of Hearing	: 10.07.2013
Date of pronouncement	: 10.07.2013

ORDER

PER SAKTIJIT DEY, J.M.

These appeals are filed by different assesseees against separate Orders of the CIT(A). Since, common grounds are raised in all these appeals, these appeals are clubbed together, heard together and are disposed of by consolidated order. For the sake of convenience, we reproduce grounds raised in ITA.No.422/Hyd/2013 as under :

- “1. *The appellant has entered into development agreement in respect of a joint residential property at Boiguda, Secunderabad. The fact of existence of residential house is evidenced by the 'schedule to the development agreement' which contains reference to the dwelling house. Further the fact is supported by municipal tax payment receipts. The very fact of assessment to municipal tax proves the existence of dwelling units. The order of Urban land ceiling authority clearly confirms the fact of existence of 'dwelling units'.*

No plausible reasons were given by the appellate Commissioner for not accepting the factual evidence.

2. *The assumption that the property that was given for development is only plot of land, is based on the premise that the deed of conveyance executed by the estate officer to convert leasehold land to freehold land in favour of the appellant does not mention the existence of the residential property. The residential structures on the lease hold land belongs to the appellant, whereas the land belongs to the government. The government could not have transferred what it did not own, and therefore sale deed was executed in favour of the appellant only for land.*
3. *The appellant is entitled for exemption u/s. 54 .Plurality of the flats (received as consideration) should be construed as a residential house for the purpose of exemption u/s. 54, following the honourable Karnataka High Court in the case of Rukminiyamma 331 ITR 221. The Hon'ble court considered all the available decisions of ITAT. Its decision is to be followed.*

4. *The assumption of the values of 'flats' received as consideration which is on high side, is not correct and baseless. Similarly the fair market value in 1980 for the purpose of cost of acquisition is very low and not justified.*

On the above and other grounds that will be filed in the course of appeal, the appellant requests to hold that the exemption of entire capital gains is to be granted u/s. 54”.

2. **ITA.No.422/Hyd/2013** : Since, facts are identical in all the appeals, we will deal with the facts taken from this appeal. As can be seen from the grounds raised by the assessee, the issue raised in ground Nos. 1, 2 and 3 relates to the nature of long term capital asset transferred by the assessee i.e., whether it is simply a land or a land with building and secondly whether the assessee is eligible to claim exemption under section 54 of the I.T. Act, 1961.

3. Briefly, the facts relating to the aforesaid issue are that the assessee is an individual. The assessee is a co-owner of a residential property bearing No. 6-2-97 to 100 and 6-2-102 to 110 situated at Boiguda, Secunderabad admeasuring about 6600 sq. yards. The assessee along with the other co-owners entered into a development agreement for construction of flats with a developer. Assessee's share in the property was 1818 sq. yards and as per the development agreement the owner has to transfer 50% of his land for the super-structures he will receive as consideration. Thus, under the development agreement, the assessee received 7 flats towards his share with a constructed area of 11704 sq. feet. The assessee worked out the value of the flats received as his share at Rs. 27 lakhs (@ Rs.239.69 per sq. feet) and worked out capital gains on Rs.15,57,534/- after deducting the amount of Rs.11,42,466/- as index cost of acquisition. The assessee claimed exemption under section 54 of the Act on the entire amount of capital gains of Rs.15,57,534/- in the return filed by him for the impugned assessment year. The Assessing Officer, in course of scrutiny assessment proceeding, after obtaining information from the builder computed the value of the

constructed area received by the assessee at Rs.98,89,880/- (@ Rs.845/- per sq. feet) and worked out the net capital gain at Rs.96,97,820/- after allowing the indexed cost of acquisition of Rs.1,92,060/- based on the fair market value of the land as on 1.4.1981. So far as the exemption under section 54 of the Act is concerned, the Assessing Officer rejected the assessee's claim by holding that since long term asset transferred by the assessee is an open land without any building, no exemption under section 54 can be granted to the assessee. The Assessing Officer, however, held that the assessee is entitled to exemption under section 54F of the Act only in respect of one flat out of the seven flats and thereby, restricted the exemption under section 54F of the Act to an amount of Rs.14,84,665/- being cost of one flat. Accordingly, the Assessing Officer completed the assessment by determining the long term capital gain at Rs.82,32,155/-. The assessee being aggrieved of the assessment order passed, preferred appeal before the CIT(A).

4. The CIT(A) also concurred with the finding of the Assessing Officer by holding that the assessee is entitled for exemption under section 54F of the Act and that too only in respect of one residential flat.

5. The learned AR has filed written submissions before us contending as under :

1. The assessing officer has restricted the exemption to ' one residential flat' u/s. 54F holding that the residential property that was given for development is only 'land' . The appellant is has produced all the evidence to establish the fact that the property was 'land with residential houses' . The paper book contains copies of the documents filed before the assessing officer and CIT (Appeals).
2. Residential house' - that was referred to in the sections 54 and 54F , is now explained that it is not residential unit, as coined by the department-

The Hon'ble High Court in the case of CIT V.SYED All ADIL [2013] 352 ITR 418 , While agreeing with the view of High Court of Karnataka, explained that the expression 'residential building' should be of residential nature' . It does not refer to number of units. :

3) Extract from the decision :-

*“As held in D. Ananda Basappa's case [2009] 309 ITR 329 (Karn) by the Karnataka High Court, the expression "a residential house" in section 54(1) of the Act has to be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number and where an assessee had purchased two residential flats, he is entitled to exemption under section 54 in respect of capital gains on sale of its property on purchase of both the flats, more so, when the flats are situated side by side and the builder has effected modification of the flats to make it as one unit, despite the fact that the flats were purchased by separate sale deeds. This decision was followed by the Karnataka High Court in CIT v. Smt. K. G. Rukminiamma [2011] 331 ITR 211 (Karn) where a residential house was transferred and four flats in a single residential complex were purchased by the assessee, it was held that all the four residential flats constituted "a residential house" for the purpose of section 54 and that the four residential flats cannot be construed as four residential houses for the purpose of section 54. Admittedly, the two flats purchased by the assessee are adjacent to one another and have a common meeting point. In the impugned order, the Tribunal has also relied upon the decisions in K. G. Vyas' case (supra), P.e. Ramakrishna, HUF's case (supra) and Prem Prakash Bhutani's case (supra) wherein it was held that exemption **under section 54 only requires that the***

property should be of residential nature and the fact that the residential house consists of several independent units cannot be an impediment to grant relief under section 54 even if such independent units were on different floors. The decision in Ms. Sushila M. Jhaveri's case [2007] 292 ITR (A T) 1 (Mumbai) [SB] holding that only one residential house should be given the relief under section 54 does not appear to be correct and we disapprove of it. We agree with the interpretation placed on section 54 by the High Court of Karnataka in D.Ananda Bassappa's case (2009) 309 ITR 329 (Karn) and Smt. K.G.Rukminiamma's case (2011) 331 ITR 211 (Karn.) and the decisions of the Mumbai, Chennai and Delhi Benches of the Tribunal in K.G.Vyas (supra), P.C.Ramakrishna, HUF (supra) and Prem Prakash Bhutani (supra). We, therefore, hold that the Commissioner of Income-tax (Appeals) was correct in setting aside the order of the Assessing Officer and the Tribunal rightly confirmed the decision of the Commissioner of Income-tax (Appeals)

- 4) The expression residential house u/s 54 and 54F was further explained by the hon'ble High Court of Delhi in the case of CIT V. GITADUGGAL: [Paper book contains the judgment copy]

“. Section 54/54F uses the expression "a residential house". The expression used is not "a residential unit". This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence. the requirement of the Section should be taken to have been

satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be before the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. We are therefore, unable to see how or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly nor by necessary implication prohibited.

- 5) The appellant submits that the exemption of total gain in his case, is to be given u/s. 54 or 54F in the light of the above verdicts.

6. The learned D.R. on the other hand, submitted that the language employed in sections 54 and 54F of the Act refers to “a residential house” which in other words, mean that the assessee is entitled for exemption in respect of one residential unit. In support of such contention, the learned D.R. relied upon the decision of the ITAT, Mumbai, Special Bench in the case of ITO vs. Suseela M. Zhaveri 107 ITD 327. So far as the nature of the asset transferred is concerned, the learned D.R. submitted that there is nothing on record to suggest that the assessee has transferred a residential house so as to entitle him to exemption under section 54 of the Act. He further submitted that residential house would mean a place fit for human habitation. In this context, the learned D.R. relied upon a decision of ITAT, Hyderabad Bench in case of ITO vs. Smt. Rohini Reddy 122 ITD 01.

7. We have considered the submissions of the assessee and perused the materials on record. We have also applied our mind to the decisions relied upon by the parties. As can be seen from the written submissions filed by the learned A.R. he has mainly confined his arguments to the interpretation of the revenue authorities with regard to the expression “a residential house” as appears in section 54 as well as sec. 54F of the Act. At this stage, it would be appropriate to look into the provisions as contained under sections 54 and 54F of the Act. Section 54 provides that in case of an assessee being an individual or HUF where capital gains arises from the transfer of a long term capital asset being building or land appurtenant thereto and being a residential house the income of which is chargeable under the head “Income from House Property” and if the assessee within a period of one year before or two years after that date on which, the transfer took place purchased or has within a period of three years after that date, constructed a residential house, then no capital gain will be charged to tax. Section 54F provides that in a case where the assessee has transferred any long term capital asset not being a residential house and within a period of one year before or two years

after the date on which the transfer took place, purchased or within a period of 3 years after that date, constructed a residential house, then the capital gain will not be charged to tax.

8. The reading of the aforesaid provisions makes it clear that both the provisions are parimateria excepting the nature of long term capital asset which is subject to transfer. While in the case of section 54 of the Act, it is a building or a land appurtenant thereto which is in the nature of a residential house in case of section 54F, the long term capital asset is an asset other than a residential house. However, both the sections speak of either purchase or construction of “a residential house”. The Assessing Officer as well as the CIT(A) while interpreting the expression ‘a residential house’, have come to a conclusion that such expression would mean a single residential unit “Flat” and not all the seven flats and accordingly have restricted the exemption under section 54F to the cost of one flat only. However, the Hon’ble Karnataka High Court while interpreting the words ‘a residential house’ as appears in section 54 of the Act in case of CIT vs. Smt. K.G. Rukmini Amma 331 ITR 211 following its earlier decision in case of CIT vs. D.Anand Basappa 309 ITR 329 have held that the expression “a residential house” as appears in section 54 of the Act, cannot be interpreted in a manner to suggest that the exemption would be restricted to a single residential unit. The Hon’ble Karnataka High Court held that “a residential house” as mentioned in section 54(1) of the Act, has to be understood in a sense that the building should be of a residential nature and the word “a” should not be understood to indicate a singular number. The Hon’ble jurisdictional High Court in the case of CIT vs. V.Syed Ali Adil (2013) 352 ITR 418, while agreeing with the aforesaid view of the Hon’ble Karnataka High Court held as under :

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As held in D. Ananda Basappa's case [2009] 309 ITR 329 (Karn) by the Karnataka High Court, the expression "a residential house" in section 54(1) of the Act has to be

*understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number and where an assessee had purchased two residential flats, he is entitled to exemption under section 54 in respect of capital gains on sale of its property on purchase of both the flats, more so, when the flats are situated side by side and the builder has effected modification of the flats to make it as one unit, despite the fact that the flats were purchased by separate sale deeds. This decision was followed by the Karnataka High Court in C1T v. Smt. K. G. Rukminiamma [2011] 331 ITR 211 (Karn) where a residential house was transferred and four flats in a single residential complex were purchased by the assessee, it was held that all the four residential flats constituted "a residential house" for the purpose of section 54 and that the four residential flats cannot be construed as four residential houses for the purpose of section 54. Admittedly, the two flats purchased by the assessee are adjacent to one another and have a common meeting point. In the impugned order, the Tribunal has also relied upon the decisions in K. G. Vyas' case (supra), P.e. Ramakrishna, HUF's case (supra) and Prem Prakash Bhutani's case (supra) wherein it was held that exemption **under section 54 only requires that the property should be of residential nature and the fact that the residential house consists of several independent units cannot be an impediment to grant relief** under section 54 even if such independent units were on different floors. The decision in Ms. Sushila M. Jhaveri's case [2007] 292 ITR (A T) 1 (Mumbai) [SB] holding that only one residential house should be given the relief under section 54 does not appear to be correct and we disapprove of it. We agree with the interpretation placed on section 54 by the High Court of Karnataka in D.Ananda Bassappa's case (2009) 309 ITR*

329 (Karn) and Smt. K.G.Rukminiamma's case (2011) 331 ITR 211 (Karn.) and the decisions of the Mumbai, Chennai and Delhi Benches of the Tribunal in K.G.Vyas (supra), P.C.Ramakrishna, HUF (supra) and Prem Prakash Bhutani (supra). We, therefore, hold that the Commissioner of Income-tax (Appeals) was correct in setting aside the order of the Assessing Officer and the Tribunal rightly confirmed the decision of the Commissioner of Income-tax (Appeals) "

9. The Hon'ble Delhi High Court in the case of CIT vs. Gita Duggal while interpreting the words "a residential house" as appeared in section 54 and 54F of the Act also expressed the same view by following the ratio laid down by the Hon'ble Karnataka High Court (supra). So far as the decision of the ITAT, Special Bench, Mumbai in the case of ITO vs. Suseela M. Zhaveri (supra) is concerned, a perusal of the decision of the ITAT, Special Bench does reveal the fact that the Special Bench has held that the expression 'a residential house' appearing in sections 54 and 54F of the Act, would mean that exemption would be allowable in respect of investment in a single residential house only. However, it is to be seen that the aforesaid decision of the ITAT, Mumbai Special Bench has been disapproved by the jurisdictional High Court in case of CIT vs. Syed Ali (supra). Hence, the decision of the ITAT, Mumbai Special Bench no longer can be considered to be a good law. Therefore, considering the totality of the facts and circumstances in the light of consistent view of different High Courts including the jurisdictional High Court, we are of the view that the lower authorities were not correct in restricting the exemption under section 54F of the Act to only one flat by interpreting the words "a residential house" in a manner which has been held to be an incorrect interpretation in various judicial precedents as referred to hereinabove. In the aforesaid view of the matter, in our considered opinion, the assessee is entitled for exemption under section 54F of the Act in respect of all the seven flats. We, therefore, set aside the Order of the CIT(A) and direct the Assessing Officer to compute capital gain, if any, after allowing exemption under section 54F of the Act in respect of all the seven flats which were received by the assessee under the

development agreement. In view of our aforesaid finding, the other issue as to whether the long term capital asset transferred by the assessee under development agreement was simply a land as held by the department or a residential house along with land as claimed by the assessee so as to entitle it for exemption under section 54 of the Act has become inconsequential and therefore, not required to be adjudicated upon. Resultantly, the decision relied upon by the learned D.R. in the case of ITO vs. Smt. Rohini Reddy (Supra) and the decision of Hon'ble Supreme Court in the case of CIT vs. TN Arvind Reddy 120 ITR 46 would not apply to the facts of the present case.

10. So far as ground No.4 is concerned, the assessee has not canvassed any argument in respect of the aforesaid ground either orally at the time of hearing or in the written submission. Hence, it is, presumed that the assessee has nothing to say in respect of the aforesaid ground. Accordingly, the ground raised is dismissed.

11. **ITA.No.423/Hyd/2013 and ITA.No.424/Hyd/2013** : Following our decision in ground Nos. 1, 2 and 3 of ITA.No.422/Hyd/2013 dealt with hereinbefore, we set aside the Orders of the CIT(A) in these appeals also and direct the Assessing Officer to compute the capital gain, if any, after allowing exemption under section 54F of the Act in respect of all the flats received by the respective assessees.

12. In the result, all the appeals viz., ITA.No.422,423 & 424/Hyd/2013 are partly allowed.

Order pronounced in the open Court on 10th July, 2013.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Hyderabad, Date 10th July, 2013.

VBP/-

Copy to

1. Vittal Krishna Conjeevaram, Flat No.401, 6-1-118 Block,
Belvedere Garden, Padmarao Nagar, Secunderabad - 500 025
PAN ANJPC7070J **C/o.** K.K.Gupta, F.C.A. Chartered
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2. Anand Krishna Conjeevaram, Flat No.401, 6-1-118 Block,
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PAN AMRPC4593H **C/o.** K.K.Gupta, F.C.A. Chartered
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PAN AMWPC0506D **C/o.** K.K.Gupta, F.C.A. Chartered
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4. Commissioner of Income Tax (Appeals)-VI, 6A, I.T.Towers,
A.C.Guards, Hyderabad – 500 004.
5. Commissioner of Income Tax-V, Hyderabad
6. DR “B” Bench, ITAT, Hyderabad