

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH : BANGALORE

BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER

AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA 2818/Bang/2018
Assessment Year : 2006 - 07

Late Susan Cherian, L/R by Mr. Abraham Cherian, No. 56, Munnekolala, Marthahalli, Bengaluru. PAN NO : BJHPS7835L	Vs.	The Income Tax Officer, Ward - 4(2) (3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. V. Srinivasan, Advocate
Respondent by	:	Shri. Manjeet Singh, Addl. CIT

Date of Hearing	:	18-02-2020
Date of Pronouncement	:	19-02-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 20/09/2018 passed by Ld. CIT(A)-9, Bangalore for assessment year 2006-07 on following grounds of appeal:

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment made requires to be cancelled.

3. The learned CIT[A] ought to have appreciated that the impugned assessment order was passed without the service of a notice u/s. 143[2] of the Act and hence, the assessment order passed was opposed to law and ought to have been cancelled.

4. Without prejudice to the above, the learned CIT[A] is not justified in upholding the taxability of long term capital gains for the year under appeal holding that there was a transfer of the undivided interest in land in favour of the developer upon entering into the joint development agreement dated 23/05/2005 without appreciating that the mere execution of the joint development agreement does not amount to transfer and hence, the capital gains assessed for the year under appeal ought to have been deleted.

5. Without prejudice to the above, the learned CIT[A] ought to have allowed the cost of acquisition being the fair market value of the land as on 01/04/1981 at Rs. 25 per sft., as claimed by the appellant instead of directing the same to be adopted at Rs. 20 per sft. under the facts and in the circumstances of the appellant's case.

6. The learned CIT[A] is not justified in holding that the appellant was not entitled to exemption u/s 54F of the Act, in respect of all the residential apartments and villas to be received upon development under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies herself liable to be charged to interest u/s.234A, 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Brief facts of the case are as under:

2. Assessee is an individual represented by legal representative. She did not file her return of income for year under consideration. Ld.AO observed that, assessee entered into joint development agreement on 23/05/2005 with M/s. Venus Homes, for development of land, by transferring 1 acre 0.6 guntas of vacant land situated at SY No. 20/1, Munnekolla Village, Varthur Hobli, Bangalore. In return, assessee received 10815 sft. of super built up area of Villa and 14407 sft. of super built up area from the apartment. Ld.AO was of the opinion that, assessee did not reflect all these details in her return of income and therefore, there was escapement of income chargeable to tax under the head capital gains. Subsequently, notice under section 147 was issued to assessee. Assessee, after number of opportunities, filed return of income for year under consideration on 24/03/2014, followed by which, notice under section 143 (2) of the Act was issued. As there was no response, Ld.AO passed order under section 144 of the Act, by computing long term capital gains in the hands of assessee at Rs.2,38,93,444/-. Ld.AO also denied benefit under section 54F of the Act claimed by assessee by holding that assessee had more than one residential house as on the date of transfer.

3. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld. CIT(A), wherein, assessee relied upon decision of *Hon'ble Karnataka High Court* in case of *Anand Basappa* reported in 309 ITR 329 and *K. G. Rukminiamma* reported in 331 ITR 221. It was submitted that, on identical facts of case of assessee claim under section 54 was granted which is *pari materia* with section 54F of the Act.

4. Ld. CIT(A) was of the opinion that, assessee cannot seek any benefit due to decision of *Special Bench of this Tribunal* in case of *Suseela M Zaveri* reported in 110 ITD 327. Ld. CIT (A) was of the view that, residential houses received by assessee under JDA cannot be termed to constitute 'a residential house' for purpose of 54F of the Act.

Aggrieved by observations of Ld. CIT(A) assessee is in appeal before us now.

At the outset, Ld.AR submitted that **Ground No.1** is general in nature and therefore do not require any adjudication.

He submitted that, **Ground No.2-3** are not pressed at the instructions of assessee.

Accordingly, these grounds are dismissed as not pressed.

Ld.AR argued on **Ground No.6** being the claim denied under section 54F.

He placed reliance upon:

- decision of *Hon'ble Karnataka High Court* in case of *Anand Basappa* reported in 309 ITR 329;
- decision of *Hon'ble Madras High Court* in case of *CIT vs Smt. V. R. Karpagam* in *Tax case (appeals) No. 301 of 2014 dated 18/08/2014,*

- decision of this *Tribunal* in case of *Smt. Nethravathi* in *ITA No. 2630/Bang/2017* dated 25/04/2018;

Ld. AR submitted that, prior to amendment, section 54F was liberally construct 'a residential house' to be interpreted as applying to each and every one of residential houses and villas received by assessee. He placed reliance on decisions relied upon by him.

On the contrary, Ld. Sr. DR placed reliance upon orders passed by authorities below.

We have perused submissions advanced by both sides in the basis of records placed before us.

5. As per JDA registered on 23/05/2005, assessee received 35% of total built up area, i.e, 35% of apartments constructed along with 35% of car parking and 35% of terrace and garden rights earmarked for private use as against common use in consideration for transferring 65% of undivided interest. Assessee claimed exemption under section 54F on the value of the 35% of constructed area which was denied by Ld. AO and confirmed by Ld. CIT(A). Before us assessee urges that, she is eligible for exemption under section 54F on the 35% of constructed area received in view of the land she had parted with.

6. It is observed that in decisions relied upon by Ld.AR reproduced hereinabove, *Hon'ble Madras High Court*, *Hon'ble Karnataka High Court* has categorically held that amendment to section 54F with regard to 'a' by Finance (No.2) Act, 2014 w.e.f. 01/04/2015 withdrawing deduction for more than one flat (residential house). Courts have consistently held that post

amendment benefit of section 54F will be applicable only to one residential house in India whereas prior to the amendment residential house would include multiple residential house/units.

7. In view of consistent view taken by jurisdictional High Court, as well as other High Courts, we are of the opinion that assessee is entitled to deduction under section 54F of the act in respect of 35% of constructed property received by her.

Accordingly, this ground raised by assessee stands allowed.

Ground Nos. 4-5, now becomes academic in nature and therefore do not require adjudication.

Ground No.7 is consequential and **Ground No.8** is general in nature.

In the result, appeal filed by assessee stands partly allowed.

Order pronounced in the open court on 19th February, 2020.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 19th February, 2020.
/MK/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate
Tribunal.
Bangalore.