IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "SMC-A", BANGALORE

Before Shri George George K, Judicial Member

ITA No.31/Bang/2021 : Asst.Year 2013-2014

Sri.K.S.Hanumantha Rao 378, Jamadagni, 16A Main 36A Cross, 4th T Block, Jayanagar Bangalore – 560 041 **PAN : AACPH3083Q.**	v.	The Pr.Commissioner of Income-tax – 2 Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.K.S.Hanumantha Rao, Advocate
Respondent by : Sri.Ganesh B.Ghale, Standing Counsel

Date of Hearing : 16.03.2021		**Date of Pronouncement : 19.03.2021**

O R D E R

This appeal at the instance of the assessee is directed against CIT's order dated 19.01.2021 passed u/s 263 of the I.T.Act. The relevant assessment year is 2013-2014.

2. Seven grounds are raised. Ground Nos.1, 2, 3, 6 and 7 are regarding the issue on jurisdiction of CIT to invoking revisionary powers u/s 263 of the I.T.Act. Ground Nos.4 and 5 are regarding two issues, namely, (i) CIT has erred in holding that assets sold (ground floor of residential site bearing No.579 in Jayanagar) as short term capital gains; (ii) the assessee is entitled to deduction u/s 54 of the I.T.Act on investment of new asset (flat).

3. The brief facts of the case are as follow:

The assessee is a senior citizen and a practicing Advocate. For the assessment year 2013-2014, the return of income was filed on 26.07.2013 declaring total income of Rs.46,75,460. The

return was selected for scrutiny and assessment was completed u/s 143(3) of the I.T.Act on 04.03.2016. Subsequently, notice u/s 263 of the I.T.Act was issued by the CIT. According to the CIT, the assessment order completed u/s 143(3) of the I.T.Act on 04.03.2016 is erroneous and prejudicial to the interest of the revenue mainly for the reason that the assessee had claimed cost of indexation benefit for the entire purchase. According to the CIT properties sold were purchased in two instances (on 27.02.1989 and 29.10.2009) and for the portion which was purchased on 29.10.2019, the assessee was not entitled to the benefit of indexation as the said asset was held for less than 36 months. Secondly, according to the CIT, the assessee was not entitled to claim for deduction u/s 54 of the I.T.Act amounting to Rs.48,81,963 for the investment made in new asset, since the investment in the new asset was made one year prior to the date of sale of the original asset. The assessee raised objections to the notice issued u/s 263 of the I.T.Act, both on jurisdictional aspect and on merits. The CIT rejected the objections raised by the assessee and passed the impugned order on 19.01.2021.The CIT set aside the assessment order dated 04.03.2016 and gave following directions to the Assessing Officer :-

> *"i. The Assessing Officer is directed to re-compute the Capital gains of the residential units 31 (Ground floor) and 31/1, (1st and 2nd floor) separately in view of the discussion in para 4 above after giving an opportunity to the assessee.*
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> *ii. The Assessing Officer is directed to re-consider the computation of deduction u/s 54 of IT Act in view of the discussion in para 5 above after giving an opportunity to the assessee.*

iii. The Assessing Officer is directed to re-consider income to the extent of Rs.15,201/- as professional income of the assessee as discussed in para 6 above."

4. Aggrieved by the order of the CIT, passed u/s 263 of the I.T.Act, the assessee has preferred this appeal before the Tribunal. The assessee has filed a paper book comprising of 156 pages *inter alia* enclosing therein copy of the return of income along with computation of income for the relevant assessment year, copy of the notices issued u/s 142(1) of the I.T.Act, copies of the replies filed by the assessee to the notices issued u/s 142(1) of the I.T.Act, copies of the sale deeds executed by the assessee for purchase of original asset, copy of the sale deed when assessee sold the original asset, copy of the purchase deed with regard to investment of flat, copy of the assessment order, notice issued u/s 154 of the I.T.Act by the A.O., confirmation issued by the builder of the new asset (flat), submissions to the notice issued u/s 263 of the I.T.Act, etc. The assessee appeared in person and argued the case at length. He raised arguments both on the validity / jurisdiction of the CIT to invoke revisionary powers u/s 263 of the I.T.Act, and on merits, which I shall narrate in the course of adjudicating each of the issues raised.

I shall first adjudicate the issue raised on merits.

Ground No.4 : Sale of ground floor of residential unit at Jayanagar, whether it give rise to long term capital gains or short term capital gains).

5. The assessee sold a residential unit bearing No.579 in Jayanagar, through registered sale deed on 24.05.2012 for a

total consideration of Rs.3,69,00,000 (refer page 8 of the sale deed dated 24.05.2012) and declared entire gains arising out of the sale as long term capital gains. This residential unit originally consisted of ground and first floor. The first floor was purchased by the assessee and his wife on 27.02.1989 and they constructed second floor during the financial year 1992-1993. The ground floor was retained with the original owner. Later, vide sale deed dated 29.10.2009, the assessee and his wife purchased the ground floor also for a consideration of Rs.55,00,000.

5.1 The CIT in the order passed u/s 263 of the I.T.Act was of the view that capital gains on sale of first and second floors would give rise to long term capital gains. However, with regard to sale of ground floor, the CIT held that since it was purchased by the assessee vide sale deed dated 29.10.2009 and was sold vide sale deed dated 24.05.2012, the ground floor was held by the assessee for a period less than 36 months. Hence, according to the CIT, the income arising out of sale of ground floor would give rise to short term capital gains. The main contention of the assessee was that he had entered into an oral agreement to purchase the ground floor on 28.06.2008 and payments were made to the vendor right from 28.06.2008, which is reflected in the sale deed dated 29.10.2009 (refer page 6 of the sale agreement dated 29.10.2009). It was submitted that reckoning the period of holding of ground floor from 28.06.2008, the same would give rise to long term capital gains. In this context, the assessee relied on various case laws. The CIT rejected the contention of the assessee and held that since

the ground floor was given possession to the assessee only on executing the sale deed, the period of holding is to be reckoned from 29.10.2009 and sale of the same on 24.05.2012 would only give rise to only short term capital gains.

5.2 I have heard rival submissions and perused the material on record. To understand the dispute raised, it is necessary to analysis the relevant provisions of section 2(42A) of the I.T.Act, which reads as follow:-

> *"Section 2(42A) in the Income-Tax Act, 1961 (42A) "short-term capital asset" means a capital asset held by an assessee for more than thirty-six months immediately preceding the date of its transfer".*

5.2.1 The term "transfer" is defined under Section 2(47) of the I.T.Act. This provision has undergone substantial amendment by Finance Act, 1987, which came into effect from 1.4.1988, whereunder clauses (v) and (vi) were introduced. In the definition of "short-term capital asset" prior to the amendment, by Finance Act No.2 of 1977, which came into effect from 1.4.1978, the period prescribed was 60 months. By Finance Act, 1977, it was amended reducing the period to 36 months. In the memorandum explaining the provisions in the Finance (No.2) Bill, 1977, the reasons for enlargement of the scope of long-term capital gains is set out as hereunder:

> *'Enlarging the scope of "long-term capital gains". Any profits or gains arising from the transfer of any capital asset held by a taxpayer for not more than 60 months immediately preceding the date of its transfer are treated as capital gains relating to a "short-term capital asset" and charged to tax as ordinary income. Gains arising from the transfer of a capital asset held by the taxpayer for more than 60 months are treated as "long-term capital 'gains" and charged to tax on a concessional basis. As the holding period of 60 months is unduly long and adversely affects the investment climate, the Bill seeks to secure that gains arising from the transfer of any capital asset held*

by a taxpayer for more than 36 months immediately preceding the date of its transfer are treated as "long-term capital gains" and, therefore, charged to tax on a concessional basis.'

5.2.2 Similarly, the reason for introduction of clauses (v) and (vi) in the definition of the word "transfer" in Section 2(47) of the Act is contained in the circular No.495 dated 22.9.1987 by way of explanatory notes on the provisions of the Finance Act, 1997, which reads as under:

'11.1 The existing definition of the word "transfer" in section 2(47) does not include transfer of certain rights accruing to a purchaser, by way of becoming a member of or acquiring shares in a co-operative society, company, or association of persons or by way of any agreement or any arrangement whereby such person acquires any right in any building which is either being constructed or which is to be constructed. Transactions of the nature referred to above are not required to be registered under the Registration Act, 1908. Such arrangement confer the privileges of ownership without transfer of title in the building and are a common mode of acquiring flats particularly in multistoreyed constructions in big cities. The definition also does not cover cases where possession is allowed to be taken or retained in part performance of a contract, of the nature referred to in section 53A of the Transfer of Property Act, 1882. New sub-clauses (v) and (vi) have been inserted in section 2(47) to prevent avoidance of capital gains liability by recourse to transfer of rights in the manner referred to above.

11.2 The newly inserted sub-clause (vi) of section 2(47) has brought into the ambit of "transfer", the practice of enjoyment of property rights through what is commonly known as Power of attorney arrangements. The practice in such cases is adopted normally where transfer of ownership is legally not permitted. A person holding the power of attorney is authorized the powers of owner, including that of making construction. The legal ownership in such cases continues to be with the transferor.

11.3 These amendments shall come into force with effect from 1-4-1988 and will accordingly apply to the assessment year 1988-89 and subsequent years.'

5.2.3 Subsequent to the amendment, the Central Board of Direct Taxes issued a Circular No.471 dated 15.10.1986 explaining how capital gains from long-term capital asset is to be calculated in cases where the allottee gets title to the

property on the issuance of allotment letter and the payment of instalments though possession is not delivered and registered deed of conveyance is not disputed. It reads as under:

> *"474. Capital gains from long-term capital asset Investment in a flat under the self-financing scheme of the Delhi Development Authority Whether to be treated as construction for the purposes of capital gains*
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> 1. Sections 54 and 54-F provide that capital gains arising on transfer of a long-term capital asset shall not be charged to tax to the extent specified therein, where the amount of capital gain is invested in a residential house. In the case of purchase of a house, the benefit is available if the investment is made within a period of one year before or after the date on which the transfer took place and in case of construction of a house, the benefit is available if the investment is made within three years from the date of the transfer.
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> 2. The Board had occasion to examine as to whether the acquisition of a flat by an allottee under the Self-Financing Scheme (SFS) of the D.D.A. amounts to purchase or is construction by the D.D.A. on behalf of the allottee. Under the SFS of D.D.A., the allotment letter is issued on payment of the first instalment of the cost of construction. The allotment is final unless it is cancelled or the allottee withdraws from the scheme. The allotment is cancelled only under exceptional circumstances. The allottee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking the delivery of possession is only a formality. If there is a failure on the part of the D.D.A. to deliver the possession of the flat after completing the construction, the remedy for the allottee is to file a suit for recovery of possession.
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> 3. The. Board have been advised that under the above circumstances, the inference that can be drawn is that the, D.D.A. takes up the construction work on behalf of the allottee and that true transaction involved is not a sale. Under the scheme the tentative cost of construction is already determined and the D.D.A. facilitates the payment of the cost of construction in instalments subject to the condition that the allottee has to bear the increase, if any, in the cost of construction. Therefore, for the purpose of capital gains tax the cost of the new asset is the tentative cost of construction and the fact that the amount was allowed to be paid in instalments does not affect the legal position stated above. In view of these facts, it has been decided that cases of allotment

> of flats under the Self-Financing Scheme of the D.D.A. shall be treated as cases of construction for the purpose of capital gains."

5.2.4 Perusal of definition of short term capital asset shows that the legislature has used the expression 'held'. In various other allied or similar sections, namely Section 54 / 54F of the I.T.Act, the legislature has preferred to use the expression 'acquired' or 'purchased' Thus, it is clear that the legislature was conscious while making use of this expression. The expressions like 'owned' has not been used for the purpose of determining the nature of asset as short term capital asset or long term capital asset. Thus, the intention of the legislature is clear that for the purpose of determining the nature of capital gain, the legislature was concerned with the period during which the asset was held by the assessee for all practical purposes on de facto basis. The legislature was apparently not concerned with absolute legal ownership of the asset for determining the holding period. Thus, we have to ascertain the point of time from which it can be said that assessee started holding the asset on de facto basis.

5.2.5 In the instant case, the assessee had purchased the ground floor for a total consideration of Rs.55,00,000 by executing a sale deed dated 29.10.2009. However, the assessee had entered into an oral agreement, whereby advance of Rs.5,00,000 was paid on 28.06.2008 itself for purchase of above mentioned property. The details of entire payment of Rs.55,00,000 as mentioned in the sale deed dated 29.10.2009 is reproduced below:-

Sl. No.	Date	Mode of payment	Amount (Rs.)
1.	June 28, 2008	Cheque No.423287 drawn in favour of B.S.Dwarakanath on the South India Bank, Jayanagar, Bangalore	3,00,000:00
2.	June 28, 2008	Cheque No.398939 in fvour of B.S.Prabhakar on the South India Bank Ltd. Bangalore	2,00,000:00
3.	May 5, 2009	Cheque No.876524 in favour of B.S.Dwarakanath on the Canara Bank, Jayanagar Shopping Complex Branch, Bangalore	3,00,000:00
4.	May 5, 2009	Cheque No.876525 in favour of B.S.Prabhakar on the Canara Bank, Jayanagar Shopping Complex Branch, Bangalore	2,00,000:00
5.	Aug. 28, 2009	Cheque No.282992 in favour of B..S.Dwarakanath, drawn on the Karnataka Bank Ltd., Jayanagar, 4th Block Branch, Bangalore.	13,00,000:00
6.	Aug. 28, 2009	Cheque No.423295 in favour of B.S.Dwarakanath drawn on the South India Bank, Jayanagar, 4th Block Branch, Bangalore	2,00,000:00
7.	Aug. 28, 2009	Cheque No.282991 in favour of B.S.Prabhakar drawn on the Karnataka Bank Ltd., Jayanagar, 4th Block Branch, Bangalore	10,00,000:00
8,	Oct. 9, 2009	Cheque No.423296 in favour of B.S.Prabhakar drawn on the Sough Indian Bank Ltd., Jayanagar, 4th Block Branch, Bangalore	8,00,000:00
9.	Oct. 23, 2009	Cheque No.423297 in favour of B.S.Dwarakanath, drawn on the South Indian Bank Ltd., Jayanagar 4th Block Branch, Bangalore	12,00,000:00

5.2.6 From the above payment schedule, it is clear that the assessee had advanced a sum of Rs.10 lakh on 28.06.2008 and 05.05.2009 out of total consideration of Rs.55,00,000 (Therefore, these two payments would be beyond 3 years from the date of sale of original asset which was on 24.05.2012). The assessee on payment of first advance on 28.06.2008, was conferred with a right in property (i.e. the ground floor of residential unit579, in Jayanagar) which is also assignable. Therefore, payment of balance amount and delivery of

possession are consequential acts that relate back to and arise from the rights conferred on the payment of advance i.e., on 28.06.2008. The Hon'ble Hon'ble Karnataka High Court in the case of CIT vs A Suresh Rao 223 Taxmann 228 (Kar) has analysed the significance of the expression 'held' used by the legislature. The Hon'ble High Court examined the provisions of the Act pertaining to computation of capital gain under various situations and also circulars issued by the CBDT on this issue. The relevant portion of the observation of the Hon'ble Karnataka High Court (supra), is reproduced hereunder:-

> *"12. The definition as contained in Section 2 (42A) of the Act, though uses the words, "a capital asset held an assessee for not more than thirty-six months immediately preceding the date of its transfer", for the purpose of holding an asset, it is not necessary that, he should be the owner of the asset, with a registered deed of conveyance conferring title on him. In the light of the expanded definition as contained in Section 2(47), even when a sale, exchange, or relinquishment or extinguishment of any right, under a transaction the assessee is put in possession of an immovable property or he retained the same in part performance of the contract under Section 53-A of the Transfer of Property Act, it amounts to transfer. No registered deed of sale is required to constitute a transfer. Similarly, any transaction whether by way of becoming a member of or acquiring shares in a cooperative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of any immovable property, also constitutes transfer and the assessee is said to hold the said property for the purpose of the definition of 'short-term capital gain'. In fact, the Circular No.495 makes it clear that transactions of the nature referred to above are not required to be registered under the Registration Act, 1908. Such arrangements confer the privileges of ownership without transfer of title in the building and are common mode of acquiring flats particularly in multistoried constructions in big cities. The aforesaid new sub-clauses (v) and (vi) have been inserted in Section 2(47) to prevent avoidance of capital gains liability by recourse to transfer of rights in the manner referred to above. A person holding the Power of Attorney is authorized the powers of owner, including that of making construction though the legal ownership in such cases continues to be with the transferor. The intention of legislature is to treat even such transactions as transfers and the capital gain arising out of*

such transactions are brought to tax. Further, the Circular No.471 goes to the extent of clarifying that for the purpose of Income-tax Act, the allottee gets title to the property on the issuance of the allotment letter and the payment of installments is only a follow up action and taking the delivery of possession is only a formality. In case of construction agreements, the tentative cost of construction is already determined and the agreement provides for payment of cost of construction in installments subject to the condition that the allottee has to bear the increase, if any, in the cost of construction. Therefore, for the purpose of capital gains tax the cost of the new asset is the tentative cost of construction and the fact that the amount was allowed to be paid in installments does not affect the legal position……"

5.2.7 Thus, from the aforesaid judgment, it is clear that for the purpose of holding an asset, it is not necessary that the assessee should be the owner of the asset based upon a registration of conveyance conferring title on him.

5.2.8 Similarly, in the case of *Mrs.Madhu Kaul v. CIT & Anr. [(2014) 363 ITR 54 (P&H)],* the Hon'ble Punjab & Haryana High Court analysed various circulars and provisions of the Act that on allotment of flat and making first installment the assessee was conferred with a right to hold a flat which was later identified and possession delivered on later date. The mere fact that possession was delivered later, would not detract from the fact that assessee (allottee) was conferred a right to hold the property on issuance of an allotment letter. The payment of balance amount and delivery of possession are consequential acts that relate back to and arise from the rights conferred by the allotment letter upon the assessee.

5.2.9 In the case of *Vinod Kumar Jain v CIT & Ors. [(2012) 344 ITR 501 (P&H)]* it was held by Hon'ble Punjab & Haryana High Court that conjoined reading of section 2(14), 2(29A) and

2(42A) clarifies that holding period of the assessee starts from the date of issuance of allotment letter. Since allottee gets title of the property on the issuance of allotment letter and payment of first installment is only a consequential action upon which delivery of possession flows. Even if the sale deed or agreement to sell is executed or registered subsequently but the assessee always had a right in the property since the date of issuance of allotment letter. Therefore, it can be said that assessee held the property immediately from the date of allotment letter.

5.2.10 The Hon'ble Bombay High Court in the case of *CIT v. Tata Services Limited [(1980) 122 ITR 594 (Bom).]* had stated that the word "property" used in section 2(14) of the I.T. Act is a word of widest amplitude and this was reemphasized this by use of the words "of any kind". It was held by the Hon'ble Bombay High Court that the contract for sale of land is capable of specific performance and is also assignable. Therefore, it was concluded by the Hon'ble Bombay High Court that a right to obtain conveyance of immovable was liable for capital gains. The relevant finding of the Hon'ble Bombay High Court in the case of *CIT v. Tata Services Limited (supra)*, reads as follow:-

> *"What is a capital asset is defined in s. 2(14) of the I.T. Act, 1961. Under that provision, a capital asset means property of any kind held by an assessee, whether or not connected with his business or profession. The other sub-clauses which deal with what property is not included in the definition of capital asset are not relevant. Under s. 2(47), a transfer in relation to a capital asset is defined as including the sale, exchange or relinquishment of the asset or the extinguishment of any right therein or the compulsory acquisition thereof under any law. The word " property ", used in s. 2(14) of the I.T. Act, is a word of the widest amplitude and the definition has re-emphasised this by use of the words " of any kind ". Thus, any right which can be called property will be included in the definition of " capital asset ". A contract for sale of land is capable of specific performance. It is also*

> *assignable. (See Hochat Kizhakke Madathil Venkateswara Aiyar v. Kallor Illath Raman Nambudhri, AIR 1917 Mad 358). Therefore, in our view, a right to obtain conveyance of immovable property, was clearly " property " as contemplated by s. 2(14) of the I.T. Act, 1961."*

5.2.11 The Hon'ble Bombay High Court in the case of *Principal CIT v. Vembu Vaidyanathan [(2019) 413 ITR 248 (Bom.)]* following the Hon'ble Bombay High Court judgment in the case of CIT v. Tata Services Limited (supra), had held that the assessee gets title of property on the basis of allotment letter and payment of instalment was only a follow up action and taking delivery of possession is only a formality. The relevant finding of the Hon'ble Bombay High Court in the case of *Pr.CIT v. Vembu Vaidyanathan (supra)*, reads as follow:-

> *"3. The Commissioner of Income-tax (Appeals) and the Tribunal held the issue in favour of the assessee relying on various judgments of different High Courts including the judgment of this court in the case of CIT v. Tata Services Ltd. [1980] 122 ITR 594 (Bom). Reliance was also placed on the Central Board of Direct Taxes circulars.*
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> *4. Having heard learned counsel for the parties, we notice that the Central Board of Direct Taxes in its Circular No. 471, dated October 15, 1986 ([1986] 162 ITR (St.) 41) had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority ("DDA" for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that such allotment is final unless it is cancelled or the allottee withdrew from the scheme and such allotment would be cancelled only under exceptional circumstances. It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of instalments was only a follow-up action and taking the delivery of possession is only a formality.*
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> *5. This aspect was further clarified by the Central Board of Direct Taxes in its later Circular No. 672, dated December 16, 1993 ([1994] 205 ITR (St.) 47). In such circular representations were made to the Board that in cases of allotment of flats or houses by co-operative societies or other institutions whose schemes of allotment and consideration are similar to those of Delhi*

Development Authority, similar view should be taken as was done in the Board circular dated October 15, 1986. In the circular dated December 16, 1993 the Board clarified as under :

> "2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/ houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of the Board's Circular No. 471, dated October 15, 1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act."

It can thus be seen that the entire issue was clarified by the Central Board of Direct Taxes in its abovementioned two circulars dated October 15, 1986 and December 16, 1993. In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property. There is nothing on record to suggest that the allotment in construction scheme promised by the builder in the present case was materially different from the terms of allotment and construction by the Delhi Development Authority. In that view of the matter, the Commissioner of Income-tax (Appeals) or the Tribunal correctly held that the assessee had acquired the property in question on December 31, 2004 on which the allotment letter was issued."

5.2.12 In view of the aforesaid reasoning and the judicial pronouncements cited supra, we hold that the assessee gets a right to the impugned property on the date of payment of advance, i.e., on 28.06.2008 and payment of balance amounts is only a follow up action and taking delivery of possession is only a formality. Therefore, reckoning the period from 28.06.2008, i.e. the date of advance, I hold that the sale of ground floor give raise to long term capital gains and not short term capital gains as held by the CIT.

Ground 5 : Whether assessee is entitled to deduction u/s 54 of the I.T.Act

6. The discussion of facts, submission and the findings of the CIT on above issue are reproduced below:-

"5. The second issue in this case is the claim of deduction u/s 54 of IT Act 1961 in respect of investment made in the new asset, i.e., Apartment No.201, 2nd Floor of Kay Arr Herald. If the assessee and his wife invest in the new asset by way of purchasing a new asset, then the assessee and his wife should purchase it within a period of 1 year before 24.05.2012 or within 2 years after 24.05.2012. The window of purchase of new asset is available to the assessee and his wife from 24.05.2011 to 24.05.2014 in the present case. The facts of this case show that the assessee and his wife entered into a registered agreement with M/s.Kay Arr Herald & Co (Builder) on 6/4/2011 to purchase a flat in their residential complex "Kay Arr Herald". The consideration for this purchase was Rs.53.5 lakh, out of which Rs.25 lakh was paid by the assessee and his wife on 25/3/2010, 4 lakhs was paid on 2/2/2010 and 24 lakh was paid on 6/4/2011 as per the "Absolute Sale deed" dated 6/4/2011.

5.1 Further, the assessee submitted a certificate from the builder Kay Arr Herald and Co., dated 27.07.2019 stating that the apartment was not fully completed at the time of registration of the sale deed. After completing the finishing work, the actual and physical possession of the apartment was handed over to the assessee only in the month of November 2011. The assessee also furnished a copy of the invitation extended on the occasion of gruhapravesham of the newly acquired house which was performed on 12.03.2012 while the apartment was completed in November, 2011. When clarity about the timing of registration of sale deed on an earlier date i.e., 6.04.2011 was sought, the assessee submitted that the registration process was completed earlier since there was an expectation at that time that the stamp duty charges were going up shortly in Karnataka State.

5.2 The submissions of the assessee in this regard are considered. From the submissions and evidences produced, it is seen that though the newly acquired flat gets completed and comes into existence in November, 2011 and gets physically handed over to the assessee in the same month, it was purchased by the assessee and his wife on 06.04.2011 itself and entire sale consideration also has been paid on or before that date to the builder. Therefore, it is to be held that the said apartment was purchased by the assessee in the month of April, 2011 and therefore this investment is not eligible for the benefit of Sec.54 of the Income Tax Act. I therefore set aside this issue to the file of the Assessing Officer for fresh consideration after providing an opportunity of hearing to the assessee."

6.1 I have heard rival submissions and perused the material on record. As mentioned in CIT's order (para 5), the window of purchase of new asset available to the assessee and his wife is from 24.05.2011 to 24.05.2014. The CIT considered the absolute sale deed dated 06.04.2011 as the date of purchase of new assets. Therefore, according to the CIT, the purchase of new asset was one year prior to the date of sale of the original asset (sale of original asset was on 24.05.2012) and hence was not entitled to deduction u/s 54 of the I.T.Act. The assessee had submitted a confirmation of builder of the new asset (flat) stating that at the time of registration of sale deed, the apartment was not completed and after finishing all the work in apartment, the same was handed over possession to the assessee only in the month of November 2011. A copy of letter of the builder is placed at page 94 of the paper book. A copy of the invitation extended on the occasion of *gruhapravesham* of new flat which was performed on 12.03.2012 is also placed on record at page 95 of the paper book. It is the contention of the assessee that the registration process was completed earlier because it was expected that there would be increase in stamp duty rates. This contention of the assessee cannot be brushed aside as untrue. In many cases, before the completion of flat the property would be registered on anticipation that there would increase in stamp duty rates. Be it as it may, I notice that the builder has certified that the new flat was handed over to the assessee only in the month of November 2011. This fact is also acknowledged by the CIT in the impugned order at para 5.2, wherein he states that – *"5.2. .....From the submission and evidence produced, it is seen that though the newly acquired*

flat gets completed and comes into existence in November 2011 and gets physically handed over to the assessee in the same month……..” . Admittedly, the assessee is handed over possession of new flat in the month of November 2011 and *gruhapravesham* was completed on 12.03.2012. Since the assessee was handed over the possession of the new flat only in November 2011, that date should be considered for all practical purposes, the date of acquisition of new flat for claiming deduction u/s 54 of the I.T.Act. As mentioned earlier, window of purchase of new asset is available to the assessee from 24.05.2011 to 24.05.2014. Therefore, handing over possession of new asset being in the month of November 2011 falls within the period of window mentioned above. Hence, I hold that the assessee is entitled to deduction u/s 54 of the I.T.Act on purchase of new asset. It is ordered accordingly.

7. Since I have adjudicated the issues raised on merits in favour of the assessee, I refrain from adjudicating the validity of revisionary order.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 19th day of March, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 19th March, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr.CIT-2, Bangalore.
4. The ACIT-Range 2(2), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore