

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

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THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 1<sup>ST</sup> DAY OF AUGUST 2022 / 10TH SRAVANA, 1944

ITA NO. 232 OF 2019

AGAINST THE ORDER/JUDGMENT IN ITA 40/2017 OF I.T.A.TRIBUNAL,COCHIN

BENCH

**APPELLANT:**

BINDU PREMANANDH  
AGED 55 YEARS  
PLOT NO.30,MANI MANDIR,  
PANAMPILLY NAGAR,COCHIN-682036.

BY ADVS.  
A.KUMAR  
SRI.P.J.ANILKUMAR  
SMTG.MINI(1748)  
SRI.P.S.SREE PRASAD  
SRI.AJAY V.ANAND

**RESPONDENTS:**

- 1 THE COMMISSIONER OF INCOME TAX  
CENTRAL REVENUE BUILDING,I.S.PRESS ROAD,  
KOCHI-682018.
- 2 INCOME TAX OFFICER,  
WARD 1 (5),RANGE-1,NOR CORPORATE,  
CENTRAL REVENUE BUILDING,I.S.PRESS ROAD,KOCHI-682018.

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 07.07.2022,  
THE COURT ON 01.08.2022 DELIVERED THE FOLLOWING

## J U D G M E N T

S.V.Bhatti, J.

We have heard Mr A Kumar and Mr Christopher Abraham for the parties.

2. The assessee/Bindu Premananth is the appellant. The Commissioner of Income Tax, Kochi/Revenue is the respondent. The appeal is at the instance of the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act ) being aggrieved by the order dated 30.11.2018 in I.T.A No.40/Coch/2017 of the Income Tax Appellate Tribunal, Cochin Bench (for short, 'the Tribunal'). The appeal relates to the assessment year 2013-14. The circumstances are in a limited sphere and are adverted to as under:

3. The assessee an individual, on 31.10.2013 filed the returns for the assessment year 2013-14. Notice dated 04.09.2014 under Section 143(2) of the Act was issued to the assessee. On 09.09.2015, a notice under Section 142(1) was issued to the assessee. The dispute between the assessee and the Revenue arises under Section 54F of the Act. The dates relevant for examining the claim of the assessee for computation of business income, are stated chronologically as follows:

- 1981-82 Assessee's father late E.K. Chandrasenan and two others purchased 2.5 acres of land in Chendelpet Taluk, Tamilnadu. (Hereinafter called the original asset).
- 11.07.2007 The assessee paid Rs.10,00,000/- to Heavenly Homes (P). Ltd for the purchase of a house in a housing scheme developed at Vaduthala.
- 03.03.2008 The assessee paid the developer a further sum of Rs.5,00,000/-.
- 20.01.2012 ICICI Bank dispersed home loan amounting to Rs.70,22,302/- in favour of K.S Premanand- husband of the assessee.
- March 2013 The assessee sold 1/3 share in the original asset and received Rs.3,30,00,000/- as sale consideration.

The assessee claimed a sum of Rs.2,14,87,000/- as investment exemption under Section 54F of the Act. The Assessing Officer limited the claim for an exemption to Rs.1,21,00,000/- and disallowed the claim for exemption made on the house construction at Vaduthala amounting to Rs.93,87,000/- vide order dated

31.12.2015 in Annexure-A. The reasons weighing with the Assessing Officer are excerpted for ready reference:

2.5 I have considered the assessee's claim, but unable to accept the same for the following reasons. Section 54F 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, 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;

In the case of the assessee, as the assessee has not purchased a residential house within a period of one year before or two years after the date on which the transfer took place, the first option is not applicable for the assessee. Coming to the other option of construction of a residential house, Section 54F is very clear which says that the assessee has "within a period of three years after that date constructed" i.e. within a

period of three years after the date on which the original asset was transferred has constructed. Here in the case of the assessee, the assessee claims that she along with her husband has made payments to Heavenly Homes (P) Ltd. for purchase of land and construction of a residential building starting from 11.07.2007, which is to be considered for the purpose of exemption u/s. 54F. Transfer of the original asset belonged to the assessee took place in the month of March 2013 i.e. during the financial year 2012-13 relevant to A.Y. 2013-14. Payment for purchase of land and construction of the residential house started from 11.07.2007. Construction of the residential house is not completed even now. So in no way amount spent for purchase of a property and construction of a house in the name of the assessee and her husband, which started on 11.07.2007 can be connected with sale of land which took place in the month of March 2013, for claiming exemption u/s. 54F. The assessee vide letter dated 08.12.2015 confirms that due to financial issue, the builders has stopped construction, which is yet to be completed. Further, Section 54F gives a 3 year period limitation for construction of the new residential house. Here the property i.e. the original asset in question was transferred in March 2013. Three year period will expire in March 2016. Construction of the new residential building has not completed yet. Construction of residential house, according to the assessee started from 11.07.2007. From 11.07.2007 to 31.12.2015 (the date on which this order is passed), number of months are 102 i.e. eight and half years.

2.6 The assessee has also claimed that they have taken a home loan of Rs. 70,22,302/ from ICICI bank on 20.01.2012, which is meant for construction of the residential house on 27.80 cents of land purchased from Heavenly Homes (P) Ltd. Perusal of the loan sanction letter issued by ICICI Bank shows that the loan was sanctioned to K.S. Premanand. This loan sanctioned on 20.01.2012 was much before the sale of property in the name of the assessee in the month of March 2013, in respect of which exemption u/s. 54F is sought. The payment for purchase of 27.80 cents of land and payment for construction of residential house

to Heavenly Builders started on 11.07.2007, which was 6 years before sale of property in March 2013 owned by the assessee. Accordingly, the claim of the assessee that amounts purported to be spent/paid for purchase of 27.80 cents of land and construction of a residential house thereon in the name of the assessee and her husband is to be considered for deduction u/s. 54F is not accepted. The decision relied on by the assessee in the case of CIT vs Bharti Mishra was examined. The facts of that case entirely different than the facts of the assessee's case.

(Emphasis added)

3.1 The tax demanded is Rs.26,51,660/-. The assessee filed an appeal against the order in Annexure-A before the Commissioner of Income-tax (Appeals)-II (for short, 'the CIT (Appeals)'. The Appellate Authority through Annexure-B order dated 22.11.2016 partly allowed the appeal. The Revenue filed a second appeal in I.T.A No.40/Coch/2017 before the Tribunal and the Tribunal through the order under appeal allowed the appeal. Hence the appeal with the following substantial questions of law.

“i) Whether in the facts and in the circumstances of the case the Tribunal has erred or not in denying the deduction under section 54F of the Income Tax Act on the investment made prior to the date of transfer of original asset?

ii) Whether the Tribunal has erred or not in the understanding of the scope of section 54F and the parameters required to be satisfied for eligible for deduction under section 54F, and whether or not the denial of deduction for investment prior to transfer can be denied at all in respect of a house constructed within time.”

4. Adv. A Kumar develops the argument by inviting our

attention to a few dates and events in the reported judgments in *Commissioner of Income-tax V. Bharti Mishra*<sup>1</sup>, *C.Aryama Sundaram V. Commissioner of Income Tax*<sup>2</sup> and argues that the view held by the Tribunal is contrary to the interpretation placed by the Madras and Delhi High Courts on the meaning to be assigned to the words “*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,*” arising in Section 54F of the Act. It is not a condition precedent to undertake the construction from the very sale consideration received from the sale of the original asset. It is argued that the value of the construction of a residential house includes the value of the plot and the construction cost. The important consideration is that the assessee has within three years after that date i.e. the sale of the original asset constructed a residential house. There is no dispute on the acquisition of the new asset, but for reasons beyond the assessee’s control, the project was delayed. The sanction of loan by ICICI Bank is for construction and the amounts received as loan or sale consideration to the extent expended on the construction of a residential house are claimed as

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<sup>1</sup> (2014) 8 TaxCorp (DT) 56475 (Delhi)

<sup>2</sup> (2018) 258 Taxman 0010 (Madras)

eligible exemption. The Tribunal has not recorded a crucial finding on whether the new asset is to the extent claimed by the assessee is completed within three years or not and if so, the eligible exemption is available to the assessee. Mr A Kumar placed strong reliance on the following excerpts from the reported judgments:

*Bharti Mishra case.*

12. Section 54F(1) if read carefully states that the assessee being an individual or Hindu Undivided Family, who had earned capital gains from transfer of any long-term capital not being a residential house could claim benefit under the said Section provided, any one of the following three conditions were satisfied; (i) the assessee had within a period of one year before the sale, purchased a residential house; (ii) within two years after the date of transfer of the original capital asset, purchased a residential house and (iii) within a period of three years after the date of sale of the original asset, constructed a residential house.

13. For the satisfaction of the third condition, it is not stipulated or indicated in the Section that the construction must begin after the date of sale of the original/old asset. There is no condition or reason for ambiguity and confusion which requires moderation or reading the words of the said sub-section in a different manner. The apprehension of the Revenue that the entire money collected or received on transfer of the original/capital asset would not be utilised in the construction of the new capital asset, i.e., residential house, is ill-founded and misconceived. The requirement of sub-section (4) is that if consideration was not appropriated towards the purchase of the new asset one year before date of transfer of the original asset or it was not utilised for purchase or construction of the new asset before the date of filing of return under Section 139 of the Act, the balance amount shall be deposited in an authorized bank account under a scheme notified by the



Central Government. Further, only the amount which was utilised in construction or purchase of the new asset within the specified time frame stand exempt and not the entire consideration received.

14. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted. The Supreme Court in *CCE v. Favourite Industries*, [2012] 7 SCC 153 has succinctly observed:

"21. Furthermore, this Court in *Associated Cement Companies Ltd. v. State of Bihar* [(2004) 7 SCC 642], while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held: (SCC p. 648, para 12)

"12. Literally 'exemption' is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See *Union of India v. Wood Papers Ltd.* [(1990) 4 SCC 256: 1990 SCC (Tax) 422] and *Mangalore Chemicals and Fertilisers Ltd. v. CCT* [1992 Supp (1) SCC 21] to which reference has been made earlier.)"

22. In G.P. Ceramics (P) Ltd. v. CTT [(2009) 2 SCC 90], this Court has held: (SCC pp. 101-02, para 29)

"29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries[(2005) 1 SCC 657] (SCC para 26); TISCO Ltd. v. State of Jharkhand [(2005) 4 SCC 272] (SCC paras 42-45); State Level Committee v. Morgardshammar India Ltd. [(1996) 1 SCC 108]; Novopan India Ltd. v. CCE & Customs [1994 Supp (3) SCC 606]; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala[(2007) 2 SCC 725] and ReizElectrocontrols (P) Ltd. v. CCE. [(2006) 6 SCC 213]"

### C.Aryama Sundaram Case

“At the cost of repetition, it is reiterated that exemption of capital gain from being charged to income tax as income of the previous year is attracted when another residential house has been purchased within a period of one year before or two years after the date of transfer or has been constructed within a period of three years after the date of transfer of the residential house. It is not in dispute that the new residential house has been constructed within the time stipulated in Section 54(1) of the said Act. It is not a requisite of Section 54 that construction could not have commenced prior to the date of transfer of the asset resulting in capital gain. If the amount of capital gain is greater than the cost of the new house, the difference between the amount of capital gain and the cost of the new asset is to be charged under Section 45 as the income of the previous year. If the amount of capital gain is equal to or less than the cost of the new residential house, including the land on which the residential house is constructed, the capital gain is not to be charged under Section 45 of the said Act.”

5. Mr Christopher Abraham relies on the findings recorded by the Tribunal and argues that the crucial aspect in the matter viz.

the three periods, viz. purchase one year before and two years after the sale of the original asset and construction within three years from the sale of the original asset a residential house. The case on hand attracts Section 54F (4) of the Act and the findings are correctly recorded by the Tribunal. He relies on the judgment reported in ***Shantaben P. Gandhi v. Commissioner of Income Tax, Gujarat-III***<sup>3</sup>.

6. We have taken note of the rival contentions and examined the ratio laid down in the cases relied on by Mr A. Kumar. To appreciate the argument made in law, first, we would prefer to excerpt the consideration of the issue by the CIT (Appeals) which reads as follows:

“In the instant case, there is no doubt about the fact, that the appellant started construction of a residential house, albeit prior to receipt of sale consideration from sale of land and the construction continued. The appellant deposited part of sale consideration in capital gains Accounts. Section 54 stipulates that a new residential house can be purchased either one year before the sale of asset or 2 years after the sale of asset. In case of construction, the construction should be completed within 3 years of sale of asset. From the plain reading of this provision, it is clear that it is not necessary to invest from the sale consideration as a new house can be purchased one year before the sale. In my opinion, on the basis of the facts on record, the appellant has fulfilled the conditions stipulated in section 54 F and therefore eligible for deduction u/s 54F on the entire amount of Rs.2,14,87,000/-. The A.O. is directed

accordingly. These grounds of appeal of the appellant are treated as allowed.

The Tribunal reversed the said conclusion of the CIT (Appeals) and the operative portion reads thus:

“7.4 Now the assessee claims deduction u/s. 54F in respect of investment in construction of residential house made by the assessee before the date of sale, i.e., before 22nd March, 2013. This provision provides that construction of the residential house should be done after the date of transfer but within three years from such date. If the date of sale is considered as the date of transfer of capital asset, the case of the assessee would not fall within the parameters of the said provision. These investments are made before one year of sale of the residential house which cannot be allowed as deduction u/s. 54F of the Act.”

Now the ratio relied on by the assessee lays down that,

- (i) the spending for construction need not be from the very sale consideration received from the sale of the original asset.
- (ii) the requirement is ie. within one year before or two years after the date on which the transfer took place purchased, or has within three years after that date constructed a residential house in three years from the date of sale of the original asset.

- (iii) The new asset includes both the value of the plot and the construction of the residential house.

6.1 The CIT (Appeals) has not noted all the sequential events in the explanation given by the assessee. But has arrived at a quick finding for extending the relief under Section 54F of the Act. Turning to the findings of the Tribunal, we are of the view that the Tribunal has given importance only to the time of the payments made by the assessee or sanction of the loan by the ICICI Bank in favour of the assessee's husband. The test ought to be when the residential house was completed. Either the finding on the crucial aspect is incomplete or not satisfactory. As rightly argued by Mr Kumar relevant to the consideration is when the assessee has completed the residential house. Even assuming the loan was sanctioned in February 2012, that by itself is not conclusive. According to him, the conclusive circumstance is the completion of construction of a residential house three years from the sale of the original asset. As we notice a serious flaw in the application and appreciation of Section 54F of the Act, to the circumstances stated by the assessee, we prefer to remit the matter to the Commissioner of Income-tax (Appeals) for a decision afresh. Hence for statistical purposes, the questions are answered in favour of the assessee and

against the Revenue.

7. For the above, reasons, the order in Annexure-B dated 22.11.2016 and the order of the Tribunal dated 30.11.2015 are set aside and the matter is remitted to the Commissioner of Income-tax (Appeals) for disposal afresh. The assessee if so advised may file additional material before the Commissioner of Income-tax (Appeals).

The appeal is allowed and the case is remanded to the Commissioner of Income-tax (Appeals).

**S.V.BHATTI**  
**JUDGE**

**BASANT BALAJI**  
**JUDGE**

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APPENDIX OF ITA 232/2019

**PETITIONER'S ANNEXURES**

<b>ANNEXURE A16</b>	<b>TRUE COPY OF THE ASSESSMENT ORDER DATED 31/12/2015</b>
<b>ANNEXURE B</b>	<b>TRUE COPY OF ORDER OF THE CIT(Appeals) dated 22/11/2016</b>
<b>ANNEXURE C</b>	<b>TRUE COPY OF THE ORDER OF THE HON'BLE TRIBUNAL DATED 30/11/2018</b>