

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE****BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.672/Bang/2019
Assessment Year: 2014-15

Smt. Amarnath Sarala No.632/18, 10 <sup>th</sup> D Main Road Jayanagara 4 <sup>th</sup> Block Bangalore 560 011 Karnataka  <b>PAN NO : ACGPS1342B</b>	<b>Vs.</b>	ITO Ward-7(2)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Venkatesh Kumar, A.R.
<b>Respondent by</b>	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	15.02.2023
Date of Pronouncement	:	15.02.2023

**ORDER****PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

This appeal by assessee is directed against order of CIT(A) dated 31.1.2019 for the assessment year 2014-15. The first ground for our consideration in ground Nos.1.1 to 1.4 are as follows:

***“1. Addition on account of difference in sale consideration and guidance***

*1.1 That the learned CIT(A) was not justified in adopting the fair market value of Rs.2,34,63,205/- under section 50C of the Income tax Act, without considering the objection of the assessee with regard to fair market value of the property sold by the Assessee during the relevant A.Y. 2014-15, based on the report of the DVO as well as against the presumptive value of the capital asset as per Sec. 50C of the Act..*

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*1.2 The learned CIT(A) has failed to consider the Assesses CBDT approved valuer's report., wherein he adopted the Land & Building method of valuation being the most appropriate method of valuation and determined the FMV of the property at Rs.1,25,30,606/- by considering the factors like type of property, transactions, & specific situation of the property etc.,*

*1.3 The Hon'ble Madras High Court, in the case of MA. Jagannathan Sailaja China v. The Income Tax officer, T.C.A. NoJ42 of 2019, Dated 15.02.2019 dealing with similar question held that ' A bare reading of Scheme of Sec. 50C of the Act would show that Assessee can object to presumptive value as per Sec.50C (1) and, therefore, it is only after hearing the objections of the Assessee, the Fair Market Value of the Capital Asset as per \* Guidance Value" can be determined by the authorities. The Assessee cannot be denied an opportunity to raise his objections even against the presumptive Fair Market Value under Sec, 50C (1) of the Act or Report of DVO under Section 50C (2) of the Act and the Assessing Authority or the Appellate Authorites, whose powers are co-extensive with those of the Assessing Authority, cannot refuse to meet those objections point by point'.*

*1.4 The Hon'ble Delhi High Court, in the case of CIT v. Khoobsurat Resorts (P) Ltd., (2012) 28 taxman.com 93 dealing with a similar question held that the provisions of Sec, 50C of the Act only enable the Revenue to adopt the Guidance Value declared by the State for payment of stamp duty, as the Fair Market Value under section 48 of the Act. But that Guidance Value cannot, ipso facto, be taken as the valuation for the purposes of computing Capital Gain Tax liability in the hands of the assessee/seller. Sub Sec. 2 of Section 50C of the Act itself provides for reference to DVO if the assessee objects to invoking of Sec. 50C (1) of the Act'.*

2. Facts of the case are that during the F.Y. 2013-14 corresponding to the A.Y. 2014-15 the assessee sold a property (1/4<sup>th</sup> share) bearing No.18/2, PID No.60-106-18/2 with super built up area of 2005 Sq. Ft. in the Third Floor, 10<sup>th</sup> Main D Road, 4<sup>th</sup> block, Jayanagar, Bengaluru-560011 dated 13.11.2013 for a consideration of Rs.1,55,00,000/-. The AO found that at the time of registration of the property guidance value of Rs.2,66,50,000/- was adopted and stamp duty at 1%, which came to Rs.2,66,500/- was paid. The AO proposed to apply the provision of Sec 50C of the Act and wanted to adopt the total value of the property at Rs.2,66,50,000/- thereby enhancing the sale proceeds by Rs.1,11,50,000/- for the purpose of computation of capital gains. As the assessee's share in the property was 25% the proposed

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enhancement in the sale proceeds was Rs.27,87,500/-. The assessee argued before the AO that the sub-registrar has valued the property at a higher rate because the place has been named as 10<sup>th</sup> D Main in the Government notification whereas in reality the property is situated on the cross road and not in the Main. He also contended that the property has been sold in piecemeal and not as a whole stock which has considerable impact on the value of the property. However, the AO was not convinced and he applied the provision of Sec 50C and adopted the sale consideration at Rs.66,62,500/- as against the claim of the assessee at Rs.38,75,000/-. Accordingly, he computed short term capital gains at Rs.52,51,376/- and added to the total income of the assessee.

3. Before the ld. CIT(A), assessee requested him to refer the matter to DVO. Accordingly, ld. CIT(A) directed the AO to refer the matter to the DVO. The AO referred the matter to the DVO and he forwarded the valuation report on 3.9.2018, wherein the value was estimated at Rs.2,84,63,205/- as against the declared value of Rs.1.55 lakhs. After considering the valuation report, ld. CIT(A) observed that the objections raised by the assessee were raised before the valuation officer also and he has taken into account those objections and has disposed of the same by a speaking order. The ld. CIT(A) has gone through the valuation report dated 03.09.2018 wherein the valuation officer has discussed in detail the objections raised by the assessee and the ground on which the objections had been dismissed. The valuation officer has estimated the value of the property in question at Rs.2,34,63,205/- as against the value declared by the assessee at Rs.1,55,00,000/- after making detailed enquiry and taking into account all the relevant factors. The assessee has not brought any evidence to prove that the report of the valuation officer has a fallacy and that it cannot be relied upon. Therefore, the objection of the

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assessee to the report of the valuation officer was rejected by the ld. CIT(A). However, the ld. CIT(A) observed that the value to be adopted at Rs.2,34,63,205/- in the place of Rs.26,65,000/- as adopted by AO on the basis of DVO report. Against this assessee is in appeal before us.

4. After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in the co-owner's case Amarnath Sarla in ITA No.673/Bang/2019 dated 21.6.2022 wherein held as under:

*"7. We have heard the rival submissions and perused the materials available on record. In this case, assessee has filed the valuation report from the registered valuer before Ld. CIT(A) and the fact has been noted by the Ld. CIT(A) in his order. However, no credence has been given to it. As per the registered valuer report given by A.S. Anil Kumar dated 23.8.2018, the value has been determined by him as Rs.1,25,30,606/- as against the value adopted by the DVO at Rs.2,34,63,205/-. However, the assessee declared the value at Rs.1.55 crores in sale deed. However, the AO considered the guideline value adopted for registration as sale consideration to determine the capital gain. There is a substantial difference between the value adopted for registration and valuation made by different valuers. The argument of the Ld. D.R. is that the assessee has not furnished copy of registered valuer report to AO at the time of assessment and only at the time of first appellate proceedings, he has produced it. Hence, no credence has been given. In our opinion, an appropriate opportunity ought to have been given to the assessee to reconcile the value mentioned by DVO and registered valuer and also with regard to the method of valuation followed by the different valuers. It is also submitted by Ld. A.R. that DVO has considered the value of certain property, which was not in the impugned sale deed which has to be excluded while determining the FMV of the impugned property. We also direct the authorities to bring more comparable cases for deciding the issue. With this observation, we remit the entire issue to the file of AO for reconsideration in the light of above."*

4.1 In view of the above order of the Tribunal, we remit this issue also to the file of AO for similar directions. These grounds of assessee's appeal are partly allowed for statistical purposes.

5. Now we take up Ground Nos.2 to 2.3 for adjudication, which are as follows:

**2. Disallowance of deduction u/s 54F amounting to Rs.32,76,006/-**

2.1 That the learned CIT(A) has failed to consider the fact that claim of the assessee regarding investment made in purchase of the site of Rs.36,00,000/- even if the assessee finally could not construct the new house within the time period specified under section 54F once the assessee has invested the sale proceeds of existing asset for the purposes of construction of new house the deduction u/s,54F cannot be denied.

2.2 That the Hon'ble High Court of Karnataka in the case of CIT v. Mrs. **Shakuntala Devi** (2016) 389ITR 366/75 **taxmann.com** 222 (Kar.) has held that 'the condition precedent for claiming benefit under said provision is that the capital gains realized from sale of a capital asset should be reinvested with in purchasing a residential house or utilised for constructing a residential house. If it is established that consideration so received on transfer of the asset has been invested in either purchasing a residential house or spent on construction of a residential house, an assessee would be entitled to the benefit U/S.54F of the Act irrespective of the fact that transaction not being complete in all respects.

2.3 In the case of CIT v, **Smt B.S. Shantakumarl** (2015) 233 **Taxmann** 347/60 **taxmann.com** 74 (Kar.) it was held that if the assessee has invested money in constructing the residential house, merely because the construction was not complete in all respect or such building is yet to be completed fully or the building not being in fit condition for being occupied, would by itself riot be ground for the assessee to be denied the benefit under Section 54F of the Act.

5.1 Facts of the case are that the assessee has sold one property for Rs.18,00,000/- vide deed of registration dated 22.11.2013 and another property for Rs.18,00,000/- vide deed of registration dated 28.11.2013. Thus total sale consideration from the sale of two plots received by the assessee was Rs.36,00,000/-. The assessee declared Long Term Capital Gains (LTCG) of Rs.29,76,006/- after claiming indexed cost of acquisition of Rs.3,23,994/- and brokerage of Rs.4,00,000/-. The assessee claimed exemption u/s 54F of the

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amount of capital gains. She entered into an agreement with Mr. Raju for the purchase of a residential house at # 262, 8<sup>th</sup> Phase, J.P. Nagar, Bangalore vide. Subsequently, this agreement was cancelled and the assessee purchased 2 plots of land on 07.10.2016 for a total consideration of Rs. 26,00,000/- @ Rs.13,00,000/- for each plot. As the assessee did not construct house on the said plot, the AO disallowed exemption claimed u/s 54F. During the appeal proceedings the Id. AR furnished a certificate from a Chartered Engineer giving the completion status of the house as on 10.12.2017 showing the following expenses:

Sl.	Description	Rate
1.	Clearing & leveling ground for foundation, clearing the debris etc	Rs.7,500/-
2.	Earth Work Excavation for footings	Rs.27,800/-
3.	Plain Cement Concrete 1,4,8	Rs.15,625/-
4.	RCC for footings	Rs.47,800/-
5.	Sump Tank	Rs.35,600/-
	TOTAL	Rs.1,34,325

5.2 He has also mentioned that construction activity has been stopped since February, 2017. Against this assessee went in appeal before Id. CIT(A) and the Id. CIT(A) perused the certificate given by the Chartered Engineer. The A/R was asked to substantiate the claim of all expenses shown in the said certificate but he failed to produce any such evidence. Without documentary evidence the certificate of the Chartered Engineer cannot be relied upon. Even if the said certificate is believed upon, there is no construction of house at all. The Chartered Engineer has given the following certificate:

Smt. Amarnath Sarala

ITA No.146/CIT(A)-10/2016-17  
A.Y.2014-15

A.S. ANIL KUMAR, B.E., MIE, FIV  
Chartered Engineer & Registered Valuer

15/1, 3rd 'A' Cross, 16th Main, KSHTC Layout,  
2nd Phase, J.P. Nagar, Bangalore - 560 078.  
Mobile : 9845033550, 9900163250  
E-mail : anilae@gmail.com

**CHARTERED ENGINEER'S CERTIFICATE**

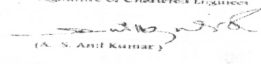
I hereby certify that construction of the building bearing property at 2 & 16, Shiva Prada Nagar, Lakshminagara Village, Atholehalli, Anekal Taluk, Dharwad Urban District, has been inspected by me and the work completed status as on 10<sup>th</sup> Dec, 2017 has been detailed in Schedule - 1. The workmanship and all the materials (types and grades) have been used strictly in accordance with the general and detailed specifications. Further, the following observations have been made:

- A. Construction activity has been stopped since Feb 2017. The single work completed as on mentioned in the attached Schedule - 1.
- B. There is no approved sanction plan obtained for the construction activity. Only earth work excavation for footings, plain cement concrete for footings, Sump tank & partly R.C.C. footings columns were completed.
- C. Sanction Plan Approval is under process since it is existing under village panchayat limits.

To the best of my knowledge & information presented to me, I once again reiterate that what has been stated above is true & correct.

Date : 10<sup>th</sup> Dec, 2017  
Place : Bangalore

Signature of Chartered Engineer



A.S. ANIL KUMAR B.E., MIE, FIV  
CHARTERED ENGINEER  
M - 155033-6

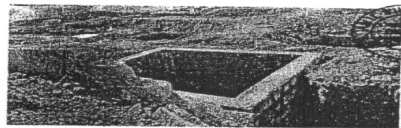


**SCHEDULE - 1**

Description	Rate
1. Clearing & leveling ground for foundation, clearing the debris etc.	Rs. 7,500/-
2. Earth Work Excavation for footings	Rs. 27,643/-
3. Plain Cement Concrete 1:2:8	Rs. 19,622/-
4. R.C.C. for footings	Rs. 47,863/-
5. Sump Tank	Rs. 25,630/-
<b>TOTAL</b>	<b>Rs. 1,34,322/-</b>

Total Cost of Construction = Rs. 1,34,322/-

Note: Rates considered are prevailing market rates as on Jan 2017 & the quantity is measured at site and considered for calculation purpose.



A.S. ANIL KUMAR B.E., MIE, FIV  
CHARTERED ENGINEER  
M - 155033-6



SL

A. Sarala

Against this assessee is in appeal before us.

5.3 In this regard, it is to be borne in mind that the assessee had sold the above mentioned two properties on 22.11.2013 and 28.11.2013. Therefore, he was required to purchase a house within a period of two years or construct a house within a period of three years. Section 54F(1) gives a time limit for the said purpose. In this case the assessee was required to buy a house on or before 28.11.2015 or construct a house on or before 28.11.2016, but in the instant case the assessee has bought the land only on 07.10.2016 i.e. nearly towards the completion of three years from the date of sale of the property. The assessee does not have any evidence that the construction activity started within a period of three years, so there is no question of completion of construction of the residential house within that period. In the certificate of the Chartered Engineer also it is mentioned that construction activity has been stopped since February, 2017. During the appeal proceedings also the ld. AR stated that construction activity has stopped since February, 2017 and has not resumed since then. The ld. AR has filed copies of various judgments contending that benefit of section 54F of the Act has to be allowed even if the construction of residential house has not been completed. In the instant case, however, there is no question of completion of the residential house; it has not even started at the end of three years from the date of sale of the property. Therefore, the judgments relied upon by the ld. A.R. are not applicable to the case of the assessee. Hence the ld. CIT(A) agreed with the AO that the claim of deduction made u/s 54F of the Act is not allowable. The assessee has claimed expenditure of Rs.4,00,000/- as brokerage paid for the sale of the land. But no evidence for such payment was produced by the assessee before the AO or during the appeal proceedings. Hence ld. CIT(A) was of the considered opinion that the AO has rightly disallowed the assessee's claim with regard to payment of brokerage amounting to Rs.4,00,000/-. Thus, the ld.



CIT(A) did not find infirmity in the action of the AO in making an addition of Rs.32,76,006/- as Long Term Capital Gains. Accordingly, the ld. CIT(A) sustained the addition on account of LTCG amounting to Rs.32,76,006/-. Against this the assessee is in appeal before us.

6. We have heard the rival submissions and perused the materials available on record. The contention of the ld. A.R. is that assessee purchased the residential plot on 7.10.2016 and started construction immediately and the cut-off date to commence the construction is on or before 28.11.2016. According to the assessee, assessee completed the construction by Jan'17 and he drew our attention to a copy of certificate dated 10.12.2017 issued by Chartered Engineer to establish that construction in the said property has been continued up to Jan'17. Later on account of hospitalization of her husband owing to Cancer treatment. Soon after treatment was got over construction started and residential houses were constructed by Jan'20. In support of this, he drew our attention to the completion certificate issued by Prakash Engineers, No.7, Puttanna Link Road, Main Road, Behind Vidhyarthi Bhawan, Basavanagudi Bangalore 560 004 dated 20.2.2020. He also placed various photographs said to be the construction of impugned building.

6.1 On the other hand, ld. D.R. strongly opposed the arguments of ld. A.R. and submitted of the assessee has not placed any iota of evidence to suggest that the construction has been completed within the period of 3 years from the date of sale of the capital asset as stipulated in section 54F of the Act. For better understanding we have to go through the provisions of section 54F of the Act which reads as follows:

*“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, one residential house in India] (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, this 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.”*

6.2 A bare reading of the above provisions shows that the above provisions are incentive provisions intended to augment investment in residential houses. As per these provisions if the assessee within a period of one year before or two years after the date on which the transfer taken place purchases or within a period of three years after that date constructed a residential house then capital gain has to be dealt with in accordance with the provisions of section 54(1)(a) & (b) of the Act. If the assessee constructed any residential house, the assessee is required to place necessary evidence to prove that the construction has been taken place. Before the lower authorities, no evidence has been furnished regarding the construction of new house so as to show that the sale proceeds of the land were utilised for the purpose of construction of the new house. In the absence of any material to suggest the construction of the house, out of the sale proceeds of the land, we are not in a position to hold that the assessee is entitled for deduction u/s. 54F of the Act. It is needless to say that when the assessee claims deduction u/s. 54F of the Act, it is incumbent upon the assessee to place necessary evidence in support of its claim. In the present case in spite of the Assessing Officer and the CIT(A) requiring the assessee to furnish necessary evidence for construction of the residential building within the

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period as enumerated in section 54F of the Act, the assessee failed to produce the same. Being so, when we examine the facts on record to see whether the assessee herein has actually constructed any residential house within the meaning, object and time laid down u/s. 54F of the Act, the material on record does not suggest any construction of the house in terms of section 54F of the Act. The onus lies on the assessee to prove by way of evidence to justify their claim for deduction. In this case, the onus was not discharged by the assessee herein in view of the fact that the assessee could not furnish the requisite evidence to prove the fact that there was any actual construction within the time stipulated in section 54F of the Act. The assessee has not placed any cogent evidence, so that it can be inferred that actually there was construction of residential building out of the sale proceeds of the sale of land and also not placed evidence for the purchase of any materials relating to construction of residential building. Merely producing a copy of permission from Gram Panchayat with regard to construction permission that itself cannot discharge the assessee from proving actual construction.

6.3 In our opinion, this is made believe story before us and without producing requisite evidence to suggest that the assessee has completed the construction within the period of 3 years after the date of transfer. It has also been noted that assessee has not produced any license/permission for construction of building in the scheduled property from any authorities said to be constructed and there was no evidence in support of the fact that there was actually any construction within the stipulated time as per section 54F of the Act. Accordingly, we do not find any merit in the arguments of the ld. A.R. which is only artificial and superficial and deduction u/s 54F of the Act cannot be granted. This ground of appeal of the assessee is rejected.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 15<sup>th</sup> Feb, 2023.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 15<sup>th</sup> Feb, 2023.  
VG/SPS

**Copy to:**

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

By order

Asst. Registrar, ITAT, Bangalore.