IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C'

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.1916/Bang/2016
(Asst. Year 2011-12)

Mrs. Kavita Tiwari,
D-202, Adarsh Residency, 8th Block,
Jayanagar, Sangam Circle,
Bengaluru. . Appellant

Vs.

The Income-tax Officer,
Ward-4(4),
Bengaluru. . Respondent
PAN – ACVPT1583G.

Appellant by : Shri R.E Balasubramaniam, C.A
Respondent by : Shri M.K Biju, JCIT

Date of Hearing : 16-08-2017
Date of Pronouncement : -10-2017

O R D E R

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the CIT(A)-7, Bangalore dated 26.8.2016 for Assessment Year 2011-12.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee filed her return of income for asst. year 2011-12 on 307/2011 declaring income of Rs.9,44,207/- from rent, interest

and capital gains. The return was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was completed u/s 143(3) of the Act vide order dated 19/3/2014, wherein the assessee's income was determined at Rs.1,16,77,383/- in view of the Assessing Officer ('AO') reworking the Long Term Capital Gains ('LTCG') arising on sale of property vide sale deed dated 31/5/2010 at Rs.1,06,33,176/- as against Nil LTCG declared thereon by the assessee.

2.2 Aggrieved by the order of assessment dated 19/3/2014 for asst. year 2011-2, the assessee preferred an appeal before the CIT(A)-7, Bangalore; which was disposed off by order dated 26/8/2016 allowing the assesee partial relief.

3.1 Aggrieved by the order of the CIT(A)-7, Bangalore dated 26/8/2016 for asst. year 2011-12, the assessee has preferred this appeal before the Tribunal, wherein she has raised the following grounds:-

> *"1. The impugned order is opposed to the facts of law in so far as it is prejudicial to the interest of the appellant.*
>
> *2. a) The Ld. CIT (A) erred in not considering the total amount paid to the builder for the purposes of deduction u/s 54, which included additional construction costs and restricting the deduction u/s 54 to the registration value.*

b) The Ld. CIT(A) erred in confirming the disallowance of

Rs.13,45,800/- held by the AO as unexplained differential amount without appreciating that has been no explanation or finding by the AO herself for the said amount.

3. The Ld. CIT (A) erred in not allowing the genuine expenditure which was incurred in order to bring the home into a habitable condition.

4.. The Appellant prays for leave to add, modify, delete or introduce

additional Grounds of Appeal at any time before the Appeal is disposed off."

The ld AR for the assessee was heard in support of the grounds raised.

3.2.1 We have heard the rival contentions of both the ld DR for Revenue and the ld AR of assessee and perused and carefully considered the material on record; including details filed by the asessee in paper book (pages 1 to 30). A perusal of the grounds raised by the assessee (Supra) clearly indicate that the issue raised therein pertain to the computation of the LTCG arising on sale of property vide sale deed dated 31/5/2010. The details of the matter, as emanate from the record before us, are that the assesee sold a property vide sale deed dated 31/5/2010 for a consideration of Rs.1,95,00,000/-,

which was purchased by her, on 16/1/2003 for Rs.25,59,700/-. In her computation of LTCG on sale of the aforesaid property, the assessee computed the indexed cost of acquisition at Rs.43,89,589/- and the LTCG was worked out at Rs.1,51,10,410/- It was, claimed by the assessee that this was Nil taxable LTCG arising thereon, in view of her claim for exemption of Rs.1,52,28,607/- u/s 54 of the Act. On examination of the LTCG computed by the assessee, the AO observed that the new asset in which the assessee had invested i.e, Villa No.42, Adarsh Palm Retreat, Outer Ring Road, Marthahalli, Bangalore vide deed dated 14/10/2010 was purchased in the joint names of the assessee as well as her husband, Shri Subhash Tiwari. The AO also noticed that there is a difference in the amount claimed to have been paid by the asesee for purchase of the new asset viz Rs.1,52,28,607- as against the consideration of Rs.68,46,050/- paid as per the recitals in the purchase deed dated 14/10/2010. The AO observed that the assessee had included therein certain payments that were not eligible for being considered as part of amount spent for acquisition and certain other amounts claimed to have been paid, for which no documentary evidence was brought on record to prove such expenditure.In the above factual matrix of the case, the AO proceeded to allow the assesee exemption u/s 54 of the Act only to the extent of 50% in view of his holding that both the assessee and her husband were having equal share in the new property purchased at Adarsh Palm Meadows on 14/10/2010. The AO further held the purchase price of the new property to be Rs.68,46,050/- as reflected in the purchased deed dated

14/10/2010 and after disallowing certain other items of expenses, reworked the net LTCG at Rs.1,06,33,176/- after allowing exemption of Rs.44,77,234/- u/s 54 of the Act to the extent of 50% of the amount invested on account of the joint ownership of the new property by the assessee and her husband.

3.2.2 On appeal, it is seen that the ld CIT(A) after detailed consideration of the assessee's submissions on various grounds raised in this regard and various judicial pronouncements partly allowed the assessee's claim in respect of the computation of LTCG on sale of the said property on 31/5/2010 and exemption claimed u/s 54 of the Act, rendered his findings as under at paras 6 to 8.5 of the impugned order:-

> *"6. In ground no.2, the appellant has contended that the restricting the deduction u/s 54 of the Act to 50% of the amount invested on account of joint ownership is erroneous. The AO observed that since the 'New Asset' has been purchased in the name of appellant and her husband Mr. Subhash Tiwari, jointly and since their shares has not been specified thus the AO restricted the amount of deduction to the appellant to the extent of 50% only.*
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> *6.1 During the appellate proceedings, the appellant contended that as per the provisions of Section 54 of the Act, the intention of legislation is that amount received from sale of an asset should be invested in some other*

asset and there is no restriction on the manner in which the same should be invested. The Appellant, in support of his contention relied upon the decision in the case of Jennifer Bhide v DIT 349 ITR 80 of Hon'ble High court of Karnataka to emphasise that once the investment is made in manner, the assessee is entitled to the benefit of the provisions of the Act. It was also contended that the legislature has not specifically mentioned in the statute that the investment of the sale proceeds should be made in the own name of the appellant and in absence of it, the same should not be presumed by the AO. The appellant contended that the provision of section 54 of IT Act does not express the intention that the purchase of new house or the construction should be in the name of the person who has sold the original property. The intention of the legislation is investment of sale consideration for acquisition or construction of residential premises as observed by the Hon'ble High Court in the case of Jennifer Bhide (Supra). The appellant also relied on the case of ITO vs. Ashwathanarayana ITA No. 1152/Bang/2012 of Hon'ble ITAT Bangalore in which the appellant invested the capital gains in three adjoining plots in the name of his wife and son and constructed a property across was found eligible for deduction u/s 54/54F of IT Act.

6.2 There is no dispute that a 'New asset' has been purchased in the name of the Appellant and her husband Mr. Subhash Tiwari. Also it is also a matter of fact that no specific share of ownership or investment is mentioned in the sale deed of the 'New Asset'. The relevant provisions of Section 54 are as below:

6.3 Of course, tax laws do distinguish between joint ownership where the name of the joint owner is merely for the sake of convenience, and beneficial joint ownership, where each joint owner has contributed towards the cost of the house. Joint ownership for the sake of convenience is certainly not regarded as an ownership for the purpose of tax laws, and therefore the prohibition would not apply to such cases. In case of beneficial joint ownership, each joint owner would be regarded as a beneficial owner of the property in the proportion of the cost of the property borne by her to the total cost of the property. The issue of joint ownership qualifying for the exemption u/s 54 of the Act has been examined by several courts. In the case of DIT v Mrs. Jennifer Bhide (supra) referred by the appellant, the assessee sold her residential property and invested part of sale proceeds on purchase of residential property and bonds. She claimed exemption under sections 54 and 54EC of the Act in respect of said investment. On

verification, the Assessing Officer observed that aforesaid property and bonds were not purchased in the name of the assessee alone but were also in the name of her husband. The Hon'ble Court held that the wife is entitled for the exemption on the entire amount. It was held that :

> *"5. In the light of the said submission the question that arise for consideration is whether the husband of the assessee, by inclusion of his name as joint owner in the property, would become 50% owner of the said property and whether the assessee would not be eligible for exemption of the entire investment made by her.*
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> *6. Section 45 of the Transfer of Property Act throws some light in this regard which reads under:*
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> *"45. Where immovable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to*

the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property."

7. On careful reading of section 54 as well as section 54EC on which reliance is placed makes it clear that when capital gains arise from the transfer of long term capital asset to an assessee and the assessee has within the period of one year before or two years after the date on which the transfer took place purchase or has within the period of three years after the date of construction of residential house then instead of capital gain being charged to Income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the provision made under the section which grants exemption from payment of capital gains as set out thereunder. Therefore, in the entire section 54, the purchase to be made or the construction to be put up by the assessee, should be there in the name of the assessee, in not expressly

stated. Similarly even in respect of section 54EC, the assessee has at any time within a period of six months after the date of such transfer invested the whole or any part of the capital gains in the long term spec/led asset then she would be entitled to the benefit mentioned in the said section. There also it is not expressly stated that the investment should be in the name of the assessee. Therefore, to attract section 54 and section 54EC of the Act, what is material is the investment of the sale consideration in acquiring the residential premises or constructing a residential premises or investing the amounts in bonds set out in section 54EC. Once the sale consideration is invested in any of these manner the assessee would be entitled to the benefit conferred under this provisions. In the absence of an express provision contained in these sections that the investment should be in the name of the assessee only any such interpretation were to be placed, it amounts to Court introducing the said word in the provision which is not there. It amounts Court legislating when the Parliament has deliberately not used those words in the said Section. That is the view taken by the Hon'ble Madras High Court and Hon'ble Punjab and Haryana High Courts and we

respectfully agree with the view expressed in the aforesaid judgment."

6.4 In the case of CIT v. Ravinder Kumar Arora [2012] 342 ITR 38/[2011] 203 Taxman 289/15 taxmann.com 307 (Delhi) the facts are quite similar to the instant case. All the payments were made by the assessee on the purchase of residential house jointly in the names of the assessee and his wife. The AO then referred to Section 54F of the Act and allowed 50% of the exemption claimed under Section 54F of the Act. The Hon'ble Court however held that object of the provision of legislature is important and it should be given wide connotation. The appeal was allowed in favour of assessee and it was held that:

"10. Even when we look into the matter from another angle, facts remain that the assessee is the actual and constructive owner of the house. In CIT v. Podar Cement (P.) Ltd. [1997] 92 Taxman 541 /226 ITR 625 (SC), the Supreme Court has also accepted the theory of constructive ownership. Moreover, Section 54F mandates that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of the assessee only. Here is a case where the house was purchased by the assessee and that too in his name and wife's name was also included

additionally. Such inclusion of the name of the wife for the above-staled peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee. Objective of Section 54F and the like provision such as Section 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technicality should not impede the way of deduction which the legislature has allowed. Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Section 54F of the Act is the beneficial provision which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied on hyper technical ground. Andhra Pradesh High Court in the case of Mir Gulam A li Khan v. CIT [1987] 165 ITR 228 1[1986128 Taxman 572 has held that the object of granting exemption under Section 54 of the Act is that an assessee who sells a residential house for purchasing another house must be given exemption so far as capital gains are concerned. The word "assessee" must be given wide

and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation to the word "assessee" as that would frustrate the object of granting exemption.

11. We also find judgments of other High Courts giving benefit of Section 54F(1) of the Act when the house of the assessee is purchased jointly with his wife. In the case of CiT v. Natarajan [2006] 287 ITR 271/ 154 Taxman 399 (Mad.), though this case was decided in relation to Section 54 of the Act, the said Section is pari materia of Section 54F(1) of the Act. Likewise, the Punjab & Haryana High Court in the case of CIT v. Gurnam Singh [2010] 327 1TR 2781[2008] 170 Taxman 160 took the same view while discussing the provisions of Section 54 of the Act which is again pari materia of Section 54F(i) of the Act.

6.5 In view of the above discussion and respectfully following the decision of above mentioned decision of Hon'ble High Courts including Jurisdictional High court, in the instant case where there is no evidence has been brought out by the AO regarding the proportion of share, the Appellant is eligible for the exemption to the full extent. Accordingly, the order of AO in restricting the exemption

u/s 54 of the Act to 50% only is denied and the appellant is allowed 100% exemption u/s 54 of the Act on the amount which is discussed and decided in the succeeding paragraphs.

7. In the ground no. 3 of the Appeal, the appellant contended that the amount paid to the Developer should be not be restricted to the registration value but should be allowed in as much as the amounts paid to the Developer including additional construction costs. The appellant argued that the in Section 54 what is relevant is amount spent by the appellant to bring the residential house into existence and to make it habitable as per the requirement of the appellant. It was further argued that the registration cost is only for the residential house but the developer/ builder also provide other facilities/ amenities like club house, swimming pool, common path etc which are not covered in the purchase consideration of the land and villa and the appellant has paid consideration for it. The Appellant submitted the details of payments of Rs.97,12,768/- made to M/s Adarsh Developers confirmed by the builder. The confirmation letter dated 04.12.2013 of the builder and the ledger account of the appellant in the books of builder/developer were closely perused.

7.1 There is no dispute in the fact that the cost of villa ,as per the sale deed dated 14.10.20 10 is

Rs.63,50,000!- along with stamp duty and registration charges of Rs.4,96,0501-, the total side ration comes to Rs.68,46,0501-. The AO has further allowed the sum of Rs.7,30,030/- of maintenance deposit, Rs.4,33,388/- of BESCOM and BWSSB charges, Rs.25,000/- of legal charges, and Rs.9,20,000/- for Modular Kitchen, as amount of investment eligible for exemption u/s 54 of the Act.

7.2 In the case of CIT Vs Kuldeep Singh ITA No. 117/2014, the Hon'ble Delhi High Court has referred the observation of Hon'ble Apex Court in which it was suggested not to take only the literal meaning of the statutory provisions but the intention of the legislation should be interpreted. In the decision of the Supreme Court in CIT vs. J.H. Gotla [1985] 156 ITR 323 (SC), it was observed:

> *"Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary*

to remember that language used is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of the dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meeting."

7.3 In the case of CIT Vs Kuldeep Singh ITA no. 117/2014, the Hon'ble Delhi High Court has held that:

"It was observed that the basic purpose behind Section 54 is to ensure that the assessee is not taxed on the capital gains, if he replaces his house with another house and spends money earned on the capital gains within the stipulated period.

The view we have taken gets support from sub-section (2) to Section 54. The aforesaid sub-section requires the assessee to deposit unspent amount not utilized by the assessee for purchase or construction of a new asset before the date of furnishing of return, in a specified account. It further states that the amount, if already utilized for purchase or construction of the new asset with the amount so deposited will be deemed to be cost of a new asset

subject to the proviso. The word "purchase' is used in sub-section (2) and indicates that the said word is not restricted or confined to registered sale deed or even possession but has a wider connotation. The proviso supports the aforesaid interpretation and stipulates that the amount deposited but not utilized wholly or partly for purchase or construction of new asset within the specified period will be charged to tax under Section 45 in the previous year in which the period of three years from the date of transfer of original asset expired."

7.4 There is certainly a difference in the amount on which, the property has been registered and the amount paid to the builder / Developer. A similar issue was dealt by the Hon'ble ITAT, Bangalore in the case of Shri S. Tejraj Ranka, ITA no 82/ Bang/2014 and it was held that the undervaluation of property for Stamp Duty purposes will not have any bearing on the exemption u/s 54 of the Act subject to investment made. The ITAT, Bangalore in the case of Shri S. Tejraj Ranka(Supra) held that:

"17. The fact remains that the Assessee has parted with a sum of Rs.54, 70,887/- to acquire a 'residential house', in the sense, a house which is habitable. Therefore, as far as proceedings under the Act are concerned, the Assessee cannot be denied the

benefit of deduction u/s 54F of the Act. The fact that there was undervaluation of the value of the property for the purpose of stamp duty, is an issue which is alien to the question of allowing deduction u/s 54F of the Act, when the evidence on record clearly shows investment in constriction of 'residential house' to the extent of Rs. 54, 70,887/-.

18. The AO and the CIT(A) have ignored the fact that the Assessee has in fact made investment to the extent of Rs. 54,70,887/- and therefore, the deduction claimed u/s 54F of the Act ought to be allowed. The fact that there was discrepancy between the amount set out in the registered document and the agreement with the builder has already been noticed by the State Registration Authorities and the Assessee is contesting those proceedings. Those proceedings will not have any bearing with regard to the claim of the Assessee for deduction u/s 54F of the Act, as the factum of investment in acquiring a residential house and payment of Rs. 54,70,887/- has been established and not disputed by the Revenue,"

7.5 The Appellant was unable to substantiate the reasons of difference of Rs.13,45,800/alleged to be paid to builder. There is no change in the facts and the appellant has not brought any facts on the record to substantiate the excess

payment. Therefore, I am of the considered view that claim of capital Gains of Rs.89,54,468/- by the AO does not require any interference. However, the computation of share of appellant has half of it is not justified, as discussed in preceding paragraphs, thus the same is deleted.

8. In ground no.4, the appellant has contended that the genuine expenses incurred in connection with the construction of new house have not been allowed by the AO. The Appellant has claimed that a sum of Rs.48,13,089/- was incurred by the Appellant directly apart from the payments made to M/s Adarsh. The break-up of these expenses are as below:

1	VineetToshniwal for Interiors	Rs.3,00,000/-
2	Springwell Mattresses Pvt. Ltd. towards interiors	Rs.2,00,000/-
3	Sound system from Noshanshu	Rs.40,000/-
4	Installation of solar hot water system	Rs.1,20,000/-
5	Samsung	Rs.2,48,100/-
6.	S. Venkatesh towards additional work/modification	Rs.20,00,000
7.	Dimension Digital Control Pvt. Ltd. supposedly for purchase of Home Theater	Rs.4,64,600/-
8	Amounts spent by Appellant through cash	Rs.14,40,389/-

8.1 As discussed above, an honest attempt should always be made to discover the intention of the Legislature from the language used but such stretch of imaginations has also an outer limit. The word 'Construction' used in Section 54 of the Act cannot be construed for the installation of Solar hot water system, Sound System, purchase of mattresses or installation of electronic items!

TV. The meaning of construction is generally construed as Clearing, dredging, excavating, and grading of land and other activity associated with buildings, structures, or other -types-of real property. Construction is the process of constructing a building or infrastructure. Construction is a general term meaning the art and science to form objects, systems, or organizations,] and comes from Latin constructional (from corn- "together' and struere "to pile up") and Old French construction 'Construction' is used as a verb: the act of building, and a noun: how a building was built, the nature of its structure. The items referred at Si no. 1,2,3,4,5 and 7 cannot be, by any stretch of imagination, be treated as construction material to make a house liveable. These items are furniture and fixtures which are those equipments which does not have permanent connection with the structure of the building. The AU has although denied its allowability treating it as capital asset and also because the details were not made available to the AU by the appellant during the assessment proceedings. These items are neither part of purchase nor of construction thus by the intent of legislation, these cannot be considered for exemption u/s 54 of the Act.

8.2 The Appellant has neither submitted any details of expenditure incurred by her in cash amounting to Rs. 14,40,389/- during assessment proceedings nor during the

appellate proceedings. In absence of any documentary evidence to support the claim that any sum is eligible for any exemption, the same cannot be allowed. Therefore, the disallowance made by the AU for this amount is also sustained.

8.3 The appellant has claimed that she has paid a sum of Rs. 20,00,000/- to Mr. S. Venkatesh for construction of fountain and other civil works. The appellant also submitted the details of payments made and the confirmation dated 28.02.2014 of receipt from S. Venkatesh PAN: ABWPV2871M, No 179, 2 nd Main, PAl layout, Benniganahalli, Bangalore. The payments are made in three installments in the following manner:

Sl. No.	Date	Cheque No.	Amount (in Rs.)
1	05.03.2010	05637	5,00,000
2	07.04.2010	13945	5,00,000
3	09.06.2010	13950	10,00,000

8.4 From the Perusal of the Sale Deed NO BNG(U)-VRT 4437/ 2010-11 dated 14.10.2011, it has been mentioned that purchaser/Appellant have got some additional built-up through an agency with the consent of the vendor, M/s Adarsh Developers. It says:

"8. The purchaser herein have further got constructed the additional built-up area measuring 2696.6 sq.ft.,

by themselves, through an agency with the consent of the Vendor herein, pursuant to which the aforesaid Residential building bearing Villa No. 42, now totally measures 4171.6 sq. ft of built up area constructed on the Plot measuring 4960 sq. ft., more fully described in Schedule - 'B' hereunder the hereinafter referred to as Schedule 'B' Property."

8.5 As the appellant has produced the evidence of payment, its confirmation and the sale deed also mention certain additional work done by outside agency, the sum of Rs. 20,00,000/- paid to Mr. S.Venketesh is found eligible for the exemption uls 54 of IT Act, as a part of construction. Therefore, the order of AU is directed to modify the order to that extent. Accordingly, the ground no. 4 of the appeal is partly allowed.

3.2.3 In the grounds raised before us (Supra) the assessee has assailed the impugned order of the ld CIT(A) in not adopting the total amount paid to the Builder for the purpose of allowing the assessee exemption u/s 54 of the Act and in confirming the disallowances of Rs.13,45,800/- of expenditure claimed for bringing the new residential property into a habitable condition. Except for rising these grounds, the assessee has failed to bring on record before us any material evidence to controvert the factual findings rendered by the ld CIT(A) on the aforesaid issues after due consideration of the submissions

placed before him. In this view of the matter, we find no reason to interfere with or to deviate from the findings rendered by the ld CIT(A) in the impugned order on these issues at paras 6 to 8.5 thereof (Supra). Consequently, finding no merit in the grounds raised and argument put forth by the assessee we dismiss the grounds 1 to 4 raised by the assessee.

4. In the result, the assessee's appeal for asst. year 2011-12 is dismissed.

Order pronounced in the open court on 11th **October, 2017**.

Sd/-	**Sd/-**
(SUNIL KUMAR YADAV)	**(JASON P BOAZ)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Bangalore
Dated : 11/10/2017
Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore.