IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.453/Bang/2018
(Assessment Year : 2013-14)

Shri. Parswanath Padmarajaiah Jain,
9th Main, Koramangala 3rd Block,
Bengaluru 560 034 .. Appellant
PAN : AEHPP3827M

v.

Assistant Commissioner of Income-tax,
Circle – 1(1)(1), Bengaluru .. Respondent

Assessee by : Shri. S. Ganesh, Advocate
Revenue by : Shri. Vikas K. Suryawamshi, Addl. CIT

Heard on : 13.12.2018
Pronounced on : 21.12.2018

O R D E R

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee against the order of the CIT(A)-4, Bengaluru, dt.27.11.2017, for the assessment year 2013-14, on the following effective grounds of appeal :

2. The Ld. CIT (Appeals) erred in upholding the disallowance of the exemption claimed under section 54F to the extent of Rs. 1,93,44,970/- being cost of land for the reason that, the land purchased is prior to the disposal of Asset resulting in Capital Gain. The provisions of Section 54F doesn't bar such a scenario as long as the new residential house property is constructed within 3 years after the date of disposal of Asset resulting in Capital Gain.

3. The Ld. CIT (Appeals) erred in not considering the judicial precedence in the following cases wherein it is held that amounts spent even before the date of transfer of Asset has to be considered for allowing exemption.
   - High Court of Karnataka in the case of CIT v. J R Subramanya Bhat (165 ITR 0571)
   - Sandeep Khosla v. DCIT (2015 TaxPub (DT) 1549 Bang-Trib)
   - ITO, Corporate Ward-2(r), Chennai vs Shri Gangesan Saseendran – 2017(10) TMI 819 – ITAT Chennai
   - ACIT vs Subhash Sevaram Bhavnani – 2013 TaxPub(DT) 0592 – ITAT Ahmedabad

4. The Ld CIT (Appeals) erred in not considering circular 667 dated 18.10.1993, wherein it is clarified that the cost of the new residential house shall also include the cost of land.

02. Brief facts are that the assessee purchased a land on 17.04.2010 and has claimed exemption u/s.54F of the Act, of an amount of Rs.3,83,76,769/- out of the capital gains of Rs.8,62,15,500/- on the premise that the assessee's case falls within the purview of Section 54F(1) as the assessee has carried out the construction which includes the purchase of land and therefore the assessee was entitled to the benefit of 54F for the above said amount. However during the assessment proceedings the AO had denied the benefit of 54F in respect of the cost of land of a sum of Rs.1,93,44,970/- as the said land was acquired by the assessee before one year of sale of the capital asset i.e. 01.04.2012.

Feeling aggrieved by the decision of the AO, the assessee preferred an appeal before the CIT (A).

03. The first appellate authority had also dismissed the claim of the assessee relying upon the bare provision of Section 54F and hence the assessee is before us.

04. It was submitted by the Ld. AR that the assessee is entitled to benefit of Section 54F and for this purpose he relied upon the following judgments :

i) C. Aryama Sundaram v. CIT [(2018) 97 taxmann.com 74 (Mad High Court)

ii)Mustansir I Tehsildar v. ITO [(2017) 88 taxmann.com 275 (Mum- Tribunal)]

iii) Sandeep Khosla v. DCIT [(2015 TaxPub(DT) 1549 (Bang-Trib)

iv) ITO v. Gangesan Saseendram, [(2017) (10) TMI -819 –ITAT Chennai

v) ACIT v. Subhash Sevaram Bhavnani [(2013) TaxPub (DT) 0592 (Ahd – Trib)

vi) CIT v. J. R. Subramanya Bhat [(1987) TaxPub(DT) 0603 (Kar-HC]

vii) CIT v. Bharti Mishra [(2014) 41 taxmann.com 50 –De HC]

viii) CCE v. Favourite Industries [(2012) 7 SCC 163 (SC)]

04. On the other hand the Ld. DR relies upon the bare provision of 54F and also the decision of Hon'ble Supreme Court in the matter of Commissioner of Customs (Import) v. Dilip Kumar and Co., Our attention was drawn to para 40 & 41 of the judgment, to the following effect :

40.After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute: It is the law that any ambiguity in a taxing statute should endure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided Surendra Cotton Oil Mills Case (supra) observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export Case (supra) that the ambiguity in an exemption notification should be interpreted in favour of the assessee.

41.After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified 67 to conclude and also compelled to hold that every taxing statue including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

05. We have heard the rival contentions and perused the record. For the purposes of adjudicating the present case, we deem it

appropriate to reproduce section 54F relevant for the impugned assessment year, as under:

54F. CAPITAL GAIN ON TRANSFER OF CERTAIN CAPITAL ASSETS NOT TO BE CHARGED IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE

(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 1two 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:

Provided thatnothing contained in this sub-section shall apply where-

(a) the assessee,-
(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset ; or
(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset ; or
(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

Explanation For the purposes of this section,-- "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards' the purchase of the new asset made within one year before the date on which the transfer of original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this

behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided thatif the amount deposited under this sub-section is not utilised, wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,--

(i) the amount by which--

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1),exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

From the perusal of the above provision it is clear that for the purpose of claiming benefit of deduction under section 54F it is incumbent upon the assessee to satisfy one of the following ingredients :

i) That the Capital asset should be purchased within one year before the sale of the long term capital asset

Or

ii) The Capital asset should have been acquired within two years after the date on which the transfer took place

Or

iii) Within a period of three years after the date of sale of the capital asset, the assessee had constructed one residential house in India.

Admittedly for the purposes of availing the benefit of exemption u/s.54F, the assessee is required to satisfy that his case falls in any of the above conditions. The capital asset was sold on 01.04.2012 and the land was purchased by the assessee for which the benefit of section 54F was sought, was purchased on 17.04.2010. Hence it is beyond the pale of argument that the i) condition(supra) is applicable as the capital asset (land) has been acquired before a period of one year from the sale of capital asset.

06. Similarly it is not the case of the assessee that the assessee is claiming the benefit or exemption u/s.54F in clause (ii)(supra) as, As assessee has not purchased land within a period of two years after the transfer took place.

07. The claim under the last clause of 54F would only fall if the assessee within a period of three years after the date of transfer had constructed one residential house in India. Admittedly land was purchased on 17.04.2010 and hence this clause would also not be applicable for the purposes of claiming the benefit of section 54F as the land was purchase prior to one one year whereas land required construction of residential house after 3 years of sale of capital asset. In our understanding the construction or acquisition of the residential house should have taken place within a period of three

years after the transfer of the capital asset. The capital asset was transferred on 01.04.2012 and the land was purchased on 17.04.2010 ie., one year prior to the date of transfer and hence for the purposes of availing the benefit u/s.54F (3rd exemption), as mentioned herein above, it is necessary that the house should have been constructed within a period of **three years from the date of transfer of the capital asset**. Purchase of the land was prior to one year hence the case of the assessee does not fall under any of the three exemptions available to the assessee u/s.54F. Reliance of the assessee on the aforesaid judgments is not correct as in none of the judgments cited by the assessee; facts are similar to the present case.

08. In the matter of C. Aryan Sundaram v. CIT (supra), the assessee sold a house for a total consideration of Rs.12.5 crores and capital gains arose to the assessee for a sum of Rs.10,47,95,925/- and the assessee after purchasing another property on 14.05.20 with super structure for a total consideration of Rs.15,96,46,443/- had raised construction at the cost of Rs.18,73,85,491/- and claimed long-term capital gains. In this case though the land was purchased on 14.05.2007 and the capital gains arose to the assessee on account of sale of the land on 15.02.2010, but the long-term capital gains was restricted to the capital gains as the cost of construction was more than the capital gains arising to the assessee and the cost of the land which was purchased on 14.05.2007 was not included , while granting the benefit under section 54F of the Act . Further we find that the Hon'ble High Court had not answered question no.2

mentioned in para 11 of the decision either in affirmative or negative. Hence we do not find the judgment is applicable either on facts or law in this case, to be a binding precedence on this Tribunal.

09. The second decision relied upon by the assessee was in the matter of ACIT v. Subhash Sevaram Bhavnani [(2013) TaxPub(DT) 0592 – ITAT, Ahmedabad. In that case also the brief facts as mentioned in para 2 were that assessee had shown the capital gains of Rs.21,88,620/- and had claimed the deduction u/s.54F of a new house at Rs.30,44,695/-. It was also mentioned in the same para that the assessee had invested a sum of Rs.21,21,008/- in construction of the residential house. In these facts of the case, the Tribunal had allowed the benefit of 54F in respect of capital gains that arose to the assessee. As the cost of construction was Rs.21,21,008/- which is almost equal to the long-term capital gains arose to the assesee,

However in none of the judgments referred before us by the AR, the principal of law as discussed by this Tribunal para 7 (supra) was subject matter of adjudication.

We may further add that section 54F is an exemption provision and though there is no ambiguity in reading of 54F assuming there is some ambiguity in that eventuality section 54F is required to be read in favour of the Revenue as held by the Hon'ble Supreme Court in the matter of Dileep Kumar & Co. (supra).

10. In view of the above, we dismiss the appeal of the assessee and hold that the assessee is not entitled to the benefit of Section 54F in respect of the investment made by the assessee in purchasing the capital asset (land) prior to the period of one year from the sale of capital asset , as the said purchase of the land was not within a period of one year prior to the sale of the capital asset or falling in any of the categories in which the assessee was entitled to claim exemption u/s.54F under various categories.

11. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 21st day of December, 2018.

Sd/- Sd/-

(A. K. GARODIA) (LALIET KUMAR)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Bengaluru
Dated : 21.12.2018
MCN*

Copy to:
1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.