

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1040/Bang/2018
Assessment year : 2013 – 14

Shree Anil Dev, C/o M/s Suresh & Co., Chartered Accountants, #43/16, ‘Srinidhi’, 1 st Floor, Surveyor Street, Basavangudi, Bengaluru - 560004 PAN : AEPPD4791L	Vs.	DCIT Circle – 2 (2) (1), Bengaluru
APPELLANT		RESPONDENT

Assessee by	:	Shree Nitish Ranjan, C. A.
Revenue by	:	Smt. R. Premi, Addl. CIT DR
Date of hearing	:	20.08.2020
Date of Pronouncement	:	25.08.2020

ORDER

PER ARUN KUMAR GARODIA, A. M.:

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A) – 10 Bengaluru dated 10.01.2018.

2. The assessee has raised several grounds but Learned AR of the assessee submitted that as per these grounds, this is the only effective grievance of the assessee that the AO and CIT (A) were not justified in rejecting the claim of the assessee for deduction u/s 54F.

3. Regarding this issue, it was submitted by the learned AR of the assessee that as per paras 5.2 of his order, learned CIT (A) has held that as per the proviso (ii) to section 54F, the assessee cannot purchase any residential house other than the new asset within a period of one year after the date of transfer of the original asset. He pointed out that the original asset being shares were transferred by the assessee on 03.03.2012 as noted by CIT (A) in Para 2.3 of his order. He also pointed out that in para 5.2 of his order, this is also noted by the CIT (A) that the assessee has claimed deduction u/s 54F in respect of residential property purchased by him at 183, Binanmangala, 2nd Stage, Bangalore. He submitted that entire sale proceeds of shares held in joint names of the assessee and his wife was deposited in joint account held by the assessee along with his wife but the payment for purchase of this residential property was made by the assessee on or before 29.03.2011 being the date of purchase of this property which is before the date of sale of the original asset on 03.04.2012 and although, in the purchase deed, name of the wife of the assessee is also there along with the name of the assessee but this is the claim of the assessee that he is the sole owner of this property and for entire investment in this property, deduction u/s 54F should be allowed to the assessee. He submitted a synopsis of income declared in the return of income by the assessee and his wife Smt. Alka Dev and pointed out that the sale consideration belonging to the assessee and his

wife is equal at Rs. 480,84,057/- each in the hands of the assessee and his wife and this is accepted by the AO also in both cases. He also pointed out that indexed cost of acquisition of shares is also equal at Rs. 245,47,564/- in the hands of the assessee and his wife and this is accepted by the AO also in both cases. Thereafter, he also pointed out that the resultant LTCG is also equal at Rs. 235,36,493/- in the hands of the assessee and his wife and this is also accepted by the AO in both cases. He pointed out that the entire sale proceeds of shares was deposited in this joint Bank Account held by the assessee out of which, the money belonging to the present assessee was Rs. 480,84,057/- and equal amount was belonging to his wife. He pointed out that although the purchase of new residential was before the sale of house and this is not the case of the revenue that this property is not eligible for deduction u/s 54F and the only objection of the revenue as per Para 5.2 of the order of CIT (A) is this that the assessee has also purchased another residential property at 180, NGEF Quarters, Binnamangala I Stage, Bangalore on 11.06.2012 in joint name with his wife Smt. Alka Dev and therefore, the proviso (ii) to section 54F becomes applicable and no deduction u/s 54F is allowable. He pointed out that payment for this second residential property is made from this joint account only in which the wife of the assessee also deposited 50% of sale proceeds of shares Rs. 480,84,057/- and she has claimed deduction u/s 54F for purchase of the second property

at the cost of Rs. 299,47,500/- paid from this joint account No. 1604 and her individual bank account No. 2724 as per the details available on page 143 of the paper book and for deposit of Rs. 20 lacs in Capital Gain Account Scheme made from the same joint Account No. 1604. He pointed out that copy of scrutiny assessment order in the case of the wife of the assessee Smt. Alka Dev is available on pages 247 to 255 of the paper book and as per the same as noted on page 255, the AO disallowed the claim of deduction of Rs. 156,38,412/- u/s 54F on this basis that this assessee i.e. Smt. Alka Dev is holding two residential properties on date of sale of original asset i.e. on 03.04.2012 being (i) residential property purchased by him at 183, Binanmangala, 2nd Stage, Bangalore in joint name with her husband Shree Anil Dev and (ii) Plot No. 350, Door No. 1, 17th Street, Miligaipoo Nagar, Ashok Nagar, Chennai – 78 and these two properties are in addition to the new asset for which deduction u/s 54F is claimed by her i.e. the residential property at 180, NGEF Quarters, Binnamangala I Stage, Bangalore purchased on 11.06.2012 in joint name with her husband Shree Anil Dev. He submitted a copy of the order of CIT (A) in her case and pointed out that as per this order, learned CIT (A) has allowed deduction u/s 54F to her by holding that the Chennai Property is a commercial property and not a residential property and the residential property at 183, Binanmangala, 2nd Stage, Bangalore in joint name with her husband Shree Anil Dev is fully

owned by her husband and the second residential property being the property at 180, NGEF Quarters, Binnamangala I Stage, Bangalore purchased on 11.06.2012 in joint name with her husband Shree Anil Dev is fully owned by her and therefore, deduction u/s 54F is to be allowed to her in respect of this property at 180, NGEF Quarters, Binnamangala I Stage, Bangalore purchased on 11.06.2012 in joint name with her husband Shree Anil Dev since it is fully owned by her. He also pointed out that this order of CIT (A) in the case of the wife of the assessee Smt. Alka Dev has attained finality because the appeal filed by the revenue against this order of CIT (A) has been dismissed by the tribunal because of low tax effect. He submitted that under these facts, it is the admitted position that out of three properties jointly owned by Shree Anil Dev and his wife Smt. Alka Dev, one property being Chennai Property is a commercial property and one residential property being property at 180, NGEF Quarters, Binnamangala I Stage, Bangalore purchased on 11.06.2012 in joint name with her husband Shree Anil Dev is accepted as fully owned by her and the second residential property being residential property at 183, Binanmangala, 2nd Stage, Bangalore in joint name of Smt. Alka Dev and her husband Shree Anil Dev is fully owned by her husband Shree Anil Dev. He submitted that therefore, deduction u/s 54F should be allowed to the present assessee Shree Anil Dev also in respect of residential property at 183, Binanmangala, 2nd Stage,

Bangalore in joint name of Smt. Alka Dev and her husband Shree Anil Dev and admitted to be fully owned by Shree Anil Dev. As against this, learned DR of the revenue supported the orders of the lower authorities.

4. We have considered the rival submissions. We find that para 5.2 of the impugned order of CIT (A) is very much relevant because as per this para only, he has discussed and decided this issue about allowability of deduction u/s 54F. Hence, we reproduce this para for ready reference. This reads as under:-

5.2 Deduction u/s 54F

The appellant has claimed Investment from capital gains to the residential property at 183, Binnamangala, r^d Stage, Bangalore and has claimed deduction u/s 54F. However, within one year the appellant has purchased another residential property at 180, NGEF Qtrs. Binnamangala. The claim of the appellant is that the second property though stands in the joint name of the appellant and his wife belongs exclusively to his wife. However, the AO has noted that the property has been funded by the appellant from his joint bank account with his wife. Provision of Section 54F reads 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 (hereinafter in this section referred to as the original asset), and the assessee has, within a period of one year before or

[2000][two years] after the date on which the transfer took place purchased, or has within a period of three years after that date [2001]constructed, one residential house in India] (hereinafter 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 that nothing 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.]

From the above provision it is very clear that the appellant cannot buy another house within one year if he wants to avail deduction u/s 54F of the Act. But he has violated the provision by purchasing another house. In this regard, the observation of the AO is as under:

The assessee has taken an alternative claim that his name is added as a joint purchaser in the sale deed of purchase of

property made by his wife dated 11/6/2012, only for the purpose of safety and family security. This submission is not acceptable. The assessee is one of the directors in the company and has individual sources of income in the form of salary, rental income and as On date is the owner of 3 residential properties. The assessee's submission regarding safety and family security in such a situation is totally not acceptable. The sale deed shows both the names as joint owners. And both the parties will be a part of all/ any legal proceedings on this property and even for sale of this property in future. It cannot be sold only on the whims and fancies of Mrs. Alka Dev, his spouse. The name as co-owner on the sale deed specifies that both the persons have an equal share in the property.

From the above, it is very clear that the appellant is the owner of the new property and hence his claim that this belongs to his wife is not acceptable. In view of this, I am of the considered opinion that the AO has justly denied the claim of exemption u/s 54F. Hence, I do not find any infirmity in the order of the AO with regard to the claim of exemption u/s 54F. Accordingly, the ground of appeal is dismissed.

5. From this para, this comes out that the claim of the assessee is rejected on this basis that the assessee is the owner of three residential properties because these are in joint names of the assessee and his wife. These three properties in joint names are (1) 183, Binanmangala, 2nd Stage, Bangalore, (2) 180, NGEF Quarters, Binnamangala I Stage, Bangalore and (3) Plot No. 350, Door No. 1, 17th Street, Miligaipoo Nagar, Ashok Nagar, Chennai – 78. Now, at this juncture, we reproduce relevant paras from pages 2 to 4 of the order dated 28.09.2018 passed by CIT (A) u/s 154 in the case of Smt. Alka Dev, wife of the assessee and joint owner of these three properties. The same read as under:-

“4.3 Deduction u/s 54F

'Having Considered the submissions and the record, I observe the following pertinent facts in the matter:

“The appellant and her husband Mr. Anil Dev were shareholders of the company (VTS i Air systems Pvt. Ltd) in which 40,97,023 shares were sold jointly by them during the AY 2013-14. As per the provisions of the company law requirements, minimum two shareholders are required for Incorporation of a Company. Therefore, both Appellant and her husband had invested 50% of their shares each in the company and acquired the shares in the aforesaid Company. Thus, when these shares were sold, each person is entitled to their respective 50% shares in the sale of shares of the company. As per general practice, their 50% respective funds (sale consideration) were credited to their joint account and from the joint account;’ the appellant had, invested in the residential property bearing No.180, NGEF Quarters, Binnamangala 1 stage, Bangalore.

However, as explained by the appellant this property is entirely owned and paid by the appellant though the appellant's husbands name was mentioned in the title deed only for the purpose of ease of inheritance and safety and should be considered as the entire property is owned by the appellant. Though the title deed has both appellant and her spouse name it is to be noted that as relied upon by the appellant on Karnataka high court decision in 2011(9) TMI 161, Director of Income-tax, International Taxation Bangalore Versus Mrs. Jennifer Bhide case, the property should be considered as belonging only to the appellant. It provides as follows:

Exemption u/s 54 or 54EC - 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. - Held that:- The source for acquisition of the property and the bonds is the sale consideration. It is not. in dispute. Once

the sale consideration is utilized for the purpose mentioned under sections 54 and 54EC, the assessee is entitled to the benefit of those provision. As the entire consideration has flown from the assessee and no consideration has flown from her husband, merely because either in the sale deed or in the bond her husband's name is also mentioned, in law he would (70t have any right. The assessee cannot be denied the benefit of deduction - Decided in favor of assessee."

Also, the appellant has further relied upon on the Delhi High court decision in case of CIT Vs. Ravinder Kurnar Arora which provides as follows:

Section 54f mandates that the house should be purchased by Me 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-stated peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee

Based on the above decisions in line with the Karnataka high court decision supra, the property No. 180, NGEP Quarters, Binnamangala I Stage, Bangalore, is completely owned by the appellant and the property No 183, Binamangala II Stage, Bangalore is 'completely owned by appellant's spouse Anil Dev. The appellant was also questioned about the applicability of Bangalore ITAT decision in 2018 (3) TMI 581-ITAT BANGALORE Shri Raghuram P Nambyar and Smt. Veena NanlbYar" Versus Asst. Commissioner of Income Tax, Circle 1 (2) and Dy. Director of Income Tax (Intl. Taxation) , Circle 1 (1) , Bangalore which provides as follows:

Bangalore ITAT rejects assessee-individuals' (husband and wife) claim that long term capital gains ('LTCG') arising out of sale of property (registered in the name of husband) during AY 20-10 should

be split equally in their hands and taxed accordingly for AY 2009-10, rejects assessee's stand that they were co-owners of the property and rejects their exemption claim u/s. 54EC / 54F; Assessee argued that though the purchase and sale deeds only record the husband as the sole owner, the purchase was effected by equal contributions by both of them, further the rent received from letting out the property was declared equally by assessee in their respective income-tax returns,' ITAT clarifies that the mere fact that both the husband and wife have suo moto offered rental income does not confer co-ownership to wife, rules, that "Ownership has to be considered from the recitals of the relevant documents and not from any stated intention or claim made which is legally unsustainable."; Observes that the recitals of purchase / sale deeds clearly show husband as sole owner, further notes that at the time of purchase, wife was a foreign citizen and could not have purchased any property in India without RBI permission, accordingly holds that entire L TCG has to be assessed in the hands of husband only."

The above- mentioned case is not applicable to the appellant case, as in the above cited case the title deed did not contain the spouse name at all. The wife being a foreign citizen could not have owned such a property in her name as per RBI guidelines. Though appellants were informed about the joint contribution but the title deed itself did not have spouse name at all. Therefore, the ITAT has made the judgment against the appellant.

Further, As per the explanation provided by the appellant against the decision and explanation relied by the AO, I direct the AO to consider the Chennai property as a Commercial property and not a residential property and also direct the AO to allow the deduction claimed U/s 54F as the condition for claiming exemption under section 54F that the appellant should not own more than one residential house on the date of transfer is very much satisfied and also the investment made by the appellant's husband in property at #183, Binnamangala ii Stage, Bangalore, to be treated as completely owned by him and thus the appellant has not defaulted in investing in another property within the prescribed time limits and thus eligible

for exemption u/s 54F. Hence, the Ground No.3 of appeal raised by the appellant is allowed."

6. As per these paras reproduced from the order of CIT (A) passed in the case of Smt. Alka Dev, wife of the present assessee and joint owner of these three properties, it comes out that one property i.e. the Chennai property at S. No. 3 above is a commercial property and not a residential house and the remaining two properties are residential properties out of which one being S. No. 2 above is fully owned by Smt. Alka Dev, the wife of the present assessee and one being S. No. 1 above is fully owned by the present assessee. This order of CIT (A) has attained finality because the appeal filed by the revenue against this order of CIT (A) has been dismissed by the tribunal because of low tax effect. Therefore, the objections of the AO and CIT (A) does not survive.

7. Moreover, this is not the case of the revenue that the wife of the assessee Smt. Alka Dev does not have the funds to buy this property as her own property. As per the details available on page 143 of the paper book, the wife of the assessee Smt. Alka Dev has made a payment of Rs. 299,47,500/- for acquiring this property and this payment is made by her from the joint account No. 1604 except Rs. 11 Lacs, which was paid by her from her individual bank account No. 2724 and an amount of Rs. 20 lacs was deposited by her in Capital gain Account Scheme out of the same joint account No. 1604. Hence total payment by her from this joint account No. 1604 is Rs. 308,47,500/- and total deposit in this joint account No. 1604 on account of share sales being her 50% share is Rs. 480,84,057/- and therefore, she was having own funds for acquiring this property. Merely this fact that the amount was lying in a joint account cannot lead to this conclusion that

the property is acquired by both i.e. the present assessee and his wife for this reason alone that the names of both are appearing in the purchased deed in spite of this claim by both of them that one property is belonging to the present assessee Shree Anil Dev and the second property is belonging to his wife Smt. Alka Dev. As per the provisions contained in proviso (ii) to section 54F, this proviso will get triggered if the assessee purchases any residential house other than the new asset within a period of one year after the date of transfer of the original asset. To say that a property is purchased by a person, mere inclusion of his or her name in the purchase deed is not enough because this may happen for various reasons including this reason also that the other person who is really purchasing the property wanted to include the name of his relative in the purchase deed for some emotional issues. This action will no doubt give rise to some ownership rights on the property in question to that second person but such rights may not be on this account that the second person has purchased the property. For purchasing the property, a person has to pay consideration and if both persons named in the purchase deed says that such consideration is paid in its entirety by any one of them only, then the purchase of property is by that person who paid the consideration in spite of this fact that some ownership rights are created in favour of the other person also, who did not pay the consideration because his name is also included in the purchase deed. For triggering the provisions of the proviso (ii) to section 54F (1), the pre requirement is this that the assessee has purchased one more residential house other than the new asset within one year after the date of transfer of the original asset and this is not enough that some ownership right is acquired by him in such property within such time which has not accrued to him on account of purchase. Hence, it has to be the case that there is such purchase by the assessee and mere acquisition of some right is not enough. In the present case, both persons i.e.

the present assessee and his wife Smt. Alka Dev are stating that the purchase is by Smt. Alka Dev, wife of the assessee although in the purchase deed, name of the assessee is also there along with the name of Smt. Alka Dev and purchase consideration of this second residential property is paid by her out of the joint/her individual bank account and we have seen that she was having sufficient own funds in that joint bank account received as her share in sale proceeds of the shares and this claim is accepted by CIT (A) also in her case and that order of CIT (A) has attained finality because the appeal of revenue against this order of CIT (A) got dismissed by the tribunal because of low tax effect. Considering all these facts and in view of this discussion, we delete the disallowance of the assessee's claim for deduction u/s 54F made by the AO and confirmed by CIT (A).

6. In the result, the assessee's appeal is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated: 25th August, 2020.
/DS/NS/*AKG

Sd/-

(A.K. GARODIA)
Accountant Member

Copy to:

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.