

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1523/Bang/2019
Assessment year : 2014-15

The Income Tax Officer, Ward 1(2)(2), Bangalore.	Vs.	Shri Mujeeb Urrahman, No.395, Thimmaiah Road, Shivajinagar, Bangalore – 560 051. PAN: AADPU 9149H
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Smt. H. Kabila, Addl.CIT (DR)(ITAT), Bengaluru.

Date of hearing	:	25.08.2021
Date of Pronouncement	:	31.08.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the revenue is directed against the order dated 12.03.2019 of the CIT(Appeals)-1, Bengaluru for the assessment year 2014-15 on the following grounds :-

- “1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is entitled to deduction u/s 54 of the Income Tax Act, 1961, even when the conditions for claim of deduction have not been fulfilled by the assessee.

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT (A) be reversed and that of the Assessing Officer be restored.

4. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.”

2. The assessee in the assessment year under consideration sold a property No.3BM/519, OMBR Layout Extension, Old Madras Banaswadi Road, Bangalore vide sale deed dated 19.10.2013 for a consideration of Rs.3,15,00,000. The assessee intended to reinvest the entire consideration of Rs.3.15 crores by purchasing a BDA site and construction of residential building on the said piece of land. Subsequently, the assessee being successful bidder in e-auction purchased a site No.2BC/805 in Sy.No.36/1, Benniganahalli Village East of NGF Layout, K R Puram Hobli, Bangalore measuring 2400 sq.ft. The assessee deposited the entire sale consideration of Rs.1,59,62,400 and the BDA registered the site in favour of assessee vide sale deed dated 9.6.2014 and possession delivered on the same day. The assessee also incurred Rs.10,53,879 as stamp duty and registration fees. The assessee inclined to construct a 3 floor residential building for his residential purposes. However, there was a litigation pending between a private party Smt. Padmaja and BDA in a suit filed on 30.8.2012 against the BDA for which relief of permanent injunction from interfering with possession of said property which was sold to assessee. Being so, the assessee was prevented by sufficient cause which was beyond his control to construct residential building. The suit instituted on 30.8.2012 was much before the e-auction and sale deed executed by BDA in favour of assessee. The proceedings in the suit culminated on 25.10.2016 wherein the suit filed by Smt. Padmaja was dismissed. An interim application with a prayer for grant of temporary injunction restraining the BDA from interfering with possession of the said

property was filed by Smt. Padmaja which was rejected by the City Civil Court. Aggrieved, Smt. Padmaja filed a Writ Petition before the Hon'ble High Court of Karnataka in WP No.22737/2016 on 3.10.2016 wherein the assessee is made as Respondent No.3 and the matter was pending for disposal before the High Court. After the Court judgment dtd: 05-11-2016 assessee made attempts to obtain the sanction plan and the same was sanctioned by the BBMP on 26-05-2017 after consideration of the necessary formalities.

3. The assessee had claimed exemption u/s. 54 of the Act for having invested the capital gains in the new residential house which was denied by the AO on the ground that capital gains arising out of sale of original asset was not deposited in the Capital Gain Deposit Account.

4. On appeal, the CIT(Appeals) observed that assessee made attempts to obtain a License and a Sanctioned Plan from the Competent Authorities for construction of the residential house on the new Asset being the site purchased from the BDA. However the Appellant was unable to obtain the License and the Plan, in view of a Pending Litigation between a private party Smt. Padmaja and BDA. After the Court judgment dtd: 05-11-2016 sanctioned plan was obtained from the BBMP on 26-05-2017. Later the assessee constructed a residential Building in the year 2017-18 and in support of the construction filed a valuation report dtd. 15-12-2018. The assessee placed reliance on the decision of the Hon'ble High Court of Karnataka in the case of *CIT v. K. Ramachandra (2015) 277 CTR 522 (Kar)* wherein it was held that the deduction cannot be denied if the Assessee had intention to retain the cash to invest in construction even if not deposited in the Capital Gain Deposit Account. The CIT(Appeals) was of the view that the assessee is entitled for the deduction admissible u/s. 54 of the Act since a major portion of Rs. 1,70,16,279/- was invested in

purchasing a site from the BDA which was locked-up in a litigation and only after finalization of such litigation the assessee was able to construct a building by investing the balance capital gain of Rs. 56,75,680/-. According to the CIT(A), the assessee in view of the litigation was prevented from construction of the building within the time limit, which should not be a ground for disallowance of deduction admissible u/s. 54 of the Act. Therefore the addition made by the AO amounting to Rs. 2,48,83,672/- was deleted by the CIT(Appeals). Against this, the revenue is in appeal before us.

5. The Id. DR submitted that the judgment of the Hon'ble High Court of Karnataka in *CIT v. K. Ramachandra Rao (supra)* held as follows:-

“4.1 Re.Question No.2 :

"As is clear from Sub-section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."

5. For the aforesaid reasons both the substantial questions of law are answered in favour of the, assessee and against the Revenue. Therefore, we do not see merit in any of the appeals. Accordingly, all the four appeals are dismissed.”

6. On the other hand, the Id. AR relied on the order of the CIT(Appeals) and relied on the judgment of the Hon'ble Bombay High Court in *CIT v. Girish L. Raghya* in ITA No.66 of 2015 dated 17.3.2016 wherein it was held that the sanction of plan was delayed in view of the pending litigation filed by the other parties and thus the Appellant was prevented from fulfilling the condition to avail the benefit of deduction admissible under the Act. Further, in *CIT v. K. Ramachandra Rao (supra)*, the Hon'ble High Court of Karnataka has decided the issue in favour of assessee and against the department observing that if the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.

7. The Id. AR also relied on the ITAT Chennai Bench decision in *Smt. V.A. Tharabai v. DCIT 14 ITR (Trib) 15 [ITAT Chen]* wherein it was held as under:-

“The assessee sold one of her capital assets in the previous year relevant to the assessment year 2007-08, resulting in capital gains and claimed exemption in her return of income on the long-term capital gains under section 54F of the Income-tax Act, 1961 as the assessee was proposing to construct a residential house property out of the sale consideration of the property. The assessee immediately after the sale purchased land to construct a house. The purchase price paid for the land was more than the long-term capital gains in the hands of the assessee on sale of her capital asset. But the assessee could not construct the proposed residential house in the land purchased by her as proposed due to an injunction order from the civil court. Even though these circumstances were explained before the assessing authority, the claim of exemption made by the assessee under section 54F was

rejected on the ground that the assessee had not constructed the residential house within the period of three years, which was mandatory under the provisions of the Act. The Commissioner (Appeals) also did not grant exemption. On appeal:

Held, allowing the appeal, that it was an accepted principle of jurisprudence that law never dictates a person to perform a duty that is impossible to perform. It was impossible for the assessee to construct the residential house within the stipulated period of three years. The entire consideration received by the assessee on sale of her old property has been utilized for the purchase of the new property. The purchase value of the property is more than the long-term capital gains taxable in the hands of the assessee. The conduct of the assessee unequivocally demonstrated that the assessee was in fact proceeding to construct a residential house, based on which the assessee had claimed exemption under section 54F. It was true that the assessee could not construct the house. But she has purchased the land utilizing the entire consideration received on the sale of the old property. It meant that the assessee has invested the entire consideration received on sale of the old asset in acquiring/constructing a residential house property. In the special facts and circumstances of the present case, therefore, it was necessary to hold that the amount utilized by the assessee to purchase the land was in fact utilized for acquiring/constructing a residential house. Without purchasing land, house cannot be constructed. The first step should be the purchase of land. That was done. Therefore, the entire amount spent by the assessee in purchasing the land should be construed as amount invested in purchase/construction of residential house. The assessee was entitled for exemption under section 54F as the intention of the statute provided in section 54F had been fully satisfied by the assessee. The expression 'of the nature referred to in section 53A' in sub-clause (v) of section 2(47)(v) of the 1961 Act, cannot be stretched to refer to an amendment that was made years later in 2001, so as to then say that though registration of a contract is required by the Amendment Act of 2001, yet the aforesaid expression 'of the nature referred to in section 53A' would somehow refer only to the nature of contract mentioned in section 53A, which would then in turn not require registration".

8. We have heard both the parties and perused the material on record. In this case, the assessee sold a property No.3BM/519, OMBR Layout Extension, Old Madras Banaswadi Road, Bangalore vide sale deed dated 19.10.2013 for a consideration of Rs.3,15,00,000. This was originally purchased by the assessee jointly with his brother Mr. Haseeb-ur-Rahman on 10.1.2006. After selling the property, the assessee was to construct a new residential house. For this purpose, the assessee participated in the e-auction conducted by the BDA and purchased the property through e-auction on 9.6.2016 for a consideration of Rs.1,59,62,400 and after adding up the cost of registration, it worked out at Rs.1,70,16,279. Later, the assessee was held up with the litigation of this property and there was delay in construction of new residential house. Litigation was over after the High Court judgment dated 5.11.2016 as narrated in para 2 of this order. Consequently the assessee obtained the building plan from BBMP on 26.5.2017.

9. While framing the assessment, exemption claimed by the assessee was denied since the assessee has not complied with the requirement of provisions of section 54 of the Act. However, the CIT(Appeals) allowed the claim of assessee u/s. 54 of the Act. Admittedly, the assessee has actually invested an amount of Rs.1,70,16,279 in purchasing the residential site for for constructing a new residential house. To that extent, proportionate deduction to be granted to the assessee. However, the CIT(Appeals) granted deduction u/s. 54F of Rs.2,48,83,672, though assessee has not deposited that portion in the net sale consideration into the account scheme notified by the Central Govt. For this purpose, it is appropriate to go through the provisions of section 54(2) of the Act which are as follows:-

“54. (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is

chargeable under the head "Income from house property" (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 ³[*constructed, one residential house in India*], then, instead of the 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 following provisions of this section, that is to say,—

- (i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be *nil*; or
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain 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 the 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 that if 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 not so utilised shall be charged under section 45 as the 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 such amount in accordance with the scheme aforesaid.”

10. The contention of the Id. AR is that in view of the judgment of the Hon'ble High Court of Karnataka in the case of *CIT v. K. Ramachandra (supra)*, the assessee is entitled for deduction u/s. 54 to the full extent as granted by the CIT(Appeals) as the intention of the assessee was not to retain cash, but to invest in construction of new residential house property. The delay in investment was beyond the control of the assessee. However, we observe from the answer to question No.2 in the same case, in para 4.1, that if such investment is made in the bank account as stipulated in section 54(2) or invested in constructed of new residential house within the stipulated period, then assessee is entitled for deduction u/s. 54 of the Act. If the assessee failed to deposit into the bank account and also failed to construct the new residential house within the stipulated time, then assessee cannot take advantage of its own default so as to claim deduction u/s. 54 of the Act. In the present case, though assessee purchased the residential site and incurred the expenditure of Rs.1,76,16,279, the assessee failed to deposit the balance amount in the account notified by the Central Govt within extended period due to litigation, hence the assessee is not entitled for deduction to the extent of balance amount which was not invested under an account notified by the Central Govt. In our opinion, deduction under this section is restricted to proportionate amount invested in purchase of new residential site for the purpose of construction of new residential house after sale of the original asset and also amount invested in construction of property. The intention of legislature was that either the assessee has to purchase or construct new residential house out of net sale consideration received by sale of

original asset or deposit the same in the account notified by the Central Govt. u/s. 54 of the Act. If the assessee failed to do so, he is liable for capital gain on the transfer of capital asset. In the present case, the assessee purchased the residential site and used portion of net sale consideration for construction of new house and not appropriated the balance sale consideration either in investment in construction of residential house or deposit into account notified by the Central Govt. to avail exemption u/s. 54. Hence the assessee is entitled for deduction only to the extent of amount used for purchase of residential site only as follows:-

A – Net sale consideration	=	3,15,00,000
B – Capital gain	=	2,26,91,897
C – Investment in property	=	1,70,16,279
D – Eligibility u/s. 54		

Exemption =
$$\frac{\text{Long term capital gain} \times \text{Amount of investment}}{\text{Net Sale Consideration}}$$

$$D = \frac{B \times C}{A}$$

$$\text{i.e., } \frac{22691897 \times 16016279}{31500000} = \text{Rs.1,22,58,148}$$

11. Thus, assessee is entitled for deduction u/s 54 at Rs.1,22,58,148.

12. In the result, the appeal by the revenue is partly allowed.

Pronounced in the open court on this 31st day of August, 2021.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 31st August, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.