



IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORESHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1060/Bang/2022
Assessment Year : 2015-16

Sharada Mohan Shetty, #1, Sahana, Bus Stand Road, Nellikeeeri Kumta-581343. PAN : AXXPS 8528 F	Vs.	The ITO, Ward-2, Karwar, The Dy. Commissioner of Income- tax,
APPELLANT		RESPONDENT

Assessee by	:	Shri G. Sathyanarayana, C.A
Revenue by	:	Shri Gudimella VP Pavan Kumar, JCIT (DR)

Date of hearing	:	14.03.2023
Date of Pronouncement	:	29.03.2023

ORDER

This is an appeal filed by the assessee against the order passed by the NAFC, Delhi vide order dated 18/08/2022 with the following grounds of appeal:-

"The learned AO erred in concluding the assessment by disallowing exemption of Rs. 1,86,63,291/- claimed by the Appellant u/s 54F of the Income Tax Act, 1961 even though the investment was made by the Appellant in New House within the time prescribed under the IT Act 1961 for the AY2015-16. Rs.56,57,714/-

The Appellant also prays for permission to add falter the grounds of Appeal before or during the courses of Appeal hearing."

2. The brief facts of the case are that the assessee filed return of income on 30/09/2015 for the assessment year 2015-16 declaring

total income of Rs.12,50,950/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. The assessee filed reply, after verification of the details furnished it was noted that during the impugned assessment year under consideration, the assessee sold a plot of land on 08/09/2014 admeasuring 371.70 square meters situated at HSR Layout, Bangalore for a consideration of Rs.2 cores. In the rerun of income, the long term capital gain was worked out to Rs.1,86,63,291/- and claimed deduction u/s 54F of the Act. Being invested the entire sale consideration towards purchase of two residential BDA sites bearing No.196 and 197 admeasuring 360 square meters each and constructed a residential building at site No.197. During the assessment proceedings, the assessee was asked to substantiate the claim of deduction made u/s 54F of the Act. In response, the Id.AR of the assessee submitted as under:-

"The property was acquired by late Mohan K Shetty, the husband of the assessee and the property was transferred from the deceased to the assessee in June 2009. The particulars of the property transferred are enclosed herewith. The property was duly declared in the assets and liabilities statement of late Mr Mohan K Shetty and the Asset was acquired by the said Late Mohan K Shetty out of valid sources. Mr Mohan K Shetty was a regular Assessee under JT. Act till his death.

The capital gains was worked out in the case of the assessee on the sale of the NA site bearing No 65211156 situated at HSR layout, Bangalore as under for the A Y 2015-16."

3. The submissions of the assessee was considered by the AO and he also referred to sec. 54F of the Act and observed as under:-

“7. On careful reading of the section 54F, it is clear that the assessee is required to purchase within a period of one year before or two years after the date on which the transfer took place or constructed one residential house within a period of three years after the date of sale of capital asset. In the instant case, the assessee sold the capital asset on 08-09-2014 and was required to construct the residential building before 09-09-2017. The assessee furnished a copy of approval letter obtained from BDA dated 04-08-2015 for construction of residential house along with building plan. As per the building plan assessee obtained permission to construct residential house with G+2 building having plinth area 239.40 sq. mts and total built up area of 710.09 sq. meters on the site no 197. Further, the assessee has stated that she could not complete the residential building due to dispute and in this regard the assessee furnished a copy of writ petition dated 05-11-2014 filed by Smt. Chennamma before the Hon'ble High Court of Karnataka against the acquisition of land by the BDA where the assessee has purchased two sites. Assessee has not furnished any copy of stay order passed by the Hon'ble High Court in this regard. It is not clear that when there is a dispute, how the BDA has granted permission to construct the residential building at the disputed land to the assessee.

8. The assessee has stated that she has invested Rs. 22.5 lakhs up to 17-08-2015 towards construction of residential building. That means within twelve days from the date of permission obtained from the BDA to construct the residential house, the assessee has invested Rs. 22.5 lakhs. However the assessee has not furnished any details of payments made in connection with the construction activity. The assessee furnished a bill dated 16-01-2016 for Rs. 18,65,841/- raised by SKS Builders requesting the assessee to release the payment in connection with construction work of the residential house. As per the provisions of the Act, in an event that the assessee is not in a position to invest in the new Capital Asset on or before the time limit u/s 139(l), she has to channelize the investment through a mandatory account

specified under CGAS-88. The assessee has failed to undertake the same and unutilized amount has not been invested in CGAS-88 account before filing the return of income.

9. From the above, it is clear that the assessee has not fulfilled the two conditions to claim deduction u/s 54F of the Income Tax Act that the assessee has not constructed a residential house within a period of three years after the date of sale of capital asset and not deposited unutilized amount in the capital gain account before filing the return of income. Therefore, a letter dated 05-12-2017 was sent to the assessee proposing to disallow the deduction claimed u/s 54F and requiring the assessee to furnish her objection if any in this regard on or before 13-12-2017. The letter was served on the assessee on 07-12-2017. The assessee did not respond to the said letter and it is presumed that the assessee has no objection for disallowance of her claim for deduction u/s 54F. Therefore, the deduction claimed u/s 54F of the Income tax Act 1961 of Rs. 1,86,63,291/- has been disallowed and the Long Term Capital Gain arising on sale of capital asset of Rs.1,86,63,291/- has been brought to tax. The assessee has not furnished any registered deed/ document to substantiate the cost of acquisition adopted. However, the cost of acquisition of the land sold has been adopted at Rs. 8,25,000/- by the assessee is found to be reasonable and hence, accepted.

11. Subject to the above remarks, the assessment in this case is concluded as under

Gross total income as per return of income	12,50,950
Add: Income from Long Term Capital Gain	1,86,63,291
Total assessed Income	1,99,14,241
R/off	1,99,14,240
Tax thereon	39,32,942
Add: Surcharge	3,93,294
Add: Cess	1,29,787
Tax Payable	44,56,023
Add: Interest u/s 234A	40,331
Add: Interest u/s 234B	13,30,923
Total tax and interest payable	58,27,277
Less: Tax paid as per 143(1)	2,06,294
Balance Tax payable	56,20,983
Add: Interest u/s 234D	29,150
Add: Interest u/s 244A allowed now withdrawn	7,581
Balance Tax and Interest payable	56,57,714

Accordingly the AO completed the assessment .

4. Aggrieved from the above order, the assessee filed appeal before the CIT(A). During the course of appellate proceedings, theCIT(A) issued 5 notices for hearing on different dates but no response was received from the assessee side. The detail of notices is as under:-

Sr. No.	Date of notice issued	Date of Hearing/ compliance	Remarks
1.	20/02/2020	27/02/2020	No response/compliance
2.	28/12/2020	12/01/2021	
3.	29/06/2022	06/07/2022	
3.	18/07/2022	25/07/2022	
4.	02/08/2022	11/08/2022	

5. There were ample opportunities were granted by the CIT(A). However, the assessee has refrained himself form representing the appellate proceedings. Thereafter the CIT(A) relying on the judgment of the CIT Vs. Gold Leaf Capital Corporation Ltd., vide order dated 02/09/2011 in ITA No.798/2019 rendered by the Hon'ble High Court of Delhi and accordingly uphold the order of the AO.

6. Aggrieved from the above order, the assessee filed appeal before the ITAT,

7. The assessee filed detail written synopsis which is as under :-

"This appeal is instituted against the order of the Commissioner Appeals, NFAC Delhi !PSt the Assessment Order passed by Income Tax Officer, Ward 2 Karwar. Against the order the assessee, with the grievance of disallowing the Capital Gain exemption zfmim,ed by the assessee, hence the appeal has been filed before the Honorable Bench with Grounds of appeal.

Ground No. No 1: Disallowance of Capital gain exemption u/s 54(f) for Rs. 1,86,63,291/-

1. The learned Assessing Officer did not allow the exemption claimed by the assessee for having invested the amount in the construction of new house property.

2. The assessee sold a plot at HSR Layout, Bangalore bearing No.1156 on 81h September 2014 for Rs.2,00,00,000/- and consequently a Capital Gain of Rs.1.86,63,291/- is declared in the Income Tax Return.

3. In order to claim exemption from capital gain the assessee decided to buy a site and construct a house under the provisions of Section 54F of the Income Tax Act, 1961.

4. The assessee purchased a site developed by the Bangalore Development Authority (BDA) from the site allottee Shri. Ravikumar N and others at Arkavathi Layout, SiteNo. 196 and 197 formed by the Bangalore Development Authority in survey No. 82 2 of Tharisandra village, Bangalore, totaling for Rs. 1,86,00,858/- (including Stamp Duty and Registration Charges) on October and December 2014.(Copies of Sale Deeds attached in Annexure 1)

Site No.	196	197
Purchase Value	77,52,200	96,87,500
Stamp Duty	4,38,053	5,47,400
Registration Charges	78,090	97,615
Total	82,68,343	1,03,32,515

5. After getting all the documents transferred in her name, the assessee applied for plan approval and obtained plan sanctioned on 0 August 2015 (Copy of Plan Sanction attached in Annexure 2)

6. The Assessee started the construction on the site and engaged SKS Builders to construct the house and paid 2250,000/- up to 17th August 2015. When the construction was commenced and half way through, the original land owners i.e. SL Channamma and others (WP 51294/2014 and WP 35243/2014) whose land acquired by BDA to form the layout obstructed the construction based on the Writ Petition filed by them before the Honorable High Court of Karnataka against the acquisition. The original landowners did not allow the construction to go on. The following details are attached;

Construction bill copy of SKS Builders - Annexure 3

Status, of initial construction - Photo -Annexure 4

Copy of Writ Petition by original landowners - Annexure 5

7. Honorable High Court of Karnataka was already ordered that the parties shall maintain Status Quo with regard to possession and nature of property on 18/11/201 therefore because of the writ application and the direction of the court the assessee could not be able to continue with the construction (Order Sheet Extract -annexure 6)

8. Since the matter was constitutional issue on the land acquisition and development of plot by landowners where the site of assessee is situated and therefore the assessee could not able to continue the construction.

9. The Honorable High Court of Karnataka delivered the judgement on 27/09/2021 favoring the BDA for the acquisition of land formation of layout and distribution of sites to the allottees but directed BDA to form a committee and finalize the issue Annexure 7). The committee has given its report to the Honorable High Court and the assessee is awaiting the final verdict by the Court.

10. With the above facts and circumstances of the case the assessee spent all the proceeds (more than net consideration) to buy the site and commenced the construction but could not be able to continue and complete the work. After the disposal of high court case in the first part, the assessee slowly mobilized the sources and restarted the construction.

11. The honest efforts of the assessee to construct a new residential house and avail the exemption U/s 54F should not be deprived of the benefit for the reason of delay in completion of construction, which is beyond the control of the assessee.

12. It is submitted that this case is covered by the following judgements:

The Income Tax Officer, Bangalore Vs Mujeeb Urraliman [ITA No. 5 Bing/2019/

Assessee had purchased the residential site and used portion of net sale consideration for construction of new house and not appropriated the balance sale consideration in investment in construction of residential house or deposit into account notified by the central Govt. to avail exemption u/s 54. Hence assessee was entitled for exemption to the extent of amount used for purchase of residential site only.

Capital gains - Exemption under section 54 - Assessee purchased residential site and used portion of net sale consideration for construction of new house -

Assessee not appropriated the balance sale consideration either in investment in .in'iiion of residential house or deposit into account notified by Central Govt. Assessee claimed exemption under section 54 for having invested the capital gains fa Aw 'w residential house which was denied by AO on the ground that capital gains arising out of sale of original asset was not deposited in the Capital Gains Account. Held: The intention of legislature was that either assessee has toor construct new residential house out of net sale consideration receivede of original asset or deposit the same in the account notified by the Central Govt. under section 54. If assessee failed to do so, he would liable for capital ViFnandw transfer of capital asset. In the instant case, assessee had purchased the 'Iwial site and used portion of net sale consideration for construction of newnd not appropriated the balance sale consideration either in investment in- iion of residential house or deposit into account notified by the Central Coazo avail exemption under section 54. Hence assessee, was entitled for exemption to the extent of amount used for purchase of residential site only.

The Income Tax Officer, CHENNAI 'D'BENCH Vs V.A. THARABA Iv. Dy. CIT [JTA No. 1894/Mds/2011 & S. P. No. 861Mds12011]

.—Capital gains--Deduction under section 54FConstruction of new house within 3 years – Assessee had sold capital assets in the previous year relevant to the --.nz year 2007-08, resulting in capital gains. The exemption was claimed unit-section 54F as assessee was proposing to construct a residential house property out of the sale consideration of the property. Assessee had purchased a new landed property for a consideration more than the taxable long-term capital sum but could not proceed further to construct the house, as assessee was prevented from proceeding further by virtue of the restraint order by the competent civil court. Even though these circumstances were explained before AO, the claim of exemption was rejected on the ground that assessee had not constructed the residential house within the period of three years, which was mandatory as per the provisions of Act. Held: It was impossible for assessee to construct the residential house within the stipulated period of three years as assessee was restrained by a competent court. But, the intention of statute provided in section 54F had been fully satisfied by assessee. Therefore, assessee was entitled for exemption under section 54F.

It is 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. But she has purchased the land utilising the entire consideration received on the sale of the old property. It means 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 is necessary to hold that the amount utilised by the assessee to purchase the land was in fact utilised for acquiring/constructing a residential house. Without purchasing land the house cannot be constructed. The first step

should be the purchase of land. That was done. No step could be put forward thereafter, for reasons already stated. Therefore, the entire amount spent by the assessee in purchasing the land should be construed as amount invested in purchase/construction of residential house. In view of the above, the assessee is entitled for exemption under section 54F. The intention of the statute provided in section 54F has been fully satisfied by the assessee. [Para 13 & 14]. With the above submission, it is prayed that the deduction under section 54F of the Act may be allowed and the relief be granted to the Assessee."

7. In addition to the written synopsis, he also submitted the receipts from the sale of capital assets were invested in the purchase of two plots from the BDA. The first plot was purchased on 31/10/2014 for Rs.82,68,343/- and Plot No.2 was purchased on 05/12/2018 for Rs.1,03,32,515/-. Accordingly, sum of Rs.1,86,63,291/-/- were invested towards purchase of residential plots. Further a sum of Rs.22,52,000/- was spent towards construction of the house building. Accordingly, the total investments were made within the stipulated time for an amount of Rs.2,08,50,858/-. Accordingly capital gain was Nil. Since the original landlord i.e Smt. Chanamma and others filed writ petition before the Hon'ble High Court of Karnataka vide writ petition No.51294/2014 and W.P No.35243/2014 where whose land was acquired by the BDA to form the layout. Before the construction based on the writ petition filed before the Hon'ble High Court of Karnataka against the land acquisition and the original land owners did not allow the construction to go through, therefore, the assessee was unable to construct the residential house within the stipulated time as per the section 54F of the Act, since the matter was sub-judice. He also relied on the following judgments:-

1. CIT V/s Ramachandra Rao, ITA No.47 of 2014,46 of 2014, 494 of 2013 and 495 of 2013 High Court of Karnataka, Order Dated 14th July 2014
2. V.A. Tharabai V/s DCIT, Vellore, ITA No.1894 (Mds) 2011 ITAT "D" Bench Chennai Order Dated 12th January 2012
3. The ITO, Ward (1)(2)(2), Bangalore V/s Mujeeb Urrehaman,ITA No.1523/Bang/2019ITAT "C" Bench, Bangalore Order Dated 31st August 2021
4. ACIT, Circle (1)(1), Goa V/s Girish L Raghya,ITAN 0.116/P NJ / 2014- ITAT Panaji Order Dated 8th August 2014 Varun Seth, New Delhi V/s ACIT, Circle 47(1),
5. ITA No. 1388/Del/2019ITAT, Delhi "F" Bench Order Dated 14th May 2019

8. The ld. DR relied on the order of the lower authorities and submitted that before the CIT(A), he did not appear and not filed any documents, whereas the CIT(A) has given various opportunities to the assessee and he further submitted that the law is very clear that for getting exemption u/s 54F of that Act that the new residential building should be constructed within the period of 3 years from the date of the sale of the capital asset. The assessee also unable to establish, when the construction of the new residential building was completed, therefore he requested that the order of the authorities should be upheld.

9. After hearing rival contentions and perused the material available on record, on going through the order of the authorities below, we noticed that the assessee sold capital assets and claimed exemption u/s 54F of the Act. On perusal of the documents

submitted by the assessee, we note that the assessee has furnished Construction plan approval letter, construction bills issued by SKS builders & initial construction photo at page 61 to 65. From the bills issued by builders, it was for construction of compound wall & shed works it clearly shows that the building was not completed within the stipulated period of 3 years from the date of sale of capital assets. We also noted from the documents submitted by the assessee that the landlord Smt. Chanamma filed writ petition before the Hon'ble High Court of Karnataka against the acquisition of land by the BDA. We further note from the order of the AO at para No.5 that the residential building has been constructed on the site No.197. The Id.AR of the assessee also filed case laws. On perusal of the above case law cited by the Id.AR of the assessee in the case of The ITO, Ward (1)(2)(2), Bangalore V/s Mujeeb Urrehaman, ITA No.1523/Bang/2019 ITAT "C" Bench, Bangalore Order Dated 31st August 2021, a similar issue has been decided by the coordinate bench of the Tribunal . In the case on hand, the assessee has invested the entire amounts before filing of the return of income as mandated in sec.54F of the Act & has claimed exemption u/s 54F of the Act. On perusal of the documents filed by the assessee we observed that the assessee had genuine reason for not constructing the building within the due date as prescribed by the section 54F of the Act, but the intention of the assessee was to construct of the residential house building. We note from the order of the

coordinate bench of the Tribunal in ITA No.1523/Bang/2019 for assessment year 2014-15, in which it has been held as under:-

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 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 ld. 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

Considering the above judgments quoted supra the issue on hand is similar. The intention of the assessee was to invest the sale proceeds for acquiring/construction of the new assets. In the impugned case the assessee invested for the purchase of two BDA sites No. 196 & 197 for Rs. 1,86,00,858/-. The assessee also submitted that Rs. 22,50,000/- have been invested up to 17.08.2015 but no any credible evidences produced, the assessee has further submitted a photograph which is placed at page No. 65 of the paper book which will be used by the laborers during the construction period, in view of this the same construction cannot be considered as the assessee has constructed a house property at plot No. 197 as observed by the AO. Accordingly the assessee is eligible for the proportionate deduction as per section 54F of the Act, since the entire sale

proceeds were not used for the new assets. Since the purchase of property from BDA is subjudice with the Hon'ble High Court of Karnataka and the assessee could not show us the status of the case before the Hon'ble High Court. If in case the assessee gets refund from the BDA, in such case the assessee will be liable for capital gain tax as per law. Accordingly we direct to AO to compute the capital gain in above terms.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in court on 29th day of March, 2023.

Sd/-
(George George K)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated: 29th March 2023
Vms

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.