

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF JULY, 2014

PRESENT

HON' BLE MR. JUSTICE N.KUMAR

AND

HON' BLE MR. JUSTICE B.MANO HAR

ITA NO 47 OF 2014 c/w. ITA NO.46/2014, ITA
NO.494/2013 AND ITA NO.495/2013

BETWEEN (IN ITA NOS.47/2014 & ITA NO.46/2014)

1. THE COMMISSIONER OF INCOME-TAX
C.R.BUILDING, QUEENS ROAD,
BANGALORE.
2. THE DEPUTY/ASST. COMMISSIONER
OF INCOME -TAX, CENTRAL CIRCLE 1(1),
C R.BUILDING, QUEENS ROAD,
BANGALORE ... APPELLANTS

BETWEEN (IN ITA NOS.494/2013 & ITA NO.495/2013)

1. THE COMMISSIONER OF INCOME-TAX
C.R.BUILDING, QUEENS ROAD,
BANGALORE.
- 2 THE INCOME-TAX OFFICER
WARD-3(4), C R BUILDING,
QUEENS ROAD, BANGALORE
... APPELLANTS

(By Sri. G KAMALADHAR – ADV.)

AND

SHRI K RAMACHANDRA RAO
NO.56, 40TH CROSS,
8TH BOCK, JAYANAGAR,
BANGALORE-560082.

... RESPONDENT
(COMMON)

(By Sri.CHYTHANYA K K – ADV.)

ITA 47/2014 & ITA 46/2014 ARE FILED UNDER SEC.260-A OF THE INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW, ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.886/BANG/2012 DT.20.9.2013 (IN ITA NO.47/2014) AND ITA NO.885/BANG/2012 DT.20.9.2013 (IN ITA NO.46/2014) CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX,CENTRAL CIRCLE-1(1), BANGALORE.

ITA NO.494/2013 AND ITA NO.495/2013 ARE FILED UNDER SEC 260-A OF INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.904/BANG/2012 DT.10.5.2013 (IN ITA NO.494/2013) AND ITA NO.905/BANG/2012 DT.10.5.2013 (ITA NO.495/2013) AND CONFIRM THE ORDER PASSED BY THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE INCOME TAX, WARD-3(4), BANGALORE.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, N.KUMAR J., DELIVERED THE FOLLOWING:

J U D G M E N T

As these four appeals are in respect of the same assessee and arise out of a non residential asset, they are taken up for consideration together and disposed of by this common order.

2. The assessee sold certain converted lands in Laxmipura Village and Kalkere village, Jigani Hobli, Anekal Taluk on 17.12.2014 to Paramahansa Foundation Trust for a consideration of Rs.2,87,28,750/-. In the returns filed under Section 153A of the Income Tax Act (for short hereinafter referred to as the Act) the assessee computed Long Term Capital Gains of Rs.2,87,28,750/- before claiming exemption under Section 54B and 54F of the Act. During the course of assessment proceedings the assessee's representative was asked to substantiate the claim made for exemption under section 54B and 54F of the Act. In reply the assessee stated in the year 2005 i.e. on 31.3.2005 a sum of Rs.31,00,000/- has been

contributed towards house construction. Till that date a loan of Rs.2,10,00,000/- was taken from Bank which was also utilized for construction. Therefore to the extent of 1,36,00,000/- he claimed exemption for construction of the house. After considering the said reply the Assessing Authority held the assessee has admitted that the land sold is a capital asset. The assessee claimed exemption under Section 54F to the extent of 1,63,23,064/-. He also claimed that he has utilised 1,36,00,000/- for house construction. On the ground that the assessee has not furnished how much amount was in fact utilized for construction after the date of sale, the claim of the assessee for claiming exemption was not accepted. The assessee claimed to have utilized 14,00,000/- in the previous year towards house construction. It is not clear as to whether the amount of Rs.1,36,00,000/- claimed to have been spent for house construction is inclusive of 14,00,000/- spent earlier. Further it was held the assessee ought to have

deposited the unutilized sale consideration in a Bank account under the Capital Gains Accounts Scheme. It has not been done. He has not furnished any proof in this regard along with the return filed. Therefore, the assessee's claim for exemption under Section 54F was disallowed. Aggrieved by the said order the assessee preferred an appeal to the Commissioner of Income Tax (Appeals). The Appellate Authority held the assessee's investment in construction subsequent to the date of sale and investment in the eligible project even after the project of the house is started beyond one year will be eligible for exemption under Section 54F. However investment is made prior to more than one year before the date of transfer is not eligible for exemption. Accordingly, he granted exemption. The Revenue preferred an appeal challenging the said order. The Tribunal has affirmed the said order. It is against the said order the Revenue has preferred the said appeals.

3. The two substantial questions of law which arise for consideration in these batch of appeals are as under :-

- 1) *Whether the assessee is entitled to the benefit conferred under Section 54F when the sale consideration is utilized for construction of a residential house on a site which is owned by him within one year from the date of transfer?*
- 2) *When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under Section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under Section 139(1) of the IT Act?*

4. Re.Point No.1

Section 54(F) deals with capital gains on transfer of certain capital assets not to be charged in case of investment on house. It reads as under.

54F. (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 or [two 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 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”.]

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 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 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.*

Section 54F(1) provides, 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 and the assessee 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 constructed a residential house, the capital gain shall be dealt with in accordance with the said provision. This is subject to the provisions of Sub Section (4).

Sub Section (4) stipulates if the amount of 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 transfer of the original asset took place or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under Section 139 of the Act shall be deposited by him before furnishing such return in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under Section 139(1) of the Act in an account in any such bank or institution as specified and utilized in accordance with any scheme which the Central Government may, by notification in the official gazette framed in this behalf.

Sub Section (4) is attracted only to a case where the sale consideration is not utilized either for purchase or for construction of a residential house. It has no application to a case where the assessee invests the sale consideration derived from the transfer either in purchasing the property or constructing the residential

house within the period stipulated in Section 54F(1). The proviso to Section 54F puts an embargo on the application of Section 54F to cases which are mentioned in the said proviso. That is to be eligible for the benefit under Section 54F(1) the assessee should not be owning more than one residential house other than the new asset acquired or he should not purchase any residential house other than the new asset within a period of one year after the date of transfer of residential asset or constructs any residential house other than the new asset within a period of three years after the date of transfer of the residential asset. In the entire scheme there is no prohibition for the assessee putting up construction out of sale construction received by such transfer of a site which is owned by him as is clear from the language used. It is open for the assessee to put up a residential construction or to purchase a residential house. It is not the requirement of law that he should purchase a residential site and then put-up

construction. Therefore, in the instant case admittedly the assessee has purchased a vacant site on 31.3.2001. He sold the original asset on 27.8.2003 on which date he was already owning a site. In fact even before sale of the original asset he had started construction on such site by availing loan from the Bank. In terms of Section 54F(1) all investments made in the construction of the residential house of the said site within a period of one year prior to 27.8.2003 would be eligible for exemption under Section 54F(1). Similarly all investments in the said construction after 27.8.2003 within a period of three years there from is also eligible for exemption. Therefore, the argument that such investment in putting up a residential construction cannot be made on a site owned by him to be eligible for exemption is without any substance. Both the Appellate Authorities have rightly extended the benefit to the assessee and there is no error committed by them which calls for interference.

4. 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.

Sd/-
JUDGE

Sd/-
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