

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA No.405/Bang/2020
(Assessment Year: 2016-17)

Shri Krishnappa Jayaramaiah,
No.6, BBMP Khata, No.238,
1st Main Road, 2nd Cross, Ward No.4,
Chikkabommawandra, Yelahanka,
New Town, Bangalore-560 064

....Appellant.

Vs.

Income Tax Officer,
Ward 6(3)(4), Bangalore.

.....Respondent.

Assessee By:	Shri C. Ramesh, C.A.
Revenue By:	Shri Kannan Narayanan, JCIT (D.R.)

Date of Hearing :	11.02.2021.
Date of Pronouncement :	22.02.2021.

ORDER

PER SHRI CHANDRA POOJARI, AM :

This appeal by the assessee is directed against the order of Commissioner of
Income Tax (Appeals), Bangalore dt.24.02.2020 for the Assessment Year .

2. The assessee has raised the following grounds :

“1. The CIT(A) was not correct in not allowing the deduction claimed u/s 54F having invested in Residential house property to the extent of Rs.2,40,40,716/- in the name of assessee’s widow daughter.

2. The CIT(A) was not correct in not appreciating the facts that the appellant’s widow daughter is one of the legal heirs of the property and also part of sale deed executed by all family members, which was sold by appellant.

3. The CIT(A) was not correct in not appreciating the facts that the property sold by the appellant is HUF property, acquired by way of partition by appellant as karta of the HUF, though declared in ITR returns with individual PAN.

4. The CIT(A) was not correct in confirming the disallowance made by A.O. on selling expenses to the extent of Rs.15,00,000/- claimed in the return of income and not appreciated the facts that the expenses spent by appellant exclusively on the property.

5. The CIT(A) and A.O. were not correct in not following the various High Court and Hon’ble ITAT decisions, where liberal interpretation is given for allowability of deduction u/s 54F being beneficial provision and also there is no specific bar in investment of property in the name of Family Members.”

3. The facts of the case are that the assessee filed Return of Income declaring total income at Rs.2,96,430 under the head ‘house property’, ‘income from capital gain’ and ‘income from other sources’. The assessee claimed deduction u/s 54F of the Act for the investment made in a residential property, in the name of his widowed daughter Smt. J. Shylaja. The assessee submitted before the A.O. that the property under question was received by inheritance by way of partition. The legal

heirs of the property are the assessee, his wife, son and widowed daughter. All legal heirs have executed sale deed dated 15.10.2015 in favour of the purchaser. The entire sale consideration received was invested in residential house property in the name of his widowed daughter. The assessee claimed deduction u/s 54F of the Act on the capital gains in his return. The A.O. denied the claim of deduction and determined the total assessed income at Rs.2,07,75,230. Further the assessee claimed an expenditure of Rs.12 lakhs towards the cost of transfer of capital assets. This was disallowed by the lower authorities on the reason that no evidence produced to show that it is a part of improvement of land or no break up has been furnished by the assessee. Against this addition the assessee is in appeal before us.

4. The learned Authorised Representative submitted that the assessee has sold the property situated at 70, Kannamangala Vilalge, Kasaba Hobli, Devanahalli Taluk, Bangalore along with legal heirs for a consideration of Rs.2,60,46,754 vide Sale Deed dated 15.10.2015. Further it was submitted that all the legal heirs including his widowed daughter, in whose name the investment is made for claiming the exemption u/s. 54F of the Income Tax Act, 1961 ('the Act'), were party to sale deed. According to Id. AR the said property which was sold was acquired by the assessee by way of Partition Deed dated 23.11.1971 and the following legal heirs are having the share in the property.

- (i) Chandramma, Wife 55 Years.

- (ii) Ravi J, Son, 37 Years.
- (iii) Shailaja J and her children, Daughter 35 Years

The assessee and other family members are the sole owners of the property which is sold and the Capital Gain arising out of the sale of the said property was declared in individual name using their PAN. The other family members do not have any other sources of income. The assessee invested the sale consideration received on the sale of Capital Assets in purchase of residential property in the name of his married widow daughter Smt. Shailaja J, her husband was expired on 20.12.2017. She along with her children are staying with the assessee and she is having no independent source of income, being a widow daughter. The residential site purchased in her name and constructed residential house so as to secure her life. The assessee invested entire sale consideration in the land and residential house in widowed daughter's name and claimed exemption u/s. 54F of the Act on the Capital Gain arising out of said sale of property. The entire sale consideration having been invested by the assessee in the residential site and construction of residential house through banking channels and there is nexus between the sale consideration and investment made in the residential house property. He relied on the following judgments :

- (i) Smt.Pinky v. ITO [ITA No.2222/Bang/2019 ITAT Bangalore Benches – order dated 22.01.2020].
- (ii) Subbalakshmi Kurada v. ACIT [ITA No.2493/Bang/2019- ITAT Bangalore Benches – order dated 08.05.2020]
- (iii) DIT v. Jennifer Bhide [(2012) 349 ITR 80 (Karnataka HC)]
- (iv) Bhatkal Ramarao Prakash v. ITO [(2019) 175 ITD 144 (ITAT Bangalore Benches)]
- (v) N.Ram Kumar v. ACIT [ITA No.1901/Hyd/2011 – ITAT Hyderabad]
- (vi) Late Gulam Ali Khan v. CIT [165 ITR 228 (AP)] High Court of Andhra Pradesh.
- (vii) CIT v. Ravinder Kumar Arora [ITA No.1106 to 2011 dated 27.09.2011]
- (viii) Shri Rajkumar Mandhani v. DCIT [ITA No.835/Hyd/2017 – order dated 20.11.2018 ITAT Hyderabad Benches].

5. On the other hand, the ld. DR submitted that the assessee sold the property situated at 70, Kannamangala Vilalge, Kasaba Hobli, Devanahalli Taluk, Bangalore, which stood in his name as on 15.10.2015. However, the sale consideration received by the assessee was invested in his married widowed daughter on which the assessee claimed exemption u/s. 54F of the Act which is not permitted. According to ld. DR, the investment shall be made in the name of assessee himself, not in the name of his married widowed daughter. The ld. DR argued that the assessee is not eligible for exemption u/s. 54F of the Act.

6. We have heard the rival contentions, perused and carefully considered the material on record. Section 54F which reads as follows :

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 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, one residential house in India (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.

7. The objection of the Id. DR is that the assessee has purchased new residential house in the name of Smt. Shailaja J, who is married widowed daughter of the assessee. According to the Id. DR, the Income Tax Act needs to be given legal interpretation not a liberal interpretation as contended by the Id.AR. If the

word 'assessee' used in the Income Tax Act is to be given liberal interpretation, it would be tantamount to giving free hand to the assessee and its legal heirs, it shall curtail the revenue of the Government, which the law does not permits.

8. On the other hand, the contention of the learned Authorised Representative is that the assessee has not made investment in the name of any unknown person. It was made in the name of his dependent married widowed daughter who is the legal heir of the assessee. Admittedly, in this case purchase consideration for purchase of new residential house was paid by the assessee out of sale consideration of property situated at 70, Kannamangala Vilalge, Kasaba Hobli, Devanahalli Taluk, Bangalore. There is a direct nexus between the sale consideration received and utilized investing in residential house in the name of Smt. Shylaja J, who is married widowed daughter of the assessee. It is to be noted that a purposive consideration is to be preferred as against literal consideration, more so when even in calling the literal consideration, there is nothing in the Section 54F of the Act to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F of the Act in terms does not required that the new residential property shall be purchased in the name of the assessee, it merely says that the assessee should have purchased/constructed a "residential house".

9. Now let us examine the applicability of various case laws decided by various Courts. In the case of **CIT Vs. Natarajan [(2007) 287 ITR 271 (Mad)]** wherein it was held that the assessee has purchased a property in the name of his wife, the Hon'ble Court held that the assessee will be eligible for exemption u/s. 54F of the Act.

9.1 In the case of **Gurunam Singh [(2010) 327 ITR 278 (P&H)]**, it was held that the assessee purchased residential house in the name of wife and the assessee has paid entire sale consideration and merely has included his wife as owner of the property, it would not make any difference and in fact such a contract has to be encouraged which helps in empowerment of women and that the government itself has floated various schemes permitting joint ownership with wife. The Court further observed that the assessee therein should be a constructive owner of the property.

9.2 Further the A.P. High Court in the case of **Late Gulam Ali Khan v. CIT [165 ITR 228 (AP)]** wherein it was held that the object of granting exemption u/s. 54F of the Act, is that a person who sells a residential house for the purpose of purchasing another convenient house must be given exemption so far as capital gains are concerned. As long as the sale of the house and purchase of another house are part of the same scheme, the lapse of sometime between the sale and

purchase makes no difference. The word “assessee” must be given a wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation to the word “assessee” as that would frustrate the object of granting the exemption.

9.3 In the case before us, the assessee's married widowed daughter is having no independent source of income and is fully dependent on the assessee, on the death of her husband on 20.12.2017. This fact was also clarified by filing a Joint Affidavit by Smt. Shailaja J and the assessee dt.11.12.2018. Being so, in our opinion, the statute should be construed liberally; since the provisions permit economic growth has to be interpreted liberally, restriction on it too has to be construed so as to advance the objective of the provisions not to frustrate it. Accordingly, we are of the opinion that the assessee has invested the sale consideration on transfer of Capital Asset in purchasing a new residential property in the name of Smt. Shailaja J who is being married widowed dependent daughter of the assessee and also legal heir of the assessee. Accordingly, we direct the Assessing Officer to grant exemption u/s. 54F of the Act on the amount invested in purchase of residential house in his daughter's name. This ground of appeal of assessee is allowed.

10. The next ground is with regard to disallowance of selling expenses.

10.1 The assessee has not furnished the full details of selling expenses before the lower authorities. Hence in the interest of justice, we remit this issue to the file of Assessing Officer for fresh adjudication and with a direction to the assessee to furnish the details before the Assessing Officer.

11. In the result, the assessee's appeal is partly allowed for statistical purposes.

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

Sd/-

**(GEORGE GEORGE K)
JUDICIAL MEMBER**

Sd/-

**(CHANDRA POOJARI)
ACCOUNTANT MEMBER**

Dated: 22.02.2021.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore