

In the High Court of Judicature at Madras

Dated: 18.08.2014

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The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE G.M.AKBAR ALI**

Tax Case (Appeal) No.301 of 2014

Commissioner of Income Tax
Coimbatore.

.... Appellant

Vs.

Smt.V.R.Karpagam

.... Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 07.03.2013 made in I.T.A.No.1082/Mds/2010 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai for the assessment year 2007-08.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel for Income Tax

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Tax Case (Appeal) is filed by the Revenue as against the Income Tax Appellate Tribunal for the assessment year 2007-08 raising the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Tribunal was justified in treating five independent flats in a multi-storey construction as a single residential unit under Section 54F, without considering the intention of the

legislature to restrict the reinvestment to only one more residential unit under Section 54F?

2. Whether on the facts and circumstances of the case, the Tribunal was right in interpreting the phrase "a residential house" in plural connotation for the purpose of reinvestment of capital gain for claiming exemption under Section 54F?"

2. The brief facts are as follows:

The respondent/assessee had entered into an agreement with one M/s.Mount Housing and Infrastructure Ltd., for development of a piece of land measuring 13,059 sq.ft. owned by her at Door No.29F, Race Course, Coimbatore. As per the agreement, the assessee was to receive 43.75% of the built up area after the development. This 43.75% built up area was translated into five flats. The assessee, while filing her return of income, calculated the capital gains based on the sale consideration of Rs.1,09,75,620/-. As per the assessee, this was the value of the flats, which were to be received by her and was equivalent to 56.25% of the undivided share of land given by her to M/s.Mount Housing and Infrastructure Ltd. The assessee claimed exemption under Section 54F of the Income Tax Act on the value of the five flats. According to the assessee there were no capital gains whatsoever left for assessment.

3. Before the Assessing Officer, two issues were raised, one on the value of the built-up area of the five flats and the other was whether the assessee would be entitled to the benefit of Section 54F of the Income

Tax Act in respect of the five flats. The Assessing Officer granted the benefit of capital gains in respect of one flat and that too on the higher extent with regard to the floor space, viz., 2413.36 sq.ft.. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. The Commissioner of Income Tax (Appeals), by order dated 06.05.2010, after discussing the provisions of Sections 54 and 54F of the Income Tax Act, held that the claim of the assessee under Section 54F for all the five flats could not be admitted, but however, he took the view that the assessee would be entitled to the benefit of Section 54F in respect of one single flat with largest area of 4814.36 sq.ft. and accordingly directed the Assessing Officer to calculate the exemption under Section 54F of the Income Tax Act. Aggrieved by this order, the assessee preferred further appeal before the Income Tax Appellate Tribunal.

5. The Tribunal, after considering the orders of the Authorities below, held in paragraph No.4 of the order that as the assessee's representative admitted that with regard to the substitution of sale consideration based on the cost of construction of the developer, M/s.Mount Housing and Infrastructure Ltd., the order of the Commissioner of Income Tax (Appeals) could not be faulted. Also, the Tribunal, by considering the provision of Section 54F of the Income Tax

Act and taking note of the decision of the Karnataka High Court in the case of **CIT V. Smt. K.G.Rukminiamma** reported in **331 ITR 211**, which referred to Section 13 of the General Clauses Act, held that the word 'a' appearing in Section 54F of the Income Tax Act should not be construed in singular, but should be understood in plural. Hence, following the said decision of the Karnataka High Court, the Tribunal held as follows:

"8. Their Lordships has clearly held in the above judgment that 'residential house' in the context could not be construed as a singular. In the said case also, claim for exemption was with regard to four flats in lieu of share in land, but the claim was under section 54 of the Act and not under section 54F of the Act. However, in our opinion the meaning given to the expression "a residential house" will apply paripassu to Sec.54F also, since the expression used here is also 'a residential house'. New asset defined in the sec.54F, as 'a residential house' has also to be understood in the plural. It is not necessary that all residential units should have a single door number allotted to it as argued by the Ld. D.R. No doubt Hon'ble jurisdictional High Court in the case of G.Saroja (supra) did consider the fact that different flats were having one door number. However, this alone was not the reason why assessee was held to be eligible for claiming of exemption under section 54F of the Act. Their Lordships took cue from the decision of Hon'ble Karnataka High Court in the case of Smt.K.G.Rukminiamma (Supra). Similar exemption was given by the Hon'ble jurisdictional High Court again in the case of Dr.(Smt.)P.K.Vasanthi Rangarajan (supra) wherein there

was no claim that flats allotted in lieu were having single number. We are therefore of the opinion that assessee was eligible for claiming exemption under section 54F of the Act on the five flats received by her in lieu of the land she had parted with."

6. The Tribunal further held that the principles mentioned in Section 54 of the Income Tax Act, as interpreted by the Karnataka High Court in the above-said decision, would apply paripassu to Section 54F also. Hence, the Tribunal came to the conclusion that the assessee was eligible for exemption under Section 54F of the Income Tax Act on the five flats received by her in lieu of the land she had parted with. Aggrieved by this order of the Tribunal, the Revenue has preferred the present appeal raising the above-said substantial questions of law.

7. Learned counsel appearing for the Revenue submits that a residential house mentioned in Section 54F of the Income Tax Act should not be construed as one unit, even though different flats are constructed; but it should be construed as one residential flat, as every residential apartment contains separate kitchen, entrance etc. He also pointed out to the amendment brought to Section 54F of the Income Tax Act vide Finance (No.2) Act, 2014 with effect from 01.04.2015, wherein the word 'a residential house' is substituted to 'one residential house'. Hence, the assessee is not eligible for exemption under Section 54F of the Income Tax Act.

8. We have heard the learned Standing counsel appearing for the Revenue at length and perused the materials placed before this Court and the decision relied on by the Tribunal in the case of **CIT V. Smt. K.G.Rukminiamma** reported in **331 ITR 211**. We find that the relevant provision in this case is Section 54F of the Income Tax Act, 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 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".

9. It is relevant to note herein that an amendment was made to the above-said provision with regard to the word 'a' by the Finance (No.2) Act, 2014, which will come into effect from 01.04.2015. The said amendment reads as follows:

"32a. Words "constructed , one residential house in India" shall be substituted for "constructed, a residential house" by the Finance (No.2) Act, 2014, with effect from 01.04.2015."

10. The above-said amendment to Section 54F of the Income Tax Act, which will come into effect only from 01.04.2015, makes it very clear that the benefit of Section 54F of the Income Tax Act will be applicable to constructed, one residential house in India and that clarifies the situation in the present case, i.e, post amendment, viz., from 01.04.2015, the benefit of Section 54F will be applicable to one residential house in India. Prior to the said amendment, it is clear that a residential house would include multiple flats/residential units as in the present case where the assessee has got five residential flats. We may also mention here that all the Authorities below have clearly understood that the agreement signed by the assessee with M/s.Mount Housing Infrastructure Ltd., is that the assessee will receive 43.75% of the built-up area after development, which is construed as one block, which may be one or more flats. In that view of the matter what was before the Assessing Officer is only equivalent of 56.25% of land transferred, equivalent to 43.75% of built up area received by the assessee. This built up area got translated into five flats. Hence, we are of the opinion that the transaction in this case was not with regard to the number of flats but with regard to the percentage of the built up area, vis-a-vis, the Undivided Share of Land.

11. In similar circumstances, this Court, by order dated 04.01.2012 in T.C.(A)No.656 of 2005 held as follows:

"The above provision refers to a residential house

meaning thereby that even if there are four different flats and if it is considered for the property assessed as one unit and one door number is given, it should be construed as a residential unit, namely, one unit. In that sense, the said provision is available to the assessee."

12. In the decision reported in **(2012) 75 DTR 56 (Dr.(Smt.) P.K.Vasanthi Rangarajan**, this Court, while dealing with the benefit of exemption under Section 54F, followed the above-said decision of this Court in T.C.(A)No.656 of 2005 and granted the benefit to the assessee under Section 54F of the Income Tax Act on the investment made in the four flats.

13. Hence, the above-said decisions of this Court make it clear that the property should be assessed as one unit, even though different flats are available. Here also, as per the assessment order, all the flats have one door number, namely, Door No.29F, Race Course, Coimbatore.

14. In the light of the above, we find no question of law much less any substantial question of law arises for consideration in this Tax Case (Appeal). Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Index : Yes/No
Internet:Yes/No
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(R.S.,J) (G.M.A.,J)
18.08.2014

R.SUDHAKAR,J.
AND
G.M.AKBARALI,J.

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To

1. The Income Tax Appellate Tribunal 'D' Bench, Chennai
2. The Commissioner of Income Tax (Appeals), I, Coimbatore.
3. The Income Tax Officer, Ward - III (1), Coimbatore.

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