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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

IT(IT)A No.2015/Bang/2019
Assessment year: 2013-14

Shri Rajasugumar Subramani, 56, Ferns City, Outer Ring Road, Doddanekundi, Bengaluru – 560 037. **PAN: DAIPS 0270K**	Vs.	The Income Tax Officer, Ward 2(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandran, Advocate
Respondent by	:	Ms. Priyadarshini Misra, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing		:	01.01.2020
Date of Pronouncement		:	10.01.2020

O R D E R

Per N.V. Vasudevan, Vice President

This appeal by the assessee is against the order dated 29.7.2019 of the CIT(Appeals)-12, Bengaluru relating to assessment year 2013-14.

2. The only issue for consideration in this appeal is as to, whether the revenue authorities were justified in denying the claim of assessee for deduction u/s. 54/54F of the Income-tax Act, 1961 [the Act].

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3. The assessee is an individual. He sold a site measuring 3903 sq.ft. bearing No.53, CMC Khatha No.364, New BBMP Khatha No.396 in Sy.No.19/1, Ferns City, Doddanekundi Village, Krishnarajapura Hobli, Bangalore East Taluk [hereinafter referred to as "the property"] under Sale Deed dated 05.11.2012 for a consideration of Rs.2 crores. The assessee claimed deduction u/s. 54/54F of the Act on the capital gain on sale of the property as he invested the capital gain in purchase of a residential house in Texas on 12.7.2013. The AO went into the quantum of capital gain and also into the question, whether the assessee would be entitled to deduction u/s. 54/54F of the Act when he purchased the house outside India. The AO firstlyl expressed the opinion that the site sold was a vacant site and therefore deduction cannot be claimed u/s. 54 of the Act which is applicable only when the capital asset sold is a residential asset. With regard to the deduction u/s. 54F of the Act, the AO was of the view that the said deduction is not available to investment of capital gain in purchase of property outside India. The AO therefore computed the capital gain of Rs.1,89,50,133 on sale of property as follows:-

(in Rupees)

Sale consideration	2,00,00,000
Less: Expenses	4,35,000
Net Sale Consideration	1,95,65,000
Less: Cost of Acquisition Conversion fee as discussed at para 5.1 Sale Price, Stamp Duty & Registration fee as discussed in para 5.2 - 2,93,000 Indexation 293000 X 852/406 Betterment fee as discussed at para 5.3	 NIL 6,14,867 NIL
Long term capital gain	1,89,50,133
Less: Exemption u/s. 54F as discussed at para 6	NIL
Long term capital gain taxable	**1,89,50,133**

4. In view of the conclusion that the assessee will not be entitled to deduction u/s. 54/54F of the Act because the new asset purchased was outside India, the AO did not allow the assessee's claim for deduction u/s. 54/54F of the Act.

5. On appeal by the assessee, the CIT(Appeals) confirmed the action of the AO in not allowing deduction u/s. 54/54F of the Act. With reference to the quantum of capital gain computed by the AO, the CIT(A) gave some relief to the assessee.

6. Aggrieved by the order of CIT(Appeals), the assessee is in appeal before the Tribunal.

7. We have heard the rival submissions. The ld. counsel for the assessee placed reliance on the decision of the Bangalore Bench of the Tribunal in the case of *ITO(IT), Ward 1(1), Bangalore v. Arshia Basith, IT(IT)A No.2768/Bang/2017 AY 2014-15, order dated 14.8.2018* wherein this Tribunal held that assessee would be entitled to benefit of deduction u/s. 54/54F of the Act on the property purchased outside India and that the amendment made to section 54F of the Act by the Finance Act, 2014 w.e.f. 2015 is applicable only prospectively from AY 2015-16 and not to earlier assessment year. By the said amendment, the provisions of section 54F(1) were amended whereby it was laid down that the new asset purchased or constructed by utilising the capital gain must be in India. He also relied on the decision of the ITAT Mumbai Bench in the case of *ACIT v. Jai Kumar Gupta HUF, ITA No.5303/Mum/2017 AY 2013-14, order dated 28.2.2019* and decision of ITAT Bangalore in the case of *Mrs. Suma v. ITO, ITA No.568/Bang/2018 for AY 2006-07, order dated 20.7.2018*. It was held that deduction u/s. 54F can be considered and allowed even though the assessee has made claim for deduction only u/s. 54 of the Act provided the conditions laid down in section 54F are satisfied.

8. The ld. DR submitted that the issue should be directed to be examined by the AO afresh in the light of decision cited by the ld. counsel for the assessee.

9. We have given a careful consideration to the rival submissions. We find that in the decision rendered in the case of *Jai Kumar Gupta HUF (supra)* on identical facts the assessee had made a claim for deduction u/s. 54 of the Act instead of 54F of the Act. The Tribunal held that the assessee's claim for deduction u/s. 54F should be examined. In the case of *Arshia Basith (supra)* the Bangalore Bench of the Tribunal held that assessee would be entitled to deduction u/s. 54F of the Act even in respect of property purchased which is located outside India. The following were the relevant observations of the Tribunal:-

> "3. Having carefully examined the orders of authorities below in the light of rival submissions, we find that the assessment year in this appeal is 2014-15 and the provision in section 54F comes w.e.f. 01.04.2015 according to which it was clarified that the residential house is to be acquired only in India meaning thereby before this amendment it was not clear as to whether the benefit of section 54F can be given to residential house acquired in India or abroad. This issue was examined by the Tribunal in the case of ACIT Vs. Iqbal Jafar (supra) which was authored by one of the members of this Bench and it was held by the Tribunal that before the amendments, the benefit can also be given to the residential house acquired in abroad. The relevant observation of the Tribunal is extracted hereunder for the sake of reference:
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> > "9. Having heard the rival submissions and from a careful perusal of the orders of the authorities below, find that it has been repeatedly held by the Hon'ble Apex Court and various High Courts that cardinal rule of interpretation is that the statute must be construed according to its plain language and neither should anything be added nor subtracted therefrom unless there are adequate grounds to justify the inference that the legislature clearly so intended. It is also well settled that in a taxing statute one has to look merely at what is clearly

stated The meaning and extent of the statute must be collected from the plain and unambiguous expression used therein, rather than from any notions which may be entertained by the Court as to what is just or expedient.

10. In the case of TV. Sundaram Iyengar & Sons (P.) Ltd. (supra), their Lordships have held that if the language of the statute is clear and unambiguous, the court cannot discard the plain meaning, even if it leads to an injustice.

11. Again in the case of Smt. Tarulata Shyam v. CIT (supra), it was held that there is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by Legislation and not by judicial interpretation.

12. Further, in the case of Sodra Devi (supra), it was held by the Hon'ble Apex court that unless there is an ambiguity, it would not be open to the Court to depart from the normal rule of construction which is that the intention of the legislature should be primarily to gather from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and considered on surrounding circumstances and constitutionally proposed practices.

13. We have also examined the order of the Tribunal in the case of Vinay Mishra (supra), in which it has been held that the words 'in India; cannot be read into section 54F when Parliament in its legislative wisdom has deliberately not used the words 'in India' in section 54F of the Act. The Tribunal accordingly held that assessee 's claim for exemption under section 54F of the Act shall be allowed since all conditions laid down in this section are satisfied for availing the said exemption, though he has acquired house property in U.S.A.

14. Similarly in the case of Mrs. Prema P. Shah (supra), the Tribunal has again held that the assessee was entitled to the benefit under section 54 of the Act, which does not exclude the right of the assessee to claim property purchased in a foreign country, if all other conditions laid down in the section are satisfied, merely because the property acquired was in a foreign country.

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15. Again in the case of Dr. Girish M Shah (supra), the Mumbai Bench of the Tribunal has taken a view by holding that the assessee is entitled for exemption under section 54F of the Act for of house property outside India i.e. in Canada.

16. Having carefully examined various judicial pronouncements and the order of the Id. CIT(A), we find pt in the case of Leena J. Shah v. Assts. (2006) 6 SOT 72 I (Ahd.), the Tribunal has taken a t view that the words "in India" cannot be inserted in section 54F of the Act and as per plain of section 54F of the Act, the sale proceeds of capital asset shall be invested in residential house or outside India. We, accordingly, following the judgment of the Hon'ble Apex Court in the case v. Vegetable Products Ltd [1973j 88 ITR 192, hold that the view favourable to the assessee taken ous Benches of the Tribunal should be followed and accordingly following the same, we hold that the assessee is entitled for exemption under section 54F of the Act. We, therefore, do not find any infirmity in the order of the Id. CIT(A), who has rightly adjudicated the issue in the light of the ratio laid down by the Tribunal in a number of cases. Accordingly, the order of the ld. CIT(A) is confirmed and the appeal of the Revenue is dismissed."

4. Since the Tribunal has taken a view in similar set of facts, we find no justification to take a contrary view in this appeal. Accordingly, following the same, we hold that the assessee is entitled for deduction under section 54F of the Act. Therefore, we find no infirmity in the order of the CIT(A). We accordingly confirm the same."

10. We are of the view that in the case of assessee the deduction claimed should be examined in the parameters of section 54F of the Act in the light of decision cited before us. The AO is directed to apply the ratio laid down in the aforesaid decision and allow the claim of deduction of assessee in accordance with the law, after affording assessee opportunity of being heard.

11. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Pronounced in the open court on this 10th day of January, 2020.

Sd/-	Sd/-
(B R BASKARAN)	(N V VASUDEVAN)
ACCOUNTANT MEMBER	VICE PRESIDENT

Bangalore,
Dated, the 10th January, 2020.

/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore. 6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.