

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

ITA No. 165/2014

BETWEEN:

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

... APPELLANTS

(BY SRI: K V ARAVIND, ADV ALONGWITH
SRI:E I SANMATHI, ADV)

AND:

SMT. B S SHANTHAKUMARI
NO.187, 8TH MAIN
BYRASANDRA, 1ST BLOCK EAST
JAYANAGAR
BANGALORE – 560 022

... RESPONDENT

THIS ITA IS FILED UNDER SECTION 260A OF INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 13.11.2013 PASSED IN ITA NO.63/BANG/2013 FOR THE ASSESSMENT YEAR 2009-2010 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.63/BANG/2013 DATED 13.11.2013 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-4(1), BANGALORE.

THIS ITA COMING ON FOR ADMISSION THIS DAY, ARAVIND KUMAR, J., DELIVERED THE FOLLOWING:

JUDGMENT

The revenue is in appeal assailing the order of the Income Tax Appellate Tribunal dated 13.11.2013 passed in ITA No.63/Bang/2013 whereunder, appeal filed by the revenue has been dismissed and order of the Appellate Commissioner has been affirmed.

2. Briefly stated the facts are:-

The assessee is an individual and during the year previous to assessment year, sold property situated at Dr.Shivaram Karanth Nagar under a sale deed dated 06.10.2008 and capital gain on sale of said property

was invested by the assessee by purchasing a residential site at Nagarbhavi, II Stage on 13.10.2008. The assessee claimed deduction under Section 54F of the Income Tax Act, 1961 (for short 'Act') which came to be disallowed by the assessing officer vide assessment order dated 18.11.2011, on the ground that the assessee had not completed the construction of the house within three years as per Section 54F of the Act.

3. Being aggrieved by said order, appeal came to be filed by the assessee and found favour. In other words, Appellate Commissioner accepted the contention of the assessee and allowed the appeal by order dated 02.11.2012. Revenue further pursued the matter before the Tribunal which did not find favour and as such, revenue is in appeal before this Court contending inter alia that on account of assessee having not complied with rigour of Section 54F of the Act whereunder the word used is 'constructed' and assessee has not placed any material on record to show that he had commenced the construction and completed the same within three years from date of sale of her property and as such

assessee would not be entitled to the benefit of long term capital gains flowing from Section 54F of the Act.

4. We have heard Sri.K V Aravind, learned Panel Counsel for appellant-revenue and perused the records.

5. Sri.K V Aravind, learned Counsel appearing for the revenue would re-iterate contentions raised before the CIT appeal as well as before the Tribunal. He would contend that Tribunal committed an error by relying upon the judgment of this Court in the case of *Commissioner of Income Tax Vs Sambandam Udaykumar reported in (2012) 81 CCH 0151*, wherein this Court had found on facts that the construction was almost completed and as such had held assessee therein was entitled to the benefit of Section 54F and contends that facts of present case differ from the case of *Sambandam Udaykumar's* case relied upon by the Tribunal, since in the instant case construction had not been completed within three (3) years as indicated in Section 54F. Hence, he would contend that substantial question of law as framed in the

appeal memorandum be formulated, adjudicated and answered in favour of the revenue.

6. Having heard the learned Counsel appearing for the revenue and on perusal of the records, we are not inclined to admit this appeal for following reasons:

It would emerge from perusal of records that immediately after sale of the property on 06.10.2008, assessee purchased another residential plot on 13.10.2008 and on 02.06.2010 she obtained approval of the building plan from the local authority namely Bruhat Bengaluru Mahanagara Palike and commenced the construction. However, it was not completed within 3 years i.e., on or before 05.10.2011. Hence, the assessing officer during the course of assessment proceedings issued summons under Section 131 of the Act to the assessee to verify as to whether the assessee had invested the capital gains in the construction of the residential house. Pursuant to the same, the husband of the assessee appeared and answered the query raised by the assessing officer. To a pointed question No.3 put to the husband of the assessee by

the Assessing Officer as to whether he has constructed the residential house within a period of three years, he has stated as under:

"I got the construction plan approved by the BBMP on 02.06.2010. But, due to certain financial constraints, I could not complete the construction within the stipulated period".

The assessing officer has rejected the claim of the assessee only on the ground that the construction has not been complete. Hence, Assessing Officer disallowed the benefit of Long Term capital gain as claimed by assessee.

7. In fact, the assessee during the appellate proceedings had produced the photographs of the residential building which was under construction to demonstrate and establish that the consideration received on transfer has been invested by her in purchasing the residential plot and it is under construction. Appellate Commissioner taking note of principles enunciated by this Court while interpreting Section 54F of the Act in Sambandam Udaykumar's case, whereunder

it came to be held that said provision has to be construed liberally for achieving the purpose for which it was incorporated, allowed the appeal of assessee.

8. Section 54F of the Act is a beneficial provision which promotes for construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it is incorporated in the statute. The intention of the legislature, as could be discerned from the reading of the provision, would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in three (3) years and/or make it habitable. The essence of said provision is to ensure that assessee who received capital gains would invest same by constructing a residential house and once it is established that consideration so received on transfer of his Long Term capital asset has invested in constructing a

residential house, it would satisfy the ingredients of Section 54F. If the assessee is able to establish that he had invested the entire net consideration within the stipulated period, it would meet the requirement of Section 54F and as such, assessee would be entitled to get the benefit of Section 54F of the Act. Though such construction of building may not be complete in all respect "that by itself would not disentitle the assessee to the benefit flowing from Section 54F". In fact, appellate Commissioner has not only taken note of the judgment of the co-ordinate bench of this Court in *Sambandam's* case referred to supra, but had also taken note of the judgment of High Court of Madras in the case of *CIT Vs Sardarmal Kothari reported in (2008) 302 ITR 286*, which was on similar facts as obtained in *Sambandam Udaykumar's* case and as such in the instant case, Appellate Commissioner allowed assessee's appeal noting that the appeal filed by the revenue against the order of High Court of Madras before Apex Court in CC No.3953-3954/2009 had been dismissed on 06.04.2009.

9. That apart, co-ordinate bench of this Court in *Sambandam Udaykumar's* case referred to supra has examined similar issue and has held that the words used in Section 54F are 'purchased' or 'constructed' and held that the condition precedent for claiming benefit under such provision is the capital gain realized from sale of a Long Term capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. It has also been held that if the assessee has invested money in constructing the residential house, merely because the construction was not complete in all respects or such building is yet to be completed fully or the building not being in a fit condition for being occupied, would by itself not be a ground for the assessee to be denied the benefit under Section 54F of the Act. It has been held by the co-ordinate bench as under:

"The intention of the legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law. The words used in the section are 'purchased' or 'constructed'. For such purpose, the capital gain realized should have been invested in a

residential house. The condition precedent for claiming benefit under the said provision is the capital gain realized from sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of Section 54F of the Act. Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was not in a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under Section 54F of the Act.”.

10. We are in complete agreement with the ratio laid down by the co-ordinate bench of this Court. It has also been noticed by this Court that on the facts of the present case, assessee had produced material evidence before the First Appellate Authority to demonstrate that the construction was on the verge of completion by producing photographs and this aspect, though not noticed in detail, same came to be noticed by the Tribunal to reject the appeal of Revenue. It was also noticed by the Tribunal that construction of the building having

been completed and same having been occupied by the assessee, is also a factor to dismiss the appeal of the revenue.

In the circumstances narrated hereinabove, we are of the considered view that no substantial questions of law arises for being formulated and adjudicated.

11. In the result, we proceed to pass the following:

O R D E R

- (i) Appeal is hereby dismissed.
- (ii) Order passed in ITA No.63/Bang/201 dated 13.11.2013 by Income Tax Appellate Tribunal, Bengaluru is hereby affirmed.

Sd/-
JUDGE

Sd/-
JUDGE

*bgn/-