IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' BENCH, CHENNAI
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

I.T.A.No.3314/Chny/2019

Assessment Year: 2007-08)

Mr. D.Ravikumar, 31, Flowers Street, Saidapet, Chennai-600 015.	Vs	The Assistant Commissioner of Income Tax, Non-Corporate Circle-14 Chennai.
PAN: ADPPR 2237J		
Appellant)		(Respondent)

Appellant by	:	Mr. Y.Sridhar, FCA
Respondent by	:	Mr. P.Sajit Kumar, JCIT

Date of hearing	:	14.07.2022
/Date of Pronouncement	:	27.07.2022

आदेश / O R D E R

PER G. MANJUNATHA, AM:

This appeal filed by assessee is directed against order of learned Commissioner of Income Tax (Appeals)-14,Chennai, dated 12.09.2019 and pertains to assessment year 2007-08.

2. The assessee has raised following grounds of appeal:-

" 1. The order of the learned Commissioner of Income Tax Appeal is opposed to law, facts and probabilities of the case.

2. The learned CIT (A) erred in denying exemption U/s 54F as there is no addition of property in the hands of the Assessee since the Co Ownership is converted into Full Ownership by purchasing the share of his brother Mr. Ananda Kumar by investing the capital gains proceeds.

3. The Assessee prays the exemption under Section 54F be allowed by deleting the addition made by the Learned Assessing Officer in the interest of Justice.

4. Further, the Assessee pleads that the Penalty proceedings be kept in abeyance till the disposal of appeal. The Assessee craves permission to adduce further grounds of appeal at the time of hearing."

3. Brief facts of the case are that the assessee is an individual derives income from house property apart from remuneration and interest income from M/s.Saidapet Electricals. The assessee has filed his return of income for the assessment year 2007-08 on 31.03.2007 admitting total income of Rs.5,49,500/-. During financial year relevant to assessment year 2007-08, the assessee has sold property for consideration of Rs.40 lakhs and computed long term capital gain of Rs.26,28,898/-. The assessee had also claimed deduction u/s.54F of the Income Tax Act, 1961 for purchase of another residential house property for consideration of Rs.27,50,000/-. The Assessing Officer has disallowed deduction claimed u/s.54F of the Income Tax Act, 1961, on the ground that at the time of transfer of original asset, the assessee is having more than one house property. The assessee carried the matter in appeal before the first appellate

authority, but could not succeed. The learned CIT(A), for the reasons stated in their appellate order dated 12.09.2019 confirmed additions made by the Assessing Officer towards disallowance of deduction claimed u/s.54F of the Act. Being aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. The learned A.R. for the assessee submitted that the learned CIT(A) erred in confirming disallowance of deduction claimed u/s.54F of the Act, without appreciating fact that although, the assessee had more than one house property at the time of transfer of original asset, but those properties were let out for commercial purposes and if we exclude those properties, then the assessee does not own more than one house property and consequently, eligible for deduction u/s.54F of the Income Tax Act, 1961. In this regard, the learned A.R has relied upon decision of the Hon'ble Karnataka High Court in the case of Navin Jolly vs. ITO (2020) 424 ITR 462.

5. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the Assessing Officer as well as the learned CIT(A) brought out clear facts to the effect that

properties owned by the assessee are residential houses even though, same are let out for commercial purposes, therefore, the assessee is not entitled for deduction u/s.54F of the Income Tax Act, 1961 and hence, their orders should be upheld.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Assessing Officer has denied deduction claimed u/s.54F of the Act, on the ground that the assessee owns more than one houses at the time of transfer of original asset. It was explanation of the assessee before the Assessing Officer that although, he had owned more than one houses, but those houses are let out for commercial purposes and if we exclude houses let out for commercial purposes, then the assessee does not have more than one houses, when the original asset was transferred and thus, entitled for exemption u/s.54F of the Income Tax Act, 1961. We have considered rival submissions and also decision relied upon by the learned AR for the assessee in the case of Navin Vs, ITO (supra) and we find that the issue involved in the present appeal is squarely covered by the decision of the Hon'ble Karnataka High Court

where it has been held that where two apartments owned by the assessee, even though had been sanctioned for residential purpose, yet same were in fact, being used for commercial purposes as service apartments, then both needs to be excluded for the purpose of deduction u/s.54F of the Income Tax Act, 1961. The relevant findings of the Hon'ble High Court are as under:-

> *" 8. We have considered the submissions made on both the sides and have perused the record. Before proceeding further, it is apposite to take note to Section 54F(1) of the Act, which is reproduced below for the facility of reference:*
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> *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, 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.

9. From close scrutiny of section 54F(1) of the Act, it is evident that in order to attract section 54F(1) of the Act, the conditions stipulated in clauses (a) and (b) of proviso to section 54F(1) have to be complied with as the legislature has used the expression 'and' at the end of clause (a) of proviso to section 54F(1) of the Act. It is pertinent to note that under section 22 of the Act any income from any buildings irrespective of which the use which has to be treated under the head income from house

property'. It is well settled legal proposition that a provision in a taxing statute providing incentive for promoting growth and development has to be construed liberally so as to advance the object of the section and not to frustrate it. See: CIT v. Strawboard Mig. Co. Ltd. (1989) 177 ITR 431 (SC) and Bajaj Tempo Ltd. (Supra) A bench of this court in Sambandam Uday Kumar Supra while interpreting section 54F of the Act has held that provisions of section 54F is a beneficial provision for promoting construction of residential houses and has to be construed liberally. Kerala, Delhi, Allahabad, Calcutta and Hyderabad High Courts have taken a view that usage of the property has to be considered in determining whether it is a residential property or a commercial property and Madras High Court in C.H.KESVA RAO supra has held that expression 'residence implies some sought of permanency and cannot be equated to the expression 'temporary stay' as a lodger.

10. In the backdrop of aforesaid well settled legal principles, the facts of the case in hand may be examined. Learned counsel for the revenue have fairly submitted that out of nine apartments, seven flats have been sanctioned for commercial purposes. Therefore, the dispute only survives in respect of two apartments, which have been sanctioned (or residential purposes and are being used for commercial purposes as serviced apartments. The usage of the property has to be considered for determining whether the property in question is a residential property or a commercial property. It is not in dispute that the aforesaid two apartments are being put to commercial use and therefore, the aforesaid apartments cannot be treated as residential apartments. The contention of the revenue that the apartments cannot be taxed on the basis of the usage does not deserve acceptance in view of decisions of Kerala, Delhi, Allahabad, Calcutta and Hyderabad High Courts with which we

respectfully concur.

11. Alternatively, we hold that assessee even otherwise is entitled to the benefit of exemption under section 54F(1) of the Act as the assessee owns two apartments of 500 square feet in same building and therefore, it has to be treated as one residential unit. The aforesaid fact cannot be permitted to act as impediment to allowance of exemption under section 54F(1) of the Act. Similar view was taken by Delhi High Court in case of Geeta Duggal wherein the issue whether a residential house which consists of several independent residential units would be entitled to exemption under section 54F(1) of the Act was dealt with and the same was answered in the affirmative. The appeal against the aforesaid decision was dismissed by the Supreme Court by an order reported in (2014) 52 taxmann.com 246 (SC). We agree with the view taken by Delhi High Court.

12. For the aforementioned reasons, the substantial questions of law are answered in favour of the assessee and against the revenue. In the result, the orders of the Assessing Officer and Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal insofar as it pertains to denial of exemption under section 54F(1) of the Act to the appellant is hereby quashed. In the result, appeal is allowed."

7. In this view of the matter, and by respectfully following decision of the Hon'ble Karnataka High Court in the case of Navin Vs, ITO (supra), we are of the considered view that the assessee is entitled for deduction u/s.54F of the Income Tax Act, 1961 in respect of amount invested for purchase of

another residential property. Hence, we direct the Assessing Officer to delete additions made towards disallowance of deduction claimed u/s.54F of the Income Tax Act, 1961.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 27th July, 2022

Sd/- Sd/-

(V.Durga Rao) (G.Manjunatha)
Judicial Member Accountant Member

Chennai,
Dated 27th July, 2022 DS
Copy to:
1. Appellant 2. Respondent 3. CIT(A)
4. CIT 5. DR 6. GF.