HC-KAR
CNR: KAHC010047532021

NC: 2026:KHC:58199-DB
ITA No. 129 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

INCOME TAX APPEAL NO. 129 OF 2021

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX
INCOME TAX-2
BMTC COMPLEX,
KORAMANGALA,
BANGALORE.

2. THE ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE-2 (2)(1)
BENGALURU.

...APPELLANTS

(BY SRI. E. I. SANMATHI, ADVOCATE)

Digitally signed by AASEEFA PARVEEN
Location: HIGH COURT OF KARNATAKA

AND:

C. A. BADRINATH (HUF),
NO.57 AND 57/4, IST MAIN,
MALLESHWARAM,
BANGALORE-560003.
PAN-AADHC3044B.

...RESPONDENT

(BY SRI. A. SHANKAR, SR.COUNSEL FOR

SRI. ANAMALAI S., ADVOCATE)

THIS ITA / INCOME TAX APPEAL UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 29/01/2020 PASSED IN ITA NO. 3362/BANG/2018, FOR THE ASSESSMENT YEAR 2015-2016 PRAYING TO

DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 29.01.2020 (ANNEXURE-A) PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BENGALURU IN APPEAL PROCEEDINGS NO. ITA NO. 3362/BANG/2018 FOR ASSESSMENT YEAR 2015-2016, AS SOUGHT FOR IN THIS APPEAL.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

The above appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961, is directed against the order dated 29.01.2020 in ITA No.3362/BANG/2018 for the assessment year 2015-16 passed by the Income Tax Appellate Tribunal 'C' Bench, Bengaluru.

2. The above appeal was admitted on 12.08.2021 to examine the following two substantial questions of law:

1. *"Whether on the facts and in the circumstances of the case, the Tribunal is right in law holding the assessee is entitled for section 54F benefit by*

holding that the right to the built up area was acquired on the date of entering Joint Development Agreement which is more than 36 months and as such it is transfer of capital asset without observing that by entering into JDA, assessee was conferred a right in super built up area and it did not get a right which the assessee could transact in but only recognized share of assessee in project, it was only vide the sharing agreement dated 12/12/2012, that the assessee was allotted 23 Flats, vilaments and row houses which gives title to assessee to transact with other parties"?

2. *"Whether on the facts and in the circumstances of the case and in law, the Tribunal and CIT's orders can be said as perverse in holding that assessee entitled for benefit under section 54F of the Act ignoring that assessee acquired a new asset on 10/1/2014 whereas assessee original asset was sold after 16/1/2015, therefore assessee was not entitled for benefit under section 54F of the Act on 9.6 crores"?*

3. Heard learned counsel Sri.E.I.Sanmathi for the appellants-Revenue and learned Senior Counsel Sri.A.Shankar for learned counsel Sri.Anamalai.S for respondent- Assessee.

4. It is seen that the respondent-Assessee is a HUF. The respondent-Assessee entered into Agreement of Sale in respect of 23 flats on various dates i.e., January-2014 to October-2014 and possession of those flats was handed over between April-2014 to November-2014. The Sale Deeds were executed subsequently between July-2014 to July-2015. It is stated that the respondent-Assessee offered the income for assessment for the Assessment year 2015-16, claiming benefit under Section 54 of the Act. However, the Assessment Officer (AO) disallowed the claim of the respondent-Assessee under Section 54 of the Act by order dated 29.12.2017 (Annexure-C). The respondent-Assessee filed appeal before the CIT Appeals and the CIT Appeals by order dated 28.09.2018 (Annexure-B) allowed the appeal and directed the AO to assess the capital gains and examine the applicability of exemption claimed under Section 54 of the Act for the assessment year 2014-2015 and assessment year 2015-16. The appellants-Revenue approached the

ITAT against the appellate order of the CIT (Appeals). The ITAT placing reliance on the decision of the Hon'ble Apex Court in ***SANJEEV LAL VS. COMMISSIONER OF INCOME TAX, CHANDIGARH*** reported in ***[2014] 46 Taxmann.Com 300 (SC)*** rejected the Revenues' appeal holding that the date of Sale Agreement has to be considered as date of sale. Questioning the said order of the ITAT, the Revenue is before this Court in this appeal.

5. Learned counsel Sri.Sanmathi.E.I mainly contends that the Tribunal could not have blindly followed the decision in *Sanjeev Lal* and confirmed the order of the CIT (Appeals). Learned counsel Sri.Sanmathi.E.I made an effort to distinguish the said decision by contending that the *Sanjeev Lal's* case was decided in a peculiar facts of the said case and moreover, he submits that it involved litigation and therefore, the Sale Deed was executed subsequently. Learned counsel Sri.E.I.Sanmati would further submit that the benefit under Section 54 would be

available with the precondition, strictly complying with the conditions therein, placing reliance on the decision of the Hon'ble Apex Court in ***COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI V. M/S.DILIP KUMAR AND COMPANY AND ORS***.

6. Learned Senior Counsel Sri.A.Shankar would submit that in the instant case, the CIT (Appeals) as well as the ITAT has rightly granted the benefit of Section 54 exemption referring to the Agreement of Sale entered into between the respondent and the purchasers and also referring to the fact that possession has been delivered immediately on entering into the Sale Agreement. Learned Senior Counsel refers to the definition of 'Sale' under Sub-section 47 of Section 2 of the Act and submits that the transfer in relation to a capital asset includes any transaction involving the allowing of a possession of any immovable property to be taken. Learned counsel would further submit that the decision of Division Bench of Gujarat High Court in ***KISHORBHAI HARJIBHAI PATEL V.***

INCOME TAX OFFICER, WARD 1(2)(4)* in ***[2019] 107 TAXMANN.COM 295 (GUJARAT)*** as well as decision of Co-ordinate Bench of this Court in ***SHRI LAHAR SINGH SIROYA vs. THE ASSISTANT COMMISSIONER OF INCOME-TAX*** (ITA No.169/2010 dated 15.12.2015) following the decision in *Sanjeev Lal,* have held in identical fact situation that the Assessee would be entitled for benefit under Section 54 of the Act. Further, learned Senior Counsel would submit that the AO accepted the taxability of the capital gain for the assessment year 2015-16 and when the taxability for the assessment year 2015-16 is accepted, they could not deny the benefit under Section 54F of the Act. Thus, he would pray for dismissal of the appeal.

7. Having heard the learned counsel for the parties and on perusal of the entire material on record including the decisions cited by the learned counsels for the parties, we are of the considered opinion that the Substantial Questions of Law raised by the appellants-Revenue is to

be answered against the appellants-Revenue and in favour of the respondent-Assessee.

8. The transaction entered into between the respondent-Assessee and purchasers as noted by the CIT Appeals at paragraph 5.1 of the order is not in dispute. The agreements are entered into by the respondent and purchasers as stated above between January-2014 and November-2014. Possession of those flats are delivered to the purchasers between April-2014 to November-2014 whereas the Sale Deeds are executed between July-2014 and July-2015. It is also not in dispute that the assessee purchased new property on 10.1.2014. The income offered by the respondent-Assessee for taxability for the assessment year 2015-16 is accepted by the Revenue. When the appellants-Revenue has accepted the capital gains offered for the Assessment Year 2015-2016, the appellants-Revenue could not have denied the benefit under Section 54 of the Act to the respondent-Assessee.

9. Be that as it may, this Court in *Shri Lahar Singh Siroya supra* has made it clear that providing for short-term and long-term capital gains is a beneficial piece of legislation, whereby certain benefits in taxation is given to the Assessee on fulfilment of certain conditions. Further, it observed that every such legislation is to be construed liberally in favour of the Assessee, as it is for the benefit of the Assessee. This Court in the said case while allowing the benefit of Section 54 of the Act places reliance on the decision of the Hon'ble Apex Court in *Sanjeev Lal,* though the decision of the Hon'ble Apex Court indicates that the decision was arrived at the peculiar facts of the said case. The facts of the present case are also identical to the facts involved in *Sanjeev Lal*.

10. Thus, we do not find any error or perversity in the order passed by the ITAT in confirming the order passed by the CIT (Appeals). Moreover, the Division Bench of Gujarat High Court in *Kishorbhai Harjibhai Patel Supra*

in an identical fact situation following the decision of the Hon'ble Apex Court in *Sanjeev Lal* supra as well as the decision of Co-ordinate Bench of this Court in *Shri Lahar Singh Siroya supra* held that CIT (Appeals) therein was not right in denying the deduction under Section 54 of the Act.

Thus, for the reasons recorded above, we are of the considered opinion that there is no merit in the appeal and accordingly, the Substantial Questions of Law are answered against the appellants-Revenue and in favour of the respondent-Assessee.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE

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