

ITAT: Ownership of several flats under JDA is eligible for Capital Gain Exemption

In Sri Ganga Poorna Prasad v. The Assistant Commissioner of Income Tax, Mysuru [*ITA No.41/Bang/2020 A.Y. 2009-2010 dated October 07, 2021*], the Income Tax Appellate Tribunal, Bangalore ("**ITAT**") held that the Capital Gains Exemption under Section 54 F of the Income Tax Act, 1961 ("**the IT Act**") is available to multiple flats obtained by Sri Ganga Poorna Prasad ("**the Appellant**"), under a Joint Development Agreement ("**JDA**").

The Appellant filed an appeal against the Order dated October 25, 2019 of Commissioner of Income Tax (Appeals) [**CIT (A)**], Mysuru, relating to Assessment Year ("**AY**") 2009-2010.

For AY 2009-2010, the Appellant filed return of income on March 31, 2010 declaring total income. The total income declared by the Appellant comprised of income from 2 house properties.

The case of the Appellant was taken under Scrutiny and the Assessing Officer ("**AO**") issued a notice under Section 148 of the IT Act for the reason that the Appellant had entered into a JDA with M/S. Oceanus Dwelling Pvt. Ltd. on April 10, 2008 on a sharing ratio of 67:33. Subsequently, the Appellant revised the agreement and the ratio of built up area to be received also revised to 71:29, the Appellant was to receive 17,226 Square Feet built up area in return however finally the Appellant received only 16, 819 Square Feet of built up area and there was deficiency of 407 Square Feet.

The AO pointed out that Appellant had already received refundable amount of Rupees 25 lakhs at the time of original agreement which has not been returned by the Appellant to the builder even after the completion of the construction and handing over of flats and till date the Appellant not returned the amount. Thus the advance amount of Rupees 25 lakhs also required to be treated as Appellant's income from the project. The Appellant had received 17,226 Square Feet of built up area in return of the portion of land surrendered. The Appellant had not declared any capital gain on the transaction. For this reason, the notice under Section 148 of the IT Act dated October 09, 2013 was issued.

In response to the notice of the AO, the Appellant made a claim by way of the letter dated February 09, 2015:

- i. Allowance of exemption under Section 54F of the IT Act of the entire Long Term Capital Gain.

The AO rejected the claims of the Appellant and gave a finding that the Appellant owned 2 residential properties other than the new asset which the Appellant acquired under the

JDA and therefore the Appellant cannot be given the benefit of deduction under section 54F of the IT Act.

In the case, after the Appeal before the ITAT, the Appellant contended that he entered into a JDA with M/S. Oceanus Dwellings Pvt. Ltd., Bangalore, in terms of which the Appellant was entitled to 13 flats with a total area of 16, 819 Square Feet in lieu of transfer of 71% undivided share in the land, belonging to the Appellant. The Appellant pointed out that the law is clear to the effect that exemption under Section 54F of the IT Act is available in respect of investment in the acquisition of more than one house by the Appellant.

The Appellant furthermore, relied on decision of Karnataka High Court in ***Sri D. Anand Basappa vs The Income Tax Officer [2004 91 ITD 53 Bang, (2005) 92 TTI Bang 597 dated October 28, 2003]*** and ***CIT v. Smt. KG Rukminamma [dated August 27, 2020]*** and submitted that the entire Long Term Capital Gain is entitled to exemption under Section 54F of the IT Act.

After taking perusal of all the facts and evidences at hand, the Honorable ITAT, Bangalore allowed the appeal of the Appellant and held that finding of the AO is without any basis and is liable to be vacated. Furthermore, the Tribunal added that the AO has to consider is whether the Appellant would be entitled to deduction under section 54F of the IT Act. The Tribunal placed reliance on the decision of the ITAT, Bengaluru Bench in the case of ***Smt. Nethravathi, Bengaluru vs ITO [ITA No.2630/Bang/2017 order dated April 25, 2018]*** wherein this Tribunal took the view that multiple flats obtained under JDA would be entitled to deduction under section 54F of the IT Act.

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