

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1620/Mds/2015

निर्धारण वर्ष / Assessment Year : 2007-08

Smt. K. Dhanalakshmi,  
No.2, Pennaiyaru Street,  
Manjakuppam,  
Cuddalore – 607 001.

v. The Income Tax Officer,  
Ward I(1),  
O/o the Joint Commissioner of  
Income Tax,  
S.N. Chavadi, Cuddalore-607 002.

PAN : AKDPD 8339 C  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. V. Parameswaran, CA  
Sh. M. Anantha Krishnan, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 21.12.2015

घोषणा की तारीख/Date of Pronouncement : 05.02.2016

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 26.02.2015 and pertains to assessment year 2007-08.

2. Shri V. Parameswaran, the Ld. representative for the assessee, submitted that the only issue arises for consideration is with regard to claim of the assessee for exemption under Section 54F of the Income-tax Act, 1961 (in short 'the Act'). The assessee constructed a residential house by utilizing the sale consideration and claimed exemption under Section 54F of the Act. However, the Assessing Officer disallowed the claim of the assessee on the ground that the assessee has constructed a marriage hall, therefore, the assessee is not eligible for exemption under Section 54F of the Act. Referring to the copy of the building plan approved by Cuddalore Municipality, the Ld. representative clarified that the Cuddalore Municipality approved for residential house and in fact, a residential building was constructed. After completion of the residential building, the same was converted into Kalyana Mandapam. Therefore, according to the Ld. representative, once the assessee has constructed residential house as per approved plan, the assessee is eligible for exemption under Section 54F of the Act and the subsequent conversion cannot be a reason to disallow the claim of the assessee. The Ld. representative placed his reliance on the decision of Hyderabad Bench of this Tribunal in N. Revathi v. ITO (2015) 153 ITD 285 and submitted that on

identical circumstances, the Hyderabad Bench held that merely because the building is used as Kalyana Mandapam, exemption under Section 54F of the Act cannot be denied.

3. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that exemption under Section 54F of the Act is granted when the assessee purchased or constructed a residential house in India. In the case before us, even though the approved plan was for residential building, the assessee admitted before the Assessing Officer that she constructed a marriage hall by utilizing the sale proceeds of the land. Referring to the copy of the property assessment, the Ld. D.R. submitted that the property was assessed as marriage hall with effect from 01.04.2008. Therefore, even though the building was approved as residential house, it was not constructed as residential house, it was constructed as marriage hall and the assessment was also made as marriage hall. According to the Ld. D.R., since the assessee has constructed marriage hall, she cannot claim any exemption under Section 54F of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. On the basis of

the approved building plan, the assessee claims that a residential house was constructed. However, it was subsequently converted as marriage hall. We are unable to uphold the contention of the assessee. Admittedly, Cuddalore Municipality approved the construction of residential house on 28.02.2007 and it was completed before 01.04.2008. No assessment was made by the Cuddalore Municipality as residential house. If the claim of the assessee that a residential house was constructed and that was converted into marriage hall is true, then the first assessment would be as residential house. Unfortunately, no such assessment was made by Cuddalore Municipality after completion of residential house. The first assessment itself is marriage hall. Therefore, it is obvious that the assessee has constructed only marriage hall and not residential house.

5. We have carefully gone through the decision of Hyderabad Bench in N. Revathi (supra). The Hyderabad Bench has categorically observed at para 11 of its order that if the construction is made in such a way that it is not normally for residential use but purely commercial use, then it cannot be considered to be a residential house. Therefore, the primary fact which is required to

be examined is whether the building is constructed for residential use or not. In the case before us, even though the building plan was approved for construction of residential house, the first assessment was made by the Municipality as marriage hall. Therefore, this Tribunal is of the considered opinion that the decision of Hyderabad Bench may not be applicable to the facts of the case. In view of the above factual aspect, this Tribunal do not find any reason to interfere with the order of the lower authority. Accordingly, the order of the CIT(Appeals) is confirmed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced on 5<sup>th</sup> February, 2016 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 5<sup>th</sup> February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--|--------------------------|
| 1. अपीलार्थी/Appellant                   | 2. प्रत्यर्थी/Respondent |
| 3. आयकर आयुक्त (अपील)/CIT(A), Puducherry |                          |
| 4. आयकर आयुक्त/CIT, Puducherry           |                          |
| 5. विभागीय प्रतिनिधि/DR                  | 6. गार्ड फाईल/GF.        |