

आयकर अपीलीय अधिकरण, “जे” खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI-“J”, BENCH
सर्वश्री संजय गर्ग, न्यायिक सदस्य एवं अश्वनी तनेजा, लेखा सदस्य
Before S/Sh. Sanjay Garg, Judicial Member & Ashwani Taneja, Accountant Member
आयकर अपील सं./ITA No.2624/Mum/2014, निर्धारण वर्ष/Assessment Year-2009-10

Shri Jayant S. Jain C/o., G.P. Mehta & Co. CAS, 807, Tulsiani Chambers, 212, Nariman Point, Mumbai-400021. PAN No. AAAPJ 9285 E	Vs.	Asstt. CIT, Circle 15(2) Matru Mandir, Room No.113 Tardeo, Mumbai-400 007.
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(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

Appellant by	Shri G.P. Mehta
Respondent by	Shri Jeevanlal Lavidiya-DR

Date of hearing	:	17.12.2015
Date of pronouncement	:	08.01.2016

ORDER

PER ASHWANI TANEJA, AM:

The only ground argued by the Id. Counsel of the assessee before us is with regard to action of lower authorities in disallowing the benefit of deduction/exemption claimed by the assessee u/s.54 of the Act for Rs,21,95905/-, in respect of Long Term Capital Gain (LTCG) on account of sale of house property.

2. During the course of hearing it has been submitted before us that the assessee had constructed the new house property within a stipulated period of three years. All the conditions have been complied with regard to section 54 of the Act. The only grievance of the lower authorities was that the unutilised amount was not deposited in the specified bank account before filing of the return. Ld. counsel has

submitted petition u/r. 29 for admission of additional evidences showing that house was completed within a stipulated period of three years. It has been argued that since the substantive compliance had been made of the law, the benefit of deduction should not be denied merely on some procedural reasons. He has also submitted details showing payment made by the assessee towards construction of new residential house property for an amount aggregating to Rs.28,97,570/-.

3. On the other hand, Id. DR has submitted that assessee is obliged under the law to make compliance of the conditions stipulated therein, if, he seeks to get some benefits provided under the law. However, he showed no serious objection in case matter is sent back to Assessing Officer for verification of the facts based on fresh evidences sought to be filed by the assessee, by way of aforesaid petition under rule-29.

4. We have heard both the parties. From the evidences brought before us it appears that assessee has completed construction of the house property. Thus, the main object of law as contained in section 54, to develop new residential units has been achieved. The only grievance of the Revenue now is with regard to non deposit of unutilised amount in the specified bank account by the assessee. In this regard both the parties agreed during the course of hearing that assessee can be granted the benefit of section 54 with respect to the amounts which the assessee has utilised in construction of house property up to the time period available for filing of return u/s. 139(4) of the Act. Thus, keeping in view position of law, facts and evidence brought before us and submissions made by both the parties before us, we deem it appropriate to send this issue back to the file of the Assessing Officer with the direction that amount utilised by the assessee towards construction of house property up to the date of time period allowed for filing of return u/s.

139(4), should be considered for the purpose of granting deduction u/s. 54 of the Act. The Assessing Officer shall also examine evidences with regard to completion of construction. In case construction of house property has been completed then benefit of section 54 shall not be denied for the amount as discussed above. The issue is being sent back to the Assessing Officer for verification of facts in this regard, for which an adequate opportunity of hearing shall be granted to the assessee. The assessee shall also extend requisite co-operation to the Assessing Officer and furnish requisite details and documents as required by the Assessing Officer, as per law. This ground is treated as partly allowed for statistical purposes. Other grounds are treated as dismissed being not pressed.

5. As a result, this appeal is treated as partly allowed.

Order pronounced in the open court on 08.01.2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08 जनवरी, 2016 को की गई।

Sd/-

Sd/-

(संजय गर्ग /SANJAY GARG)

(अशवनी तनेजा /ASHWANI TANEJA)

न्यायिक सदस्य/ JUDICIAL MEMBER

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई, Mumbai, दिनांक Dated 08.01.2016

Jv, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai