

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1123/Mds/2016

निर्धारण वर्ष /Assessment year : 2010-2011

Guruprasad Angisetty,
No.2, 4th Street,
Radhakrishnan Salai,
Mylapore,
Chennai 600 004.
[PAN AAGPG 9415K]

Vs. The Income Tax Officer,
Non-Corporate Ward 1(2)
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. G. Baskar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. P. Radhakrishnan, IRS

सुनवाई की तारीख/Date of Hearing

: 30-06-2016

घोषणा की तारीख /Date of

: 27-07-2016

Pronouncement

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-2, Chennai in ITA No.246/CIT(A)-2/13-14, dated 21.01.2016 for the assessment year

2010-2011 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

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

"2.1 The Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in denying claim for exemption u/s. 54F of the IT Act.

2.2 The Commissioner of Income-Tax (Appeals) failed to note that what had been acquired by the assessee is a residential property and as such exemption u/s.54F is rightly allowable.

2.3 The Commissioner of Income-Tax (Appeals) failed to consider the facts of the case and the submissions made before him in the proper perspective".

3. The Brief facts of the case are that the assessee is a proprietor of M/s. First Computers and in the business of trading, Hiring computers and computer peripherals filed Return of income on 29.09.2010 with total income of ₹71,72,239/- and the Return of income was processed u/s.143(1) of the Act and subsequently, the case was selected for scrutiny through CASS and notice u/s.143(2) of the Act was issued. The Id. Authorised Representative of assessee appeared from time to time and produced details as called for by the Id. Assessing Officer. The Id. Assessing Officer found that the assessee has claimed exemption of Long Term Capital Gains u/s.54F of the Act and called for the property information. In compliance the assessee explained that he has sold Residential house property at

Valsaravakkam on 24.09.2009 and the said property was purchased alongwith other co-owner in the year 1994. The total cost of acquisition towards the assessee's share is ₹9,39,240/-. The assessee further explained by letter dated 13.02.2013 that at the time of acquisition of property in the year 1994 the assessee also paid money on behalf of his wife and no income was received by her in earlier years and not assessed to Income Tax. The property was sold by two separate documents for a consideration of ₹85,00,000/-. The contention of the assessee that the entire property is owned by the assessee and sale consideration of ₹85,00,000/- is assessed in the hands of the assessee and claimed exemption u/s.54 of the Act. The Id. Assessing Officer called for further details for the enquiry and correctness of claim. The assessee has purchased vacant land at Baywatch Boulevard, Waterland Drive, Kottivakkam, Chennai. The payments are made in the year 2007 being ₹77,00,000/- on 29.11.2007 and ₹23,00,000/- on 06.12.2007, total aggregating to ₹1,00,00,000/- and the sale deed was registered on 24.09.2010. These payments are made prior to sale of residential house property in the year 2009. The assessee claimed exemption u/s.54 of the Act on investment of capital gains in Residential property and has not deposited amount in Capital Gains Deposit Scheme before due date u/sec. 139(1) of the Act. The Id. Assessing Officer relied on the

provisions of Sec. 54(1) & (2) of the Act and the conditions stipulated were the assessee has to purchase a new asset one year before or two years after transfer of sale of original asset or should have constructed the residential property within a period of three years. The Id. Assessing Officer found that the assessee has not invested in Capital Gains Investment Scheme. The Id. Authorised Representative explained that the assessee paid the purchase consideration in the year 2007 and took possession of property after Registration of sale deed on 24.09.2010 and complied the provisions u/s.53A of the Transfer of Property Act, 1882. The Id. Assessing Officer found that the assessee has completed the transaction of purchase of property by paying entire purchase consideration in the year 2007-08 and assessee has constructed swimming pool during August, 2009 to January, 2010 on the land purchased. The Id. Assessing Officer applied the provisions of Sec. 54(1) of the Act and analysed the facts were the Actual transfer on sale of Residential House property at Valsaravakkam was on 24.09.2009 and one year prior to date of transfer shall be 25.09.2008 for investment in property or assessee should have invested and constructed Residential house by 23.09.2012. Whereas, the assessee has invested in purchase of vacant land prior to mandatory date of one year from date of sale. The Id. Assessing Officer deputed the Inspector of the Department to verify

the property and on enquiry report dated 08.03.2013 it was found the swimming pool was constructed by the assessee on the property acquired at Kottivakkam in year 2007 and the swimming pool cannot be termed as "residential house". The Id. Assessing Officer issued show cause notice to assessee for denial of exemption u/s.54 of the Act vide order sheet noting dated 08.03.2013 and 13.03.2013. In compliance, the Id. Authorised Representative vide letter dated 11.03.2013 filed explanations that the assessee claimed exemption by investing the net consideration in adjacent plot on which residential house is situated and the land is appurtenant to the Building and relied on the decision of Delhi Bench of Tribunal in the case of *Addl. CIT vs. Narendra Mohan Uniyal (34 SOT 154)*. The Id. Assessing Officer distinguished the decision with the present case as the assessee has constructed Residential house in the year 2003 and no activity of construction took place during the stipulated period. The assessee has constructed only swimming pool and lawn on the land adjacent to the building and is evident from the photographs submitted by the Id. Authorised Representative on 13.03.2013 and also the assessee has not complied the conditions of Capital Gains Deposit Scheme. With these observations, the Id. Assessing Officer denied exemption u/s.54 of the Act and disallowed the claim with other disallowances and assessed income u/s.143(3) of the Act vide

order dated 20.03.2013. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative argued the grounds and substantiated the purchase and sale of property with submissions made before Id. Assessing Officer. The Id. Commissioner of Income Tax (Appeals) based on the documentary evidence, findings of the Id. Assessing Officer and submissions by the assessee has dealt on the provisions of Sec. 54 of the Act at page 5 and provisions of Sec 53A in transfer of property Act and judicial decisions relied at page 6 to 8 and concluded that since the assessee has invested in purchase of piece of land adjacent to the existing House property and as per the assessee's own submissions constructed lawn and outdoor swimming pool by utilizing the sale proceeds. The definition of House property cannot be equated to a swimming pool for Habitation purpose and since the assessee has not complied the conditions of Sec. 54 of the Act and the Id. Commissioner of Income Tax (Appeals) concurred with the findings of the Id. Assessing Officer and dismissed the appeal. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative of assessee argued that Commissioner of Income Tax (Appeals) has erred in confirming the findings of the Id. Assessing Officer irrespective of submission of evidence and the assessee is eligible for exemption of residential house as the sale proceeds were utilized. The Id. Authorised Representative explained that it is a continuous process of construction on the plot of residential house and being part of land apparent to building takes the character of a residential house and relied on the decision of Delhi Bench of Tribunal in the case of *Addl. CIT vs. Narendra Mohan Uniyal (34 SOT 154)* where the Tribunal has allowed the cost of land apparent to forming part of residential unit to be considered for claim of exemption u/s.54F of the Act even if no construction is done on vacant land and prayed for allowing the ground.

6. Contra, the Id. Departmental Representative relied on the orders of the Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative contended that the assessee has sold vacant land at Valsaravakkam in 2009 and utilized the sale proceeds in construction of Residential

house and claimed exemption u/s.54 of the Act. Prime facie to claim exemption u/s.54 of the Act, the assessee has to comply the conditions as per definition of Sec. 54 of the Act as under:-

*“54. [(1)] [Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset [***], being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (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, a residential house], then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

(i) if the amount of the capital gain [is greater than the cost of [the residential house] so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain”.

On perusal of the definitions and the facts of the case stated hereunder:-

01	Date of sale of Residential Property.	:	24.09.2009
02	Due date of filing of Return of Income u/s.139(1) of the Act	:	30.09.2010
03	Conditions as per Sec. 54 of the Act	:	
	(i) One year prior to date of sale of original asset, the assessee should invest in residential property	:	25.09.2008
	(ii) Assessee invested in property and constructed Residential house within three years from the date of transfer of property	:	23.09.2012
	(iii) Purchase of land by assessee's at Kottivakkam for a consideration of Rs.1 Crore	:	29.11.2007 and 06.12.2007
	(iv) Residential house adjacent to the land purchased was constructed and in the possession of the assessee	:	From the year 2003 onwards
	(v) Construction of swimming pool and lawn as per assessee's submissions.	:	During Aug 2009 to Jan 2010.

We on perusal of the facts and documentary evidence found that the first criteria the assessee should invest the Long Term Capital Gains in residential house within stipulated period. The definition of "Residential house" for exemption u/s.54 of the Act has to be

construed with liberal meaning "Denotes the place where the assessee eats, drinks and sleeps and should be understood in the normal sense for claiming benefit u.s.54(1) of the Act and the said definition was dealt by Hon'ble Karnataka High Court in the case of *South Kanara Central Co-Operative Wholesale Stores vs. CIT (1978) 114 ITR 0298* where it was held that Sec. 54 of the Act applies to natural persons only and not to artificial persons. The meaning of "residence" in exemption u/sec.54 of the Act is not the same as defined in Sec. 6 of the Act "Residence in India". On applying the facts, law and legal decisions, the assessee has invested in construction of swimming pool and lawn adjacent to the existing House property constructed in the year 2003 and the construction was confirmed by the independent enquiry report of Inspector of Income Tax referred in assessment order. The Id. Authorised Representative could not controvert the finding of the Id. Assessing Officer and relied only on the principles of construction of property on plot adjacent to the Residential House as construction on land apparent to the building. We are not convinced by the arguments put forth on the logical aspects of construction of swimming pool within the definition of Residential House. Considering the apparent facts, materials on record and legal decisions, the assessee though undertakes the construction on the apparent land. But construction works shall not

qualify for treating as "Residential Property" and the Id. Commissioner of Income Tax (Appeals) dealt on the disputed issue. We are of the opinion that the assessee is not eligible for exemption u/s. 54F of the Act for construction of swimming pool and we uphold the order of the Commissioner of Income Tax (Appeals) and the grounds of the assessee are dismissed.

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

Order pronounced on Wednesday, the 27th day of July, 2016 at Chennai.

Sd/-
(**ए. मोहन अलंकामणी**)
(**A. MOHAN ALANKAMONY**)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(**जी. पवन कुमार**)
(**G. PAVAN KUMAR**)
न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 27th July, 2016.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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