

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2753/Mds/2016  
निर्धारण वर्ष /Assessment Year: 2012-13

The Income Tax Officer,  
Corporate Ward-2(r),  
Room No.513, 5<sup>th</sup> Floor,  
Wanaparthy Block, 121, M.G.Road,  
Chennai-600 034.

**Vs.** Shri Gangesan Saseendran,  
No.17/5, Ragavendra  
Apartments,  
Azeez Nagar, 2<sup>nd</sup> Street,  
Kodambakka,  
Chennai-600 024.

**[PAN: AKRPS 6077 L]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr. A.V.Sreekanth, JCIT
प्रत्यर्थी की ओर से /Respondent by	:	Mr.N.Rajagopalan, CA
सुनवाई की तारीख/Date of Hearing	:	14.03.2017
घोषणा की तारीख /Date of Pronouncement	:	26.05.2017

**आदेश / O R D E R**

**PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:**

This is an appeal filed by the Revenue against the Order dated 22.07.2016 of Commissioner of Income Tax (Appeals)-6, Chennai, in ITA No.199/CIT(A)-6/2015-16 for the AY 2012-13 and raised the following grounds:

*1. The Order of the Commissioner of Income Tax (Appeals) is contrary to law and facts of the case.*

*2.1. The CIT(A) erred in deleting the disallowance made u/s.54F of the Act.*

*2.2. The CIT(A) failed to consider that the assessee had acquired two properties one on his own name and another along with his spouse and therefore has not complied with the mandatory requirement of purchasing a residential property.*

*2.3. The CIT(A) ought to have appreciated that the assessee had registered the undivided share of land of the two properties on 30.09.2010 for a total consideration of Rs.29,02,000/- and that the assessee had sold his shares only on 23.11.2011 which is more than a year prior to the date of transaction.*

*2.4. The CIT(A) erred in holding that the provisions are to be liberally interpreted and thus has enlarged the scope of Sec.54F by permitting telescoping of two investments made more than a year prior to the date of transaction.*

*2.5. The CIT(A) ought to have appreciated that the assessee had taken possession of the residential houses on 15.06.2013 and by deleting the disallowance made u/s.54F, has allowed the assessee to enjoy unjust and unintended benefit/relief in combining both the conditions, where actually one of the situations only could be applied.*

*3. For these and other grounds that may be adduced at the time of hearing, it; is prayed that the Order of the Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*

2.0 All the grounds of the appeal are related to the disallowance of claim made u/s.54F of the Income Tax Act (in short 'the Act') amounting to Rs.69,59,260/-. During the assessment proceedings, the Assessing Officer (in short 'AO') found that the assessee sold shares in Indigo Tx Pvt. Ltd., for a consideration of Rs.71,68,750/- by way of transfer and the Net sale consideration was claimed to be 69,15,260/-and claimed the entire sale consideration as deduction u/s.54F of Income tax act, towards the investment in house property. The AO disallowed the claim made by the assessee since the assessee has entered into contract for construction agreement prior to one year before the sale of the long term capital asset. As per the details the assessee had entered in to agreement for construction on 06/07/2010 and deed of sale for undivided share of land was dated 30/09/2010.

3.0 Aggrieved by the order of the AO, the assessee went on appeal before the Commissioner of Income Tax(Appeals) and the Ld.CIT(A) allowed the appeal of the assessee since, the construction was completed and taken possession of the property within three years from the date of the sale of the capital asset. The Ld.CIT(A) relied on the host of case laws including the decisions of this tribunal as well as decision of the jurisdictional High court. The relevant paragraph in Page No.4 of the Ld.CIT(A) order is extracted as under for the sake of convenience and clarity:

*5.1 The matter is considered. The objection of the AO is that the appellant had entered into construction on 06.07.2010 and the deed of sale for undivided share of land was dated 30.09.2010. The residential apartments' were completed on 15.06.2013. The case of the AO is that the period of reckoning vis-a-vis the capital gains is beyond one year prior to the date of the capital gains transaction. Whatever may be the date of construction agreement, it is not disputed that the flat was taken possession on 15.06.2013, i.e. within three years from the date of the capital gains. In view of the facts as they emerge, I am of the view that a liberal interpretation of the statute needs to be taken. In doing so, I am guided by the following judicial pronouncements:*

- i. Hon'ble Delhi High Court's decision in CIT vs Bharti Mishra reported in [2014] taxmann.com 50 (Delhi).*
- ii. Hon'ble Madras High Court in the case of CIT B. Sri Sardarmalkothari reported in (2008) TMI 30/87.*
- iii. Hon'ble Allahabad High Court in the case of CIT vs H.K. Kapoor [1998] 234 ITR 75.*
- iv. Hon'ble Karnataka High Court in the case of CIT vs T.R. Subramanya Bhatt reported in [1987] 165 ITR 571.*
- v. Ld. Chennai Tribunal in the case of Seetha Subramanian vs ACIT reported in 59 ITR 94.*
- vi. Ld. Chennai Tribunal in the case of ACIT vs R. Vasu in ITA No.1656/Mds/2008 dated 09.07.2010.*

*6.2 The head note of the Hon'ble Delhi High Court's decision in the case of Bharti Mishra (supra) is as under:*

*"Section 54F of the Income-tax Act, 1961 — Capital Gains — Exemption of in case of investment in residential house (Construction) — Assessment Year 2009-10 — Whether section 54F(1)(iii) stipulates that assessee shall within a period of three years after date of sale of original asset, construct a residential house and it is not specified in section that construction must begin after date of sale or original/old asset. Held, yes — Assessee sold shares and invested sale consideration in construction of house property — He claimed exemption under section 54F — Assessing Officer rejected claim for benefit under section 54F on ground that construction of house had commenced before date of sale of shares — Whether on liberal interpretation of provision, assessee could not be denied benefit of section*

*54F on ground that construction of house had commenced before sale of shares — Held, yes [Paras 5 and 14) in favour of assessee].”*

*6.3 Similarly, the Id. Chennai Tribunal in the case of Seetha Subramanian (supra) held that in order to get benefit under section 54F the assessee need not complete the construction of the house and occupy the same. It is enough if the assessee establishes that he has invested the entire net consideration. Hence, the overwhelming consensus of various judicial decisions is to adopt a beneficial/liberal interpretation on the claim of exemption under section 54F if the assessee is able to successfully demonstrate the investment.*

4.0 Appearing for the Revenue, the Ld.DR argued that the assessee has registered the undivided share of land of two residential apartments bearing No.404 in 4<sup>th</sup> floor and 504 in 5<sup>th</sup> floor in block C-3 admeasuring 1231.30 sq.ft. each. As per the sale deed on 30.09.2010 the assessee had paid a consideration of Rs.29,02,000/- in aggregate for both the flats towards the undivided share of land (UDS) and the shares were transferred on 23.11.2011 which was more than a year prior to the date of transfer. As per the provisions of Sec.54F of the Act, the assessee required to make investment one year before the date of transfer of capital asset or complete construction within the three years from the date of transaction. In the assessee's case, the assessee has entered into transaction for construction of residential house more than one year prior to the capital gains transaction and hence contended that the assessee is not entitled for deduction u/s.54F. On the other hand, the Ld.AR argued that the assessee has completed the construction of residential house within three years from the date of transfer of long term capital asset and eligible for deduction u/s 54F. The Ld AR further argued that the condition before one year is applicable in the case of the purchase of the asset but not for construction. The Ld.AR further argued that the intention of the

legislature to give tax benefits is to encourage the investments in house properties to address the housing problems and beneficial provisions should be interpreted liberally but not in between the lines. The Ld.AR submitted that the Ld.CIT(A) has rightly allowed the claim u/s.54F and there is no violation of provisions.

5.0 We heard the rival submissions and perused the material placed on record.

The assessee had sold the shares on 23.11.2011 and registered the undivided share of land on 30.09.2010. The construction agreement was dated 06.07.2010 and the assessee has completed the construction within the three years from the date of the sale of the shares i.e. on 15.06.2013. These facts were not disputed by the Revenue. As per the provisions of Sec.54F, the deduction is allowed if following conditions are satisfied.

- (i) In case of purchase of asset
  - (a) It should be purchased within one year before the sale of long term capital asset. or
  - (b) It should have been acquired Within two years from the date of the sale of the long term capital asset or
- (ii) In case of construction, after that date constructed a residential house with in three years for the date of transfer of capital asset..

5.1 For ready reference, we re-produce hereunder Sec.54F of the Act which reads as under:

*[Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.*

<sup>83</sup> 54F. (1) <sup>84</sup> [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a <sup>85</sup> residential house

(hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or <sup>86</sup>[two years] after the date on which the transfer took place <sup>85</sup>purchased, or has within a period of three years after that date <sup>87</sup>[constructed, one residential house in India] (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

<sup>88</sup>[**Provided** that nothing contained in this sub-section shall apply where—

- (a) the assessee,—
  - (i) owns<sup>89</sup> more than one residential house, other than the new asset, on the date of transfer of the original asset; or
  - (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
  - (iii) <sup>90</sup>constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and
- (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income f

5.2 This view is upheld by the Hon'ble Delhi High Court in the case of CIT-XV v. Bharti Mishra in ITA No.567/2013 and the relevant part of the decision is extracted as under:

*12. Section 54F(1) if read carefully states that the assessee being an individual or Hindu Undivided Family, who had earned capital gains from transfer of any long-term capital not being a residential house could claim benefit under the said Section provided, any one of the following three conditions were satisfied; (i) the assessee had within a period of one year before the sale, purchased a residential house; (ii) within two years after the date of transfer of the original capital asset, purchased a residential house and (iii) within a period of three years after the date of sale of the original asset, constructed a residential house.*

*13. For the satisfaction of the third condition, it is not stipulated or indicated in the Section that the construction must begin after the date of sale of the original/old asset. There is no condition or reason for ambiguity and confusion which requires moderation or reading the words of the said sub-section in a different manner.*

5.3 In the instant case, the assessee has completed the construction of the house within three years from the date of capital gains and the assessee has satisfied the condition for allowing deduction u/s 54F and case is squarely covered by the Hon'ble Delhi High Court judgment cited supra. The Ld. CIT(A) also allowed the appeal relying on the decision of Hon'ble High court cited (supra) and the decision of this tribunal in Seetha Subramanian vs ACIT reported in 59 ITR 94. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld.

In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 26<sup>th</sup> May, 2017, at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(डि.एस. सुन्दर सिंह)

**(D.S.SUNDER SINGH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26<sup>th</sup> May, 2017.

TLN

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