

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.3435/Mds/2016
निर्धारण वर्ष /Assessment year : 2013-2014.

Asha Marthanda Pillai,
No.137, 4th Street,
Ramnagar,
Velachery,
Chennai 600 042.

Vs. The Income Tax Officer,
Non Corporate Ward 16(1)
Chennai.

[PAN ANOPA 6890K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Smt. Nithya Sankaran, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. M. Murali Mohan, JCIT.

सुनवाई की तारीख/Date of Hearing : 25-04-2017
घोषणा की तारीख /Date of Pronouncement : 27-04-2017

आदेश / ORDER

Assessee in this appeal through its seven grounds raises two issues. First is on denial of exemption u/s.54 of the Income Tax Act, 1961 (in short "the Act") on capital gains arising out of sale of property. Second is regarding disallowance of brokerage of

₹1,00,000/- as expenditure while computing income under the head Capital gains.

2. Facts apropos are that assessee a salaried employee had filed his return of income for the impugned assessment year disclosing income of ₹4,47,140/-. During the course of assessment proceedings, it was noted that assessee had sold a property at Madipakkam, Chennai for a consideration of ₹63,00,000/- on 28.09.2012. Assessee had claimed exemption u/s.54 of the Act on the gains arising out of sale of above property. As per the assessee, she had invested a sum of ₹58,00,000/- in construction of a house property and hence eligible for such claim. Investments claimed by the assessee on her construction of a new residence were as under:-

<i>Sl. No</i>	<i>Date of payment</i>	<i>Amount paid in ₹</i>
<i>1</i>	<i>22.01.2012</i>	<i>5,00,000</i>
<i>2</i>	<i>06.02.2012</i>	<i>8,17,680</i>
<i>3</i>	<i>21.02.2012</i>	<i>13,17,680</i>
<i>4</i>	<i>10.04.2012</i>	<i>13,17,680</i>
<i>5</i>	<i>11.05.2012</i>	<i>13,31,554</i>
<i>6</i>	<i>12.03.2013</i>	<i>13,85,534</i>

Ld. Assessing Officer was of the opinion that as per Sec. 54 of the Act, assessee ought to have purchased a residential property within a period of one year before the date on which the transfer took place.

As per Id. Assessing Officer the window for making such purchase was 28.09.2011 to 28.09.2012. According to him upto 29.09.2012 assessee had paid only a sum of ₹52,84,594/-. Claim of the assessee u/s. 54 of the Act was restricted by the Id. Assessing Officer to this amount. Id. Assessing Officer also disallowed the claim of brokerage expenditure of ₹1 lakh on the sale effected by the assessee, for want of evidence.

3. Assessee's appeal before Id. Commissioner of Income Tax (Appeals) was not only unsuccessful but resulted in a reduction of the claim u/s. 54F of the Act. As per Id. Commissioner of Income Tax (Appeals) assessee had constructed a new house and not purchased a new house. Opinion of the Id. Commissioner of Income Tax (Appeals) was that where an assessee constructed a residential house such construction should have happened within a period of three years from the date of transfer of the asset giving rise to capital gains for claiming exemption u/s. 54F of the Act. As per Id. Commissioner of Income Tax (Appeals) assessee had started construction much prior to the date of transfer. In other words, as per Id. Commissioner of Income Tax (Appeals) the window of one year prior upto the date of transfer of the asset giving rise to capital gains, for making an investment, was available only where the investment was in the nature

of purchase and not in the nature of construction. Ld. Commissioner of Income Tax (Appeals) was of the opinion that construction expenditure incurred by the assessee after the date of transfer was only ₹13,85,534/- which was spent on 12.03.2013. According to him, therefore assessee was eligible for exemption of ₹13,85,534/- u/s.54F of the Act. He restricted the deduction accordingly. He also upheld the disallowance of brokerage expenditure of ₹1,00,000/-.

4. Now before me, Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that Id. Commissioner of Income Tax (Appeals) had taken a very narrow view of Sec. 54(1) of the Act. As per Id. Authorised Representative the apartment which was purchased by the assessee was being constructed by one M/s. Ozone Projects Private Limited as a part of a multistoried flat project Metrozone project. Further as per Id. Authorised Representative, assessee along with her husband Shri. P. Karthikeyan, had entered into an agreement for sale on 31.01.2012 with the project developers based on which the payments were made. Contention of the Id. Authorised Representative was that assessee was only purchasing the flat from the developer and two separate agreements, one for undivided share of the land and other for construction of a residential flat would not, PERSE convert the

acquisition done by the assessee as one which was not a purchase. Relying on the judgment of Karnataka High Court in the case of *CIT vs. J.R. Subramanya Bhat 165 ITR 571* and that of Co-ordinate Bench in the case of *ACIT vs. Shri. R. Vasu (ITA No.1656/Mds/2008, dated 9.7.2010)*, Id. Authorised Representative submitted that date of commencement of construction of new building was irrelevant and assessee was entitled for deduction u/s. 54 of the Act.

5. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

6. I have considered the rival contentions and perused the orders of the authorities below. It is not disputed that investments in the new residential property done by the assessee was within a total period of three years, of which one year fell prior to the date of transfer of asset on which capital gains arose and two years fell after the said date. Id. Assessing Officer allowed the claim for the investments made by the assessee's prior to the date of transfer whereas Id. Commissioner of Income Tax (Appeals) restricted such claim to the extent of the payment made by the assessee after the date of transfer. It is not disputed that when assessee made payments to M/s. Ozone Projects Private Limited, for acquiring a 3 BHK apartment in its project called Metrozone, assessee had no intention

to do a construction on her own. Her only intention was to acquire an apartment. In my opinion, just for a reason that construction was started before the date of transfer of the asset on which capital gains arose would not be a reason to deny the assessee the claim of deduction u/s. 54(1) of the Act, when it had satisfied all other conditions. Hon'ble Karnataka High Court in the case of *J.R. Subramanya Bhat (supra)* had held at para 6 of its judgment is reproduced hereunder:-

"So too was the next conclusion reached by the Tribunal. The date of the sale of the old building was February 9, 1977. The completion of the construction of the new building was in March, 1977, although the commencement of the construction started in 1976. It is immaterial, as the Tribunal, in our opinion, has rightly observed, about the date of commencement of the construction of the new building. Since the assessee has constructed the building within two years from the date of sale of the old building, he was entitled to relief under section 54 of the Act".

Further, we also find that Co-ordinate Bench in the case of *Shri. R. Vasu (supra)* had held as under at para 8 of its order dated 09.07.2010 in almost in similar fact situation.

"8. We have heard the rival contentions and perused the records. The grievance of the Revenue is that the assessee had entered into construction agreement on 11-12-2000 when the sale on which capital gains exemption was claimed was effected in 2002 and 2003. Whatever

may be date of the construction agreement, it is not disputed by the Revenue that the undivided share of the land which was for the flat for which construction agreement was entered into, was registered in the name of the assessee on 20-3-2002. It is also not disputed that the flat was taken possession by the assessee on 5-6-2002. For claiming exemption under sec. 54 and 54F of the Act, assessee had to purchase within a period of one year or before two years after the date on which transfer took place, a residential house or assessee had to construct a residential house within a period of three years after the date of sale. Here, in our opinion, the intention of the assessee was to purchase the flat and he had no intention to construct a flat by himself. Assessee by himself had not constructed, but on the other hand, had entered into an agreement for purchasing a flat from M/s.Alexander Properties. No doubt, assessee had entered into an agreement for this purpose on 11-12-2000, but the property can be deemed as conveyed to the assessee only when the undivided share on which the flat was constructed was registered in his name. Undisputedly such undivided share was registered on 20-3-2002 and therefore, this date alone could be considered for reckoning the date on which assessee had purchased the new flat. If that is so, This was well within the period of one year before the date of sale or two years after such sale. As mentioned by CBDT in Circular No.667referred supra, cost of the plot cannot be excluded from the purchase price of the house property. It is also not disputed that the cost of the undivided share purchased by the assessee itself was not sufficient to justify claim under sections 54 and 54F of the Act. As held by the Hon'ble Allahabad High Court in the case of CIT vs. H.K.Kapoor (supra) exemption of capital gains could be allowed notwithstanding the fact that the construction of the new house had begun before the sale of the old house. Viewed from any angle, we are of the opinion that the assessee was eligible for claiming exemption under sec. 54 and 54F of the Act. The CIT(Appeals) has rightly allowed such claim and no interference is called for .

In the circumstances, I am of the opinion that assessee's claim u/s. 54(1) of the Act was unjustly curtailed by the Id. Assessing Officer as well as by Id. Commissioner of Income Tax (Appeals). I am of the opinion that assessee was eligible for the whole of the claim of ₹58,00,000/- made by her u/s. 54F of the Act. However viz-a-viz its claim regarding allowance of brokerage fees of ₹1,00,000/-, assessee could not produce any evidence, except for making submissions of general nature. I do not find any reason to interfere with the orders of the lower authorities on the aspect of brokerage disallowance. I allow grounds 2 to 6 of the assessee whereas her ground No.7 is dismissed.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced on Thursday, the 27th day of April, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 27th April, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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