

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.147/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Vijaya Raman,
14/2015, 1st floor, 'H' Block,
5th Street, 12th Main Road,
Anna Nagar, Chennai - 600 040.

v. The Deputy Director of Income Tax
(International Taxation) – 2(1),
Chennai - 600 034.

PAN : ASUPR 6227 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V.S. Jayakumar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 02.06.2016

घोषणा की तारीख/Date of Pronouncement : 11.08.2016

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) – 16, Chennai, dated 03.11.2015 and pertains to assessment year 2011-12.

2. Shri V.S. Jayakumar, the Ld.counsel for the assessee, submitted that the first issue arises for consideration is with regard

to disallowance of ₹30,00,000/- paid to Shri Rajaraman, the husband of the assessee, towards compensation for demolition of the building. According to the Ld. counsel, the assessee is a non-resident and owner of a piece of land at Madipakkam. According to the Ld. counsel, the assessee in fact received the land by way of settlement from her mother. The assessee's husband Shri Rajaraman built a house on the above said piece of land from his own borrowed funds. The assessee sold the land and the building was demolished. In pursuance to agreement dated 10.09.2010 with Shri Rajaraman, the husband of the assessee, a sum of ₹30,00,000/- was paid to handover the vacant possession of the house to the developer so that the building can be demolished. According to the Ld. counsel, the assessee has claimed in the assessment proceeding a deduction of ₹30,00,000/- being the compensation paid to acquire the house from her husband. Unless the house was demolished, according to the Ld. counsel, the assessee cannot sell the landed property. Therefore, the compensation paid to her husband has to be allowed while computing the total income.

3. Referring to the assessment order, the Ld.counsel for the assessee submitted that the Assessing Officer observed that the agreement entered between the assessee and her husband Shri Rajaraman on 10.09.2010 was an afterthought. According to the Ld. counsel, the fact that the assessee's husband constructed the building out of his own borrowed funds is not in dispute. Therefore, the assessee has to necessarily compensate her husband in demolishing the building. Hence, according to the Ld. counsel, both the authorities below are not justified in disallowing the claim of the assessee. The Ld.counsel placed his reliance on the judgment of Madras High Court in CIT v. C.V. Soundararajan & Another (1984) 150 ITR 80 and submitted that when the assessee's husband owned the building, the assessee has to necessarily pay compensation to her husband for relinquishing his right over the building.

4. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that there was no agreement between the assessee and her husband at the time of construction of building, about the payment of compensation. The assessee admittedly has not received any rent from her husband for allowing

her husband to construct the building. According to the Ld. D.R., the assessee also resided in the very same house along with her husband, therefore, in the eye of law, both the assessee and her husband have to be treated one and the same. The assessee claims that the land belongs to her and her husband constructed the building by investing his own funds. If that is the case, the assessee and her husband have to be considered as single unit / entity since both the assessee and her husband shared the investment in both the land and building. According to the Ld. D.R., the land belongs to the assessee and the building constructed thereto belongs to her husband. Therefore, according to the Ld. D.R., it is for the assessee to establish how her husband was allowed to construct the building without payment of any rent. When the assessee has not received any compensation / rent for the land from her husband, according to the Ld. D.R., there is no justification for paying compensation when the land was sold along with the building. If the assessee treats herself as independent unit/ entity, then the assessee has to necessarily receive compensation/ rent for letting out landed property in which the building was constructed by her husband. Unfortunately, the assessee has not received any compensation from her husband. The Ld. D.R. further

submitted that when the assessee allowed her husband to construct the building without any payment for using the land since the assessee decided to sell the property, it has to be treated that the building also owned by the assessee. In other words, according to the Ld. D.R., both the assessee and her husband Shri Rajaraman are single entity as found by the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. D.R., there was no agreement between the assessee and her husband at the time of construction of the building in the said land. It is also not in dispute that the assessee has not received any compensation / rent for allowing her husband to construct the building in the land owned by her. Admittedly, the land was acquired by the assessee by way of settlement by her mother. Even though the assessee and her husband are considered to be one and the same in the eye of law, the Income-tax Act treats them separately as independent assessable unit. Therefore, the assessee ought not to have allowed her husband to construct the building without receiving any compensation. Unfortunately, it is not the case of the assessee that such

compensation was received by her from her husband for allowing him to construct the building. It is also a fact that the assessee and her husband were living together in the very same building as husband and wife. In those circumstances, this Tribunal is of the considered opinion that the claim of payment of compensation for demolition of building to her husband is not justified.

6. As rightly observed by the Assessing Officer, the so-called agreement dated 10.09.2010 is afterthought for the purpose of deduction in respect of ₹30,00,000/- said to be paid by the assessee to her husband, when the assessee herself allowed her husband to construct the building on the land without any compensation. If the assessee paid ₹30,00,000/- to her husband as claimed in the so-called agreement dated 10.09.2010, this Tribunal is of the considered opinion that the payment cannot go to reduce the value of land which was transferred. The assessee being the legal owner of the land in pursuance of settlement deed executed by her mother and the assessee's husband constructed the building and the assessee and her husband lived together in the building as wife and husband, therefore, the payment of ₹30,00,000/- to the assessee's husband as compensation cannot go to reduce the cost of the land

for the purpose of computing capital gains. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. Shri V.S. Jayakumar, the Ld.counsel for the assessee, alternatively claimed exemption under Section 54 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, the Assessing Officer denied exemption under Section 54 of the Act on the ground that the assessee sold only the vacant land. According to the Ld. counsel, both the building and land appurtenant thereto have to be treated as residential house. Since the subject matter relates to both land and building, according to the Ld. counsel, the Assessing Officer cannot deny exemption under Section 54 of the Act.

7. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the building was demolished and what was transferred to the developer is only a vacant land, therefore, the assessee is not entitled for exemption under Section 54 of the Act. However, the Assessing Officer granted deduction under Section 54F of the Act, therefore, according to the Ld. D.R., the assessee cannot have any grievance at all.

8. We have considered the rival submissions on either side and perused the relevant material available on record. As discussed in the earlier part of this order, the land was inherited / acquired by the assessee by way of settlement from her mother and the assessee's husband said to have constructed the building by investing his own funds. This Tribunal has found that both the assessee and her husband lived together in the very same building and the assessee has not received any compensation from her husband for allowing him to construct the building. Therefore, the assessee has to be treated as owner of the building along with her husband for all practical purposes. Hence what was transferred is land and building. Therefore, the assessee is entitled for deduction under Section 54 of the Act. Therefore, the order of the Assessing Officer is modified and the Assessing Officer is directed to allow deduction under Section 54 of the Act as claimed by the assessee subject to fulfilment of other conditions.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 11th August, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-16, Chennai
4. आयकर आयुक्त/CIT (International Taxation), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.