

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.19/Mds/2015

निर्धारण वर्ष /Assessment years : 2011-2012

Shri. Govinda Pillai Yuvaraj,
2B Kings Mead, 14/3, South
Mada Street,
Saidapet, Chennai 600 015.

Vs. The Income Tax Officer,
Salary Ward VI(3)
Chennai 600 034.

[PAN AAPPY2755F]

आयकर अपील सं./I.T.A. No.1362/Mds/2015

निर्धारण वर्ष /Assessment years : 2011-2012

The Income Tax Officer,
Company Ward III(1)
Chennai 600 034

Vs. Smt. Maheshwari Yuvaraj,
2B Kings Mead, 14/3, South
Mada Street,
Saidapet,
Chennai 600 015.

[PAN AGOPM2127N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by
Assessee by

: Shri. A.V. Sreekanth, JCIT.
: Shri. A. Satyaseelan &
G. Baskar, Advocates.

सुनवाई की तारीख/Date of Hearing : 13-07-2016

घोषणा की तारीख /Date of Pronouncement : 29-07-2016

आदेश / ORDER**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal in ITA No.19/Mds/2015 filed by the assessee Shri. Govind Pillai Yuraraj and another appeal in ITA No.1362/Mds/2015 filed by the Revenue of Smt. Maheshwari Yuvaraj for assessment year 2011-12 are directed against different orders of Commissioner of Income Tax (Appeals), Chennai, dated 28.11.2014 and 26.02.2015 respectively. Since the issues in the appeals mentioned hereinabove are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience. First, we take up Departmental appeal in ITA No.1362/Mds/2015 of assessment year 2011-2012 for adjudication.

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

2.1 The CIT(A) erred in deleting the addition on Long-term Capital of Rs. 72, 17,443/- arising out of the sale of immovable property held in the joint name of the assessee and her husband.

2.2 The CIT(A) erred in accepting the argument of AR of the assessee that the property in question was purchased by the assessee's husband whereas the property in question was purchased out of fund from the bank account held in the joint name of tile assessee and her husband.

2.3 The Id. CIT(A) erred in accepting the contention of the AR vide Sl. 7.1 of the impugned order that

the entire sale proceedings out of sale of property in question was received by the assessee's husband alone without noticing the facts as per the sale deed no.1212/2011 registered with SRO, Neelankarai that 50% of the sale consideration of Rs.75,00,000/- received by the assessee vide cheque nos.452090 and 452091 drawn on Indian Overseas Bank, Nalambur Branch.

2.4 It is submitted that the assessee is one of the Director of M/s. Thiruvonam Impex Private Limited and therefore, the AR's argument of assessee has no means to purchase the sold property is not in order.

2.5 The Id. CIT(A) failed to appreciate the findings of Assessing Officer in the assessment order that the assessee is also holding 50% of the ownership in the sold property and assessee's husband has intentionally offered the entire income out of sale of property in his return of income knowing the facts the assessee is not eligible for claim of exemption u/s 54F as she is already having two residential house on the date of sale of asset.

2.6 The Id. CIT(A) ought to have considered the findings of the Assessing Officer that the assessee holds equal rights in the sold property and the income arising out of sale of the property should be assessed in the hands of the assessee as there is no transfer for inadequate consideration as claimed by the AR. The above view is fortified by the ratio held in the case of Patel Chemical Works Vs. CIT report in 265 ITR 273(Gujarat).

3. The Brief facts of the case are that the assessee is in individual and She is a Director of M/s. Thiruvonam Impex Pvt. Ltd and filed Return of income electronically on 02.03.2012 with total income of ₹13,11,890/- and the Return of income was processed u/s.143(1) of

the Act on 29.05.2012. Subsequently, the case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and filed details of sale of property and purchase during the year, Wealth tax return and Bank statements. The Id. Assessing Officer on the basis of AIR information, found that the assessee has sold Residential property as co-owner alongwith her husband Shri. Govind Pillai Yuvaraj in the financial year 2010-2011 for ₹1,50,00,000/- and the assessee has not disclosed in the Return of Income about sale transaction. The Id. Authorised Representative explained that the sale consideration is reflected in Income Tax Return of her husband Shri. Govind Pillai Yuvaraj in the same assessment year. Further, the Id. Assessing Officer issued letter dated 28.11.2013 mentioning that the assessee's share in property being 50% worked out ₹72,17,443/- was not disclosed and is liable to be taxed as co-owner. In reply, the Id. Authorised Representative submitted the explanations supporting the view of not disclosing the information in the assessee's hand and relied on the provisions of Sec. 27 of the Act dealt on the "owner" and clubbing provisions u/s.64 of the Act. Further by letter dated 20.12.2013 it was explained that the assessee has not invested in purchase of said land, which was sold and submitted Bank Accounts details were no source of assessee income

was used in the purchase of land property. Based on the submissions, the Id. Assessing Officer dealt on the provisions of Sec. 27(1) and 64(1)(iv) of the Act at page 3 & 4 of his order and called for the assessment particulars of her husband Shri. Govind Pillai Yuvaraj for the assessment year 2011-2012 who was assessed to Income Tax with Income Tax Officer, Salary Ward VI(3), Chennai where he has declared the entire sale consideration of ₹1,50,00,000/- in the Return of income and re-invested ₹1,46,69,950/- in a Residential property at Mahindra World City, New Chennai jointly with his wife and claimed exemption u/s.54F of the Act. The Id. Assessing Officer perused the provisions of Sec. 54F(1) of the Act and is of the opinion that assessee's share of Long Term Capital Gains arising out of sale of land cannot be clubbed and relied on the decision of Hon'ble High Court of Bombay in the case of *Prakash vs. Income Tax Officer (2008) 173 Taxman 311 (Bom)*. Further considering the factual aspects and the provisions of law, the Id. Assessing Officer based on the enquiry and information submitted by the assessee is of the opinion that the assessee is not eligible for exemption u/sec. 54F of the Act as the assessee owns more than one residential house on the date of sale and has offered income of properties under income from House Property. The Id. Assessing Officer further explained that the assessee and her husband independently qualified for claim for exemption to the extent of their

share of Capital Gains. But since the assessee is holding more than two properties and she is not eligible for the exemption and offering of entire capital gains on sale in the hands of the spouse Shri. Govinda Pillai Yurvaraj, is not in accordance with law. Hence, 50% share of Long Term Capital Gains ₹72,17,443/- was added to the Returned income alongwith other disallowances and the Id. Assessing Officer passed order u/s.143(3) of the Act dated 30.12.2013. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of the assessee argued the grounds and explained the applicability of provisions. Further, the Id. Assessing Officer is bad in law for treating the Long Term Capital Gains as taxable in the hands of the assessee irrespective of the fact that the assessee's husband Shri. Govind Pillai Yuvaraj has purchased property and the assessee has not invested any amount in purchase of the property. Therefore, sale consideration is subjected to tax in the hands of assessee's husband and was disclosed in the Income Tax Return and prayed for allowing the appeal. The Id. Commissioner of Income Tax (Appeals) considered the submissions and the findings of the Id. Assessing Officer which has been dealt on the facts of the issue were income from Capital

Gains has been offered to tax in the hands of the assessee's husband and perused copy of the Income Tax Return and computation of income and pending of case before appellate authority and finally concluded that since entire Capital Gains are taxed in the assessee's spouse Shri. Govinda Pillai Yuvaraj, the Id. Commissioner of Income Tax (Appeals) has deleted the addition referred at para 7.4 of his order as under:-

"7.4. Considering the above facts and the order of the Assessing Officer in the spouse case as well as the Commissioner of Income Tax (Appeals) order in ITA No.1770/13-14/A-15, dated 28.11.2014 in the case of Shri. G. Yuvraj for A.Y. 2011-12, it is clear that the appellant's spouse is the de jure as well as de facto owner of the property. Since the full capital gains on the said property had been taxed on the appellant's spouse on the full sale consideration, the addition made by the Id. Assessing Officer is deleted and the grounds allowed".

Aggrieved by the order, the Revenue assailed an appeal before Commissioner of Income Tax (Appeals).

5. Before us, the Id. Departmental Representative argued and explained that the property sold is a joint property were the assessee as Co-owner holds 50% share and there is no disclosure of sale

transaction in the Return of income. The explanations in the assessment proceedings that the property purchased was registered in joint names though entire sale consideration was paid by assessee's husband. The Id. Commissioner of Income Tax (Appeals) erred in deleting the addition of ₹72,17,443/- where the property is held in the joint names of husband and wife. When the property was sold in financial year 2010-2011 as per sale deed No.1212/2011, the assessee has received a separate cheque for 50% sale consideration ₹75,00,000/-. The explanation of the assessee that her husband has purchased the property and on sale if any capital gains arises same is liable to be taxed in her spouse hands. The assessee's husband has intentionally offered entire income on sale of property in his hand and claimed exemption u/s.54F of the Act as the assessee is not eligible for claim of exemption u/s. 54F of the Act as she owns two residential property in her name as discussed by the Id. Assessing Officer in assessment order. In the sale of property, the assessee also hold equal right and liable to income tax and there is no transfer for inadequate consideration to claim benefit under provisions of Sec. 64 of the Act. The Id. Departmental Representative prayed for set aside of the order of Commissioner of Income Tax (Appeals) and restore the Assessing Officer order.

6. On the other hand, the Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

7. We heard the rival submissions, perused the material on records and judicial decisions cited. The contention of the Id. Departmental Representative that the assessee having sold property and obtained Long Term Capital Gains and should have disclosed in her Return of Income for assessment year 2011-12 and not in spouse return of income. On the other hand, the Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and explained that the property was purchased in the year 2003 and purchase consideration was paid by assessee's husband irrespective of the fact that the property was registered in joint name. We also perused the sale deed dated 23.02.2011 at page 29 of paper book where absolute sale deed was executed by assessee and her husband. Further, we also perused the purchase deed of the said property dated 15.12.2003 which was executed in favour of the assessee and her husband. The assessee has not paid any sale consideration for purchase of property in the year 2003 and relied on the provisions of Sec. 27 & Sec. 64 of the Act. The Id. Authorised Representative explained that the assessee is filing Wealth Tax Returns

and disclosed the property in the computation of Net Wealth. The facts remains the reasons envisaged by the Id. Authorised Representative that since the purchase consideration was paid in 2003 by her husband though registered in Joint name and the Capital gains is liable to taxed in the hands of assessee husband cannot be acceptable. Further, on perusal of assessment order on the claim of exemption u/s.54F of the Act, the assessee has to comply the conditions u/s.54F(1) of the Act. But the assessee is holding more than two residential house and is not eligible for exemption u/s.54F of the Act and because of disqualification of claim entire sale consideration was disclosed in the Husband Income Tax assessment for claim of exemption u/sec. 54F of the Act. The Id. Commissioner of Income Tax (Appeals) has only relied on the facts that the assessee's husband is a defacto owner of the property and Capital Gains has been offered, in his assessment and deleted the addition. The Id. Authorised Representative has filed voluminous information of purchase of property, sale deed, agreement of lease with Builder and submissions on income tax and Wealth tax made in the assessment proceeding. We are of the opinion that the information has to be verified on the aspects of ownership of the assessee and reinvested in residential property and complying the stipulated conditions for claim of exemption u/sec. 54F of the Act. Therefore, we set aside the order

of the Commissioner of Income Tax (Appeals) and remit the disputed issue to the file of the Id. Assessing Officer to pass the order afresh and provide adequate opportunity to assessee before passing the order. The ground of the Revenue is allowed for statistical purpose.

8. Now, we take up appeal in ITA No.19/Mds/2015 of assessment year 2011-12 for adjudication:- The assessee has raised the following grounds of appeal:-

1. "The Order of the Learned Commissioner of income Tax (Appeals) is against law, facts and probabilities of the case.

2. The Learned Commissioner of income tax (Appeals) had failed to consider, that the provisions of section 54F do not contemplate a one to one co-relation between the sale proceeds of the original asset transferred and investment in the new asset.

3. The Learned Commissioner of income tax (Appeals) ought to have seen that section 54F allows exemption for purchase of a house even one year prior to the date of transfer. In such a case, there is no requirement to relate the capital gain arising out of the original asset and its investment in the new asset.

4. The Learned commissioner of Income tax had not appreciated the fact the appellant had utilized the net consideration for construction of a new asset before the date of furnishing the return and hence the gains on the transfer of the original asset shall not be charged to capital gains.

5. Section 54F, being a benevolent provision, should have been liberally construed by the

Learned Commissioner of Income tax (Appeals).

6. The Learned Commissioner of Income tax (Appeals) has failed to appreciate that the assessee has other surplus funds, which could have been invested in the new asset”.

9. The main contention of the assessee that the property is a joint property with wife Smt. Maheshwari Yuvaraj and was sold for a consideration of ₹1,50,00,000/- and the assessee has offered entire Capital Gains in his hands irrespective of the fact of equal ownership and the assessee has claimed exemption u/s.54F of the Act on investment in residential house property. At this stage, we find it appropriate as the Department appeal in assessee's wife case is set aside to the Assessing Officer and the assessee case is also interlinked in respect of ownership/ sale consideration and investment. We are of the opinion that the disputed issue has to be remitted to the file of Id. Assessing Officer for fresh consideration. Therefore, we set aside the order of Commissioner of Income Tax (Appeals) and remit the entire issue to the file of the Id. Assessing Officer and shall pass the order on merits after due verification of documents filed and assessee shall be provided with adequate opportunity of hearing before passing the

orders. The ground of the assessee is allowed for statistical purpose.

10. In the result, the appeal of the assessee in ITA No.19/Mds/2015 and Department appeal in ITA No.1362/Mds/2015 for assessment year 2011-2012 are allowed for statistical purpose.

Order pronounced on Friday, the 29th day of July, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 29.07.2016

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 |