

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.2571/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Peddakota Parvateesam Naidu,
2/297, Jasmin Court,
Door No.405, Mount Poonamalle Rd,
Kattupakkam Post, Chennai - 600 056.

The Income Tax Officer,
v. Non-Corporate Circle 17(3),
Chennai - 600 034.

PAN : AAHPP 4986 D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 04.05.2017

घोषणा की तारीख/Date of Pronouncement : 22.06.2017

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)-5, Chennai, dated 25.07.2016 and pertains to assessment year 2012-13.

2. The only issue arises for consideration is disallowance of the claim of assessee under Section 54 of the Income-tax Act, 1961 (in short 'the Act').

3. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee sold a residential flat at Shanthi Colony, Annanagar, Chennai on 07.04.2011, for a total consideration of ₹80,00,000/-. The assessee has invested the sale proceeds in a new flat and claimed deduction under Section 54 of the Act. The Assessing Officer disallowed the claim of the assessee on the ground that the assessee has invested in two flats. Referring to the judgment of Madras High Court in CIT v. V.R. Karpagam (2015) 373 ITR 127, the Ld.counsel submitted that the amendment made by Finance Act, 2014 came into effect with effect from 01.04.2015. Therefore, according to the Ld. counsel, even if there are two different flats, the assessee is eligible for exemption. Even though the assessee has invested in two flats, according to the Ld. counsel, the Assessing Officer is not justified in disallowing the claim of the assessee for the assessment year 2012-13. According to the Ld. counsel, a similar view was also taken by this Tribunal in Smt. Hemalatha Chandran v. ITO in I.T.A. No.603/Mds/2015.

4. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that for the purpose of claiming exemption under Section 54F of the Act, the assessee has to invest in one residential unit. In this case, according to the Ld. D.R., the assessee has purchased two flats, therefore, the Assessing Officer has rightly disallowed the claim of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee has invested the capital gain in two residential flats. The question arises for consideration is for the assessment year 2012-13, whether the assessee is eligible for exemption under Section 54F of the Act when the investment was made in two flats? After referring to an identical amendment made in Section 54F of the Act by Finance Act, 2014, the Madras High Court in the case of V.R. Karpagam (supra) found that the amendment makes it clear that the benefit under Income-tax Act will be applicable for construction of one residential house in India. This clarifies the present position, i.e. post amendment from 01.04.2015, the benefit of Section 54F of the Act will be applicable to one residential house in India. Prior to this amendment, it was clear that a residential unit would include

multiple flats / residential units. The Madras High Court further found that the property should be assessed as one residential unit.

6. Even though the CIT(Appeals) reproduced the order of the Madras High Court, it is not clear from the facts of the case whether the residential units purchased by the assessee were comprised in one single unit. In view of the above, this Tribunal is of the considered opinion that the facts need to be clarified. Accordingly, the orders of the authorities below are set aside and the issue of claim of deduction under Section 54F of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh in the light of the judgment of Madras High Court in V.R. Karpagam (supra) and find out whether the two flats purchased by the assessee constitute one unit or not and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 22nd June, 2017 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 22nd June, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai
4. Principal CIT-9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.