

आय अधकरण, "सी+यायपीठ, चेनई
PELLATE TRIBUNAL 'C' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदय एवं श्री धुवु आर.एल रेडी, यायक सदय के सम
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./ T.A. No. 542/Mds/2016

अधारण वष/Assessment Year:2012-13

Shri R. Vasudevan,
Flat No. R-35, TNHB Complex, T.S.
Krishna Nagar, Mogappair,
Chennai 600 050.

[PAN:AAPPV1970J]

(अपीलाथ /Appellant)

Vs. The Assistant Commissioner of
Income Tax,
Central Circle I(1)
Chennai.

(अयथ/Respondent)

अपीलाथ क ओर से / Appellant by

: Shri G. Baskar, Advocate &
Ms. S. Sriniranjani, Advocate

अयथ क ओर से/Respondent by

: Shri A.V. Sreekanth, JCIT

सुनवाई क तारख/ Date of hearing

: 05.04.2017

घोषणा क तारख /Date of Pronouncement

: 23.06.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 18, Chennai, dated 26.08.2015 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the denial of exemption under section 54F of the Income Tax Act, 1961 [Act+in short].

are that the assessee is an individual and engaged in transport and land development business. The assessee filed his return of income declaring income from house property at .8,53,421/-, capital gain from sale of land at .16,24,088/-, income from other sources at .4,04,533/- and also declared loss from business of real estate at .1,08,212/-. The return filed by the assessee was selected for scrutiny and notice under section 143(2) of the Act dated 04.09.2014 was served on the assessee. Notice under section 142(1) of the Act along with questionnaire has also been issued on 05.12.2014. Assessment under section 143(3) of the Act was completed by assessing total income of the assessee at .1,38,80,029/- after making disallowance of .1,12,06,199/- under section 54F of the Act as well as levying interest under section 234A, 234B and 234C of the Act.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) has observed and held as under:

“4.2 I have perused the assessment order, grounds of appeal in this regard. In the instant case the appellant had allegedly invested in land situated in Government Industrial Estate, Ambattur, Chennai. It is very clear that the nature of the property is industrial and not a residential house. Hence, I do not find any reason to interfere with AO’s order. As a result, the grounds raised in this regard are dismissed.”

4. On being aggrieved, the assessee is in appeal before the Tribunal and the Id. Counsel for the assessee has submitted that out of sale

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has invested in landed property and claimed exemption under section 54F of the Act and therefore, pleaded that the Id. CIT(A) went in wrong to confirm in denying the exemption as claimed by the assessee.

5. On the other hand, by supporting the orders of authorities below, the Id. DR has submitted that out of sale consideration, the assessee should have invested in a residential property as provided under section 54 of the Act, whereas, the assessee has invested in an industrial property and therefore, the assessee is not eligible to claim exemption under section 54F of the Act.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee sold his property for a sale consideration of .1,61,32,000/- and out of this sale consideration, the assessee has purchased land at No. OP 8(SP) in the Government Industrial Estate, Ambattur, Chennai. As per the sale deed, the assessee is authorized to use the new property only for the purpose of running an industry and other connected activities and for no other purpose. Further, the assessee is required to utilize the allotted land only for constructing industrial work sheds and for running an industry for which it was intended and allotted. Therefore, the Assessing Officer has observed that the very nature of the property purchased by the assessee was an

house. Secondly, the Assessing Officer has noticed that the assessee has received the entire sale consideration in cash and has claimed that out of the cash received, .1,26,70,000/- has been spent in cash towards civil work and moreover, the assessee has not furnished any evidence to verify the genuineness and quantum of investment. Accordingly, the Assessing Officer disallowed the entire deduction of long term capital gain and brought to tax, which was confirmed by the Id. CIT(A) in his appellate order.

6.1 For the sake of clarity, section 54F of the Act is reproduced as under:

“Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house”

54F. (1) [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 residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or [two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (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:”*

6.2 From the above, it is amply clear that capital gain tax cannot be charged only if the assessee has invested in a residential house. Under this

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the assessee to make investment in any property to claim deduction of exemption. Admittedly, in this case, the assessee has not invested the sale consideration to acquire residential house as provided under section 54F of the Act. Since the assessee has invested in an industrial property, which is meant for constructing industrial work sheds and for running an industry, we are of the considered opinion that the Assessing Officer has rightly denied the claim of deduction under section 54F of the Act, which was confirmed by the Id. CIT(A). Under the above facts and circumstances, we find no reason to interfere with the order passed by the Id. CIT(A) and thus, the ground raised by the assessee is dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 23rd June, 2017 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 23.06.2017

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रत्यक्ष/DR & 6. गाडफाईल/GF.