

आय अधकरण, श्रीययपीठ, चेनई

PELLATE TRIBUNAL BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदय एवं श्री धुवु आर.एल रेडी, न्यायक सदय के सम

Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 3168/Mds/2016

नधारण वष/Assessment Year:2012-13

The Assistant Commissioner of
Income Tax, Non-Corporate Circle 15,
Chennai.

Vs. Shri R. Vijay Krishnan,
No. 17A-2, Sai Krupa Apartments
Main Road, Adyar, Chennai.

[PAN:ABBPV9714C]

(अपीलाथ /Appellant)

(नयथ/Respondent)

अपीलाथ का ओर से / Appellant by : Shri A.V. Sreekanth, JCIT

नयथ का ओर से/Respondent by : Shri R. Sivaraman, Advocate

सुनवाई का तारख/ Date of hearing : 11.04.2017

घोषणा का तारख /Date of Pronouncement : 28.06.2017

आदेश /ORDER

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 15, Chennai dated 19.08.2016 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in directing to delete the disallowance under section 54 and under section 54F of the Income Tax Act, 1961 [Act+in short].

re that the assessee is an individual and filed his return of income declaring total income of .16,77,280/-. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 07.08.2013. Thereafter, notice under section 142(1) r.w.s 129 of the Act was issued on 24.02.2015 calling for various details. In response thereto, the assessee has filed all the detail and on verification of the particulars furnished by the assessee, the assessment under section 143(3) of the Act was completed on 17.03.2015 by assessing total income of the assessee at .3,14,63,830/- after disallowing the claim of deduction under section 54F of the Act at .65,27,441/- as well as claim of deduction under section 54 of the Act at .2,30,62,707/-.

3. The assessee carried the matter in appeal before the Tribunal. After considering the submissions of the assessee as well as facts of the case, the Id. CIT(A) has deleted both the disallowances under section 54/54F of the Act.

4. On being aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that the Id. CIT(A) has not adjudicated on the issue of the claim of deduction u/s. 54 of the Act that the capital asset

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

house property and the capital asset transferred was only vacant land. It was also submitted that while granting deduction under section 54/54F of the Act, the Id. CIT(A) has failed to notice that the conditions contained therein were not fulfilled by the assessee and pleaded that the order of the Id. CIT(A) should be set aside and that of the Assessing Officer is restored.

5. On the other hand, the Id. Counsel for the assessee has strongly supported the order passed by the Id. CIT(A).

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. The assessee has sold two residential land, one at Noombal Mathura, Puliambedu Village for a sum of .72,60,600/- and another at Nagpur for a sum of .2,65,21,000/- during the financial year 2011-12. The assessee has reported a long term capital gain of .65,27,441/- towards Noombal Mathura residential plot and a long term capital gain of .2,30,62,707/- for Nagpur property. The entire value of the sale consideration was kept as bank deposit under the capital gains deposit scheme. Thereafter, the assessee utilized the sale consideration for acquisition of land and construction of residential house at Chennai in March, 2013.

Under the provisions of section 54/54F of the Act, the assessee has to either purchase a new residential house property either one year before or two years after the date of transfer of the original asset or should construct a new residential house property within the period of 3 years after the date of transfer of the original asset. In the assessee's case, though the entire consideration was utilized in the acquisition of the land, it is not sufficient if the consideration is invested in the land but the assessee should have constructed the new residential house property within three years from the date of sale of the original property. The Assessing Officer has further observed that the assessee has sold the properties in June, 2011 and in Dec. 2011 and the new residential house property has to be constructed by June 2014/Dec.2014. Moreover, the Assessing Officer has noticed that the assessee has submitted an application for building approval to the CMDA authorities only on 30.01.2014 and the approval of the CMDA was given only on 14.03.2014. Since the assessee could not have constructed the building before June, 2014, the Income-tax Inspector was deputed to have a physical inspection of the land and report as to whether the building was completed and a new residential house property existed in the said land. The Inspector visited the place on 05.03.2015 and submitted a report. As per his report, the construction is under progress and only pillars are erected and the construction of the house is not completed. Since the approval for construction was taken only on 14.03.2014 i.e., almost 2 years

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

original assets, the Assessing Officer has held that the assessee is not entitled to claim deduction under section 54 and 54F of the Act and disallowed the same and brought to tax. However, by considering various decisions, the Id. CIT(A) deleted the disallowance made on this account. Before obtaining building approval from the CMDA on 14.03.2014, it is not possible for the assessee to start construction work. In this case, the assessee has not entrusted the construction work to any builder. The contention of the Assessing Officer was that the assessee has utilized in the acquisition of the land, but, it was not sufficient if the consideration is invested in the land but the assessee should have constructed the new residential house property within three years from the date of sale of the original property. However, the details with regard to the total amount invested for acquisition of land and amount spent for construction within the time limit available for claiming exemption are not available in the orders of authorities below. The Id. CIT(A) has also not bothered to bring on record the above details. Under the above facts and circumstances, we remit the matter back to the file of the Assessing Officer to verify the details as observed hereinabove and to allow the claim of deduction to the extent the assessee has utilized the sale consideration before the time limit available for claiming exemption under the provisions of Act. The assessee is also directed to furnish complete particulars before the

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

tion. Accordingly, the ground raised by the

Revenue is allowed for statistical purposes.

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

Order pronounced on the 28th June, 2017 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 28.06.2017

Vm/-

आदेश कॆ ढतललल अडत/Copy to: 1. अडलतल/ Appellant, 2. डतल/ Respondent, 3. आडकर आडत (अडल)/CIT(A), 4. आडकर आडत/CIT, 5. डडडडड डतललल/DR & 6. गडडडड/ GF.