

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'B', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2334/Mds/2016  
निर्धारण वर्ष / Assessment Year : 2012-13

Mohammad Amin Yashin Khan Tagala,  
Old No.32, New no.67, Corner Estates,  
Sembudoss Street,  
Chennai – 600 001.  
[PAN: ABDPT 5563H]

(अपीलार्थी /Appellant)

Income Tax Officer,  
Vs. Non-Corporate Ward-11(2),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K.Meenakshi Sundaram, ITP  
प्रत्यर्थी की ओर से/Respondent by : Shri Sanath Kumar Raha, Jt. CIT  
सुनवाई की तारीख/ Date of hearing : 16.05.2017  
घोषणा की तारीख /Date of Pronouncement : 03.08.2017

**आदेश /ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals)-34, Chennai ('CIT(A)' for short) dated 28.06.2016, dismissing the assessee's appeal contesting its assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 27.03.2015 for the assessment year (AY) 2012-13.

2. We may begin by recounting the background facts of the case, i.e., in-so-far as are relevant. The assessee realized ₹. 188.22 lacs (vide decree under

compromise suit (C.S. No. 229/2016 dated 26.09.2008/PB pgs. 61-77)) in respect of his share in the property of his late brother, Y. Shabir Tagala, who died intestate on (13.11.2000) on 24.09.2008. The resultant long term capital gain (LTCG) of ₹. 114.88 lacs was claimed exempt u/s. 54 of the Act, investing ₹. 200 lacs in the capital gains scheme account as specified u/s. 54(2) of the Act, on 07.11.2008. The assessee was accordingly obliged to utilize the said deposit amount toward purchase of a residential house by 23.09.2010 or construction of a new residential house by 23.09.2011, failing which the amount claimed (and allowed) exempt would, in terms of s. 54(2), be charged to tax as capital gains in the year in which the three year period (from the date of transfer) expires. The assessee purchased a residential house at Bangalore vide sale deed dated 19.10.2011 for ₹. 127.20 lacs, i.e., beyond a period of two years of transfer, expiring on 23.09.2010. The assessee having been subject to capital gains tax on the LTCG (₹. 114.88 lacs) for the current year, is in second appeal before us.

3. We have heard the parties, and perused the material on record.

The primary facts are not in dispute. The assessee states to have entered into an oral agreement for purchase of the Bangalore property on 23.08.2010, i.e., in exchange of his properties at Chennai and Gujarat, paying the seller, Mr. Mohan K. Thomas, ₹. 10,000 as token money in cash. However, as there were legal hurdles in the transfer of his properties, the 'agreement' could not be carried out, so that the property was finally purchased against cash consideration on 19.10.2011, ostensibly – there being no finding or material in that respect on record, by utilizing the amount deposited in the capital gain scheme account. The said plea, being wholly unsubstantiated, has been regarded as an eye wash by the Revenue. It would be, to begin with, extremely unlikely that the seller, a Bangalore based person, would be interested in, not one, but two properties of the assessee-buyer, located at different places, one of which is in the remote

area in Gujarat. We say so as the seller is not shown to be a dealer in real estate; a person normally acquires a real estate property, which involves considerable, if not huge sums of money, only where it suits his personal or business interests. That, therefore, the buyer should become interested in two of the assessee-buyer's properties is itself intriguing. Also, an exchange predicates an agreement on the value of the relevant properties, which is normally achieved only after hard bargaining, so that the same implies an agreement on the value of three properties under exchange. Be that as it may, there is in fact no mention of the oral argument in the sale deed dated 19.10.2011, *and which cannot be, i.e., where it was actually undertaken.*

Continuing further, we are unable to find any basis, whether in law or in facts, in the assessee's case which, as afore-stated, is wholly unsubstantiated, with no improvement therein having been made even before us. Assuming that the assessee entered into, as stated, an oral agreement *qua* the purchase of a residential house at Bangalore i.e., which stands finally purchased, and even assuming that all the formalities in respect of the exchange of the three properties could be completed by 23.09.2010, i.e., within a month of the agreement, it would only amount to an exchange, resulting in fresh capital gain arising to the assessee, i.e., *qua* his Chennai and Gujarat properties transferred by way of exchange; it (exchange) being a mode of transfer both under the Transfer of Property Act as well as u/s. 2(47) of the Act. *How does that, then, we wonder, assist the assessee's case in any manner?* What the assessee was in law required to do was to utilize the amount deposited in the capital gain account, investing thus the entire capital gain of ₹. 114.88 lacs arising to him during the previous year relevant to AY 2009-10 by the relevant date. In fact, the date of the stated oral agreement, as stated in the impugned order, is 27.09.2011, i.e., much after the date by which the new asset (residential house) ought to have been purchased, i.e., 23.09.2010, so that it is of no consequence in

explaining the delay. That is, besides being un-evidenced, the date of the oral agreement, assuming so, is not certain and, in any case, defeats the assessee's case. It in fact gives no substantial rights to the assessee in the subject property, so as to be of any consequence in law (refer Transfer Property Act, Registration Act and Stamp Act). It is, as aforesaid, the utilization of the funds in the capital gain deposit account toward purchase or construction of a new residential house that is relevant, and which, even assuming the existence of an oral agreement, would not advance the assessee's case in any manner as the same does not meet the mandate of s. 54(2), non-satisfaction of which has resulted in the capital gain being brought to tax for the current year. As such, considered whichever way, the assessee's case is wholly without merit, and no wonder has been considered as a colorable device by the Revenue; there being no basis to his claim, with the oral agreement, assuming so, operating to, on the contrary, oust the assessee's case (i.e., *qua* utilization of funds) at the outset.

The case law cited before the Id. CIT(A) is, again, without reference to the facts and circumstances of the present case, and were in fact not referred to during hearing. The same is on the basis that where the moneys have been invested toward the purchase or construction of a new asset, which has not been completed by the due date, and has been so only subsequently, substantial compliance having been made, the benefit of the section should not be denied in-as-much as it is not always within the control of the assessee to complete the purchase or the construction within the time statutorily specified. In the present case, as against substantial compliance, there is no iota of progress, i.e., subsequent to the transfer on 24/9/2008, toward purchase of a house property by utilizing the amount, which remained unexpended till 19.10.2011. In other words, there was no utilization of the said deposit amount till that date, which falls beyond the two year period and, in fact, even beyond the extended period for construction, which was admittedly neither under progress nor even under

contemplation. The assessee's plea for non formalization of the purchase, which was contemplated to be by way of exchange (of his existing properties), rather than assisting, ousts his case at the threshold inasmuch as there would in that case be no utilization of the deposit amount. It would, rather, give rise to a fresh capital gain and, correspondingly, tax liability. The said case law thus has no application in the facts and circumstances of the present case. In fact, most of the grounds raised by the assessee before us are misconceived and, besides, do not arise out of the assessment or the impugned order.

For the reasons afore-mentioned, we have no hesitation in upholding the assessment and the impugned order.

4. In the result, the assessee's appeal is dismissed.

*Order pronounced on August 03, 2017 at Chennai.*

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(संजय अरोड़ा)

(Sanjay Arora)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, August 03, 2017

EDN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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