

आयकर अपीलीय अधिकरण, ' सी ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No. 3322/Mds/2016

निर्धारण वर्ष/Assessment Year : 2010-11

The Income Tax Officer,
Non-Corporate Circle -9(3),
Chennai – 600 34.

Mrs. Shema Renny Abraham,
Vs. Janapriya Crest,
No. 113, Pantheon Road,
Egmore, Chennai – 600 008.

[PAN: AKZPS 1467N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N. Gopi Krishna, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 18.05.2017

घोषणा की तारीख/Date of Pronouncement

: 16.06.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

This is an appeal filed by the revenue against the order of the Commissioner of Income Tax (Appeals)-10, Chennai in ITA No. 316/2013-14/CIT(A)-10 dated 23.09.2016.

2. Mrs. Shema Renny Abraham, the assessee, an individual, is deriving income from; share from M/s. Entech International, house property and from other sources. While completing the assessment for assessment year 2010-11, the Assessing Officer, among other issues, refused to allow the deduction claimed u/s. 54F for the reason that on the date of transfer of original asset, the assessee owns more than one residential house property, other than the new house. Aggrieved, the assessee filed an appeal before the CIT(A)-10, Chennai. The CIT(A) called for remand reports from the Assessing Officer and relying on the decision of the Hon'ble Madras High Court in the case of CIT Vs V R Karpagam (373 ITR 127) allowed the assessee's claim u/s. 54F. Aggrieved, the revenue filed this appeal with the following grounds:

"2. The Ld. CIT(A) erred in allowing exemption u/s. 54F in respect investment in all the four flats without appreciating the fact that on the date of transfer the assessee owned more than one residential property.

3. The CIT(A) erred in following the decision of the Hon'ble High Court of Madras in the case of Smt. V R Karpagam (373 ITR 127) (2015) (Mad), where the facts and circumstances are clearly distinguishable from the facts and circumstances of the present case.

4. The CIT(A) erred in not considering the decision of the Hon'ble Karnataka High Court in the case of CIT (Central) Vs M J Siwani [2014] 46 taxmann.com 170. In this case, the Hon'ble

Supreme Court dismissed the SLP filed by the assessee [2015] 53 taxmann.com 318 (SC)."

3. The DR argued the case on the lines of the grounds of appeal. Per contra, the AR submitted that the AO has denied the benefit of section 54F for the reason that the assessee is owning more than one residential house as on date of sale of property, which was subject to capital gains tax. During the remand proceedings before the AO, the assessee filed an affidavit, a copy of which was furnished by the CIT(A) also during the appeal proceedings. In the affidavit, the assessee explained the actual position as regards to her place of residence and on the nature of property owned by her. However, the AO has not expressed any opinion regarding the allowability of deduction u/s. 54F in the remand report. In spite of the plea taken by the assessee before the CIT(A) that she owns only one residential property and all others are commercial in nature and hence she is entitled for claim of exemption u/s. 54F, unfortunately, the CIT(A) has not addressed this issue. Hence, the AR pleaded to allow this appeal

4. We heard the rival contentions and gone through the order of the CIT(A). It is clear from it that the CIT(A) has not addressed this issue. Since, the assessee claims that she owns only one residential property and all other properties are commercial in nature, which has to be verified by the Assessing

Officer, this issue is remitted back to the AO for re-examination and for passing a speaking order after affording due opportunity to the assessee.

5. In the result, the revenue's appeal is treated as dismissed for statistical purpose.

Order pronounced on Friday, the 16th day of June, 2017 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 16th June, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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