

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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./ITA No.1967/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Vasala Balakrishnan
Ravikrishnan,
No.6, Sunrise Avenue,
Akkarai, Sholinganalur,
Chennai - 600 119.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 6,
Chennai - 600 006.

PAN : AAFPR 1666 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. Pushya Seetharaman,
Sr. Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 22.11.2017

घोषणा की तारीख/Date of Pronouncement : 30.11.2017

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 27.06.2017 and pertains to assessment year 2013-14.

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

3. Smt. Pushya Seetharaman, the Ld. Sr. counsel for the assessee submitted that the assessee disclosed long term capital gains of ₹76,78,300/- and claimed deduction under Section 54 of the Act on the investment made in new residential house to the extent of ₹76,78,300/-. According to the Ld. Sr. counsel, the assessee sold a residential property at Door No.20, Kalathiappa Street, Choolai along with his brother for a total consideration of ₹2 Crores by means of registered sale deed dated 22.10.2012 and 03.12.2012. The assessee's share comes to ₹1 Crore. According to the Ld. Sr. counsel, the property was originally purchased by the assessee's father on 27.10.1977. On the demise of the assessee's father, the assessee inherited the property along with his brother and mother. According to the Ld. Sr. counsel, the assessee and his brother got their mother's share by means of settlement deed dated 23.05.2012.

4. The Ld. Sr. counsel for the assessee further submitted that the construction was started by means of agreement with a builder

in November, 2009. In fact, according to the Ld. Sr. counsel, the construction was commenced in the month of April, 2010. Due to misunderstanding in the family, the construction was halted midway. After mediation, the construction was started once again and completed. According to the Ld. Sr. counsel, the new house was assessed to property tax in the first half of financial year 2012-13. The Ld. Sr. counsel has placed a copy of property tax details said to be downloaded from the website maintained by Corporation of Chennai. Placing reliance on the judgment of Karnataka High Court in CIT v. J.R. Subramanya Bhat (1987) 165 ITR 571, the Ld. Sr. counsel submitted that it is immaterial about the date of commencement of construction of the new building. What is material is completion of construction within two years from the date of sale of the old asset. According to the Ld. Sr. counsel, since the old asset was sold and new asset was constructed within two years from the date of sale, according to the Ld. Sr. counsel, the assessee is entitled for exemption under Section 54 of the Act. The CIT(Appeals) confirmed the order of the Assessing Officer on the ground that the commencement was started before the date of sale of property. The Ld. Sr. counsel has also placed her reliance on the

decision of Ahmedabad Bench of this Tribunal in ACIT v. Subhash Sevaram Bhavnani (2012) 23 taxmann.com 94.

5. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that Section 54 of the Act clearly says that for the purpose of claiming exemption, the assessee who within a period of one year before or three years after the date on which transfer took place, shall construct a residential in India, is eligible for exemption. In this case, according to the Ld. D.R., the construction was completed. However, the construction was commenced one year before the sale of the property. Therefore, according to the Ld. D.R., in view of the decision of this Bench of the Tribunal in Mrs. Hema Harathi v. ITO in I.T.A. No.2922/Mds/2016 dated 11.01.2017, the assessee is not eligible for exemption.

6. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee along with his brother sold the property and acquired a new land and commenced construction. The question arises for consideration is whether the assessee is eligible for exemption under Section 54 of the Act? The Ld. Sr. counsel by

placing her reliance on the judgment of Karnataka High Court in J.R. Subramanya Bhat (supra) submitted that commencement of construction is immaterial for the purpose of Section 54 of the Act. The building was claimed to be completed. The Ld. Sr. counsel submitted that the property was assessed to property tax by Corporation of Chennai. These facts were not taken into consideration by the authorities below. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh after considering the property tax assessment said to be made by the Corporation of Chennai and thereafter decide the issue, after considering the judgment of Karnataka High Court in J.R. Subramanya Bhat (supra) and decision of this Bench of the Tribunal in Mrs. Hema Harathi (supra), 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 30th November, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 30th November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai-34
4. Principal CIT- 9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.