

आयकर अपीलीय अधिकरण, B/“SMC” न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
B/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

**I.T.A.No.1035/Mds./2016**

(Assessment Year : 2010-11 )

**Ms.Subhadra Raju,**  
34/3/16,Royal villa, Rukmani road,  
Kalashetra colony, Besant Nagar,  
Chennai 600 041.

**PAN AXNPS 2824 C**

(अपीलार्थी /Appellant)

**Vs.** The Income Tax officer,  
Salary ward VI(3),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Mr.S.Sridhar,Advocate &  
Mr.A.S.Sriraman,Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr.N.Madhavan,, ACIT, D.R

सुनवाई की तारीख/ Date of hearing : 16.11.2017

घोषणा की तारीख /Date of Pronouncement : 29.11.2017

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-15, Chennai dated 10.02.2016 pertaining to assessment year 2010-11.

2. The grievance of the assessee in this appeal is with regard to non-granting of deduction u/s.54F of the Act, though the assessee has created a new asset within the time allowed u/s.54F of the Act.

3. The brief facts of the case are that assessee is an individual and e-filed her return of income on 02.10.2010 for the A.Y. 2010-11 admitting total income of ₹6,01,365/-. The case was selected for scrutiny through CASS. Thereafter, the assessment was completed u/s 143(3) of the Act on 27.03.2013 assessing the total income at ₹40,77,950/-.

3.1 During the assessment year under consideration, the assessee along with two other persons have sold a vacant land for a consideration of ₹1,15,29,000/- at Muttukadu in Kancheepuram District. The assessee's share of Long Term Capital Gain worked out to ₹34,76,585/- and the same was claimed as exempt u/s 54F. The date of sale of old building was 15.02.2010 and the new building (against which 54F was claimed) was also let out on the same date 15.02.2010 which

means that the construction of the new building was completed before date of sale of old building i.e. 15.02.2010 in which case the assessee is not entitled to claim deduction u/s 54F. The certificate given to the assessee by the builder M/s Vishranthi Sabari Construction vide its letter dated 12.02.2010 stating that the said apartment (against which 54F was claimed) was completed and ready for occupation. Hence, the building was ready for possession on 12.02.2010 before the sale of old building i.e. 15.02.2010. Further, the assessee stated to have taken security deposit of ₹2,00,000/- from her tenant. The security deposit should have been taken only by way of cheque. No such credit entry is available in the bank statement during the period of February 2010. According to Id. Assessing Officer, the subject building was let out for more than 3 months and the rent of ₹54,000/- was paid to the assessee. The rental agreement was made as 15.02.2010 only because the date of sale of old building was also 15.02.2010 so as to claim deduction u/s 54F. Hence, the AO was of the opinion that the assessee is not entitled for claiming deduction u/s 54F of the Act of ₹34,76,585/-.

Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, the Ld.CIT(A) confirmed the action of AO in denying exemption u/s.54F of the Act. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

4. Before us, Id.A.R submitted that the assessee sold the vacant land in February 2010 and used the sale proceeds towards construction cost which is not disputed by the AO. The dispute is only with regard to the construction having been completed before the sale of the vacant land and exemption cannot be allowed. The assessee tried her best to dispose the vacant land but could not do so and immediately on the sale used the proceeds for construction. Further, Id.A.R submitted that the sale proceeds were invested for purchase of a residential property, hence, it maybe allowed the exemption u/s.54F of the Act.

5. On the other hand, Id.D.R submitted that the assessee

purchased 1074.60 sq.ft. of undivided share of land on 30.01.2008 and had entered into an agreement with M/s Vishranthi Sabari Constructions on 27.03.2007 for construction of 1734.45 sq.ft. of super built up area. The new property was also let out on 15.02.2010 and the non-judicial stamp paper used was purchased on 07.10.2009. Further, Id.D.R submitted that no details are given either by the AO or the assessee regarding the details of payments received on sale of vacant land and payments made to the builder. According to Id.D.R, the assessee does not fulfill any of the conditions laid down for claiming exemption u/s 54F, i.e. purchasing flat before one year of sale of old asset or purchasing flat within two years of sale of old asset or constructing flat within three years of sale of old asset. Hence, Id.D.R pleaded to confirm the order of Ld.CIT(A).

6. I have heard both the parties and perused the material on record. In this case, the lower authorities rejected the claim of assessee u/s.54F of the Act for the reason that construction of a new residential house was commenced before the date of transfer of capital asset and also completed before the date of

sale of old building. It was noted by the AO that the old building was sold on 15.02.2010, the new building was let out on the same day i.e. 15.02.2010. Nence, it was inferred by the Id. Assessing Officer that the construction of a new building was completed before the date of sale of the building, which was sold. It is also noted that the assessee purchased the undivided share in the land on 30.01.2008 and entered into an agreement with M/s Vishranthi Sabari Constructions on 27.03.2007 for construction of 1734.45 sq.ft. of super built up area, i.e. before purchasing the undivided share of land.

6.1 Now, the plea of the assessee is that as per Sec.54F, the assessee has to invest the capital gains arising from the transfer of any long term capital gains, not being a residential house within one year before or two years after the date on which transfer took place in the purchase of new residential house or within three years after the date of transfer constructed a new residential house. According to Id.A.R, there is no stipulation for the date of commencement of construction of new residential house, which is irrelevant and construction may be commenced,

even before the transfer of asset and only the requirement is the investment in the construction of a new building to be made within three years of sale of property, then the benefit of Sec.54F to be given.

6.2 In the present case, there is no dispute to the fact that the construction is completed within three years from the sale of capital asset. However, deduction was denied on the reason that construction was commenced before the sale of original capital asset. In my opinion, if the assessee started the construction before the date of transfer of capital asset and it was completed within three years from the date of that asset, the benefit of Sec.54F to be given. This view was fortified by the decision of Co-ordinate Bench of Chennai Tribunal in the case of Shri Venu Sukumar in ITA No.3407/Mds./2016 dated 26.04.2017 for assessment year 2013-14 wherein held that:-

*“7. We find a force in the argument of the assessee for the reason that the Act does not describe any condition as to the date of commencement of construction of a new house property. The only condition is that construction of house property should be completed within three years from the date of transfer. The date of commencement of construction is irrelevant and the*

*construction may be commenced even before the transfer of asset as held by Delhi High Court in the case of CIT Vs. Bharti Mishra reported in [2014] 41 taxmann.com.50(Delhi). Further, High Court of Karnataka in the case of CIT Vs.J.R.Subramanya Bhat in [1986] 28 Taxman 578 (Kar.) has taken a similar view, which was in turn followed by Allahabad High Court in the case of CIT Vs. H.K.Kapoor in [1998] 234 ITR 753 (Allahabad). Further, the Andhra Pradesh High Court and Telangana in the case of Learned Commissioner of Income Tax Vs. Smt. V.Venkata Laxmi in [2015] 59 Taxmann.com 216 held that where investment in construction of a new building is made within 3 years of sale of the property, the benefit of Sec.54F is given. Thus, as seen from the facts brought on record, the assessee completed the construction in financial year 2013-14 for which no dispute and AO recorded in his order. Further, in the present case, the Id. Learned Commissioner of Income Tax(A) accepted that the construction was completed within 3 years from the date of sale of capital asset. However, deduction was denied on the reason that construction was commenced before sale of capital asset. Further, as rightly argued by the Id. A.R, the law does not contemplate the identity of the funds for investments in construction of new house of residential property. If the assessee started the construction before the transfer of property, the assessee cannot be precluded from claiming deduction u/s.54 or u/s.54F of the Act. This view was fortified by the decision of Co-ordinate Bench of Tribunal in the case of Muneer Khan Vs. ITO in [2010] 41 SOT 504 (Tribunal Hyd)]. Being so, we are of the opinion that the assessee is entitled for deduction u/s.54F of the Act for the entire cost of the construction incurred*

*by the assessee before one year of transfer of capital asset or 3 years after transfer of capital asset. In other words, expenses incurred by assessee for construction of new residential house between 19.11.2011 to 18.11.2014 to be considered for deduction u/s.54F of the Act. Further, similar view was also taken by Chennai Tribunal in the case of Mr.C.Arya Sundaram for Assessment Year :2010-11 in I.T.A.No.1208/Mds./2015 vide order dated 27.12.2016. Accordingly, this ground raised by the assessee is partly allowed and the AO is directed to re-compute the deduction u/s.54F of the Act after giving an opportunity to the assessee of being heard.*

*8. In the result, the appeal of assessee is partly allowed.”*

The Tribunal also took a similar view in the case of Mr.C.Arya Sundaram for assessment year 2010-11 vide order dated 27.12.2016 in ITA No.1208/Mds./2015.

6.3 In view of this, the cost of construction incurred by the assessee to a new residential house between 15.02.2010 and 14.02.2013 to be considered for grant of deduction u/s.54F of the Act. The assessee has to furnish the details of cost of construction incurred by the assessee during this period. Accordingly, this ground raised by the assessee is partly allowed

and the Id. Assessing Officer is directed to compute the deduction u/s.54F of the Act after giving an opportunity of being heard.

7. In the result, the appeal of assessee is assessee is partly allowed for statistical purposes.

Order pronounced on 29<sup>th</sup> November, 2017.

Sd/-  
(चंद्र पूजारी)  
(CHANDRA POOJARI)  
लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,  
Dated the 29<sup>th</sup> November, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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