

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1263/Mds/2017

निर्धारण वर्ष /Assessment year : 2007-2008

Shri. K.K. Srinivasan,
No.43, Car Street,
Salem 636 001.

Vs. The Income Tax Officer,
Ward 1(1)
Salem.

[PAN ACZPS 4713M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : None

प्रत्यर्थी की ओर से /Respondent by : Shri. B. Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 02-01-2018

घोषणा की तारीख /Date of Pronouncement : 04-01-2018

आदेश / ORDER

In this appeal filed by the assessee, it is aggrieved that its claim for exemption u/s.54F of the Income Tax Act, 1961 (herein after referred to as 'the Act') for investment made in a residential house was not allowed while computing capital gains.

2. Assessee had sold a property on 25.10.2006 for a consideration of ₹41,56,800/-. Assessee had computed long term capital gains of ₹30,29,272/- arising from this above transaction, after

reducing indexed cost of acquisition of ₹11,27,578/-. Assessee had claimed exemption u/s.54F of the Act for the entire capital gains, based on an investment of ₹35,76,800/- made by him in a new residential house. As per the assessee, he had constructed a residential house 314-1A/200A, in Plot No.20, Alaguvinayagar Street, Reddiyur Village, Salem. Assessee also filed a valuation report dated 10.07.2014 which inter alia mentioned that the construction had started in January, 2007 and was completed in March, 2008. However, Id. Assessing Officer was of the opinion that assessee ought have invested the net consideration from sale in a residential house within one year from the date of transfer of property or ought have constructed a residential house within three years from such date of transfer. As per the Id. Assessing Officer, assessee was also obliged to deposit the sums not used for such acquisition/construction in the special capital gains scheme account. According to the Id. Assessing Officer these conditions were not satisfied. Further, according to him, the return for the impugned assessment year was filed by the assessee only on 11.07.2014, after the issue of notice u/s.148 of the Act. Hence, he held that assessee was not entitled for exemption u/s.54F of the Act. Such claim for exemption was denied.

3. Assessee's appeal before Id. Commissioner of Income Tax (Appeals) did not meet with any success. What was held by the Id. Commissioner of Income Tax (Appeals), at para 5.1 of his order is reproduced hereunder:-

'5.1. Section 54F stipulates that the assessee should either utilize the sale proceeds to acquire a residential property or to construct a residential property within the stipulated time therein. Alternately, the assessee should deposit the sale proceeds in the Capital Gain Scheme duly notified by the Central Government. During the course of appellate proceedings, the assessee has filed several case laws, where in it has been held that if the assessee wants the benefit of section 54F, the assessee should either acquire or construct or deposit the said capital gain amount in an account which is duly notified by the Central Government. In the instant case, the assessee neither deposited the amount of net consideration in any Capital Gain Scheme specified by the Central Government nor utilized. Further, the assessee has not filed return of income for the A.Y.2007-08 within the due date for furnishing return u/s.139(1) or u/s. 139(4). The assessee has filed the return of income in response to notice u/s.148 only on 11.07.2014. Therefore, the assessee is not entitled to claim exemption u/s.54F of the Income Tax Act, 1961. Hence, I do not find any reason to interfere with the assessment order and the grounds of appeal are dismissed''.

4. When the case was called up for hearing, nobody appeared on behalf of the assessee.

5. Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that assessee had failed to

prove the completion of construction of the new residential house before the end of three years from the date of the transfer of the asset giving rise to capital gains. Lower authorities, according to him were therefore justified in denying exemption claimed u/s.54F of the Act. As per the Id. Departmental Representative, assessee could not even produce any electricity bills to substantiate its claim for completion of the new house within the stipulated time limit.

6. I have perused the orders and heard the Id. Departmental Representative. It is not disputed that as evidence for construction of new residence, assessee had produced a valuation report dated 10.07.2014. Assessee had filed a letter dated 16.03.2017 before the Id. Commissioner of Income Tax (Appeals) during the course of the hearing before him and what was stated by him with regard to construction of new residential house is reproduced hereunder:-

II. Substantial construction made and livable house brought into extence

(v) Copies of Electricity Bills dated 04-10-2007 and 07-1-2-2007 are enclosed.

(vi) Copy of Property Tax Receipt dated 24-12-2007 pertaining to half-year ended 30-09-2007 is enclosed.

Even on facts, thus, net sale consideration was invested in cost of construction as required by the Section.

It is therefore not correct to deny benefit, as appellant invested net consideration is new asset, though without depositing it under the Scheme.

(vii) Construction was commenced in January, 2007 and major work completed prior to 31-07-2007 bringing into existence a livable house. Work on Compound Wall, Wood work, Cement pavement surrounding the house, gate, some of the electrical fittings etc were done after 31-07-2007.

(viii) The registered valuer's report states the construction's completion as March, 2008, only because rates which prevailed during years ended 31-03-2007 and 31-03-2008 were adopted.

III. Construction made prior to 31-03-2008, time allowed by Section 139(4) satisfies:

(a) Assessee has proved incurring substantial amount for acquisition . of residential property prior to due date under section 139(4). Contention of Revenue that deposit in Capital Gain Scheme should have been made prior to due date under section 139(1) is untenable (259 CTR 388 P&H) - Copy enclosed.

(b) Investment under section 54 B can be made within the period prescribed by Section 139(4) - 172 TTJ 412 Jp, 173 TTJ 634 Chd, 125 DTR 314 Chd.

Assessee had specifically relied on the judgment of *Hon'ble Gauhati High Court in the case of CIT vs. Rajesh Kumar Jalan 286 ITR 282 and that of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Ms. Nagriti Agarwal, 339 ITR 610.* Hon'ble Punjab and Haryana High Court in the latter case had clearly held that Sub Section (4) to Sec.

139 of the Act was in fact a proviso to sub section (1) to Section 139 of the Act. What was held by their lordships at para 9 to 11 of its judgment are reproduced hereunder:-

'9. On the other hand, learned counsel for the respondent relies upon a Division Bench judgment of the Karnataka High Court reported as Fatima Bai v. ITO [2009] 32 DTR 243, where in somewhat similar circumstances, it has been held that the time limit for deposit under the scheme or utilisation can be made before the due date for filing of return under section 139(4) of the Act. Learned counsel for the respondent also relies upon a Division Bench judgment of the Gauhati High Court reported as CIT v. Rajesh Kumar Jalan [2006] 286 ITR 274 (Gauhati).

10. Having heard learned counsel for the parties, we are of the opinion that sub-section (4) of section 139 of the Act is, in fact, a proviso to sub-section (1) of section 139 of the Act. Section 139 of the Act fixes the different dates for filing the returns for different assessees. In the case of the assessee as the respondent, it is the 31st day of July of the assessment year in terms of clause (c) of Explanation 2 to sub-section (1) of section 139 of the Act, whereas sub-section (4) of section 139 provides for extension in period of due date in certain circumstances. It reads as under :

"(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier :

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April,

1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

11. A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-section (1), i.e., before the 31st day of July of the assessment year, the assessee can file return before the expiry of one year from the end of the relevant assessment year.

In the case before me, the valuation report filed by the assessee clearly show that he had completed the construction of the new residential house by March, 2008. That apart, assessee had also furnished before the Id. Commissioner of Income Tax (Appeals) electricity bills, dated 04.10.2007 and 07.12.2007. Assessee having completed the construction before 31.03.2008, in my opinion judgment of Hon'ble Punjab and Haryana High Court in the case of Ms. *Nagriti Agarwal (supra)* will come to its aid. The question is whether the construction was carried out within the time limit available u/s.139 of the Act. The date of actual filing of return by the assessee is irrelevant for construing the time limits within which the investments have to be made for availing exemption u/s.54F of the Act. Since the assessee had invested in the new residential house within the time limits specified under the Act, the question of depositing the consideration received on the sale of the property in an account under the Capital Gains Account Scheme also does not arise. I am therefore of the

opinion that assessee was eligible for claiming exemption u/s.54F of the Act. Ld. Assessing Officer is directed to give such exemption. Orders of the lower authorities are set aside.

7. In the result, appeal of the assessee is allowed.

Order pronounced on Thursday, the 4th day of January, 2018, at Chennai.

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:4th January, 2018

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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 |