

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री एम. बालगणेश, लेखा सदस्य केसमक्ष

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

आयकर अपील सं./ITA No.2157/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Vasumathi Ashok,
E-6, Adhisri Apartments,
32/33, Kothari Road,
Nungambakkam, Chennai - 600 034.

v. The Income Tax Officer,
Non Corporate Ward 3(5),
Chennai - 600 034.

PAN : AESPV 7330 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. Philip George, Advocate

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

सुनवाई की तारीख/Date of Hearing : 18.01.2018

घोषणा की तारीख/Date of Pronouncement : 08.02.2018

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) -4, Chennai, dated 27.06.2017 and pertains to assessment year 2013-14.

2. Sh. Philip George, the Ld.counsel for the assessee, submitted that deduction under Section 54F of the Income-tax Act,

1961 (in short 'the Act') was rejected by the Assessing Officer on the ground that the assessee was owning more than one house on the date of transfer. In fact, according to the Ld. counsel, the assessee sold the vacant land at Sithalapakkam Village on 18.10.2012 and claimed exemption under Section 54F of the Act in respect of the investment made by the assessee. According to the Ld. counsel, the assessee was having one residential house at Kothari Road which is self-occupied and also another commercial building at Bharathi Salai, Royapettah. According to the Ld. counsel, the building at Bharathi Salai, Royapettah was let out for commercial purpose, therefore, it cannot be considered as residential premises. According to the Ld. counsel, when one of the properties was let out for commercial purpose, it cannot be said that the assessee was owning more than one residential house, hence, the Assessing Officer is not justified in disallowing the claim of the assessee.

3. The Ld.counsel for the assessee further submitted that while computing fair market value, the Assessing Officer has taken the value on the date on which the property was inherited by the assessee from her husband. Placing reliance on the judgment of Bombay High Court in CIT v. Manjula J. Shah (355 ITR 474), the

Ld.counsel submitted that when the property was inherited, the cost of the property in the hands of the original owner has to be taken into consideration. Therefore, according to the Ld. counsel, the Assessing Officer is not justified in taking the cost of the asset as on the date of inheritance.

4. We heard Shri AR.V. Sreenivasan, the Ld. Departmental Representative also. The assessee sold a vacant land at Sithalapakkam Village on 18.10.2012 and claimed exemption under Section 54 of the Act. It is not in dispute that the assessee was having a residential house at Kothari Road and claiming the same as self-occupied. The assessee claims that she is having another building at Bharathi Salai, Roayapetta and it was let out for commercial purpose. The fact remains that the Planning permission/building approval was granted for construction of residential house and the electricity connection was also apparently obtained only for residential purposes. Moreover, there is no evidence for carrying out any commercial activity in the building. No material was produced either before the lower authorities or before this Tribunal. In the absence of any material to indicate that the property was in fact used for commercial activity, it cannot be said that the building at Bharathi Salai, Royapettah is a commercial

building. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority. In other words, the assessee was having more than one house, therefore, not eligible for exemption under Section 54 of the Act.

5. Now coming to determination of fair market value, it is not in dispute that the assessee inherited the property from her husband. Therefore, the cost of the property in the hands of her husband has to be estimated. Therefore, it is not correct to say that the fair market value has to be estimated on the date the assessee inherited the property from her husband. In view of the judgment of Bombay High Court in Manjula J. Shah (supra), this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of both the authorities below in respect of determination of fair market value alone are set aside. The Assessing Officer is directed to recompute the capital gain by taking the fair market value of the property when the original owner acquired the same or as on 01.04.1981.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 8th February, 2018 at Chennai.

sd/-

(एम. बालगणेश)

(M. Balaganesh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 8th February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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