

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" 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. 1134/Mds/2017

निर्धारण वर्ष/Assessment Year : 2005-06

Ms. Renuka Philip,
Tent House, Favourite Chalet,
No. 15, Dacosta Layout 1st Cross,
Bangalore – 560 084.

The Income Tax Officer,
Vs. Non Corporate Ward -3(2),
Chennai.

[PAN: AAGPP 9696M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mrs. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing

: 26.12.2017

घोषणा की तारीख/Date of Pronouncement

: 31.01.2018

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-4, Chennai in ITA No. 39/2013-14/AY 2005-06/CIT(A)-4 dated 22.03.2017 for assessment year 2005-06.

2. Ms. Renuka Philip, the assessee, sold a property at No. 3, Manonmaniammal Road, Kilpauk, Chennai for Rs. 1,44,00,000/- on 26.04.2004, claimed to have utilised the sale proceeds towards purchase of a property at "Favourite Plaza", Bangalore and claimed deduction u/s. 54 at Rs. 1,15,67,790/-. In the assessment made u/s. 143(3) r.w.r. 147 dated 31.12.2009, the AO allowed the deduction claimed u/s. 54F. This assessment order was subject matter on an action u/s. 263 by the CIT, Chennai-X. In the order in C. No 10/113/10/CIT(A)-X/11-12 dated 14.03.2002, the CIT held, inter alia, that:

11. A perusal of the assessment record reveals that the assessee vide her letter dt.05-08-2009 stated before the AO that she had purchased Flat No.15/3, 15/4, 15/5 & 15/6 in 'Favourite Plaza, Banarwadi Main Road, Bangalore for Rs.1,15,67,790/- and that she had been using 15/3, 15/4, 15/5 and 15/6 for her residence since the date of purchase. During the last two years, she had converted her residential property 15/5 and 15/6 to a Restaurant of which, she is the sole proprietary. It was not revealed whether these flats in which the assessee admittedly runs a Restaurant, were re-converted from residential to commercial by the Municipal/Urban Development authorities.

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13. The AO had simply accepted the self-serving statements of the assessee and the copies of the "self-assessment of property tax returns" unilaterally filed by the assessee mentioning different details of two out of four properties i.e. 15/3 and 15/4 (to indicate as if the property is in a residential colony) as evidence in support of her contention that residential property was acquired though in the Sale Deed it was categorically and repeatedly mentioned that 4 different office spaces were purchased by her in the approved commercial complex. As mentioned earlier, the assessment was reopened on the reason that the correct amount of LTCG has escaped assessment. In spite of assessment having been reopened for the specific reason, the AO had failed to verify the self-serving statements made by the assessee in the re-assessment proceedings and erroneously allowed deduction u/s 54-F of the Act which was

meant to be allowed for acquisition of only one residential property (whereas the assessee has acquired 4 separate Commercial Units in 2 different floors of the Commercial Building within the stipulated period. Therefore, the re-assessment order passed by the AO is blatantly erroneous both on the facts of the case and also in the relevant provisions of law.

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19. In view of the facts and the position of the law as discussed above, the re-assessment order passed by the AO on 31-12-2009 is blatantly erroneous to the extent of allowing deduction u/s 54-F inasmuch as it ignored the facts contained in the registered Sale Deed and other related documents and it took the self-serving statements of the assessee as true without subjecting them to any form of verification/enquiry and therefore, it is evident that it is a fit case to exercise the jurisdiction u/s 263 of the Act. The deduction claimed u/s 54-F and erroneously allowed in the reassessment order is prima facie not allowable to the assessee on a plain reading of the sale deeds. It is clear that the AO had neither applied his mind nor had made any verification/enquiry on the statements made by the assessee. Therefore, the re-assessment order dt.31-12-2009 is partially set aside to the extent of allowance. of deduction u/s 54-F of the Income Tax Act, 1961 with a direction to the AO to confront the assessee to produce evidence to the that what she had purchased is not 4 units of Commercial Property but only one unit of residential property and to verify such evidences by referring the matter to the Bangalore Development Authority whether it has issued any proceedings to convert the nature of the property in question from "Commercial"(as per the Master Plan) to 'Residential', The re-assessment order shall be revised after conducting due enquiry and confronting the results of the enquiry to the assessee in accordance with the provisions of the Act."

3. Consequently, the Assessing Officer passed an order giving effect to the order u/s. 263 dated 31.03.2013, wherein, he refused to allow the assessee's

claim of deduction u/s. 54F for the reason that till passing his order, the assessee has not produced evidence to show that only one unit of residential property was purchased and that the re-invested property was converted from "commercial to residential". Reply has also not been received for his letters dated 05.02.2013 and 22.03.2013 from the Commissioner, Revenue Department, Bangalore. In such circumstances, the assessee has not discharged the burden cast on her to prove that her re-investment qualified for deduction u/s. 54F. Aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) dismissed.

4. Against the order of the CIT(A), the assessee filed this appeal challenging the order of the CIT(A). The assessee pleaded that the CIT(A) failed to appreciate that the conditions prescribed for making the claim for deduction/tax exemption u/s. 54F were complied with and ought to have appreciated that the evidence/materials filed in support thereof were not considered both at the stage of the effect giving proceedings as well as in the appellate proceedings before him. The CIT(A) failed to appreciate that the directions in the revision order were not carried out admittedly and hence ought to have appreciated that the tabulation prepared in para 12 of his order to show the prolonged appellate hearings would on the contrary establish the complexities in the issue posed before him as well as the apparent mistake committed by the Assessing Officer in the effect giving order. The CIT(A) failed to appreciate that in any event, the appellate proceedings challenging the revisional order was pending before the Jurisdictional High Court at the point of the appellate proceedings conducted by

him in T.C. Appeal No 286/2012 and ought to have appreciated that the said tax case appeal is pending for decision. The CIT(A) went wrong in recording the findings in this regard from para 13 of the impugned order without assigning proper reasons and justifications. The CIT(A) failed to appreciate that in any event the recomputation of Long Term Capital Gains on various facts was wrong, erroneous, unjustified, incorrect and not sustainable in law.

5. The AR submitted that the Assessing Officer has not followed the direction issued by the CIT in the order u/s. 263, wherein the AO was directed to verify such evidences furnished by the assessee by referring the matter to the Bangalore Development Authority, whether it has issued any proceedings to convert the nature of property in question from commercial as per the master plan to residential. Per contra, the DR referring to the findings recorded by the CIT(A) in his order pointed out that inspite of the CIT(A) giving a number of opportunities, the assessee was not able to furnish any documentary evidences to substantiate her claim that the impugned commercial flats were converted into residential flats during the assessment year 2005-06 itself. The assessee was required to furnish copies of correspondence made by the assessee with the concerned Government Departments or officials of the Municipalities of the Bangalore, which could reveal that the appellate had applied for conversion of commercial flats into residential flats by the CIT(A). She was also requested to furnish the copies of correspondence made by the said authorities with the assessee in the process and to submit copies of approval/sanction letter issued

by the concerned authorities according permissions to the assessee to convert the said commercial flats into residential flats. All the relevant documents should otherwise be in her possession, in the normal course if she has actually applied for the conversion of the property and had also obtained for due approval. In view of that the DR pleaded for confirming the order of the CIT(A).

6. We heard the rival contentions. The issue in this appeal could be decided based upon the evidence for the conversion of the impugned commercial property into residential flats during the assessment year 2005-06. The evidences must reveal that the impugned commercial property was converted into residential property during financial year 2004-05 relevant to assessment year 2005-06 for claiming the deduction u/s. 54F. As contested by the DR, normally, the assessee should be in possession of such documents. However, the assessee pleads that she had placed available evidences before the authorities. The Administrative Commissioner has directed the AO to verify such evidences with Bangalore Development Authority. The assessee submitted that when the Commissioner of Revenue Department is not responding to the AO, the flight of the assessee would be much more. Though, we are unable to agree with the assessee's stand that she could not obtain the required documents from the concerned authorities inspite of her rights under the respective Acts or Rules and as well as under the provisions of Right to Information Act etc. However, in the interests of justice, we deem it fit that this issue be remitted back to the AO for afresh examination. The assessee shall arrange to furnish the required

documents obtained under the appropriate provisions or under Right to Information Act etc., as the case may be, and furnish them at the earliest before the AO. Since, the Administrative Commissioner of Income Tax (Appeals) has directed the officer to conduct appropriate enquiry with Bangalore Development Authority, the AO may also consider exercising his power for obtaining the required details under appropriate provisions including by issue of commissions etc., and obtain such records/evidence. After affording due opportunity to the assessee, the AO shall determine the issue in accordance with law. In the facts and circumstances, the assessee's appeal is treated as allowed for statistical purposes.

7. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced on Wednesday, the 31st day of January, 2018 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: 31st January, 2018

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 |