

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

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

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3030/Chny/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Premanand Manimaran,
3B, No.1, Abirami Le Park,
Karpagambal Main Road,
Mylapore, Chennai - 600 004.

v. The Income Tax Officer,
Non Corporate Ward 2(5),
Chennai - 600 034.

PAN : AALPP 6519 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. Jharna B. Harilal, CA

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

सुनवाई की तारीख/Date of Hearing : 22.02.2018

घोषणा की तारीख/Date of Pronouncement : 28.02.2018

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) -2, Chennai, dated 29.09.2017 and pertains to assessment year 2013-14.

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

3. Ms. Jharna B. Harilal, the Ld. representative for the assessee, submitted that the assessee along with his mother and brother sold a property at Old No.12/1, Mohammed Hussain Sahib Street, Chennai, to M/s Nakoda Foundation and Development Pvt. Ltd. for a total consideration of ₹2,70,00,000/- on 04.06.2012. According to the Ld. representative, the assessee's share of sale consideration was ₹90,00,000/-. The assessee claimed deduction under Section 54 of the Act. According to the Ld. representative, the Assessing Officer disallowed the claim of the assessee on the ground that the construction was not completed within three years. Placing reliance on the order of the Assessing Officer, the Ld. representative submitted that the assessee, in fact, deposited the sale consideration in the Capital Gains Account Scheme maintained with State Bank of India, Mylapore. The funds were withdrawn and transferred to one Sylvanus Builders and Developers Limited through whom the assessee constructed the building. Referring to page 13 of paper-book, the Ld. representative submitted that the

State Bank of India debited the assessee's Capital Gains Account and issued DD in favour of Sylvanus Builders and Developers Ltd. Therefore, to the extent of the investment made by the assessee, according to the Ld. representative, there cannot be any disallowance.

4. We heard Shri B. Sahadevan, the Ld. Departmental Representative also. According to the Ld. D.R., the assessee could not complete the construction within a period of three years from the sale of the property, therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. 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 deposited the sale consideration in the Capital Gains Account Scheme maintained with State Bank of India, Mylapore Branch, before the due date for filing of return of income. Subsequently, the assessee purchased demand drafts on 31.05.2013, 14.12.2013 and 12.05.2014 in favour of the builder and the same was paid to the builder. Therefore, the entire amount was deposited in the Capital Gains Account Scheme and the amount withdrawn was transferred to the builder for the purpose of

construction of new residential premises. In those circumstances, it is obvious that the assessee utilised the funds for the purpose of construction of building. Therefore, the authorities below are not justified in disallowing the claim of the assessee under Section 54 of the Act. Accordingly, orders of both the authorities below are set aside and the disallowance made by the Assessing Officer is deleted.

6. The assessee has taken one more ground with regard to addition of ₹1,25,000/- towards the cost of improvement.

7. We heard Ms. Jharna B. Harilal, the Ld. representative for the assessee and Shri B. Sahadevan, the Ld. Departmental Representative. After going through the details furnished by the assessee, it appears that the assessee has not made any improvement to the building, but what was spent is to maintain the building. There is a lot of difference between maintenance of the building and development. Since no material is available on record to suggest that the assessee has incurred any expenditure for development of the building, this Tribunal is of the considered opinion that both the authorities below have rightly disallowed the claim of the assessee. Therefore, this Tribunal do not find any

reason to interfere with the order of the lower authority and accordingly the same is confirmed.

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

Order pronounced on 28th February, 2018 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 28th February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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