

आयकर अपीलीय अधिकरण, 'सी' (SMC) न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' (SMC) BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 3140/CHNY/2017  
निर्धारण वर्ष /Assessment year : 2008-2009.

Varun J. Maher,  
No.49, Barnaby Road,  
Kilpauk,  
Chennai 600 010.

**Vs.** The Assistant Commissioner of  
Income Tax,  
Non Corporate Circle 10,  
Chennai

[PAN AKGPM 6712M)  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Ms. Sushma Harini, A. Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. B. Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 09-05-2018  
घोषणा की तारीख /Date of Pronouncement : 10-05-2018

**आदेश / O R D E R**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

Assessee in this appeal filed against an order dated  
24.11.2017 of the Id. Commissioner of Income Tax (Appeals)-12,  
Chennai has raised the following grounds:-

*“The appellate order dated 24-11-2017 in ITA No. 236/CIT (A) 12/2013-14 passed by the Commissioner of Income-tax (Appeals) 12, Chennai, is erroneous, opposed to law and facts of the appellant's case.*

*2. The learned Commissioner of Income-tax (Appeals) erred in dismissing the appeal filed by the appellant.*

*3. The learned Commissioner of Income-tax (Appeals) erred in his observation that the appellant had failed to deposit the capital gains in the Capital Gains Account Scheme before the due date for filing the return of income for assessment year 2008-09.*

*4. The learned Commissioner of Income-tax (Appeals) failed to note that what is required to be deposited in the Capital gains Account Scheme as per sub-section (2) of section 54 is the amount of capital gains which is not appropriated towards the purchase of the new asset or which is not utilized by him for purchase or construction of the new asset before the date of furnishing of the return of income under section 139.*

*5. The learned Commissioner of Income-tax (Appeals) erred in his finding that the appellant had neither invested the capital gains amount into new residential house nor deposited the unutilized amount into Capital Gains account Scheme before the due date of filing return of income for assessment year 2008-09”.*

2. Ld. Counsel for the assessee submitted that assessee had claimed exemption u/s.54 of the Income Tax Act, 1961 (in short “the Act”) on long term capital gains arising from sale of immovable property at Uma Complex on 10.10.2007 for a consideration of ₹53,37,500/-. As per the Id. Authorised Representative, exemption was claimed based on advance given to one M/s.Narendra Properties Ltd, Chennai on 31.10.2007 for acquiring an new property. However, as per the Id. Authorised Representative, due to unforeseen

circumstances, agreement entered with M/s.Narendra Properties Ltd, had to be rescinded on 24.09.2009. As per the Id. Authorised Representative, since new asset could not be constructed within stipulated period of three years mentioned in Section 54 of the Act, long term capital gains claimed as exempt in the impugned assessment year, was offered to tax in the return of income filed for the assessment year 2010-2011. As per the Id. Authorised Representative, taxes were also paid in full. Submission of the Id. Authorised Representative was that assessee was pleading only for refund of the tax paid in assessment year 2010-2011, if capital gains was subjected to tax in the impugned assessment year.

**3.** Per contra, Id. Departmental Representative submitted that Id. Commissioner of Income Tax (Appeals) at para 9.2 of his order had given clear directions to the Id. Assessing Officer in this regard. According to him, there could be no grievance for the assessee.

**4.** We have considered the rival contentions and perused the orders of the authorities below. Claim u/s.54 of the Act was denied by the Id. Assessing Officer for a reason that new property proposed to be acquired by the assessee was a commercial one and not a residential house. Be that as it may, the agreement entered with

M/s.Narendra Properties Ltd, was rescinded by the assessee on 24.09.2009. Capital gains claimed as exempt in the impugned assessment year was offered for taxation in the return filed for assessment year 2010-2011. Observation of the Id. Commissioner of Income Tax (Appeals) as it appears at para 9.2 of his order is reproduced hereunder:-

*“9.2 Section 54 has taken into consideration circumstances where assesses couldnot invest in residential property. In such circumstances, the assessee's only option is to invest the un utilised claim in the capital gains accounts scheme within the time limit u/s 139(1) of the IT Act. It is clear from the facts of the case that the appellant had neither invested the capital gains amount in a new residential house nor deposited the unutilised amount in the Capital Gains Accounts Scheme before the due date as prescribed. Therefore, I confirm the addition of ₹40,49,641/- made in the assessment order for AY 2008-09. However, the Assessing Officer shall examine\_the claim of disclosure of capital gains in AY 2010-11 to avoid any double taxation”.*

What we find is that Id. Commissioner of Income Tax (Appeals) had given a clear direction to the Id. Assessing Officer to avoid double taxation, while examining the disclosure of capital gains made by the assessee in his return for assessment year 2010-2011. We are sure that Id. Assessing Officer will refund any excess tax paid by the assessee since capital gains stand assessed in the impugned

assessment year. In such circumstances, we do not find any reason to interfere with the orders of the lower authorities.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced on Thursday, the 10<sup>th</sup> day of May, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:10th May, 2018

KV

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        |