

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्रीए. मोहनअलंकामणी,लेखासदस्यएवंश्रीधुव्वुरुआर.एलरेड्डी, न्यायिकसदस्यकेसमक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.No.2001/CHNY/2017
(निर्धारणवर्ष / Assessment Year: 2013-14)

Shri P.R. Easwar Kumar, C1, 1 st Floor, Malini Palace New No.8, 2 nd Crescent Park Street, Gandhi Nagar, Adyar, Chennai – 600 020.	Vs	The ACIT, Non-Corporate Circle – 16, Chennai
PAN: AABPE0760G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Jharna B. Harilal, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Shri N. Madhavan, Addl. CIT

सुनवाईकीतारीख/Date of hearing	:	05.01.2018
घोषणाकीतारीख /Date of Pronouncement	:	15.02.2018

आदेश / ORDER

Per A.Mohan Alankamony, AM:-

The appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-4, Chennai dated 30.06.2017 in ITA No.04/2016-17/A.Y.2013-14/CIT(A)-4 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised several grounds in his appeal, however the crux of the issue is that the Ld.CIT(A) has erred in directing the Ld.AO to grant deduction U/s.54 of the Act, to the extent of investment made in the construction of the new asset after the date of sale of the original asset dated 13.03.2013.

3. The brief facts of the case are that the assessee is an individual employed in M/s. BGR Energy Systems Ltd., filed his return of income for the assessment year 2013-14 on 02.07.2013 declaring total income of Rs.1,20,72,800/-. Initially the return was processed U/s.143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and finally assessment order was passed U/s.143(3) of the Act on 17.02.2016 wherein the Ld.AO rejected the claim of deduction claimed U/s.54 of the Act and assessed the Long Term Capital Gain at Rs.96,52,000/-.

4. During the course of scrutiny assessment it was noticed by the Ld.AO that the assessee had sold his residential house property at Srinagar Colony, Saidapet, Chennai for sale consideration of Rs.1,32,02,000/- on 13.03.2013. In his computation statement the assessee had claimed deduction U/s.54F of the Act for Rs.2,42,40,000/- being purchase of new

residential house at Gandhi Nagar, Adyar, Chennai. It was further observed that the assessee had made agreement on 06.05.2011 with respect to purchase of his new asset. It was also observed that the assessee had paid an amount of Rs.2,24,00,000/- before 10.03.2012. Since the assessee had made payment of Rs.2,24,00,000/- on 06.05.2011 i.e., before one year from the date of sale of the original asset on 13.03.2013 the Ld.AO opined that the assessee has not complied with the provisions of the Section 54F of the Act because the Act stipulates deduction U/s.54F shall be allowable only if the new asset is purchased within one year from the date of the sale of the original asset. The assessee had replied stating that the new asset was completed and handed over by the interior designer on 10.05.2013 and therefore he was eligible for deduction U/s.54F of the Act. Thereafter the Ld.AO rejecting the claim of the assessee disallowed the claim of deduction U/s.54F of the Act by observing as under:-

“The claim of the assessee that repayment of housing loan with LIC has been made on 16/03/2013 does not entitle him to avail of the deduction claim. The date of agreement is 06/05/2011 which is material for the admissibility of the deduction u/s 54 of the IT Act. By making an agreement for purchase of property the assessee entered into an agreement dated 06.05.2011 which is beyond the period of one year before as stipulated in the provision of sec.54F of the IT Act. The decision relied upon by the assessee are inapplicable in the case of assessee since the facts in those cases are difference. The assessee has got domain over the

property by making purchase agreement dated 06.05.2011. In the case of ShahjadaBegam the issue was date of provisions and registrations of sale deed, wherein the provision was taken earlier and sale deed was registered subsequently. In the case of Mr. BalrajVs. CIT, the issue was regarding registration of document for the claim of deduction u/s.54. In the case of Commissioner of Income Tax Vs. Bharti Mishra, the issue was regarding the construction of property prior to date of transfer of asset/property. In the case of the assessee the assessee has purchased new residential house beyond the period specified u/s.54 of the ITAct. The assessee has furnished copyof interior design agreement dated 01.06.2012 for the work to be carried out of Rs.12,00,000/-. However thesedoes not substantiate the claim of the assessee for deduction u/s.54, since the assessee has purchased the property earlier and carried out interior work subsequently. These does not substitute the date of purchase of property as per agreement dated 06.05.2011. The CBDT vide Circular No.667 dated 18.10.1993 has clarified that for deduction u/s.54/54F the cost of land and construction thereon may be considered. The board has also specified that the construction thereon is completed within the period specified in the section.

The deduction claimed u/s 54 of the IT Act of Rs.9652000/- is accordingly rejected.”

5. On appeal the Ld.CIT(A) partly allowed the appeal of the assessee by directing the Ld.AO to grant deduction U/s.54 of the Act to the assessee to the extent of investment made in the construction of the new house property after the sale of the property which took place on 31.03.2013 by observing as under:-

“13. I have considered the above contentions of the appellant and it is clearly established that investment in the new house property is towards construction of house property rather than purchase of the same as held by the A.O. Therefore, the provisions of section 54 are interpreted in that context. As far as investment in the construction of new house property u/s 54 is concerned, there is no ambiguity in the section regarding the date of investment in the construction. The relevant para of section 54 reads as follows, "..... and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased or has within a period of three years after

that date constructed a residential house." From the above, it is evidently clear that the investment in the construction of new house property should commence from the date of sale of the original asset. Accordingly, the benefit u/s54 can be allowed for the investment in the construction of new house property which was made after the date of sale of the original asset.

In the present case of the appellant, as per the Construction Agreement with M/S Palace Investments, it is noticed that the same was executed on 13/02/2011 which is much prior to the sale at the original capital asset on 13/03/2013. The appellant has submitted a copy of the Construction Agreement and at page 6 of the same, there is mention of the 'Schedule of Payment' of Rs.2,46,65,000/-. It is mentioned that the assessee has undertaken to pay the same in the manner and schedule as stipulated in Annexure-II attest to this agreement. However, there is no Annexure-II attached to the copy of construction agreement filed with me. Therefore, the AO is directed to obtain the detail of payments made by the appellant to the builder prior to 13/03/2013. The relevant bank accounts should be examined to verify the said payments. Accordingly, the AO should grant deduction u/s 54 to the extent of investment made in the construction of the new house property after the date of sale of property which took place on 13/03/2013."

6. Before us the Ld.AR made the following submissions:-
- (i) The assessee had sold his residential house at Srinagar Colony on 13.03.2013 for sale consideration of Rs.1,32,02,000/- and the same is not in dispute. He has received the sale consideration of Rs.18,00,000/- on 04.03.2013 and Rs.1,14,00,000/- on 14.03.2013 aggregating to Rs.1,32,00,000/-.
- (ii) The assessee had constructed a house by making payments in the following manner:

S.	Particulars	Amount	Date	of	Amount (Rs.)	Exhi
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No		(Rs.)	payment		bit
1	Payments made through assessee's bank account Name: State Bank of India	47,65,000	15/02/2011	5,00,000	2
			17/02/2011	25,00,000	
			11/03/2011	3,50,000	
			20/05/2011	14,15,000	
2	Payments made through spouse's bank account Name: Indian Overseas Bank	14,98,000	11/03/2011	9,73,000	3
	Payment through spouse's post office savings account		11/03/2011	5,25,000	
3	Payments made through LIC housing Loan	1,79,77,000	25/03/2011	11,52,000	4
			10/04/2011	40,00,000	
			05/07/2011	33,00,000	
			09/09/2011	22,00,000	
			15/11/2011	11,00,000	
			12/12/2011	22,00,000	
			17/03/2012	7,48,000	
			28/03/2012	14,52,000	
19/05/2012	18,25,000				
Total		2,42,40,000		2,42,40,000	

- (iii) Further the assessee had repaid the housing loan obtained from LIC to the extent of Rs.1,38,70,790/- on 19.03.2013 and thereafter the loan account was closed on 04.04.2013.
- (iv) Thus the assessee had utilized the sale proceeds towards the construction of the new residential house property within the due date of filing the return which is on 31st July 2013.
- (v) The construction of the residential house was completed in all aspects including interior decoration and the property

was taken possession on 10.05.2013 which is evident from the possession certificate issued by M/s. Insign.

With the above submission the Ld.AR pleaded that the assessee has complied with the provisions of Section 54 of the Act and therefore he is eligible for deduction claimed under the Act for Rs.96,54,000/-.

7. The Ld.DR on the other hand relied on the orders of the Ld.Revenue Authorities.

8. We have heard the rival submissions and carefully perused the materials available on record. Section 54(1) of the Act stipulates that the assessee shall be entitled for deduction if he has constructed the residential house within a period of 3 years after the transfer of the original asset. Further Section 54(2) of the Act stipulates that the assessee shall deposit the amount which is not utilized for construction of the new asset before the date of filing the return of income U/s.139(1) of the Act in the capital account scheme account of any nationalized bank. From the facts of the case illustrated by the Ld.AR herein above, we find that the assessee has complied with both the conditions stipulated under the provisions of Section 54 of the Act. The possession letter from

M/s. Insign makes it evident that the assessee has completed the construction of the new residential property on 10.05.2013 which is well before 3 years as provided under the Act. In the case CIT vs. J.R. SubramanyaBhut, the Hon'ble Karnataka High Court vide its order dated 05.06.1986 had made it clear that for granting relief U/s.54 of the Act, the date of commencement of construction is immaterial,if the construction of the building is completed within the stipulated period under the Act the assessee will be entitled for deduction. Further in the case of the assessee it is evident that the entire sale proceeds was utilized for repayment of the housing loan obtained from LIC for construction of the new residential housing property on 19.03.2013. Moreover on the plain reading of Section 54 of the Act we do not find any bar as to when the assessee should start construction of the new housing property. Further distinction cannot be drawn in a case where the assessee had made payments directly to the contractor who has constructed the residential house of the assessee on credit basis and in a case where the assessee had obtained loan for construction of the property and thereafter repaid the loan amount. Accordingly in the case of the assessee, the payment made for repayment of the loan should be construed as the payment made for construction of the house because the

construction of the residential property was completed only after the loan was repaid. It has been held on several occasions by the Hon'ble Apex Court and various High Courts that beneficial provisions of the Act has to be interpreted liberally in favour of the assessee keeping in view of the purpose of the enactment of the statutes. It is pertinent to mention at this juncture that the benefit of deduction U/s.54 was introduced in the statute to promote housing infrastructure in the Country. Therefore in the case of the assessee as per the facts mentioned in para 6 herein above, we find that the assessee has satisfied the conditions laid down in Section 54 of the Act because the asset sold by the assessee is a residential house and he has utilized the sale proceeds of the residential house for construction of a new residential house property within the stipulated period of 3 years and the occasion for remitting the sale proceeds in the capital gain scheme account did not arise because the assessee had utilized the sale proceeds for the construction of the residential house on 19.03.2013 i.e., within the due date of filing the return of income which is on 31/07/2013. However from the order of the Ld.AO as well as the Ld.CIT(A) it appears that the dates with respect to the repayment of the housing loan to the LIC of Rs.1,38,70,790/- and the facts mentioned by the Ld.AR which is recorded in para 6 herein above

is not examined. Therefore in the interest of justice we hereby remit back the matter to the file of Ld.AO in order to verify the facts stated by the Ld.AR herein above and if the date of repayment of the housing loan is found to be on 19.03.2013 and if the letter dated 10.05.2013 of M/s. Insignwith regard to the completion of the construction of the residential house is found to be genuine need less to mention that interior decoration is a part of construction activity, then grant deduction to the assessee U/s.54 of the Act, otherwise pass appropriate order in accordance with merit and law. It is ordered accordingly.

9. In the result the appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced on the 15thFebruary, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिकसदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखासदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 15thFebruary,2018

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |