

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI**  
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.2960/Chny/2016  
(निर्धारण वर्ष / Assessment Year: 2006-07)

The ACIT, Central Circle 1(1), Chennai – 34.	Vs	Smt. Suchitra Mohanlal, No.16, Casa Major Road, Egmore, Chennai – 600 008.
		PAN: AAUPS8228G
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Sailendra Mamidi, CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri D. Anand, Advocate

सुनवाई की तारीख/Date of hearing	:	16.05.2018
घोषणा की तारीख /Date of Pronouncement	:	27.06.2018

**आदेश / ORDER**

**Per A. Mohan Alankamony, AM:-**

The appeal by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 20.07.2016 in ITA No.142/14-15 for the assessment year 2006-07 passed U/s.250(6) r.w.s. 153C & 153A of the Act.

2. The Revenue has raised several grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in deleting the addition of Rs.72,79,150/- made by the Ld.AO towards disallowance of exemption U/s.54 of the Act, in respect of the capital gains arising out of sale of property at Manohar Avenue, Egmore, Chennai.

3. The brief facts of the case are that the assessee is an individual earning income from business and other sources. A search and seizure operation U/s.132 of the Act was carried out in the case of Shri V. Mohanlal on 22.07.2011, wherein certain incriminating documents marked CHN/11/ML-JD/A/1,2,5,9,ANN/LSRSK/S-1 was seized belonging to Smt. Suchitra Mohanlal. Thereafter notice U/s.153C r.w.s. 153A of the Act was issued on 30.10.2013 and finally the assessment was completed on 29.03.2014 wherein the Ld.AO made addition of Rs.72,79,150/- under the head 'Long Term Capital Gains'.

4. During the course of assessment U/s.153C r.w.s. 153A of the Act, it was observed by the Ld.AO that the assessee had computer her long term capital gain as under:-

Sale consideration	:	Rs.2,00,00,000/-
Date of Sale-11.05.2006		
2 Grounds & 410 sq.ft. of land		
Less: Transfer Expense	:	Rs. 25,000/-
		-----
Total	:	Rs.1,99,75,000/-
Less: Indexed cost	:	Rs. 99,26,562/-
FY 1995-96 56,12,402/281*497		
		-----
Total	:	Rs.1,00,48,438/-
Less Deduction U/s.54	:	Rs. 72,79,150/-
		-----
Long Term Capital Gain	:	Rs. 27,69,288/-
		=====

However it was further observed that the assessee had claimed deduction U/s. 54 of the Act towards purchased flat at Samadra Darshan from M/s. Desai Homes on 08.02.2006 for Rs.72,79,150/- from the source as detailed herein below:-

Own Savings deposited in SB account	:	Rs.10,79,150/-
Bank term loan	:	Rs.60,00,000/-
Advance from spouse	:	Rs. 2,00,000/-
		-----
Total	:	Rs.72,79,150/-
		=====

Since the assessee had purchased the new residential property not out of the sale proceeds of her long term assets, the Ld.AO disallowed the claim of deduction U/s.54/54F of the Act. The Ld.AO further held that in any case the assessee is not entitled for the

benefit U/s.54 of the Act because the long term asset sold by the assessee is residential housing plot and not residential house.

5. On appeal, the Ld.CIT(A) relying in the decision of the Hon'ble Kerala High Court in the case ITO vs. K.C. Gopalan reported in 107 taxmann 509 decided the issue in favour of the assessee by granting the benefit of deduction U/s.54F of the Act.

6. Before us the Ld.DR vehemently argued stating that, Section 54F of the Act specifically provides for reinvestment of the sale proceeds received from the sale of the long term capital asset within the stipulated period of time or until such period provided in the Act, subject to deposit of the sale proceeds in the capital gain scheme account, for being eligible to claim the benefit of deduction U/s.54F of the Act. Since in the case of the assessee substantial amount of reinvestment was made from borrowings, it was argued that the assessee is not entitled to claim deduction U/s.54F of the Act. It was therefore pleaded that the deduction U/s.54F of the Act allowed by the Ld.CIT(A) is erroneous. Accordingly it was pleaded that the order of the Ld.AO may be reinstated. The Ld.AR on the other hand relied on the order of the Ld.CIT(A).

7. We have heard the rival submission and carefully perused the materials on record. For reference the relevant provisions of Section 54F of the Act is reproduced herein below for reference:-

**“ CAPITAL GAIN ON TRANSFER OF CERTAIN CAPITAL ASSETS NOT TO BE CHARGED IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE**

*54F (1) Subject to the provisions of sub-section (4), where in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), 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, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

*(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;*

*(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45 :*

*Provided that nothing contained in this sub-section shall apply where—(a) the assessee,— (i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset ; or (ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset ; or (iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset ; and (b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head “Income from house property”.*

(2) .....

(3) .....

*(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset.”*

From the above it is crystal clear that the assessee is required to reinvest in the new asset out of the sale proceeds of the assessee's long term capital asset within the stipulated period provided under the Act in order to claim the benefit of deduction U/s.54F of the Act. In case if the assessee is not able to do so, as per the provisions of the Act, the period is extended and until such period the assessee is required to deposit the sale proceeds in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may by notification in the official gazette, frame in this behalf. Needless to mention that the reinvestment or deposit in the scheme account is to be made to the extent of the equivalent value of sale proceeds

specified under the Act and not with the same cash received on sale of the asset. This aspect was elaborated in the decision relied by the Ld.CIT(A) and not applicable to the facts of the case before us. Further the provision of deduction U/s.54F of the Act is enacted to channelize and utilize the sale proceeds of a long term capital asset in residential house in order to promote residential housing infrastructure development in the Country. In the case of the assessee, it is not clear as to for what purpose the term loan was sanctioned/obtained from the bank. It is also not clear as to for what purpose the sale proceeds of the property sold was utilized. If the assessee has utilized the sale proceeds of her property for some other purpose and only for the sake of complying with the provisions of Section 54F of the Act had obtained term loan from the bank, then we are of the view that the assessee shall not be eligible to claim deduction U/s.54F of the Act. Since the entire facts does not emerge from the order of the Ld.AO as well as that of the Ld.CIT(A), we are of the considered view that the issue is required to be remitted back to the file of Ld.AO for fresh examination. Therefore in the interest of justice, we hereby remit back the matter to the file of Ld.AO for de-nova consideration.

6. In the result appeal of the Revenue is allowed for statistical purposes.

Order pronounced on the 27<sup>th</sup> June, 2018 at Chennai.

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

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

चेन्नई/Chennai,  
दिनांक/Dated 29<sup>th</sup> June, 2018

**RSR**

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             |