

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.2903/Chny/2017

निर्धारण वर्ष / Assessment Year : 2007-08

Shri A.V. Chandramohan,
No.43/48, Pudupet Street,
Alandur, Chennai - 600 016.

v. The Income Tax Officer,
Non Corporate Ward - 16(2),
Chennai - 600 034.

PAN : AJAPC 4063 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P. Rajasekaran, CA

प्रत्यर्थी की ओर से/Respondent by : Shri M. Mathivanan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 26.06.2018

घोषणा की तारीख/Date of Pronouncement : 24.07.2018

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -4, Chennai, dated 29.08.2017 and pertains to assessment year 2007-08.

2. The only issue arises for consideration is exemption claimed by the assessee under Section 54F of the Income-tax Act, 1961 (in short 'the Act').

3. Shri P. Rajasekaran, the Ld. representative for the assessee, submitted that in the case of co-owners, namely, Shri A.P. Rajmohan and Shri A.P. Madanmohan, this Tribunal vide order dated 07.04.2017 in I.T.A. No.2807/Mds/2016 and I.T.A. No.2808/Mds/2016 respectively, allowed the claim under Section 54F of the Act on the very same property. According to the Ld. representative, when the order of this Tribunal was brought to the notice of the CIT(Appeals), he simply distinguished the case on the ground that the order of this Tribunal relates to multiple flats. According to the Ld. representative, when the joint development agreement was entered into between the assessee and other co-owners, and the developer, the builder agreed to handover the constructed area to the assessee and other co-owners. Therefore, according to the Ld. representative, the cost of proportionate share of land is deemed to be invested on the capital asset and handing over the constructed flats is immaterial.

4. Referring to Section 54F of the Act, the Ld. representative for the assessee, submitted that the assessee has to invest the capital gain in the new asset within the time limit provided for filing of return of income under Section 139(1) of the Act. If not, the same has to be deposited in the capital gain account. In this case, according to the Ld. representative, the assessee admittedly has not received any portion and the cost of proportionate share of land has to be used for construction of the flat allotted to the assessee, therefore, on the date of joint development agreement, the assessee has invested the funds. Merely because there was a delay in construction, according to the Ld. representative, it cannot be a reason to deny the claim of exemption under Section 54F of the Act.

5. On the contrary, Shri M. Mathivanan, the Ld. Departmental Representative, submitted that this Tribunal in the case of co-owners, namely, Shri A.P. Rajmohan and Shri A.P. Madanmohan, found that they are eligible for deduction under Section 54F of the Act even though they were allotted multiple flats. In the case before us, according to the Ld. D.R., it is not the case of multiple flats, but the possession was handed over to the assessee in the subsequent

year, therefore, the assessee is not eligible for exemption under Section 54F of the Act.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is eligible for exemption under Section 54F of the Act in case the capital gain was invested in construction of flat or it was deposited in Capital Gains Account within the time limit provided for filing the return of income under Section 139(1) of the Act. In the case before us, on the date of joint development agreement, the assessee agreed to take the constructed flat. In other words, the cost of proportionate share of land was retained by the developer and the same was used for construction of building. Therefore, this Tribunal is of the considered opinion that the capital gain was invested in the new asset, hence, eligible for exemption under Section 54F of the Act. In view of the above, we are unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside and the Assessing Officer is directed to allow exemption provided under Section 54F of the Act.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 24th July, 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 24th July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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