

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं ए. मोहन अलंकामणी, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI
A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1467/Chny/2017

निर्धारण वर्ष /Assessment year : 2014-15

Shri Ramanujam Venkatesh,
C/o. Pratapkaran Paul & Co,
B-8,Khader Nawaz Khan Road,
Nungambakkam,
Chennai 600 034.

[PAN AADPV 2564 M]

(अपीलार्थी/Appellant)

Vs. Income Tax officer,
International Taxation 2(2),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.G.Baskar,Advocate

प्रत्यर्थी की ओर से /Respondent by : Mr.S.Bharath,CIT,D.R

सुनवाई की तारीख/Date of Hearing : 13-12-2018

घोषणा की तारीख /Date of Pronouncement : 17-12-2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-16, Chennai in ITA No.92/CIT(A)-16/2014-15 dated 31.03.2017 for the assessment year 2014-15.

2. Mr.G.Baskar represented on behalf of the Assessee and Mr.S.Bharath represented on behalf of the Revenue.

3. In this appeal, the assessee has raised the following grounds:-

"1. The order of the learned Commissioner of Income Tax (Appeals), as regards the issues contested in this appeal, is opposed to law, facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) erred in denying the deduction u/s.54F to the extent of Rs.1,06,71,318/-for the 3 flats by treating the other 2 flats as the residential house purchased other than the new asset within the period of one year after the date of transfer of original asset.

3. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the appellant has entered into two joint development agreement viz-a-viz on 9-12-2011 & 11- 1-2012 with the builder is only for the sake of getting approval for construction from the CMDA. It would be pertinent to note that the above said agreements were subsequently revised and addendum agreement has been executed on 01-11-2014 and all the five flats have been allotted as agreed between the appellant and developer only on 1.11.2014.

4. The learned Commissioner of Income Tax (Appeals) failed to appreciate that all the 5 flats that were allotted to the appellant were in the same apartment with a same residential address and it is also

having a single common entrance and the appellant is eligible to claim deduction u/s.54F for all the 5 flats as it comprises a single residential unit.

5. The learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the appellant has claimed deduction u/s.54F only for the 3 flats out of 5 flats and the same cannot be a basis for treating the remaining two flats for which the deduction has not claimed as a residential house other than new asset.

6. The learned Commissioner of Income Tax (Appeals) erred without considering the fact that the remaining 2 flats that were received by the appellant was incidental and it cannot be treated as second residential unit.

7. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the appellant has claimed an exemption u/s.54F for 5 flats in the original return but subsequently based on the situation that were prevailing at that time in the industry and based on the revised agreement the appellant has restricted the claim of exemption u/s.54F to 3 flats. Otherwise, the appellant is eligible for an exemption u/s.54F for all the 5 flats.

8. Without prejudice to the above points, as per the proviso to S.54F it is provided that, "the exemption is not available to the assessee if: owns more than one residential house, other than the new asset, on the date of transfer of the original asset or "Therefore, the appellant is eligible for one more residential house other than the new asset. The appellant owns only those 5 flats and the two flats for which exemption u/s.54F is not claimed can be construed as the other residential unit.

Additional Grounds

1. *The Commissioner of Income Tax (Appeals) ought to have allowed deduction u/s.54F of the Income Tax Act in respect of the value of all the five flats received by the Assessee pursuant to the Joint Development Agreements.*

2. *The Commissioner of Income Tax (Appeals) ought to have seen that the Jurisdiction flat High Court has held that the word "a" in sec.54F would mean not only singular but also plural and therefore the Assessee is entitled to deduction in respect of all the five flats received pursuant to the Joint Development Agreements."*

4. It was submitted by Id.A.R that the assessee owned a piece of land of nearly 11,000 Sq.mts. It was a submission that the assessee had entered into three different Joint Development Agreements with M/s.Green Leaves Estates & Hotels for constructing residential buildings on the said plots of the land, which had been demarcated into three plots. The agreements were entered into being one on 09.12.2011 and other two agreements on 11.01.2012. As per the agreement, the assessee was entitled to 55% ownership of the constructed area. The main plot of land was sub-divided into three plots on 04.04.2013. The building plans were approved on 09.04.2013. Subsequently, vide an Addendum Agreement dated 01.11.2014, the assessee's share in the constructed area was reduced to 40% of the constructed area. The assessee received his 40% share

in the form of 5 flats in the assessment year 2014-15. The assessee had filed his return for assessment year 2014-15 admitting LTCG for ₹1,90,23,889/- and claimed deduction u/s.54F of the Act for ₹1,30,44,522/- and in the revised return, admitting LTCG for ₹1,56,40,986/- and claimed deduction u/s.54F of the Act for ₹1,06,71,318/-. The Assessing authority in the course of assessment denied the assessee's claim of exemption u/s.54F of the Act on the ground that the assessee had been allotted one flat as per Joint Development Agreement (JDA) dated 09.12.2011 and subsequently, the assessee was allotted four more flats vide two separate JDA dated 11.01.2012 and thus, the assessee had violated the conditions that he should not purchase any residential house other than the new asset within a period of one year after the date of approval of the original asset, which was the case of assessee was on 09.12.2011. It was a submission that Ld.CIT(A) had also reiterated the Id. Assessing Officer's stand and dismissed the assessee's appeal. It was a submission that the Id. Assessing Officer and the Ld.CIT(A) having come to a conclusion that the transfer of original deed took place on 09.12.2011 as is evident from the assessment order at page-8, last line of para 5.2 and page-9 of the order of the CIT(Appeals) last line, no capital gains itself was liable to be assessed during the assessment year 2014-14. It was an alternate prayer that in view of the decision of

the Hon'ble Madras High Court in the case of G.Chinnadurai Vs.I.T.O,Chennai in [2016] 74 taxmann.com 227 (Mad) where the Hon'ble Madras High Court had followed its earlier decision in the case of Smt V.R.Karpagam Vs. I.T.O in [2013] 34 Txmann.com 98, the assessee should be held to be entitled to the benefit of deduction u/s.54F of the Act in respect of the 5 flats. It was a submission that the original plot was a single plot and the sub-division took place only on 04.04.2013 and consequently, the building was approved only on 19.04.2014 and through the addendum agreement dated 01.11.2014 between the assessee and the developer, 5 flats were received on 01.11.2014. Therefore, the assessee was entitled to avail the benefit of deduction u/s.54F of the Act.

5. In reply, the Id.D.R submitted that the agreement has been entered into by the assessee on two dates and the 5 flats come to the assessee on account of various JDAs entered into by the assessee with M/s.Green Leaves Estates & Hotels, and as by the first agreement dated 09.12.2011, the assessee had received one flat, the subsequent four flats received by the assessee on account of the agreements entered into by the assessee on 11.1.2012, violated the provisions of the section 54F of the Act and consequently, the assessee was not

entitled to benefit of deduction u/s.54F of the Act. It was a prayer that the order of the CIT(Appeals) may be upheld.

6. We have considered the rival submissions. The assessment year under appeal is the assessment year 2014-15. A perusal of the assessment order and the recording at page-8 of the assessment order at para 5.2 last line shows that the Id. Assessing Officer has held that the transfer of the original asset took place on 09.12.2011. This finding of the Id. Assessing Officer has also been upheld by the Ld.CIT(A) in the last line of page-9 of his order. If this stand is to be accepted, it would mean that no capital gains can be assessed during the assessment year 2014-15. This admittedly would not be appropriate in view of the fact that if this is done, the computation of capital gains itself would escape the assessment entirely. Though this stand taken by the assessee seems to be valid, we are not inclined to accept the same in view of the fact that the assessee himself has filed his return of income for assessment year 2014-15, agreeing to the levy of capital gains during the relevant assessment year. Further, also there is no ground raised by the assessee in his grounds of appeal that capital gains cannot be levied during the relevant assessment year as the Id. Assessing Officer and Ld.CIT(A) has treated the transfer of the original

asset to have taken place on 09.12.2011 relevant to assessment year 2012-13. Though the argument has been placed, invoking of Rule-27 of ITAT Rules has also not been done. Further, it is an admitted fact that Addendum Agreement has been entered into by the assessee with M/s.Green Leaves Estates & Hotels on 01.11.2014. Addendum Agreement is the agreement by which the assessee's share in respect of three JDAs have been computed and fixed at 5 flats valued at specified amount. Consequently, the agreement dated 01.04.2014 would have to be considered as the agreement on which the transfer of the original asset took place in so far it is on this date, the consideration has been determined and fixed and possessions have been handed over. Consequently, the capital gains would be eligible only during the assessment year relevant to assessment year 01.11.2014 being the assessment year 2014-15 i.e. assessment year under appeal. Admittedly, once the agreement dated 01.11.2014 is considered as the agreement by which the transfer took place, then in view of the decision of the Hon'ble jurisdictional High Court in the case of G.Chinnadurai referred to supra, the assessee would be entitled to benefit of deduction u/s.54F of the Act in respect of all the 5 flats received by him in view of the transfer of the original capital assets being the plot of the land which had been divided into three plots on 04.04.2013. In the circumstances, the Id. Assessing Officer is directed

to grant the assessee the benefit of deduction u/s.54F of the Act in respect of the 5 flats claimed by the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17th December, 2018, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A.MOHAN ALANKAMONY)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 17th December, 2018.

K S Sundaram

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 |