

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH ‘SMC, CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: Sh. SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA NO. ITA No. 925/CHD/2018
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Harmesh Kumar Kalsi, D-129, Industrial Area, Phase-7, Mohali.	बनाम	The ITO, Ward 6(3), Mohali.
स्थायी लेखा सं./PAN NO: AHKPK6895Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri N.K.Saini

राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24.12.2018

उद्घोषणा की तारीख/Date of Pronouncement : 24.12. 2018

Date of Release of order : 21.01.2019

आदेश/ORDER

The present appeal has been preferred by the assessee against the order dated 16.05.2018 of the Commissioner of Income Tax (Appeals)-I, [hereinafter referred to as CIT(A)], Ludhiana.

2. This is second round of appeal before us. The issue raised in this appeal is relating to the eligibility of the assessee to claim exemption u/s 54 of the Act in respect of the amount capital gains invested in residential property. The assessee sold his property on 01.09.2008 for a sum of Rs. 65 lacs and purchased a residential plot for a sum of Rs. 28 lacs including Stamp Duty thereupon and claimed exemption u/s 54 of the Act pleading that the said property/plot was purchased for residential purposes. The AO, however, denied

the claim of the assessee observing that the property in question was a plot and not a residential house.

3. The matter went up to the level of the Tribunal. The Tribunal vide its order dated 24.09.2015 passed in ITA 1035/CHD/2013 observed that the Statute has given three years to an assessee to construct a residential house. That if the assessee constructs a residential house within three years from the date of transfer of the property pursuant to which the capital gain has accrued to the assessee, then the assessee is to be allowed exemption u/s 54 of the Act. The Tribunal, therefore, observing that since intention of the assessee to construct a residential house within three years of the date of construction was not considered/examined by the AO, restored the matter to the file of the AO to examine the additional evidence submitted by the assessee regarding intention of the assessee to construct residential house on the plot in question.

4. In the set aside proceedings, the AO referring to certain evidences like Khasra Girdawari and the report of the Municipal Council observed that the assessee had not applied for sanction of any plan etc. and that the assessee had failed to prove that it had constructed the residential house on the property within three years and accordingly, disallowed the claim of the assessee.

5. The ld. CIT(A) confirmed the order of the AO.

6. Now before this Bench, ld. counsel for the assessee has submitted that as per the directions of the Tribunal, what was to be seen by the AO was the intention of the assessee to

construct a residential house on the property. He has submitted that the assessee has in fact constructed a residential house on the property within three years. The next limb of the argument of the ld. Counsel is that even if the assessee could not construct the house within three years, in the first year i.e. in the year of transfer of property, what is to be seen is the investment made in the property and the intention of the assessee to construct a residential house.

7. The ld. DR on the other hand, has relied upon the findings of the lower authority and has submitted that since the assessee could not furnish reliable evidence that the residential house has been constructed on the plot in question, hence the assessee has been rightly denied the claim of exemption u/s 54 of the Act.

8. I have heard the rival submissions and have also gone through record. The ld. counsel for the assessee has relied upon the copy of Khasra Girdawari to show that in the Girdawari, the Halka Patwari (Village Revenue Official) has mentioned the detail of property as boundary wall and house. Further, the ld. counsel for the assessee has invited our attention to a photograph showing one room constructed over a property. However, in my view, the aforesaid evidence is not sufficient to hold that the assessee has built a residential house on the property in question. I, therefore, restore this matter to the file of the AO to verify, after identifying the property in question, as to whether a residential house has been constructed by the assessee on the aforesaid property, if it is found so, then to allow the claim of the assessee. So far

as the contention of the ld. counsel for the assessee that even if the assessee has not constructed the house over the property, the claim is to be rejected after passing of three years is concerned, I am not convinced with the aforesaid averment of ld. counsel for the assessee. No evidence has been placed on the file to show that the assessee really intended to construct the property but due to some extraordinary circumstances beyond the control of the assessee, the assessee could not construct the property. Under the circumstances, it cannot be simply assume that there was really any intention of the assessee to construct the property. However, as observed above, if on the plot, even as on today, the property is found constructed with a residential house, taking into consideration the beneficial provisions of the Statute promoting housing, the assessee will be allowed the eligible benefit as per law.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 24.12.2018.

Sd/-

(संजय गर्ग)

(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Dated: 21.01. 2019

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar