

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1335/CHNY/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

Smt. Sowmya Srikanth, No.34/8, Sadhullah Street, T. Nagar, Chennai – 600 017.	Vs	The Income Tax Officer, Non Corporate Ward 2(1), Chennai.
PAN: AEGPS0056Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri K. Balasubramanian, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Dr.S. Pandian, JCIT

सुनवाई की तारीख/Date of hearing	:	24.07.2019
घोषणा की तारीख /Date of Pronouncement	:	31.07.2019

आदेश / ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals), Chennai-1, in C.No.218/3/PCIT-3/263/2017-18 dated 09.03.2018, for the assessment year 2013-14 with the following grounds:

1.1 Learned Commissioner of Income-tax -1 Chennai erred in passing an order u/s 263 of the Act on 20/2/2018, setting aside the assessment order for AY 2013-14, passed u/s 143(3) on 5-11-2015 accepting the claim u/s 54 after thorough enquiry.

1.2. The learned A/O, after collecting and verifying all the details with regard to LTCG and claim u/s 54, invoking provisions of Sec.133(6) also and thus taken a plausible view in allowing the claim u/s 54, CIT erred

in taking a different view and hence the assessment order cannot be said to be erroneous or prejudicial to the interest of Revenue.

WITHOUT PREJUDICE TO THE ABOVE:

2. Learned CIT in para (4) erred in placing reliance on Mumbai ITAT decision to set aside the asst. because facts of appellant's case are entirely different. I

3. Learned CIT erred in para 4.1 erred in holding that appellant cannot claim exemption of Rs.34 for want of deposit in Capital Gains A/c, ignoring the provisions of Sec.139(4) before which time appellant invested the entire LTCG and took possession of the flat.

4. Learned CIT erred in para 4.2 in holding that appellant invested Rs.43 lakhs ignoring the letter sent by Builder to A/O, in response to Sec.133(6) notice that he had received Rs.51,79,183 and handed over possession of the flat on 15-2-2015.

Thus in all respects CIT erred in holding that the exemption of Rs.51,79,147 allowed u/s 54 is not order.

2. The Ld.AR submitted that the Ld.AO after collecting and verifying all the details with regard to the long term capital gain and the claim U/s.54, passed the order U/s.143(3). Therefore, the order passed by the PCIT U/s.263 is unjustified on the ground of appeal extracted , *supra* , and hence pleaded that the order passed U/s.263 may be set aside and render justice.

3. Per contra, the Ld. DR submitted that the assessee sold her flat at T. Nagar vide sale deed 20/2/2013 for a consideration of

Rs.1.30 crore and claimed to have invested the resultant long term capital gain of Rs.51,79,1471- in acquiring flat at Pallavaram. The entire capital gain was claimed as exempt u/s 54 and the Assessing Officer has allowed the exemption u/s 54 in the assessment order passed u/s 143(3) dated 05.11.2015, wherein the operating portion was as under:-

“after verifying all these details, the assessment was completed by accepting the return of income filed.”

3.1 On examination of the records, the PCIT found that

(i) As per the construction agreement, the assessee has paid Rs.9.5 lakhs for the new asset on 12.12.2012 which is before the date of transfer of capital asset. As per the decision of the Mumbai Bench of the ITAT in the case of Farida A Dungerpurwala v. ITO [2014] 52 Taxmann.com 527/[2015] 67 SOT 208, any investment made prior to the date of transfer cannot be considered as an investment and eligible for deduction.

(ii) The balance amount of Rs. 34 lakh was invested after the due date of filing return of income, beginning from August 2014. The due date of filing return of income for the A.Y.2013-14 was

5/8/2013. As per the provisions of section 54(2), the assessee ought to have invested the unutilized amount in the Capital Gain Account Scheme. Thus, the assessee cannot claim exemption in respect of Rs.34 lakhs which was not deposited in the Capital Gain Account Scheme which remained unutilized on the date of filing the return of income.

(iii) From the ledger account extracts of the assessee with the Builder M/s Harmony Residences Private Limited, it is noticed the amount invested by the assessee is only Rs. 43 lakhs, whereas the assessee has claimed that she has invested 52 lakhs.

3.2 In view of the above points, the PCIT considered that the Assessing Officer has allowed the exemption u/s 54 in the assessment Order u/s 143(3) without proper application of mind and hence initiated proceedings under section 263. After examining the assessee's reply, material etc, the PCIT held that the order passed U/s.143(3) dated 05.11.2015, is erroneous as well as prejudicial to the interest of the Revenue and hence set aside that order to enable the Assessing Officer to pass appropriate orders as per the provisions of law with a direction to re-determine the capital gain as

per the order of the Tribunal, Mumbai Bench. Therefore, there is no merit in the assessee's case and hence the Ld.DR pleaded that the assessee's appeal may be dismissed.

4. We heard the rival submissions and gone through the assessment order and its operating portion is already extracted in para 3, supra. From which, it is clear that the assessment order is cryptic and the AO has without any discussion on the impugned issues determined the total income. Time and again the Courts have held that the need for delivering a reasoned order is a requirement of law which has to be complied within all appealable orders. Any order devoid of such reasons suffers from non-application of mind. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. The Delhi High Court in the case of CIT vs Toyota Motor Corporation in 306 ITR 49 held that

"There is no doubt that the proceedings before the AO are quasi judicial proceedings and a decision taken by the AO in this regard must be supported by reasons. Otherwise, every order, such as the one passed by the AO, could result in a theoretical possibility that it may be revised by the CIT under Section 263 of the Act. Such a situation is clearly impermissible.

It is also necessary for the parties to know the reasons that have weighed with the adjudicating authority in coming to a conclusion. The order passed by the AO should be a self-contained order giving the relevant facts and reasons for coming to the conclusion based on those facts and law.

We find that the order passed by the AO is cryptic, to say the least, and it cannot be sustained. The Tribunal cannot substitute its own reasoning to justify the order passed by the AO when the AO himself did not give any reason in the order passed by him.

Under the circumstances, we answer the question in the affirmative, in favour of the Revenue and against the assessee and remand the matter back to the file of the AO to decide the issue afresh in terms of the order passed by the CIT under Section 263 of the Act.”

4.1 The Supreme Court dismissed an appeal against the above order in M/S Toyota Motor Corporation vs Commr. Of Income Tax in Civil Appeal No. 5313 OF 2008 (Arising out of SLP(C) No.21772/2008 (CC No.11258/2008) on 25th August, 2008 holding, inter alia, that “It goes without saying that when the matter be taken up by the Assessing Officer on remand, it shall be his duty to take into account all the relevant aspects including the materials, if any, already placed by the assessee, and pass a reasoned order. The appeal is dismissed with the aforesaid observations.”

4.2 In this case also, the AO’s order is cryptic. It is not a self-contained order giving the relevant facts and reasons for coming to

the conclusion based on those facts and law. Thus, it does not reveal application of mind on the impugned issues and hence the PCIT has correctly invoked the jurisdiction u/s 263. Since the PCIT has directed the AO to pass appropriate orders as per the provisions of law, after giving due opportunity to the assessee, we do not find any infirmity in the order and hence the assessee's appeal is dismissed.

5. In the result, the assessee's appeal is dismissed.

Order pronounced in the court on the 31st July, 2019 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 31st July, 2019

Sd/-

(एस जयरामन)
(S. Jayaraman)

लेखा सदस्य /Accountant Member

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 |