

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2820/Chny/2017

निर्धारण वर्ष /Assessment Year : 2005-06

Shri Samar Chandra,
No.94-A/72, 1st floor, 4th Street,
Abhiramapuram,
Chennai - 600 018.

v. The Income Tax Officer,
Non Corporate Ward - 1(3),
Chennai - 600 034.

PAN : AALPS 3879 C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. N. Devanathan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri V.M. Mahidar, JCIT

सुनवाई की तारीख/Date of Hearing : 07.08.2019

घोषणा की तारीख/Date of Pronouncement : 05.09.2019

आदेश /O R D E R

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 01.02.2016 and pertains to assessment year 2005-06.

2. There was delay of 593 days in filing the appeal by the assessee. The assessee filed an application for condonation of delay. Having heard the Ld.counsel for the assessee and the Ld.

D.R., this Tribunal finds that there was a reasonable cause on the part of the assessee in not filing the appeal within the prescribed time. Therefore, the delay is condoned and the appeal is admitted.

3. Now coming to the merit of the appeal, Sh. N. Devanathan, the Ld.counsel for the assessee submitted that the assessee invested the capital gain in a property at Abhiramapuram, Mylapore, Chennai, on 06.12.1995. Subsequently, according to the Ld. counsel, the building was demolished and the assessee has reconstructed the same. The Assessing Officer disallowed the claim of the assessee under Section 54 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, the existing building was demolished and there was reconstruction, therefore, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

4. We heard Shri V.M. Mahidar, the Ld. Departmental Representative, also. The first issue raised by the assessee in the grounds of appeal is with regard to reopening of assessment. We have gone through the orders of both the authorities below. As per the information received by the Assessing Officer, the assessee sold the immovable property for a consideration of ₹84 lakhs. The

Assessing Officer also received information that the assessee along with his wife purchased a flat at Door No.20, Shri Ram Colony, Abhiramapuram, Chennai. In view of this information received by the Assessing Officer, this Tribunal is of the considered opinion that the Assessing Officer has rightly reopened the assessment by issuing notice under Section 148 of the Act.

5. Now coming to the merit of the claim of Section 54 of the Act on reconstruction of building, from the records, it appears that the assessee purchased a flat, namely, Flat No.3, Door No.20, Shri Ram Colony, Abhiramapuram, Chennai. When the assessee purchased a flat, there may be other co-owners of the property. Therefore, the claim of the assessee that the building was demolished by him and it was reconstructed is beyond the human probability. Unless all the co-owners joined together to apply for demolition to the Municipal Corporation, the building cannot be demolished. Copies of the sale deeds were not filed before this Tribunal. Moreover, the order said to be issued by the Municipal Corporation for demolition and reconstruction of the building also not filed before this Tribunal. In those factual circumstances, this Tribunal is of the considered opinion that the matter needs to be re-

examined. Accordingly, orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material available on record and bring on record the actual facts whether the assessee purchased a flat or independent house. If the assessee purchased a flat, how it was demolished without the help of other co-owners. The Assessing Officer shall also bring on record whether there was any order by Municipal Corporation for demolition of existing building and for reconstruction and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 5th September, 2019 at Chennai.

sd/-
(इंटूरी रामा राव)
(Inturi Rama Rao)
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,

दिनांक/Dated, the 5th September, 2019.

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.