

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.1402/CHNY/2018.
निर्धारण वर्ष /Assessment year : 2013-2014.

Shri. N. Krishnakumar,
No.70, 4th Avenue,
Vedavalli,
Ashok Nagar,
Chennai 600 083.
[PAN AAIPK 5295R]
(अपीलार्थी/Appellant)

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 13(1)
Chennai
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. D. Anand, Advocate
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 03-10-2019
घोषणा की तारीख /Date of Pronouncement : 21-11-2019

आदेश / O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-14, Chennai ('CIT(A)' for short) dated 28.02.2018 for the Assessment Year (AY) 2013-2014.

2. The Assessee raised the following grounds of appeal:

" 1. The Order of The Commissioner of Income tax (Appeals) is contrary to Law, facts and circumstances of the case.

2 The Commissioner of Income tax (Appeals) erred in confirming the disallowance of the claim for deduction under Section 54/54F for the year under appeal.

2.1 The Commissioner of Income tax (Appeals) erred in holding that the sale was only of vacant land even though the agreement to sell specified land and building and the AO has verified the electricity payment details filed with him as evidence of existence of the residential house at the time of transfer of immovable property.

2.2 The Commissioner of Income tax (Appeals) should have appreciated that the building was demolished after the agreement of sale was executed and possession given to the buyer and the building was demolished on the instructions of the buyer before conveyance of property under a registered sale deed in the next year. As the capital gains on transfer of property is based on the agreement for sale under which both land and residential house was transferred, the Appellant was eligible for the deduction under Section 54.

2.3 The Commissioner of Income tax (Appeals) erred in denying the claim for deduction on the value invested on another residential property by erroneously invoking sec 54F, while the Appellant is entitled to deduction u/s 54. Hence owning of more than one residential property cannot be a reason for denying the deduction against capital gains claimed by the Appellant.

3 The Commissioner of Income tax (Appeals) erred in confirming to tax the annual Letting value of residential flat at Kodaikanal.

4. The Commissioner of Income tax (Appeals) ought to have appreciated that taxing the notional rent from kodaikennal property would also mean that deduction to that extent is to be given in computation of business profits of the proprietary business of the appellant and hence the net impact on Total Income of the appellant would be Nil.

5 The Appellant craves leave to file additional grounds at the time of hearing".

3. The brief facts of the case are as under:

The appellant is an individual, manufacturing PVC Pipes and Fittings in the name of proprietorship concern M/s. Essorke

Industries. The return of income for the AY 2013-14 was filed on 28.09.2013 disclosing total income of Rs.1,44,55,220/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Non Corporate Circle-13 (1), Chennai (hereinafter referred as "Assessing Officer") vide order dated 30.03.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act') at total income of Rs.9,80,30,110/-. While doing so, the Assessing Officer denied exemption of capital gains claimed u/s.54F of the Act arising on sale of property situated at No.4A (No.165), Arcot Road, Valsaravakkam, Chennai.

4. The factual background of the case are as under :-

Assessee is a owner of Plot No.165, Arcot Road, Valsaravakkam, Chennai and the same was sold to M/s.Shell India Markets Pvt Ltd for a consideration of ₹8,40,00,000/-. Assessee claimed exemption of capital gains derived on sale of said property u/s.54F of the Act as the assessee invested the sale consideration in purchase of new house property situated at No.5/55, Blue Beach Road, Neelangarai, Chennai of ₹5,40,00,000/- apart from the cost of improvement of ₹1,55,56,178/-. The Assessing Officer denied claim for exemption u/s.54F of the Act on the ground that on the date of sale of asset, assessee was owning more than two house properties i.e one at 70,

4th Avenue, Ashok Nagar, Chennai and other at Kodaikanal. The Assessing Officer rejected the contention of the assessee that property at Kodaikanal was business asset after referring to the description of property given in schedule of property in the sale deed at the time of purchase of property which describes the property as residential house. The Assessing Officer also denied exemption u/s.54 of the Act rejecting the contention that the property sold was residential property. Thus, Assessing Officer denied exemptions claimed u/s.54 and 54F of the Act.

5. Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order had dismissed the appeal concurring with the view of the Assessing Officer that the property at Kodaikanal was residential property.

6. Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal. Ld. Authorised Representative submitted that assessee is entitled for exemption u/s.54F of the Act, in as much as, the property at Kodaikanal is not residential property and is used as guest house and the same formed part of fixed asset schedule of M/s. Essorke Industries. In support of this, he also placed before us Balance Sheet and Profit and Loss

Account of said proprietary concern demonstrating that depreciation was claimed.

7. On the other hand, Id. Departmental Representative submitted that property at Kodaikanal is residential property as shown in schedule of property in the sale deed at the time of purchase of property and the asset is deemed to have converted into personal asset.

8. In rejoinder, the Id. Authorised Representative submitted that assessee continued to carry on business and the property at Kodaikanal continues to be part of fixed asset of M/s. Essorke Industries in subsequent years.

9. We heard the rival submissions and perused the material on record. The only issue in the present appeal revolves around the allowability of claim for exemption u/s.54 of the Act. During the previous year under consideration, assessee sold property at No.4A (No.165), Arcot Road, Valsaravakkam, Chennai for a consideration of ₹8,40,00,000/- to M/s. Shell India Markets Pvt Ltd. The sale proceeds has been invested towards purchase of new residential house situated at Neelangarai, Chennai. Assessee claimed exemption of capital gains u/s.54F of the Act as the sale proceeds were invested in purchase of residential property. The Assessing Officer denied the

claim for exemption u/s.54 of the Act solely on the ground that assessee was owning two residential house on the date of sale of original asset i.e. one at Ashok Nagar and another at Kodaikanal. The finding of the Assessing Officer is being disputed by the assessee on the ground that the property at Kodaikanal is a business asset forming part of fixed assets of M/s. Essorke Industries which is proprietorship concern of the assessee. According to the assessee, the property situated at Kodaikanal cannot said to be residential property. This contention was rejected by the Assessing Officer placing reliance on the description of the property given at the schedule of the property at the time of purchase of the property by the assessee. The Id. Departmental Representative further contented before us that once the assessee ceased to carry on the business, the business asset shall become personal asset and since the assessee had discontinued to carry on the business, same is only personal asset. Therefore the controversy in the present appeal revolves around whether property in the name of M/s. Essorke Industries continue to exist and if it continues in the schedules of fixtures owned by said proprietary concern. The Assessing Officer never gone into the issue whether proprietary concern still continues to exist even after sale of property at Valsaravakkam, Chennai and whether the said property situated at Kodaikanal continues to be part of fixed asset even in the year post to

2013-2014. Therefore, we are of the considered opinion that the matter should be remitted back to the file of the Assessing Officer for limited purpose of examining whether or not M/s. Essorke Industries continues to be in existence even in the period of post assessment year 2013-2014 and the said asset continues to be held in the hands of M/s. Essorke Industries, if it is found that the said company continues to exist and the property at Kodaiknal is forming part of fixed asset of schedule, the exemption cannot be denied to the assessee. Accordingly, we remit the issue back to the file of the Assessing Officer for denovo adjudication in accordance with law.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced on 21st day of November, 2019, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21st November, 2019.

KV

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 |