

आयकर आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' 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./ITA No.2858/Chny/2018

निर्धारण वर्ष /Assessment Year: 2009-10

Shri Vimal Kumar Kumaraswamy,
F1, Sri Kumara Kottam, 8, Mannar,
Second Street, Vadapalani,
Chennai – 600 026.

Vs. The Income Tax Officer,
Ward 1,
Kancheepuram.

PAN: ACKPV 1865A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri D. Anandd Babunath, CA

प्रत्यर्थी की ओर से /Respondent by

: Ms. Shanmuga Priya, JCIt

सुनवाई की तारीख/Date of Hearing

: 25.09.2019

घोषणा की तारीख /Date of Pronouncement

: 28.11.2019

आदेश / O R D E R

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-7, Chennai in ITA No.14/CIT(A)-7/2013-14 dated 24.08.2018 for the assessment year 2009-10.

2. Shri K. Vimal Kumar, the assessee, an individual deriving income from house property and long term capital gains. The assessee sold an apartment with a super built-up area of 1270 sq.ft., in T.Nagar on 21.01.2009, arrived the capital gains at Rs.20,25,308/-. In the return filed for assessment year 2009-10 on 16.07.2009, the assessee admitted an income of Rs.21,96,010/- which included capital gains of Rs.20,25,308/- and paid the taxes of Rs.4,61,280/- which included the Long Term Capital Gains at the rate of 20% of Rs.4,05,062/-. The assessment U/s.143(3) was completed on 20.12.2011 accepting the returned income. Thereafter, the assessee filed an appeal before the CIT(A) pleading, interalia, that the Assessing Officer erred in not allowing the claim of Rs.20,25,308/-, the investment made in new property in terms of provisions of Section 54. The Id.CIT(A) recorded a finding that from the records it is seen that the assessee has filed a revised return on 01.02.2012 for the assessment year 2009-10 claiming deduction U/s.54 of Rs.17,85,096/- and consequently claimed a refund of Rs.4,09,670/-. The CIT(A) found that the assessee has purchased an apartment having a super built-up area of 870 sq.ft., at Vadapalani in Chennai on 09.04.2010. The

proceedings for the assessment year 2009-10 was completed on 20.12.2011 U/s.143(3) and taxes were also paid. After the completion of assessment, the assessee wants to claim deduction U/s.54 which is not permissible and hence he dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

3. The Id.AR submitted that the assessee being unaware of tax provisions paid the Long Term Capital Gain and filed his return on 16.07.2009 without depositing the sale receipt in any capital gains scheme. Almost at the end of scrutiny of the assessment proceedings for the assessment year 2009-10, the assessee brought to the notice of the Assessing Officer that he has purchased another property and he is entitled to claim deduction U/s.54. However, the Assessing Officer without considering the assessee's claim passed the impugned assessment order. Aggrieved, the assessee filed an appeal before the CIT(A). The Id.CIT(A) erred in not considering the assessee's plea and dismissed the appeal. Per contra, the Id.DR supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. It is clear from the above, that the assessee sold the property on 21.01.2009, consciously determined the capital gains at Rs.20,25,308/- and the corresponding tax at Rs.4,05,062/-. Thereafter, he admitted the entire income including the capital gain and paid the taxes at Rs.4,61,280/-, which included the impugned capital gain and filed his return of income also on 16.07.2009. Thus, it is clear that the assessee had no intention to avail any deduction U/s.54, as he has neither deposited the sale consideration in the capital gains scheme nor specified his intention to claim the deduction U/s.54 in the return. The return filed was subjected to the assessment and the Assessing Officer accepted the returned income U/s.143(3) on 20.12.2011. After completion of the assessment, the assessee sought deduction U/s.54, before the CIT(A), submitting that he has purchased a property on 09.04.2010 and hence his claim U/s.54 be allowed. The Id.CIT(A) very correctly decided that the proceedings for the assessment year 2009-10 was completed and the taxes already paid by the assessee were also accepted. After the completion of the assessment, the assessee's claim of deduction U/s.54 is not

permissible. On the above facts and circumstances, we do not find any reason to interfere with order of the Id.CIT(A) and hence the assessee's appeal is dismissed.

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

Order pronounced in the Court on 28th November, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 28th November, 2019

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 |

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member