

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री रमित कोचर, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Ramit Kochar, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 1245/Chny/2018
निर्धारण वर्ष/Assessment Year: 2011-12

Shri T. Prethvisekhar,
No. 9, Old No. 5, Gandhi Street,
Shenoy Nagar, Chennai 600 030.
[PAN:AKWPT8056F]

The Joint Commissioner of
Income Tax, Range XIV,
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri A. Satyaseelan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Guru Bashyam, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 25.11.2019
घोषणा की तारीख /Date of Pronouncement : 02.01.2020

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

The appeal order passed by Id. Judicial Member was, though concurred, the Id. Accountant Member passed his separate concurring order forming part of the appeal order are placed for pronouncement.

Both the orders pronounced on the 2nd January, 2020 in Chennai.

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Chennai, Dated, 02.01.2020

Vm/-

Sd/-

(DUVVURU RL REDDY)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.

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 सुनवाई की तारीख/ Date of hearing : 25.11.2019
 घोषणा की तारीख /Date of Pronouncement : .12.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 12, Chennai, dated 20.02.2018 relevant to the assessment year 2011-12. In the grounds appeal, the assessee has raised following grounds:

- *The learned Commissioner of Income Tax had failed to consider the provisions of S.54 and had restricted the benefit to 2 residential units without considering the fact that the entire investment is eligible for deduction u/s 54.*
- *The learned Commissioner of Income Tax had failed to consider that S.54(1)(i) of the Income Tax Act provides that for the purpose of computing Capital Gain in respect of new asset, arising on its transfer within a period of 3 years, the cost shall be taken as nil and hence the*

subsequent sale should be considered only in Assessment Year 2012-13 and Assessment Year 2013-14.

- *The Commissioner of Income tax ought to-have considered the tutorial issued by Income Tax department especially the paragraph relating "Consequences if the new house is transferred" detailed in Pages 5 and 6, it is clearly stated that on the sale of new house property, the cost shall be taken as nil.*
- *The Commissioner of Income Tax should have been guided by CBDT Circular No 14 (XL)- 35 dated 11.04.1955 wherein the CBDT had observed that officers of the department "must not take advantage of ignorance of the assessee to his rights. It is one of his duties to assist the tax payer in every way particularly in matter of claiming and securing the release " The above principle has been held by the 3 member bench of Chennai Tribunal in the case of R Natarajan vs. ACIT, [TS386-ITAT-2012(Chny)] and held that the authority to collect tax by the state also carries the powers to rectify any proceedings which has resulted in double taxation.*

For these and other reasons it is prayed that the Honourable Income Tax Appellate Tribunal may be pleased to direct the Assessing Officer to consider the claim of the assessee u/s 54, thus render justice.

2. Brief facts of the case are that the assessee is an individual and filed his return of income for the assessment year 2011-12 admitting total income of ₹.71,00,720/-. The case of the assessee was selected for scrutiny and against the statutory notices, the assessee furnished the details as called for. After verification of the details furnished by the assessee, the assessment under section 143(3) of the Act was completed by assessing total income of the assessee at ₹.1,54,54,221/- after disallowing ₹.1,54,50,684/- towards excess claim of exemption under section 54 of the Income Tax Act, 1961 ["Act" in short] and admitting ₹.3,537/- towards income from other sources. On appeal, the Id. CIT(A) partly allowed the ground by directing the Assessing Officer to allow the

benefit under section 54 of the Act to the extent of cost of undivided share of two flats of ₹.65,77,972/-.

3. On being aggrieved, the assessee is in appeal before the Tribunal. By reiterating the plea raised in the grounds of appeal, the Id. Counsel for the assessee has submitted that the assessee is entitled to claim deduction under section 54 of the Act for the entire investment made against the sale consideration towards transfer of property. On the other hand, the Id. DR supported the order passed by the Id. CIT(A).

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. The assessee along with two of his cousins decided to sell the property in the financial year 2009-10, wherein they had entered into a sale agreement dated 16.12.2009 with M/s. Sreerosh Properties Pvt. Ltd. for the consideration of ₹.6 crores. The actual handing over of the possession of the property was done on 28.05.2010 through a General Power of Attorney executed in favour of M/s. Sreerosh Properties Pvt. Ltd. by the assessee along with his cousins. While executing the general power of attorney, the assessee had received only ₹.1,90,00,004/- towards his 1/3rd share of the property. To substantiate this, the copy of receipt dated 28.05.2010 was submitted by the assessee during the course of assessment proceedings. By considering this the total sale consideration received for transfer of 1/3rd share of the property was

taken as ₹.1,90,00,004/-. After the sale of his 1/3rd share of the property, the assessee purchased a land at 131, 3rd Main Road, Natesan Nagar, Virugambakkam, Chennai for total consideration of ₹.1,96,20,180/- on 30.06.2010. The total extent of the land purchased is 4140 sq. ft. The Sale deed copy of the land purchased was submitted during the course of assessment proceedings. On the purchase of land at Virugambakkam, the assessee had gone to CMDA for seeking approval for construction of six flats with a built-up area of 8829 sq. ft. with stilt and three floors (2 flats per floor). The CMDA had given its approval on 15.11.2010. On receipt of the approval from CMDA, the assessee had planned to construct six flats on the land at Virugambakkam and sell 4 flats and retain the remaining 2 flats with him. To this effect, the assessee had started selling the undivided share of land towards the four flats which are to be sold and also received the sale consideration towards 3 flats undivided share in the financial year 2011-12. The undivided share of one more flat was also sold in the next financial year 2012-13. For the construction of the flats, the assessee had entered into a construction agreement with three of the four buyers of the flats, wherein he had received consideration towards construction of the flats and one buyer had entered into agreement with assessee's father for construction of the flat. The details of the transfer of undivided share of land and construction agreement, the Assessing Officer was of the opinion that the assessee had commenced the construction activity at the property after September, 2011 only and also observed that the

assessee had invested the entire sale consideration received from the transfer of his 1/3rd share of the property for the purchase of land at Virugambakkam. While computing long term capital gains, the Assessing Officer noted that the assessee has claimed ₹.6,51,752/- towards cost of acquisition. The assessee himself had taken the cost of acquisition based on the value as on 01.04.1981 of ₹.91,666/- for his 1/3rd share. During the course of assessment proceedings, the assessee had submitted a letter from the Sub-Registrar's Office, Periamedu, Chennai, wherein, it was certified that the guideline value of land as on 01.04.1981 was ₹.4,000/- per ground. By adopting the above value, the Assessing Officer computed the cost of acquisition at ₹.2,60,333/- and recomputed long term capital gain at ₹.1,87,39,670/- as against the figure of ₹.1,83,48,252/- taken by the assessee. The assessee claimed exemption under section 54 of the Act by showing an investment of ₹.65,78,542/- being the cost of purchase of land at Virugambakkam on 30.06.2010 and cost of construction of 2 flats at ₹.46,72,620/- by arriving at a net long term capital gain of ₹.70,97,180/-. Against the claim of exemption under section 54 of the Act for two flats, the Assessing Officer observed that the two flats are in two different floors and are separate residential units and held that the assessee is eligible for exemption only for one unit. The Assessing Officer further observed that the assessee did not construct the residential unit before the due date i.e., 31.07.2011 and he had failed to deposit the amount in capital gains accounts scheme as per section 54(2) of the Act. Thus, the Assessing Officer held that

the assessee had invested for the purpose of claiming exemption under section 54 of the Act only to the extent of undivided share of land for one flat i.e., 694 sq. ft. of ₹.32,88,986/- as on 31.07.2011 by arriving long term capital gain of ₹.1,54,50,684/-. By following the decision in the case of CIT vs. Smt. V.R. Karpagam [2015] 373 ITR 127 (Mad.) and CIT vs. Gumanmal Jain [2017] 394 ITR 666 (Mad.), the Ld. CIT(A) directed the Assessing Officer to allow the benefit under section 54 of the Act to the extent of cost of undivided share of two flats of ₹.65,77,972/-.

4.1 Before us, the assessee has agitated in restricting the benefit to 2 residential units without considering the fact that the entire investment is eligible for deduction under section 54 of the Act. Admittedly, the Revenue has not disputed the appellate order passed by the Id. CIT(A) in directing the Assessing Officer to allow the benefit under section 54 of the Act to the extent of cost of undivided share of two flats. Though the provisions of section 54 of the Act is a beneficial provision to encourage construction of residential units for own use, no provision is available for commercial exploitation of the sale consideration on transfer of property. The caption of the relevant provision of section 54 of the Act is "Profit on sale of property used for residence" itself shows that the relevant provision is meant for not commercial purpose. It is an admitted fact that the assessee has sought for approval of CMDA for construction of six flats and the CMDA had given its approval on 15.11.2010. On receipt of the approval from CMDA, the assessee started selling the undivided share of land and sold

undivided share of 3 flats in the financial year 2011-12 relevant to the assessment year under consideration besides undivided share of one more flat was sold in the financial year 2012-13 and entered into a construction agreement. Under these facts and circumstances and in view of recent judgement of the Hon'ble Jurisdictional High Court in the case of Tilokchand & Sons v ITO [2019] 413 ITR 189 (Mad), we are of the considered opinion that even though the Id. CIT(A) has rightly directed the Assessing Officer to allow the benefit under section 54 of the Act to the extent of cost of undivided share of land of two flats, the Id. CIT(A) has erroneously disallowed the cost of construction of two flats since the assessee has not invested the balance amount in specified deposit scheme, in view of the recent judgement of the Hon'ble Jurisdictional High Court in the case of Venkata Dilip Kumar v. CIT [2019] 111 taxmann.com 180 (Mad), the Assessing Officer is directed to verify as to whether the assessee has invested the balance amount for construction purpose and if so, the assessee should be allowed to claim exemption under section 54 of the Act.

Moreover, on perusal of the sale deed, in order to invest the sale consideration on transfer of property, the assessee purchased new property at Virugambakkam consisting house and land to the extent of 4140 sq. ft. was used for the residence till the transfer and subsequently, it was demolished by M/s. Sreerosh Properties Pvt. Ltd. Prior to demolition and construction of six flats, it is not clear from the assessment order as to whether the assessee has

claimed and allowed any exemption under section 54 of the Act on the land and building purchased with the sale consideration of transfer of his 1/3 share of the property. Thus, we direct the Assessing Officer to verify any such claim of exemption was made earlier and allowed and if so, subsequent claim of exemption is not allowable. While partially confirming the appellate order, we remit the matter back to the file of the Assessing Officer to examine the observations as stated hereinabove and allow suitable claim of exemption under section 54 of the Act. Thus, the ground raised by the assessee is partly allowed for statistical purposes.

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

Order pronounced on the December, 2019 in Chennai.

As per separate concurring
---- order dt. 02.01.2020
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
dt. 26.12.2019
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, .12.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.
विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री रमित कोचर, लेखा सदस्य एवं
 श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER

ITA No.1245/Chny/2018
 निर्धारण वर्ष / **Assessment Year: 2011-12**

Shri T. Prethvisekhar,
 No. 9, Old No. 5, Gandhi Street
 Shenoy Nagar, Chennai-600 030.

v. The Joint Commissioner of
 Income Tax,
 Range XIV, Chennai

[PAN: AKWPT8056F]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
 प्रत्यर्थी की ओर से /Respondent by
 सुनवाई की तारीख/Date of Hearing
 घोषणा की तारीख /Date of Pronouncement

: Mr.A.Satyaseela, Adv.
 : Mr. Guru Bashyam, Addl. CIT
 : 25.11.2019
 : 02.01.2020

सहमत आदेश / Concurring O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

1.My learned brother , Hon'ble Judicial Member has written his order and I concur with final decision of my learned brother Hon'ble JM for setting aside and remanding the matter back to the file of AO for fresh adjudication . However, albeit agreeing with the decision of my learned brother Hon'ble Judicial Member , I am proceeding to write this separate

concurring order to further elaborate on certain vital facts which in my considered view are required to be brought by us in our order being last fact finding authority. The effective dispute is with respect to denial of deduction u/s 54 of the 1961 Act. The assessee has during the year under consideration viz. previous year 2010-11 relevant to impugned ay: 2011-12 has transferred his 1/3rd share of residential property situated at No. 15, New No. 24, Lakshmi Street, Kilpauk, Chennai-600010 to Sreerosh Properties Private Limited. This property was originally purchased by Grandfather of the assessee in 1956 and under a will executed in 1973 by his grandfather, the assessee ultimately bequeathed the aforesaid share in the property. The assessee along with his cousins who also bequeathed the said property under aforesaid will, entered into a sale agreement dated 16.12.2009 with Sreenosh Properties Private Limited for consideration of Rs. 6 crores and the aforesaid property was finally handed over on 28.05.2010 through a General Power of Attorney executed in favour of Sreenosh Properties Private Limited by assessee and his cousins. The assessee received Rs. 1,90,00,004/- as his share of sale consideration for transfer of 1/3rd share in the said property. So far so good , there is no dispute between rival parties till this point.

2.The dispute has arisen between rival parties as to claim of deduction u/s. 54 of the 1961 Act. The assessee has claimed to have purchased an residential house, ground and premises situated at Plot No. 131, Third Main Road, (Formerly Arumuganainar Street) , Natesa Nagar, Virugambakkam, Chennai-600092 , now bearing Municipal Door Number 131. Natesa Nagar, Third Main Road, Virugambakkam , Chennai-600092 in extent one ground and 1740 square feet comprised in Survey Nos. 49 & 50-part, T.S. No. 14, Block No. 3 of in No. 105, Senjari village , Formerly known Saidapter Taluk, Chenghai-MGR District, Now Egmore-Nungambakkam Taluk, Chennai for Rs. 1,80,00,000/- . There was extent of site of one ground & 1740 square feet and the Ground floor has 1100 square feet RCC construction in the aforesaid property as is emerging from deed of sale. Refer to deed of sale dated 30th June 2010(refer to page 8-28/paper book). The authorities below have proceeded on the basis that the assessee only purchased land but the assessee is claiming now that it was an residential house purchased by him for Rs. 1,80,00,000/- which he is entitled for deduction u/s 54 of the 1961 Act for which arguments were advanced before the Bench. This plea now raised before us needs verification by AO as both the authorities below have proceeded on the basis that the assessee purchased only land and thereafter got six flats constructed on it , out of which four flats were sold by assessee and two were claimed to be retained by assessee.

However along with this contention of the assessee that it purchased residential flat on 30.06.2010 which itself made it eligible for deduction u/s 54 of the 1961 Act , the another aspect which has to be looked into by the AO is that the said constructed building on the said land purchased by assessee was demolished by the assessee in the previous year 2010-11 itself relevant to ay: 2011-12 and whether such demolition infringed provisions of Section 54(1)(i) and (ii) of the 1961 Act which mandate that new asset is to be retained by assessee for three years. This aspect is also to be looked into at first instance by AO in set aside proceedings . The assessee got approval for demolition of constructed area on aforesaid property purchased by Assistant Executive (T.P.) Zone 05, Corporation of Chennai, Chennai on 20.08.2010 vide W.D.C.No. DA/WDC05/00394/2010 in accordance with provision of Section 246(A) of MCMC Act (refer page 29/PB). The assessee got the said property demolished in the financial year relevant to impugned ay : 2011-12 itself which is confirmed/admitted by assessee vide letter dated 26.11.2010 addressed to Assistant Revenue Officer Zone V, Corporation of Chennai , Chennai(refer page 30/PB). Thus, the matter is required to be set aside to AO to verify this claim of deduction u/s 54 of the 1961 Act on the initial investment claimed to be made in residential house on 30.06.2010 and demolition of constructed building in the previous year 2010-11 itself . The AO shall also look into conditions for retaining the

new asset for a period of three year as is contemplated u/s 54(1)(i) and (ii) of the 1961 Act and also as to whether demolition of the new asset(constructed building) within year of purchase itself by assessee tantamount to transfer as contemplated u/s 2(47)(ii) of the 1961 Act being extinguishment of any right therein and whether it led to violation of conditions for retaining new asset for a period of three years as is contemplated u/s 54(1) of the 1961 Act . The AO shall gather entire intention of the assessee in acquiring the said property on 30.06.2010 being new asset which is claimed by assessee to be a residential house eligible for deduction u/s 54 of the 1961 Act and later on demolition of the constructed area thereon the acquired new asset. Later on , the assessee has constructed six flats on the said land after demolition of the constructed building on it , out of which four flats were stated to be sold. My. Learned Brother JM has already set aside the matter after considering the issue of reconstruction of property wherein assessee has claimed to have constructed six flats out of which four flats stood sold and two were claimed to be retained by assessee for which alternate claim of deduction u/s 54 of the 1961 Act was made by assessee. The AO shall pass speaking and reasoned order in set aside proceedings after considering entire factual matrix of the case in toto. We order accordingly.

3. In the result, the appeal filed by assessee in ITA No.1245/Chny/2018 for ay: 2011-12 is allowed for statistical purposes.

Order pronounced on this 02nd day of January, 2020 in Chennai.

Sd/-
(रमित कोचर)
(RAMIT KOCHAR)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 02nd January, 2020.

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF