

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

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामनलेखा सदस्य समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1362/Chny/2019

निर्धारण वर्ष/Assessment Year : 2015-16

Shri. Suriyamoorthy Shanmugavel,
84, Seethapathy Nagar,
Kani Street,
Velacherry,
Chennai – 600 042.

The Income Tax Officer,
Vs. Non Corporate Ward 14(2),
Chennai.

[PAN: ANCPS 0361B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

:

Shri. Y. Sridhar, CA &

Shri. S. Saravana Kumaran, Advocate

प्रत्यर्थी की ओर से/Respondent by

:

Shri. R. Anitha, JCIT

सुनवाईकीतारीख/Date of Hearing

:

24.10.2019

घोषणाकीतारीख/Date of Pronouncement

:

22.01.2020

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 12, Chennai, in ITA No. 19/CIT(A)-12/2018-19 dated 28.02.2019 for the assessment year 2015-16.

2. Shri Suriyamoorthy Shanmugavel, the assessee, sold a property at Trichy on 08.10.2014 for a sale consideration of Rs. 2.27 crores while its value u/s. 50C was at Rs. 2,28,33,225/-. Out of the sale consideration, he invested in two vacant lands for a total consideration of Rs. 2,55,61,000/- and claimed deduction u/s. 54. The A O noticed that as per the provisions of the Act, in the vacant land of the original asset, the assessee was supposed to construct a residential house within 3 years from the date of transfer. However, from the details obtained during the course of assessment proceedings etc , he found that the impugned land was lying as vacant land as on 13.10.2017, the vacant land is not assessed to the property tax and it does not have an Electricity connection and hence, he disallowed the assessee's claim of deduction u/s. 54 and assessed the assessee's income under the head long term capital gains.

3. Aggrieved , the assessee filed an appeal before the CIT(A). Before the Ld. CIT(A), the assessee submitted , inter alia, that he did not get approval for construction due to an order of the Madras High Court as it restricted the construction of plots at unauthorised lay outs. Therefore, he could not carry out the construction etc. The Ld. CIT (A) held, inter alia, that the provisions of section 54 and the conditions therein have not given any discretion for considering the circumstances as mentioned by the assessee to allow the claim and hence he confirmed the order of the Ld. AO. Aggrieved, the assessee filed this appeal.

4. The Ld. AR invited our attention to the gist of events with dates in the paper book, which is extracted as under :

Date	Particulars	Remarks
08.10.2014	Sale of House Property at Trichy	House property sold for Rs.2,27,00,000/-
04.12.2014	Purchase of Plot No.18 in uthandi village	Purchased for a consideration of Rs.80,35,000/- (Including Stamp duty & Registration fees)
18.09.2015	Purchase of Plot No.19 in uthandi village	Purchased for a consideration of Rs. 1,75,26,000/- Including Stamp duty & Registration fees)
29.09.2015	Filed Return of income for AY 2015-16	
29.03.2016	Planning permission obtained	
09.09.2016	Order of Hon'ble Madras High Court	Passed a Judgement restricting the registration of Court unauthorized layouts or flats or Buildings (WP No. 19566/20 15)
22.09.2016	Notice Issued u/s 143(2)	
22.05.2017	Notice Issued u/s 142(1)	
13.10.2017	Notification of Tamilnadu Government	Notification of TN government for regularization of plots and buildings.
29.11.2017	Letter issued by AO	Show cause as to why Rs.2,28,33,225/- being full value of consideration u/s 50C instead of Rs.2,27,00,000/- cannot be taxed as long term capital and sought for details of investment, if any in capital gain account scheme.
22.12.2017	Final Submission before AO along with Revised statement of Income.	
28.12.2017	Assessment Order passed by AO	Disallowed claim u/s 54
24.01.2018	Appeal filed before CIT (A)	
25.02.2019	Written submission before CIT(A).	
28.02.2019	Order u/s 250(6) by CIT(A).	Dismissed the appeal filed by the appellant

Inviting our attention to the photographs placed in page no. 34 to 36 , the AR submitted that the assessee has constructed a house subsequently and the copies of those photos were shown to the A O at the time of assessment, the property is assessed by the Assistant Revenue Officer, Zone-15 at Greater Chennai Corporation, Chennai by his order dated 08.01.2018, a copy of which

was also placed in paper book and invited to the following part of the written submissions

"10. The appellant bring to the notice of Assessing officer that he was sick Since January 2016 for long time till October 2016 and could not start the construction although the planning permission was obtained by him on 29.03.2016. The planning permission was issued with the condition that appellant should start the construction within 6 months namely 29.09.2016. By the time the appellant was about to start the construction, the Hon 'ble Madras High Court had given a Judgment restricting the registration of plots at unauthorized layouts or any flats/building constructed at such plots in Writ Petition number 19566 of 2015 dated 09.09.2016. This means that any plots which are not approved by CMDA shall not be permitted for registration or for any other activity like construction. A

copy of the planning permission and the said Judgment of the Hon 'ble Madras High Court is submitted before AO. Due to the above order of the High Court, the appellant was barred by Law from starting the house construction after 09.09.2016. Hence the appellant did not start the construction and waiting for the final outcome of the Judgment which was subsequently posted for hearing.

11. The Hon'ble Madras High Court has subsequently taken up the case for hearing on various dates and finally confirmed the original restriction imposed on 09.09.2016 and advised the Tamil Nadu Government to come out with the regularization scheme for giving approvals of the plots and building which was constructed on unapproved layouts. Accordingly the Government of Tamil Nadu has come out with a Regularization of Unapproved plots and Layouts Rules, 2017 u/s 113 LW.S. 122 of the Tamil Nadu Town and Country Planning Act, 1971 during the end of September 2017 which was published in Gazette on 13.10.2017. The copy of notification is submitted before AO.

12. Meanwhile, the appellant building permission obtained on 29.03.2016 has become invalid due to the above order and also lost its validity on 28.09.2016. Hence appellant could not start any construction activity between 09.09.2016 and till 13.10.2017. However, the appellant had started the construction during the mid of October 2017 and completed the construction during 2nd week of December 2017. The appellant had also obtained EB connection in Connection number 328-001-3002 in his name on 30.11.2017. The copy of the EB card was submitted before AO. Appellant had also applied for assessment of Tax by the Corporation officials and letter made for property assessment was submitted before AO. The appellant also submitted actual photographs taken at the site as on 21.12.2017 before AO. The appellant had also applied for the regularization of the building which was constructed after lapse of

original building plan permission but eligible for regularization as per the Rules framed by the Government of Tamilnadu.

13. The appellant humbly state that the delay in completion of construction of house property was mainly due to the restriction imposed by Law and not intentional. The appellant have lost around 400 days between 09.09.2016 and 13.10.2017 due to the order of the Hon'ble Madras High Court. Hence appellant request A O to kindly treat the above situation beyond his control and allow his claim u/s 54 on the basis that appellant had utilized the entire Long Term Capital Gain before filing the Return of Income for AY 2015-16 and completed the construction with about 2 months delay compared to the deadline of 08.10.2017."

and submitted that the lower authorities have not considered the facts and circumstances which were beyond the control of the assessee and refused to allow the assessee's claim u/s 54 . Since the assessee had utilized the entire Long Term Capital Gains before filing the return of income for AY 2015-16 and completed the construction with about 2 months delay compared to the deadline of 08.10.2017, in view of the above peculiar facts and circumstances , therefore, the Ld A R pleaded to allow the appeal . Per contra, the Ld DR supported the orders of the lower authorities.

5. We have considered the rival submissions and gone through relevant material. Though the assessee had invested the sale consideration in acquiring the vacant plots, obtained the planning permission on 29.03.2016 with the condition that the appellant should start the construction within 6 months ie before on or before 29.09.2016, by the time the appellant was about to start the construction, the Hon 'ble Madras High Court had given a Judgment restricting the registration of plots at unauthorized layouts or any flats/building constructed at such plots in Writ Petition number 19566 of 2015 dated 09.09.2016. This

means that any plots which are not approved by CMDA shall not be permitted for registration or for any other activity like construction after 09.09.2016. Hence the appellant could not start the construction and was waiting for the final outcome of the Judgment. Ultimately, when the legal and procedural environment became clear, the assessee constructed it after 13th Oct 2017. Therefore, we are of the view that the assessee is entitled to the benefits of deduction u/s 54, as the delay towards the impugned construction period is beyond his control and not attributable to him. Therefore, we direct the AO to treat as if construction is made within time . Since the A O has not examined the other conditions in relation to the grant of deduction u/s 54 , we remit the issue back to A O for a fresh examination . After affording effective opportunity to the AO , the A O shall pass the order in accordance with law.

6. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 22nd January, 2020 at Chennai.

Sd/-

(धुव्वुरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 22nd January, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member