

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

श्री महावीर सिंह, उपाध्यक्ष
एवं श्री एम बाला गणेश, लेखा सदस्य

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.3112/Chny/2019

निर्धारण वर्ष /Assessment year : 2008-09

Smt.A.Tamil Ponni,
No.5,Thiruvadi street,
Srirangam,Trichy 620 006.
[PAN ACVPT 0449 B]
(अपीलार्थी/Appellant)

Vs. The Income Tax Officer,
Ward IV(3), Trichy.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.R.S.Balaji, Advocate &
Mr.T.M.Subramanian,FCA,
प्रत्यर्थी की ओर से /Respondent by : M/s.Vijayaprabha,JCIT,D.R

सुनवाई की तारीख/Date of Hearing : 24.02.2020
घोषणा की तारीख /Date of Pronouncement : 25.02.2020

आदेश / O R D E R

PER M. BALAGANESH, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-1, Trichy in ITA No.332/2011-12/C.I.T(a)-1/TRY, dated 21.08.2019 for the assessment year 2008-09.

2. Though the assessee has raised several grounds before us, the effective issues that are to be decided by this Tribunal are as under:-

- a) Whether the sale consideration of ₹.37,92,600/- on sale of land should be considered as against the actual sale consideration received in the sale of ₹.19,85,000/- for the purpose of computation of capital gains in the facts and circumstances of the case.
- b) Whether the assessee is entitled for claiming cost of development of ₹.5 lakhs while computing the capital gains in the facts and circumstances of the case.
- c) Whether the assessee is entitled for claim of exemption under Section.54F of the Act in the facts and circumstances of the case.

3. We have heard rival submissions and perused the material on record. We find that the assessee had sold 76 cents of land at Tharanallur village, Trichy on 25.02.2008. Prior to that date, the assessee had entered into an agreement for sale wherein the consideration amount was agreed at ₹.37,92,600/- whereas the consideration as per the registered sale deed was ₹.19,85,000/-. The

assessee disclosed the capital gains by adopting the sale consideration at ₹.19,85,000/-. This sale consideration figure was sought to be substituted by the Ld. A.O with ₹.37,92,600/- being the consideration figure mentioned in the agreement for sale. The ld. A.O also recorded a statement from the purchaser of the land Smt.R.Pushpavalli on 23.11.2011 wherein on oath, she had categorically confirmed that she had paid actual consideration of ₹.37,92,600/- to the assessee in cash in three installments. This fact when confronted with the assessee, the assessee was not able to counter the same. Accordingly, the Ld. A.O. adopted the sale consideration figure of ₹.37,92,600/- as full value of consideration while computing the capital gains on transfer of land. This action was upheld by the learned CIT(A). We do not find any infirmity in the said action of learned CIT(A) upholding the Ld. A.O's order with regard to adoption of sale consideration.

3.1 We find that the assessee had made a claim of ₹.5 lakhs towards cost of improvement on the pretext that the said sum was incurred by her towards cost of development and assessee had incurred this expenditure through a mason Shri C.Vasudevan. The assessee had merely produced the receipt for payment of ₹.5 akhs from Shri C.Vasudevan to substantiate her claim. The Ld. A.O disbelieved the same and further observed that the PAN and address of Shri C.Vasudevan was not produced before him to check the

correctness of claim made by the assessee. Accordingly, the Assessing Officer denied the benefit of grant of deduction of cost of improvement at ₹.5 lakhs while computing the capital gains. This action was upheld by the learned CIT(A).

4. Before us, the Ld. A.R. argued that without incurring of development cost on the said land, the sale of land could not have happened. Hence, Ld. A.R. vehemently pleaded that assessee be given a deduction towards cost of improvement of ₹.5 lakhs while computing the capital gains, but we find that except merely making a bald statement, the Ld. A.R. was not able to furnish any other evidence before us to substantiate the claim. However, as the last opportunity in the process of identifying truth behind the transfer of land by the assessee, we deem it fit and appropriate, in the interest of justice and fair play, to remit this aspect of the issue to the file of Assessing Officer for denovo adjudication i.e only with respect to amount of deduction towards cost of improvement of ₹.5 lakhs while computing the capital gains. We hold that the assessee should furnish all necessary evidences in support of her claim before the Assessing Officer and the Assessing Officer should also make cross verification with Shri C.Vasudevan or any other person through whom the development work has been carried out to identify the truth involved

thereon. Hence this aspect of the issue is remitted back to the file of A.O. for afresh adjudication.

5. With regard to claim of exemption under Section 54F of the Act, we find that the assessee in instant case had reinvested in the new property in the name of her husband. We find that there is no dispute with regard to the fact of making reinvestment in new property. The only dispute is that reinvestment in new property has been made by the assessee in the name of her husband instead of in her name. This is a sole reason for denial of exemption under Section.54F of the Act. We find that the Hon'ble jurisdictional High Court in the case of C.I.T Vs. V.Natarajan reported in 287 ITR 271 (Mad.), which has been heavily relied upon by Ld. A.R. before us, had held as under:-

"In the instant case, the assessee purchased a house property at Anna Nagar in the name of his wife Smt.Meera after selling a property at Bangalore, but the same was assessed in the hands of the assessee. Hence, as correctly held by the learned CIT(A) as well as by the Tribunal, the assessee is entitled for exemption under Section.54F of the Act.

Respectfully following the afore said decision, we hold that even though the new property has been invested in the name of assessee's husband, exemption under Section.54F cannot be denied to the

assessee. We direct the A.O. accordingly. The grounds raised by the assessee are disposed off in the aforesaid manner.

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

Order pronounced in the open court on 25th February, 2020, at Chennai.

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/Vice President

चेन्नई/Chennai

दिनांक/Dated: 25th February,2020.

K S Sundaram

Sd/-

एम बाला गणेश)
(M. BALAGANESH)
लेखा सदस्य /Accountant 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