

आयकर अपीलिय अधिकरण, 'सी' (एस एम सी) न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: **956 / CHNY / 2018**

निर्धारण वर्ष / Assessment Year: 2012-13

Late Gobindram Hathiramani
Chandru,
Rep.by Legal Heir Priti Manohar,
Hathi Villa, Plot No.861,
13th Main Road, Anna Nagar,
Chennai – 600 040

v. The Income Tax Officer,
International Taxation Ward -1(1),
Chennai.

PAN : AGKPP3895Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N. Arjun Raj, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri A. Sundararajan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 13.02.2020

घोषणा की तारीख/Date of Pronouncement

: 17.03.2020

आदेश / O R D E R

1. This appeal by the assessee is arising out of the order of CIT(A)-16, Chennai, in ITA No.103/CIT(A)-16/2013-14 dated 12.02.2018. The Assessment was framed by Income Tax Officer, (International Taxation) Ward -1(1), Chennai for the A.Y. 2013-14 vide order dated 30.11.2016 U/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of the assessee against the order of CIT(A) is confirming the action of the Assessing Officer in sustaining the claim of exemption U/s.54F of the Act in the computation of Long Term Capital Gain reinvested against purchase of house property. For this assessee has raised various grounds but the relevant grounds are as under:-

“2. The CIT(Appeals) erred in sustaining the restriction of the claim for tax exemption u/s 54F of the Act in the computation of Long Term Capital Gains and consequently erred in sustaining the addition of Rs.25,02,243/- which sum was construed as excess claim for deduction without assigning proper reasons and justification.

3. The CIT(Appeals) failed to appreciate that the misconstruction of the provisions of section 54F of the Act was wholly unjustified and further ought to have appreciated that the factual mistake in understanding the case of the Appellant/computation of Long Term Capital Gains furnished by the Appellant would vitiate the decision rendered in relation thereto.

4. The CIT(Appeals) failed to appreciate that the mistake in the computation of Long Term Capital Gains u/s 54F of the Act was patent/obvious and ought to have appreciated that the cost of new asset in the statutory formula was wrongly taken as Rs.1,16,00,000/- which represented the amounts invested in the capital gains account scheme as against the actual reinvestment at Rs.1,48,42,691/- thereby vitiating the wrong computation of the proportionate deduction u/s 54F of the Act.”

3. Briefly stated facts are that the assessee was owner of 2/3rd share of one commercial property at Carex Centre, #244, Anna Salai, Thousand Lights, Chennai-600 006 and assessee sold his share for a

sum of Rs.1.5 Crores vide sale deed dated 30.03.2012. After claiming expenses incurred on sale of Rs.1,21,241/-, the net sale consideration considered by the assessee for the purpose of computation of Long Term Capital Gain was Rs.1,48,78,755/-. The assessee kept the entire net consideration in his savings bank account with Indian Bank till the purchase of new asset and not utilized for any other purpose. Subsequently, a sum of Rs.1.16 Crore was transferred from his savings bank account to Capital Gains Account Scheme of the bank on 30.08.2012. The assessee's contention before the Assessing Officer as well as before the CIT(A) was that the entire funds received on sale of property was lying in the bank account and the assessee has not diverted or utilized the net sale consideration for any purpose until the new residential property was purchased by the assessee on 12.10.2012. The assessee computed the net consideration after claim of expenses at Rs.1,48,78,755/- and Long Term Capital Gain arising on this transaction was computed at Rs.1,13,55,000/-. The assessee purchased new asset being a residential house [admitted by Assessing Officer as well as by CIT(A)] on 12.10.2012 for a total consideration of Rs.1,48,42,691/- and claimed the investment as deduction U/s.54F of the Act, on account of investment of Long Term Capital Gain in purchase of new asset. The Assessing Officer and CIT(A), both rejected the assessee's claim of exemption on account of Long Term Capital Gain as investment in purchase of new residential house by

quoting the provisions of Section 54F(4) of the Act, that the net consideration which is not utilized by him for purchase of new asset before the due date of furnishing the return of income U/s.139(1) of the Act, nor the amount was deposited by him before furnishing of such return of income in to capital gain account scheme not later than the due date applicable U/s.139(1) of the Act. Thereby, according to Assessing Officer and CIT(A) as such the amount already utilized for purchase of new asset has not fully been deposited in such scheme on due date and only the amount of Rs.1.16 Crore is eligible for claim of deduction U/s.54F of the Act. Accordingly, the excess claim of deduction U/s.54F of the Act, was disallowed amounting to Rs.25,02,243/- and the same was confirmed by CIT(A). Aggrieved assessee came in appeal before Tribunal.

4. I have heard rival contention and perused the material placed before me. I noted that the assessee has made investment of the entire consideration being purchase in new property on 12.10.2012, which was sold on 30.03.2012. No doubt the investment in capital gain account scheme was made on 30.08.2012 amounting to Rs.1.16 Crore. Once the assessee has invested the full amount in purchase of the new property within the time prescribed U/s.54F of the Act, i.e., on 12.10.2012 amounting to Rs.1,48,42,691/-, the assessee is eligible for claim of deduction U/s.54F of the Act. The Ld.Counsel for the assessee

also relied on the Hon'ble Jurisdictional High Court decision in the case of Venkata Dilip Kumar vs. CIT, reported in 419 ITR 298 (Madras), wherein it was held that the amount for which deduction was sought for U/s.54 of the Act was utilized either for purchasing or constructing residential house within time prescribed U/s.54(1) of the Act, assessee could not be denied benefit of Section 54 of the Act for mere non-compliance of a procedural requirement U/s.54(2) of the Act. Hence, placing reliance on the Jurisdictional High Court in the case of Venkata Dilip Kumar, *supra*, I direct the Assessing Officer to allow the claim of the assessee which is as per the provisions of the Act.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17th March, 2020 at Chennai.

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष /Vice President

चेन्नई/Chennai,
दिनांक/Dated, the 17th March, 2020

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. |