

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य एवं
श्री एस. जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2419 & 2420/Chny/2018
निर्धारण वर्ष /Assessment Years: 2011-12 & 2012-13

Smt. S.Kumari,
Plot No.4, 75H, Swaminathan Nagar,
6th Main Road, Kottivakkam,
Thiruvanmiyur,
Chennai-600 041.

v. The Income Tax Officer,
Non-Corporate Ward-15(2),
Chennai.

[PAN: CKBPK 5836 M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.G. Chandrababu, Sr.DR
सुनवाई की तारीख/Date of Hearing : 07.12.2020
घोषणा की तारीख/Dt. of Pronouncement : 11.12.2020

आदेश / O R D E R

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.132 & 133/2015-16/CIT(A)-15 dated 31.05.2018 for the AYs 2011-12 & 2012-13.

2. The Assessing Officer (in short "AO") on receipt of information that Mrs.S.Kumari, the assessee, received Rs.10 lakhs during the Financial Year 2010-11 & Rs.1.20 Crs. during the Financial Year 2011-12 but did not file returns of income for the relevant assessment years and hence, issued notices u/s.148 of the Act for the respective assessment years.

Smt.S.Kumari filed her returns, inter alia, claiming that the amount received was the family compensation for relinquishment of her family tenancy rights and for vacating her family from the said premise where she and her family resided about 50 years and therefore, the amount received was towards members extinguishment of tenancy rights of the property, in which, her share was 1/4th and accordingly arrived the long term capital gains. Since she has invested in a residential property, she claimed exemption u/s.54F. With regard to 3/4th share of income of other family members, during the assessment proceedings of assessment years 2010-11 & 2011-12, the assessee furnished a copy of return of Mr.C.Sundar Kumar, wherein, he has admitted long term capital gains of his share and also the PAN particulars of Ms.K.Nisha & Mr.Selvakumar. The AO from the Sale Deed and from the information obtained u/s.133(6) found that M/s.Pee & Dee Land Holdings Pvt. Ltd., on behalf of the sellers, Mr.M.K. Durairaj Naicker and 63 others (the legal heirs of Dr.M.T.Kuppusamy Naicker) of the impugned property, paid Rs.1.30 Crs. on various dates during these assessment years and M/s.Pee & Dee Land Holdings Pvt. Ltd., confirmed that nature of amount paid to Smt.S.Kumari was towards relinquishment of tenancy rights. The AO held that since the sale deed mentions that the buyer of the property paid Rs.1.30 Crs. to Smt.S.Kumari only towards settlement on behalf of the vendors to secure the possession of the impugned property and nothing is stated about the compensation to the entire family of Smt.S.Kasturi, she neither owned the property sold nor placed any evidence towards five decade tenancy and hence assessed the entire receipt as assessee's income

under the 'other sources' and taxed in the respective assessment years. Aggrieved, the assessee filed appeals before the Commissioner of Income Tax(A) and the Ld.CIT(A) dismissed them. Aggrieved against those orders, the assessee filed these appeals with this Tribunal.

3. These cases were heard through videoconferencing. The Ld.AR submitted that the AO has examined the Sale Deed and found that the Sellers are Mr.M.K. Durairaj Naicker and 63 others (the legal heirs of Dr.M.T.Kuppusamy Naicker) and the purchaser is M/s.Pee & Dee Land Holdings Pvt. Ltd. They have mentioned in the Sale Deed that Mrs.S.Kumari was paid a compensation of Rs.1.30 Crs. The purchaser, M/s.Pee & Dee Land Holdings Pvt. Ltd., has certified that the nature of amount to the tune of Rs.1.3 Crs. was paid to Mrs.S.Kumari towards relinquishment of her family tenancy rights and also vacating her family from the said premises. Smt.S.Kumari's father lived in the premises for more than 40 years. After his death, Smt.S.Kumari, her husband and her children lived therein, apart from earning certain parking fee. Thus, it is clear that Mrs.S.Kumari and her family members had certain rights in the impugned property and in order to ensure that the buyer has an absolute enjoyment of the property relinquishment of the assessee and her family member's rights are absolutely required and hence on behalf of the sellers, the purchaser paid the money, which is not in dispute. Therefore, the assessee and her family member's rights in the property certainly falling under the definition of capital asset within the scope of Sec.2(14) r.w.s.2(47). The Ld.AR invited

our attention to the Paper Book, wherein, the details of admission of income under the head 'capital gains' in the name of assessee's family members viz., Mr.C. Sundar Kumar, Mr.Selvakumar and Ms.K.Nisha, etc., were placed and submitted that the assessee's family members have admitted the gains arising out of capital gains in their respective returns. In the case of Ms.K.Nisha, the AO examined the transaction u/s.143(3) r.w.s.147 dated 27.12.2016 and accepted her LTCG and allowed the corresponding deduction u/s.54F also. Therefore, the Ld.AR submitted that the AO as well as the Appellate Authority erred in deciding the assessee's cases and hence pleaded to allow the assessee's appeal. Per contra, the Ld.DR supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant materials. Mrs.S.Kumari, the assessee, states that she received the impugned amount towards her family compensation for extinguishment of tenancy rights and vacating the family from the said premises, wherein, her family resided for about 50 years. Therefore, such impugned amount was distributed among the family members according to their share. She claimed exemption u/s.54F on gains arising from her share of sale consideration. Similarly, the other family members have also admitted the long term capital gains and claimed appropriate relief in the irrespective returns filed before the Income Tax Department. In the case of Ms.K.Nisha, this transaction was examined by the Revenue u/s.143(3) of the IT Act and was accepted, supra. It is clear from the Sale Deed that the sellers as well

as the purchaser have mentioned that they have paid an amount of Rs.1.30 Crs. Thus, both the sellers and the purchaser has recognized the rights of the assessee and paid due consideration for an absolute enjoyment of that property. Further, the purchaser has also certified before the AO that the amount paid to Mrs.S.Kumari towards extinguishment of tenancy rights. Thus, the assessee has established that she and her family members had certain rights in the property. The Revenue has also examined this issue, subsequently, in the case of Ms.K.Nisha, one of the family members and accepted her claim, supra. Therefore, it is clear that such rights are falling u/s.2(14) r.w.s.2(47) of the Act and hence the impugned income is to be assessed under the head 'capital gains' only to the extent of each of the family members share of gains alone. Since, the AO has assessed the entire income under the head 'other sources' alone in the assessee's hand and has not examined the relief allowable u/s.54F, we direct the AO to assess 1/4th of the share of LTCG in the assessee's hand, as admitted by the assessee. He shall examine the assessee's claim u/s.54F in accordance with law and allow the appropriate relief u/s.54F. Since, the Ld.AR has not pressed other grounds of appeals, they are treated as dismissed.

5. In the result, the appeals filed by the assessee for the AYs 2011-12 & 2012-13 are partly allowed.

Order pronounced on the 11th day of December, 2020, in Chennai.

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L. REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 11th December, 2020.
TLN

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