

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No. 27/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2015-16)

The Deputy Commissioner of Income Tax, Central Circle-3(2), Chennai-600 034.	Vs	Mrs. Malavika Shivakumar, 12, Rutland Gate, 5 th Street Nungambakkam, Chennai-600 006.
		PAN: ADZPR 8509D
(अपीलार्थी/Appellant)		प्रत्यर्थी/Respondent/

अपीलार्थी की ओरसे/ Appellant by	:	Mr.G.Chandrababu, Addl.CIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. V.S.Jayaraman, Advocate

सुनवाई की तारीख/Date of hearing	:	04.01.2021
घोषणा की तारीख /Date of Pronouncement	:	18.01.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against order of the learned Commissioner of Income Tax (Appeals)-11, Chennai dated 30.10.2019 and pertain to assessment year 2015-16.

2. The Revenue has raised the following grounds of appeal:-

"1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to law and facts and circumstances of the case.

2) The order of the learned CIT(A) has erred in allowing assessee's appeal without proper appreciation of the facts.

3) The Id.CIT(A) is erred in allowing the disallowance of the claim of deduction u/s.54F made by the assessee, when the assessee

has failed to comply with the condition mandated under the provisions of Section 54F(4) for availing the benefit of deduction u/s.54F(1), i.e., depositing of unutilized amount in the Capital Gains Accounts Scheme, on or before the due date of filing the Return of Income u/ s.139(1) of the Act.

4) The Id.CIT(A) has failed to consider the fact that completion certificate, water connection were not given by the Block Development Officer (BDO) and also assessee has not paid any property tax as per the BDO letter dated 22/ 12/2017.

5) The Id.CIT(A) ought to have considered the fact that during the assessment proceedings as well as remand proceedings assessee has failed to submit the construction agreement for verification of details of construction expenses, estimation made by the builder, completion certificate issued by the builder, electricity connection expenses, details of property tax paid etc.

6) For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the earned CIT (A) may be set aside and that of the Assessing Officer be restored.”

3. Brief facts of the case are that assessee is an individual and director of M/s. Vastrakala Exports Pvt. Ltd. filed her return of income for assessment year 2015-16 on 31.08.2015 declaring total income of ₹ 87,79,550/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that assessee has claimed large deduction u/s.54F of the Act and hence, called upon assessee to file necessary details including computation of long term capital gain and proof of claim for benefit of exemption u/s. 54F of the Act. In response, assessee submitted that during the previous year relevant to assessment year 2015-16, she had sold equity shares for consideration of

₹ 5,09,30,326/- and computed long term capital gain after claiming benefit of exemption u/s. 54F of the Act towards construction of another residential house for a sum of ₹ 3,72,81,393/-. The assessee further submitted that balance amount of capital gain has been admitted for tax. The Assessing Officer, after considering relevant submissions of assessee was of the opinion that assessee is not entitled for benefit of exemption u/s. 54F of the Act ,because construction of property was not completed within three years from the date of transfer of original asset as envisaged u/s. 54F of the Act, which is evident from the fact that assessee has sold shares on 28.05.2014 and in order to be eligible for exemption, construction of house should be completed on or before 31.05.2017. Although assessee has purchased land on 18.3.2015 for consideration of ₹ 3,08,79,000/-, balance amount has not been deposited in capital gains deposit accounts scheme, as required under the Act. The assessee has deposited a sum of ₹ 1,20,00,000/- instead of ₹ 1,97,79,640/-, therefore, Assessing Officer was of the opinion that deduction claimed u/s. 54F of the Act is not in accordance with law. The Assessing Officer has also noted that although assessee claims to have completed construction of the building, but on perusal of details filed by the assessee including information

obtained from Block Development Officer u/s.133(6) of the Act clearly indicate that building was not completed in all respects and necessary electricity and water connection was not provided to the assessee. The assessee has not obtained completion certificate from the concerned authorities. From the above, it is clear that construction of building was not completed within stipulated time and also assessee has not invested balance sale consideration in capital gains deposit account scheme on or before the due date of furnishing return of income u/s.139(1) of the Act and hence, not entitled for exemption u/s. 54F of the Act, accordingly, rejected exemption claimed by the assessee and made addition of ₹ 5,06,46,640/-

4. Being aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A). Before learned CIT(A), assessee has filed detailed written submissions along with certain additional evidences and argued that construction of building was completed in all respects and assessee has obtained electricity connection and also paid property tax on 03.03.2017. The assessee further claimed that even assuming for a moment building was not provided with electricity connection and water connection, but fact

remains that it has furnished necessary evidences including bills, vouchers for procurement of materials and labour for construction of building and sanction letter from electricity board dated 20.04.2017. The learned CIT(A) has forwarded additional evidences filed by assessee to the Assessing Officer for his comments. The Assessing Officer vide remand report dated 27.05.2019 has reiterated his observations made during the course of assessment proceedings and argued that assessee has failed to file any evidence to prove that building was completed on or before due date specified u/s.54F of the Act. The assessee has also rebutted observations of the Assessing Officer insofar as investment of balance sale consideration in capital gains deposit account scheme and submitted that Assessing Officer has wrongly taken land purchase value at ₹ 3,08,70,000/- instead of actual consideration paid by assessee of ₹ 2,52,80,820/-. The assessee has also made deposit in capital gains account scheme of ₹ 1,20,00,000/- and thus, made claim of exemption u/s. 54F of the Act for ₹ 3,72,81,393/- on proportionate basis and for balance sale consideration necessary tax has been paid. The Assessing Officer without appreciating these facts has simply rejected the claim of assessee.

5. The learned CIT(A) after considering relevant submissions of the assessee and has also taken note of various additional evidences including bills and vouchers filed by assessee held that assessee has maintained detailed vouchers in support of construction activity out of amounts withdrawn from capital gains deposit account scheme. The expenditure have been incurred well before 31.3.2017. The assessee has also submitted tax paid receipts for assessment of building for municipal taxes dated 03.03.2017 and has also obtained electricity sanction letter on 20.04.2017. All these are before the due date specified under the Act. From the above, it is clear that assessee has completed construction of building on or before May, 2017 and hence eligible for exemption u/s.54F of the Act. Accordingly, learned CIT(A) deleted additions made by Assessing Officer towards disallowance of exemption claimed u/s.54F of the Act. The relevant findings of learned CIT(A) are as under:-

“9. The assessee has maintained detailed vouchers in support of the construction activity conducted and all bills and vouchers in support of the amounts spent and withdrawals from capital gains account. The expenditures have been incurred well-before 31.03.2017. All these expenditures are through bank

accounts and are properly vouched. The assessee has also submitted tax paid receipt dated 03.03.2017 in support of the property tax. The electricity sanctioned of 25KV is also evidenced on 20.04.2017.

10. The crucial element to verify is whether the assessee has incurred the expenditure out of the capital gains account through verifiable sources. This has been abundantly established by the assessee. The assessee has completed the construction and obtained necessary sanctions for residential purposes. It is quite possible that completion certificate from Local authority is not obtained. Local authorities do not issue timely completion certificates for various reasons Assessee cannot be held punishable for the same. On the contrary, the assessee has submitted competition certificates from contractors and engineers of the project. The assessee has been able to independently and verifiably establish that the capital gain amount is utilized towards construction of the property. The property is constructed well before the deadline. In view of the facts and circumstances as above, I am of the opinion that the assessee has adduced sufficient evidence in support of her claim regarding completion of the residential house. The assessee is held eligible to claim deduction u/s 54F. Assessing Officer is directed to allow the same."

6. The learned DR submitted that learned CIT(A) has erred in deleting disallowance of claim of exemption u/s.54F of the Act without appreciating the fact that assessee has failed to comply with the condition mandated under the provisions of section 54F(4) of the Act to avail benefit of exemption u/s.54F(1) of the

Act. The DR further submitted that learned A.O. has brought out clear facts to the effect that building was not completed and which was further supported by deposition given by Block Development Officer. However, learned CIT(A) on the basis of tax paid receipt filed by the assessee opined that building was completed well before May, 2017. The DR further submitted that assessee has also failed to file construction agreement with the builder for construction of building and also failed to file necessary evidences to prove that amount has been spent for construction. Therefore, the Assessing Officer on the basis of evidence filed by the assessee has rightly disallowed the claim, whereas learned CIT(A) has allowed the claim without verifying facts.

7. The learned AR for the assessee, on the other hand, strongly supporting the order learned CIT(A) submitted it is a fact that building was completed on or before 31.05.2017 is not disputed, because assessee has filed necessary evidence including tax paid receipts and electricity connection sanction letter from concerned authorities, which is well before due date specified under the Act. The AR further submitted that insofar as observations of learned Assessing Officer that assessee ought to

have invested balance consideration of ₹ 1,97,79,640/- instead of ₹ 1,20,00,000/-, the Act does not specify investment of full consideration in order to be eligible for exemption. Even in a case where assessee utilized part sale consideration for investment in new asset, he/she can claim proportionate exemption. But what is relevant is whether assessee has satisfied the conditions prescribed under the provisions of section 54F of the Act or not. In this case, there is no dispute with regard to fact that assessee has purchased land on or before due date and has also completed construction of building within three years from the date of transfer of original asset. Therefore, learned CIT(A) after considering relevant facts has rightly deleted additions made by Assessing Officer and his order should be upheld.

8. We have heard both parties, perused material available on record and gone through orders of authorities below. The fact with regard to sale of original asset being shares held in a company and subsequent investment in purchase of land on or before due date specified under Act was not disputed by Assessing Officer. The Assessing Officer has also not disputed fact that assessee has invested sum of ₹ 1,20,00,000/- in capital

gains deposit account scheme on or before due date of furnishing return of income u/s.139(1) of the Act. The only dispute made by Assessing Officer is with regard to completion of construction of building within three years from the date of transfer of original asset and investment of balance sale consideration in capital gains deposit account scheme. We have gone through observations made by Assessing Officer in light of various evidences filed by assessee before learned CIT(A) and found that learned CIT(A) has recorded categorical finding insofar as completion of construction of building on or before three years from the date of transfer of original asset. We further noted that assessee has placed all evidences including electricity connection obtained from concerned authorities in the month of April, 2017 and has also tax paid receipts for assessment of building for municipal taxes, which is also well before due date specified under the Act. The assessee has also placed various evidences including bills and vouchers for procurement of material and labour for construction of building. Therefore, we are of the considered view that Assessing Officer has erred in coming to the conclusion that building construction was not completed before May, 2017 only on the basis of non-furnishing

of completion certificate from municipal authorities. No doubt, completion certificate is one evidence for having completed construction of building, but it is not material evidence to draw adverse inference against assessee, when assessee has placed all other evidences which indicate completion of construction of building. The learned CIT(A) after considering relevant facts has rightly held that construction of building was completed within three years from the date of transfer of original asset and hence, we are inclined to uphold the findings of learned CIT(A) and reject grounds taken by the Revenue.

9. As regards another observation of Assessing Officer regarding investment of balance sale consideration in capital gain account deposit scheme on or before due date for furnishing of return of income, the provisions of section 54F of the Act nowhere states that assessee should invest full sale consideration in capital gain account deposit scheme in order to be eligible for exemption from capital gain. The law is very clear as per which if an assessee invests full consideration from sale of original asset for purchasing or constructing another residential house, then assessee is entitled for 100% exemption from capital gain tax. In

case, where assessee has invested part sale consideration for purchase or construction of another residential house, then proportionate deduction is allowed commensurate with investment made in new asset. In this case, on perusal of details filed by assessee, we find that assessee has made investment of Rs.1,20,00,000/- in capital gain account deposit scheme on or before due date of furnishing of return of income and said deposit account has been utilized for construction of building within three years from the date of transfer of original asset. Therefore, we are of the considered view that Assessing Officer has erred in rejecting the claim of assessee on the ground that assessee ought to have invested balance consideration in capital gain account deposit scheme, more particularly, when assessee has claimed that she has paid tax on remaining sale consideration in accordance with law. However, facts with regard to amount of exemption claimed u/s.54F of the Act and the amount of capital gain which was subjected to tax was not forthcoming from the orders of lower authorities. The assessee claims that it has claimed exemption u/s.54F for Rs.3,72,81,393/- and for balance capital gain she has paid tax, whereas Assessing Officer held that assessee has claimed exemption of ₹ 3,70,75,929/-. Therefore, we are of the

considered view that for the limited purpose of ascertaining facts with regard to computation of capital gain from sale of shares and amount of sale consideration invested in purchase/construction of new asset and amount of capital gain included in return and payment of taxes, we set aside the issue to file of Assessing Officer and direct him to verify facts in light of claim of assessee that she had paid tax for balance amount of capital gains. In case, Assessing Officer found that assessee has paid tax on balance capital gain, then Assessing Officer is directed to delete additions made towards disallowance of exemption claimed u/s.54F of the Act.

10. In the result , appeal filed by Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 18th January, 2021

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 18th January, 2021

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.