

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No. 478/Chny/2019
निर्धारण वर्ष/Assessment Year: 2012-13

Shri V. Muralikrishna,
A1, Komala Krishna, 8/20,
Corporation School Road,
Nungambakkam, Chennai 600 034.
[PAN:AUZPM1551F]

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 15(1),
Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri N. Arjun Raj, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 18.03.2021
घोषणा की तारीख /Date of Pronouncement : 09.04.2021

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai, dated 27.12.2018 relevant to the assessment year 2012-13. Besides challenging confirmation of addition of long term capital gains, by raising a specific ground, the assessee has challenged the exparte order passed by the Id. CIT(A).

2. Brief facts of the case are that the assessee e-filed his return of income on 13.07.2012 for the assessment year 2012-13 declaring total income of ₹.1,38,51,844/-. The return filed by the assessee was processed

under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. Subsequently, the case was selected for scrutiny and called for various details by issuing statutory notices. In response to the statutory notices, the AR of the assessee filed the details as called for. The assessee sold residential flat at Abhiramipuram, Chennai – 18 for total consideration of ₹.4 crores and claimed deduction under section 54 of the Act of ₹.2,27,45,000/- for investment in residential house at Thummaloor Village, Ranga Reddy District. On verification of the documents submitted by the assessee, the Assessing Officer found that the assessee has received the residential property which was sold during the previous year by registered settlement deed dated 31.10.2007 from his mother Smt. S. Janaki. Thus, the assessee becomes owner of the property on 31.10.2007. The assessee sold the same property by two sale agreement dated 15.07.2011 for a total sale consideration of ₹.4 crores. Further as per assessee's claim, the assessee has invested ₹.2,27,45,000/- for purchase of new property from M.A.K. Projects Pvt. Ltd. through agreement dated 09.04.2012. Since the assessee has purchased the new property in the name of Smt. S. Janaki, mother of the assessee, the Assessing Officer held that the assessee is not eligible to claim deduction under section 54 of the Act and accordingly, the taxable capital gain of ₹.2,27,45,000/- was brought to tax.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the written submissions of the assessee with regard to the claim of exemption under section 54 of the Act as well as decision of the Hon'ble Madras High Court in the case of CIT v. V. Natarajan 287 ITR 271, the Id. CIT(A) confirmed the addition of long term capital gain since the assessee has not furnished the evidence as called for to allow the benefit to the assessee despite giving various opportunities.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By referring to the specific ground raised in the grounds of appeal at ground No. 1, the Id. Counsel for the assessee has submitted that the Id. CIT(A) has not provided sufficient opportunity to present the evidence as required, which is against the principles of natural justice and prayed that one more opportunity may be given to the assessee to present the evidence as required by the Id. CIT(A). Per contra, the Id. DR strongly supported the order passed by the Id. CIT(A).

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the addition towards long term capital gain of ₹.2,27,45,000/-, the Assessing Officer denied the claim of exemption under section 54 of the Act on the ground that the investment of the sale consideration in the new residential house was

made in the name of the mother of the assessee. As has been relied upon by the assessee, the decision in the case of CIT v. V. Natarajan (supra), wherein, the Hon'ble Madras High Court has held as under:

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

In order to apply the above ratio in the case law relied upon by the assessee, the assessee was required to file the evidence that the capital asset acquired was assessed in the hands of the assessee and not in the hands of the ostensible owner, which was not furnished despite various opportunities given to the assessee.

6. On perusal of the appellate order, we find that the Id. CIT(A) has not disputed the eligibility of exemption under section 54 of the Act, but, to allow the benefit to the assessee, the assessee was required to furnish the proof that the capital asset acquired was assessed in the hands of the assessee as per the decision relied on by the assessee. As prayed by the Id. Counsel for the assessee, we direct the Id. CIT(A) to give one more opportunity to the assessee to furnish the proof that the capital asset acquired was assessed in the hands of the assessee and in case the assessee fails to furnish the evidence, the appellate order already passed by the Id. CIT(A) stands sustained.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 9th April, 2021 in Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 09.04.2021

Vm/-

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.