

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 समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.: 1868/Chny/2018

निर्धारण वर्ष/Assessment Year : 2013-14

Shri. Shankar Ramakrishnan,
A1-55, Flat No. 4A, 4th Floor,
Shanthi Colony,
Anna Nagar,
Chennai – 600 040.

Income tax Officer,
Vs. Non-Corporate Ward -18(5),
Chennai &
Commissioner (Appeals) -15,
Chennai.

[PAN: AFQPR 2874E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. Indira, R.K. FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri. A. Sundararajan, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

: 04.03.2020

घोषणाकीतारीख/Date of Pronouncement

: 29.05.2020

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No. 179/CIT(A)-15/2016-17 dated 28.03.2018 for assessment year 2013-14.

2. Shri Shankar Ramakrishnan, the assessee, sold his share of house property and re-invested in a flat with Metrozone and claimed deduction u/s. 54, The AO rejected the assessee's claim stating that the re-investment was not made within the stipulated period of two years as it was a purchase. Aggrieved, the assessee filed an appeal before the CIT(A), Before the Ld. CIT(A), the assessee pleaded that the new asset was not purchased, but in fact it was constructed within the stipulated period of three years. After considering the assessee's submissions, the Ld. CIT(A) held that the assessee in fact purchased a flat out of long term capital gains beyond the stipulated period of 2 years. Even for accepting the assessee's contention that it was new construction, the construction of flat was not completed within the stipulated period of three years. Therefore, he dismissed the appeal. Aggrieved, the assessee filed this appeal.

3. The Ld. AR submitted that first the assessee entered for purchase of land alone and paid stamp duty, registration fee on the guidelines of the land alone. In the consequent agreement, he has gone for construction of a residential unit. The payments have been made to contractors in installment depending on the progress of the construction and not in one lump sum. Service tax has also been paid to the central government because of the construction contract. Therefore, the Ld. AO as well as the Ld. CIT(A) erred in concluding that it has a mere purchase, actually it is a combination of

purchase and construction of purchase and construction. In this regard, the Ld. AR invited our attention to the orders of the lower authorities and submitted that booking of flat was done on 21.07.2009, the agreement for sale of UDS was made on 30.09.2009 and the date of delivery/handling over of fiat was on 15.01.2015 were examined by them. Therefore, the AO erred in saying that the benefit u/s 54 is not allowable to the assessee because the construction have been started before the sale of old asset. In this regard, he relied on three High Court decisions viz,, CIT vs T.R. Suramanla Bhat 165 ITR 571 (1987) Karnataka, CIT Vs H.K,Kapoor 234 ITR 753 (1998) Allahabad and CIT vs Bharti Mishra IT(Appeal) No. 567/2013 (Delhi). All these High Courts' have unanimously held that, for eligibility of the benefit u/s, 54, the fact that the construction of the new asset had commenced before the sale of the old asset is immaterial, and what is material is only that it must have been completed within three years from the date of sale of old asset. Since, the construction of the new asset has been completed in all respects within the period of three years from the date of sale of old asset, the Ld. AR pleaded that the assessee's appeal be allowed. Further, the assessee relied on the Jurisdictional High Court decision in the case of C. Aryama Sundaram vs ACIT, Chennai in IT(Appeal) No. 520 of 2017 also.

4. We heard the rival submissions and gone through the relevant material. The assessee sold his share of property on 19.11.2012. He had entered into

an agreement with M/s. Ozone Projects Pvt. Ltd., Chennai for purchase of land as well as construction. He had made a payment from 08.07.2009 to 12.07.2013 and the possession of the flat was taken on 15.01.2015. After considering the cases relied on by the assessee and considering the provisions of section 54, we are of the view that the amount paid by the assessee one year before the date on which he transferred his sale of property i.e., 19.11.2012 (towards purchase) and upto the period of three years after the date on which he transferred his property (towards construction) should be considered for the deduction claimed by the assessee u/s. 54. Therefore, we direct the AO to re-compute the long term capital gains accordingly.

5. In the result, the assessee's appeal is partly allowed.

Order pronounced on 29th May, 2020 at Chennai.

Sd/-
(धुव्वुरु आर. एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/Judicial Member

Sd/-
(एस जयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated: 29th May, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |