

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.521/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2016-17)

Mrs. Baskarababu Usha, 69, Old No.81, Gajapathi Street, Shenoy Nagar, Chennai-600 030.	Vs	The Income Tax Officer, Non-Corporate Ward-10(5) Chennai-34.
PAN: ABLPU 3566D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकरअपीलसं./I.T.A.No.522/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2016-17)

Mrs. Rajendran Vimala 43/35, East Park Road, Shenoy Nagar, Chennai-600 030.	Vs	The Income Tax Officer, Non-Corporate Ward-10(5) Chennai-34.
PAN: AHWPV 7103Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Ranga Ramanujam, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. R.Anita, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	09.11.2021
घोषणाकीतारीख /Date of Pronouncement	:	30 .11.2021

आदेश / ORDER

Per G.MANJUNATHA, AM:

These two appeals filed by two different assesseees are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals)-12, Chennai, both dated 13.02.2020 and pertains to assessment year 2016-17. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee's have more or less filed common grounds of appeal in their respective appeals, therefore, for the sake of brevity, grounds of appeal filed in ITA No.522/Chny/2020 are reproduced as under:-

"1. The order of the CIT (Appeals) is unfair, unjust and contrary to the facts and circumstances of the case.

2. Quantum of Investment in house Property for Computation of Exemption u/s 54F:

2.1. The Ld. CIT(A) erred in selectively interpreting only a part of the decision of the jurisdictional High Court in the case of C.Aryama Sundaram Vs, Commissioner of Income Tax 3, Chennai (2018) to arrive at an diametrically opposite conclusion to dismiss the claim of exemption u/s 54F of the IT Act of the appellant.

2.2. The CIT (Appeals) ought to have considered the entire expenditure whether or not bills were available for construction of the property as the bills would not be available for many items purchased from unorganised sector.

3. Application of section 50C without considering the Objection of the Appellant:

The Ld. CIT (Appeals) failed to consider the objections of the appellant in adopting deemed sale consideration u/s 50C of the IT Act.

4. The Ld. CIT (Appeals) erred in not considering the fact that guideline value was reduced by 33% by Tamil Nadu Government by G.O Ms.No.49 CT&R (J2) Dept dated 08.06.2017.

5. The Ld. CIT (Appeals) failed to consider the correct computation of exemption u/s.54F as per the formula prescribed u/s.54F in arriving at exemption."

3. Brief facts of the case extracted from ITA No.522/Chny/2020, in the case of Smt. R.Vimala are that

during the financial year relevant to the assessment year 2016-17, the assessee jointly with one Smt. B.Usha has sold 2.99 acres of land at Ayapakkam Village for consideration of Rs.4 crores. The assessee has computed long term capital gain by adopting her share of 50% consideration received from sale of land and computed long term capital gain of Rs.1,90,45,376/-, after deducting indexed cost of acquisition of Rs.7,54,624/-. The assessee had also claimed entire long term capital gain of Rs.1,90,45,376/- as exempt u/s.54F of the Act, for reinvesting sale consideration for construction of another residential house at Chennai. During the course of assessment proceedings, the Assessing Officer has called upon details of registered sale deed from O/o. Sub Registrar, Ambattur u/s.133(6) for which the Sub-Registrar, Ambattur had submitted registered sale deed as per which market value of the property was at Rs.5,54,04,700/-. The Assessing Officer proposed to adopt guideline value of the property as per provisions of section 50C of the Act, for which the assessee has filed her objections. Accordingly, the Assessing Officer has referred valuation of property to the departmental valuer and such valuation was yet to be completed. In the meantime, the Assessing Officer called

upon the assessee to justify exemption claimed u/s.54F of the Act with necessary evidences. In response, the assessee submitted that she had sold property on 06.08.2015 and has started construction of new residential house property jointly with her husband and said construction was commenced in the year 2013. However, construction was completed in May, 2016. The assessee further submitted that she had invested a sum of Rs.2,30,49,486/- for construction of building, therefore, claimed that entire capital gain derived from sale of property is eligible for exemption u/s.54F of the Income Tax Act, 1961.

4. The Assessing Officer, however, was not convinced with explanation furnished by the assessee and according to him, although the assessee claims to have incurred Rs.2,30,49,486/- for construction of building, but on verification of details filed by the assessee a sum of Rs.1,24,70,243/- was supported by bills and vouchers and remaining amount of Rs.1,41,92,934/- was not supported by any evidences. Therefore, out of total expenditure, he has considered a sum of Rs.1,24,70,243/- for the purpose of computing exemption u/s.54F of the Income Tax Act, 1961. He further noted that out of total expenditure of

Rs.1,24,70,243/- which is supported by invoices, a sum of Rs.1,08,57,553/- was incurred prior to transfer of impugned original asset i.e., on 03.08.2015. Therefore, he opined that any amount incurred towards construction of building prior to the date of transfer of original asset is not entitled for exemption and thus, recomputed exemption claimed by the assessee, after taking into account deemed sale consideration, as per provisions of section 50C of the Income Tax Act, 1961 and has made addition of Rs.2,57,67,594/- to returned income. The relevant findings of the learned Assessing Officer are as under:-

"The assessee jointly with one Smt. B.Usha sold 2.99 acres of land at Ayapakkam Village for a slated consideration of Rs. 4,00,00,000/- vide document number 11221/2015 dated 6/8/2015 registered with Sub-registrar, Ambattur. In response to notice u/s 133(6) dated 4/10/2018 vide his letter No.680/2018 dated 10/10/2018 Sub-Registrar, Ambattur replied that the impugned property was valued at Rs. 5,54,04,700/- for the purpose of stamp duty. The assessee has adopted her share of the slated consideration at Rs. 2,00,00,000/- for the purpose of computing capital gains and worked out capital gains of Rs. 1,90,45,376/- after deducting indexed cost of acquisition of Rs. 7.54,624/-. Further the assessee objected to the adoption of deemed sale consideration as per provisions of section 50C vide letter dated 22.10.2018. Accordingly, the impugned property was referred for valuation to the Department Valuation Officer vide reference dated 22/11/2018.

With regard to claim of deduction u/s. 54F assessee jointly with her husband Mr. Rajendiran obtained the planning permission from Chennai Corporation on 24th January 2013 to start the construction of Residential house in the land owned by them at Door. No.52, Lakshmi Talkies Road, Shenoy Nagar, Chennai -

600030 after demolition of the existing super structure by obtaining the permission of corporation of Chennai on 21/11/2012.

As per the submissions of the assessee construction was done on her own (using labour contractors) in the middle of 2013 with the intention of selling the land of 2.99 Acres at Ayappakkam village and investing the same in the residential house. Further it is stated that assessee was unable to sell the land as she planned due to the market conditions and some issues in the land, hence assessee availed a loan of Rs. 75.00 Lakhs from Sundram BNP Paribas Home Finance Limited in the month of April 2014 and continued the construction of the house. Again she availed additional Loan of Rs. 32 Lakhs then on 29th Day of January 2015 to continue the construction work. The major Civil work was said to have been completed in May 2016.

With regard to non depositing of unutilized amount in the capital gains scheme it is stated by the assessee due to the fact that the entire sale consideration was not received in at one stroke and she received the same only in instalments up to 15 months. Since the construction work was also in progress, she has used the funds for construction as and then she received. Further it is stated she used the funds for closing of the loan availed for construction residential house from Sundram BNP Paribas Home Finance Limited.

As per the copy of property tax assessment dated 3/5/2016 the assessee has constructed 8090 Sq.feet of Built up area with Ground+3 floors. Further as per the details submitted assessee has said to have incurred an expenditure of Rs. 2,30,49,486/-for construction of Building. Out of the said amount assessee could furnish invoices to an extent of Rs. 1,24,70,243/- and for the remaining amount of Rs. 1,41,92,934/- assessee could not furnish any invoices but it is claimed that the said expenditure is as per the entries in her Ledger.

Out of the expenditure of Rs. 1,24,70,243/-which is supported by Invoices Rs. 1,08,57,553/- is incurred prior to transfer of impugned land i.e 3/8/2015 based on the date of invoices.

In the absence of conclusive proof to support the expenditure of Rs. 1,41,92,934/- claimed to have been incurred without invoices the expenditure prior to and after the date of transfer of impugned land could not be verified and the same is not reckoned for the purpose of deduction u/s 54F.

As per the relevant provisions of sec.54F(1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with following provisions of this section:

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;*
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

The assessee was queried as to why the investment in new property made by the assessee to the extent made before the sale of impugned land should not be taken into consideration for computation of deduction u/s 54F, Vide his submission dated 22/11/2018 assessee relied on the order of Jurisdictional Madras High court in the case of C. Aryama Sundaram Vs CIT 97 taxmann.com 74 in which it was held that expenses incurred towards construction prior to transfer of asset is eligible for deduction u/s 54F. The said decision has not become final and SLP is pending before the Hon'ble Supreme court.

The Hon'ble High court of Gujarat in a recent Judgement in the case of Ushaben Jayantilal Sodhen Vs Income tax officer reported in [2018] 93 taxmann.com 453 (Gujarat) held where

construction took place prior to date of transfer, conditions of section 54F were not fulfilled and, consequently, assessee's claim for deduction was to be rejected. In the case of Chandru L. Raheja v. ITO (27 ITD 551) (Mum) wherein held that when the assessee had already purchased land, started construction of a building then only that part of the investment in new house that was made out of the sale proceeds received after the transfer of the old house would qualify for exemption u/s. 54 of the Act. In the case of Smt. Nimmagadda Sridevi Vs. DCIT 2013 58 SOT 54 (Hyd) it was held whatever investment made by the assessee in construction of new property within the period stipulated u/s. 54F after the sale of existing property the assessee is entitled for deduction u/s. 54F of the Act. In other words, the investment in new property made by the assessee is not entitled for deduction u/s. 54F of the Act to the extent made before the sale of property.

As per the provisions of sec.54F assessee should have constructed a residential house within a period of three years after date of transfer of original asset. Hence the claim of deduction under sec. 54F in respect of expenditure of Rs. 1,24,70,243/- supported by invoices is restricted to Rs.16,12,690/- which is evidenced to have been incurred prior to the date of transfer. In respect of the remaining expenditure incurred before the transfer of impugned land assessee is ineligible for claim of deduction u/s 54F.

As discussed above in the absence of conclusive proof to support the expenditure of Rs. 1,41,92,934/- incurred without invoices , the expenditure was incurred prior or after the date of transfer could not be verified and hence no deduction u/s 54F is allowed for the said expenditure.

The guideline value adopted by the Stamp Valuation authority is adopted as the deemed sale consideration as per the provisions of sec.50C. In the event of any variation with respect to the deemed sale consideration adopted u/s 50C consequent to receipt of valuation report the same will be rectified u/s 155(15)."

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has reiterated her arguments made before the Assessing Officer in light of certain judicial precedents and submitted that when the assessee has objected for adopting deemed sale consideration, as per provisions of section 50C of the Act, the Assessing Officer ought to have referred matter to the Departmental Valuation Officer and further adopt value as determined by the DVO. The assessee has also challenged recomputation of exemption u/s.54F of the Act by excluding amount spent prior to sale of original asset and also amount spent for construction, which is not supported by invoices. The assessee had also challenged adoption of deemed consideration for the purpose of computing exemption u/s.54F(1)(b) of the Income Tax Act, 1961. The learned CIT(A), after considering relevant submissions of the assessee and also relied upon certain judicial precedents rejected arguments taken by the assessee and sustained additions made by the Assessing Officer towards recomputation of long term capital gain by adopting deemed sale consideration, as per provisions of section 50C of the Act and further, reduction of exemption

claimed u/s.54F of the Act by excluding amount spent for construction prior to date of sale of old asset and further amount spent without supporting evidences. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

6. The learned A.R for the assessee submitted that the learned CIT(A) has erred in rejecting arguments taken by the assessee by selectively interpreting only part of the decision of the Hon'ble Jurisdictional High Court in the case of C. Aryama Sundaram vs. CIT (2018) 97 taxmann.com 74, without appreciating fact that the Hon'ble High Court has very categorically held that construction may commence before sale of old asset, but should be completed within due date specified under the Act. The learned A.R further referring to provisions of section 50C(2) of the Act submitted that when the assessee has filed objection for adopting deemed sale consideration, then the Assessing Officer should refer matter to the DVO and adopt value as determined by the DVO. In this case, the Assessing Officer has referred matter for departmental valuation, but has adopted deemed sale consideration even before DVO completes valuation of property. He further

submitted that the learned CIT(A) has erred in restricting exemption claimed u/s.54F of the Act to the extent of amount invested for construction of building, which is supported by bills and also amount spent from date of sale of original asset till completion of construction. The learned AR further referring to provisions of section 54F(1)(b) of the Act, submitted that for the purpose of determining exemption u/s.54F only actual consideration received for transfer of property should be considered, but not deemed consideration fixed for computing capital gains.

7. The learned DR, on the other hand, strongly supporting order of the learned CIT(A) submitted that if you go by provisions of section 54F of the Act, it is very clear in case of construction, the Act very clearly specifies that construction should be completed within three years from date of sale of original asset and the meaning thereby is that any amount spent towards construction before the date of sale of original asset cannot be considered for exemption u/s.54F of the Act. As regards adoption of deemed sale consideration, law mandates the Assessing Officer to adopt deemed consideration

as per provisions of section 50C of the Act, when there is a difference between agreed sale consideration as per registered document and market value of the property. Therefore, there is no error in the reasons given by the Assessing Officer as well as learned CIT(A) to recompute long term capital gain from transfer of property and hence, their orders should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, provisions of section 50C of the Act deals with computation of full value of consideration when consideration paid for transfer of property is less than fair market value of the property fixed by the authorities for payment of stamp duty. As per provisions of section 50C(2) of the Act, if an assessee claims before any Assessing Officer that value adopted or assessed by stamp valuation authority under sub-section (1) exceeds fair market value of the property as on date of transfer, then the Assessing Officer may refer valuation of the capital asset to valuation officer. From plain reading of sub-section (1) & (2) of section 50C, it is very clear that the Assessing Officer is bound to adopt fair market value, if there is

difference between agreed consideration and guideline value of the property. However, before adopting deemed consideration, it is bounden duty of the Assessing Officer to refer valuation to the DVO, in case the assessee filed objection for adopting deemed consideration. In this case, there is a difference between agreed consideration as per sale deed and market value of the property as per guideline value. It is also an admitted fact that the assessee has filed her objections before the Assessing Officer for adopting guideline value of the property. It is also an admitted fact that the Assessing Officer had referred valuation to the DVO. But, fact remains that before the DVO determines value of the property, the Assessing Officer has completed assessment by adopting deemed sale consideration as per provisions of section 50C of the Income Tax Act, 1961. Therefore, we are of the considered view that the Assessing Officer has completely erred in adopting deemed sale consideration, as per provisions of section 50C of the Act, when he himself referred valuation of property to the DVO.

9. As regards, computation of exemption u/s.54F of the Act, the assessee claims to have invested a sum of

Rs.2,30,49,486/- for construction of building. Further, construction of new building was commenced prior to the date of sale of original asset i.e., in the year 2013 itself. The construction of building was completed in the year 2016. All these facts are not disputed by the Assessing Officer. The only dispute is with regard to amount invested for construction of new building, date of commencement of construction and amount eligible for exemption u/s.54F of the Act. According to the Assessing Officer, out of a sum of Rs.2,30,49,486/-, a sum of Rs.1,41,92,934/- is not supported by bills and vouchers, therefore, he has rejected exemption claimed u/s.54F of the Act. The balance amount of Rs.1,24,70,243/- is supported by bills and vouchers. Out of this amount of Rs.1,24,70,243/-, a sum of Rs.1,08,57,553/- was incurred before sale of original asset and thus, not considered for exemption. Therefore, out of total amount of Rs.2,30,49,486/- the Assessing Officer has rejected exemption claimed u/s.54F of the Act for an amount of Rs.2,14,56,704/- and has allowed deduction for Rs.15,92,782/-.

10. We have gone through reasons given by the Assessing Officer for denying benefit of exemption u/s.54F of the Act in

respect of a sum of Rs.1,41,92,934/- being amount incurred for construction of building, but not supported by bills & vouchers and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that many expenditure in construction activity is incurred on day to day basis for which the assessee's cannot keep bills and supporting vouchers. Therefore, for this reason genuine expenditure incurred for construction of building cannot be rejected. As regards a sum of Rs.1,08,57,553/- incurred for construction of building and supported by bills and vouchers was not considered by the Assessing Officer for reason that said amount was incurred before date of transfer of original asset. We once again, do not agree with reasoning given by the Assessing Officer for simple reason that it is a well settled principles of law by the decision of various High Courts, including decision of the Hon'ble Jurisdictional High Court in the case of C.Aryama Sundaram Vs.CIT (supra) that construction may commence before date of sale of asset, but should be completed on or before period of three years from the date of sale of original asset. Therefore, we are of the considered view that the Assessing Officer has

erred in not considering amount spent towards construction of building prior to the date of sale of original asset.

11. As regards adoption of deemed consideration for the purpose of exemption u/s.54F of the Income Tax Act 1961, the Assessing Officer has adopted deemed consideration and computed eligibility for exemption u/s.54F of the Act. The deeming fiction provided for computing full value of consideration as a result of transfer of property as per provisions of section 50C of the Act is only applicable for determining full value of consideration as defined u/s.48 of the Act and thus, for the purpose of computing exemption u/s.54F of the Act, deeming fiction provided u/s.50C cannot be enlarged because, one cannot expect a person to perform impossible things, as when the assessee receives a particular amount from transfer of property, he cannot be expected to reinvest amount over and above consideration received for transfer of property. In fact, that may not be intention of the legislature. If you apply deeming fiction provided u/s.50C to provisions of section 54F of the Act, for computation of exemption, then it is impossible for assessee to fulfill said conditions because no assessee will have consideration over

and above what was received from transfer of property. This principle is supported by the decision of ITAT., Visakapatnam Bench in the case of DICT Vs. Dr. Chalasani Mallikarjuma Rao (2016) 75 taxmann.com 270. Therefore, we are of the considered view that the Assessing Officer has erred in adopting deemed consideration for the purpose of computation of exemption u/s.54F of the Income Tax Act, 1961.

12. To sum up, for all these reasons stated above, the issue needs to go back to file of the Assessing Officer to reconsider the issue 'de novo' in light of our discussions herein above. Hence, we set aside order passed by learned CIT(A) and restore the issue to file of the Assessing Officer and direct him to recompute long term capital gain by adopting market value of the property determined by the DVO and also by considering amount invested by the assessee for construction of new house property in light of our directions.

13. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

ITA No.521/Chny/2020 (A.Y.2016-17):

14. The facts and issues involved in this appeal are identical to facts & issues which we had considered in ITA No. 522/Chny/2020. The reasons given by us in preceding paragraphs shall equally apply to this appeal, as well. Therefore, for similar reasons, we set aside order of the learned CIT(A) and restore appeal to file of the Assessing Officer with similar directions mentioned hereinabove.

15. As a result, both these appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on 30th November, 2021

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President
चेन्नई/Chennai,
दिनांक/Dated 30th November, 2021
DS

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

आदेश की प्रतिलिपि अद्येषित/Copy to:

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