

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.818/Chny/2020
निर्धारण वर्ष /Assessment Year: 2014-15

Mr.Om Prakash Jonnagiri,
#13, First Cross,
Kamakshi Layout,
Kammanahalli Link Road,
Gottigere,
Bangalore-560 083.

v. The Income Tax Officer,
Non-Corporate Ward-16(5),
Room No.523, V Floor,
Wanaparthi Block,
Ayakar Bhavan, No.121,
Nungambakkam High Road,
Chennai-34.

[PAN: AERPJ 2424 C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.G.Baskar, Adv. &
Mr.I.Dinesh, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 02.03.2022
घोषणा की तारीख /Date of Pronouncement : 09.03.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-4, Chennai, dated 31.08.2020 and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:

1. The Order of CIT(A) in confirming the addition of Rs.16,85,000/- as income from other sources is contrary to the facts of the case and is liable to be reversed.

2. The CIT(A) on a wrong premise treated a sum of Rs.16,85,000/- as income from other sources holding the same as not part of Sale consideration.

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3. *The CIT(A) having taken note of the fact that the sale agreement itself reflects total consideration of Rs.78,00,000/- ought not to have treated the difference of Rs.16,85,000/- as income from other sources.*

4. *The CIT(A) having accepted to the claim of exemption u/s.54 in toto in respect of the capital gains arising from the subject transfer, erred in treating the sum of Rs.16,85,000/- as not part of the capital gains.*

5. *The CIT(A) failed to appreciate the fact that surplus money arising on sale of an immovable property would partake the character of the Sale consideration.*

3. The brief facts of the case are that the assessee being an individual filed his return of income for the AY 2014-15 on 12.12.2014 admitting total income of Rs.33,11,068/-, which consists of income from salary and long term capital gains. During the previous year relevant to the AY 2014-15, the assessee has sold a property at Kodambakkam for a consideration of Rs.78 lakhs as per sale agreement. However, in the Sale Deed executed on 19.07.2013, the consideration for transfer of property has been shown at Rs.61,15,000/-. The assessee has computed long term capital gains derived from transfer of property and has claimed exemption u/s.54 of the Income Tax Act, 1961 (in short "the Act") in respect of purchase of another residential property at Bangalore. During the course of assessment proceedings, the AO noticed that there is a difference between the sale consideration as per sale deed and agreement to sale and thus, difference between sale consideration shown in Sale Deed and sale consideration as per sale agreement, has been treated as income from other sources and has made addition of Rs.16,85,000/- to total income. The AO has denied the exemption claimed u/s.54 of the Act on the ground that the assessee

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has failed to file necessary evidences in support of re-investment for purchase of house property.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee contended that he had filed a revised statement of total income considering full value of consideration at Rs.78 lakhs as per agreement to sale and computed long term capital gains of Rs.19,29,625/-. The assessee had also claimed exemption u/s.54 of the Act in respect of purchase of another residential house property at Bangalore, for an amount of Rs.1,10,21,509/- in support of his arguments, filed certain judicial precedents including the decision of ITAT Coordinate Bench in the case of ITO v. Dr. Koshy George reported in (2009) 317 ITR (AT) 116 (Cochin). The Ld.CIT(A) after considering the relevant facts has allowed the claim of the assessee towards exemption u/s.54 of the Act in respect of purchase of house property at Bangalore for Rs.2,44,625/- . However, sustained the additions made towards difference in sale consideration as per Sale Deed and sale agreement at Rs.16,85,000/- under the head 'income from other sources' on the ground that the assessee has deliberately concealed the sale receipts of the property for the reasons best known to him. The Ld.CIT(A) further observed that as per the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT reported in (2006) 284 ITR 323 (SC), any fresh claim

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can be sought only through a revised return and not through a letter or representation, etc. Hence, rejected the arguments of the assessee and sustained the additions made by the AO towards difference in sale consideration under the head 'income from other sources'.

5. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in not appreciating the fact that the source of income is from sale of property and hence, any money arises to assessee on sale of property including on money, if any, is also partake character of sale consideration itself. Therefore, the Ld.CIT(A) having accepted the fact that the assessee has sold the property, ought to have considered full value of consideration as per agreement to sale on the basis of revised statement of total income filed by the assessee before the AO and further allowed the claim of exemption u/s.54 of the Act.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee being well educated having filed a return of income should have disclosed the actual sale consideration, if he wishes to claim the exemption u/s.54 of the Act in respect of long term capital gains derived from transfer of property. Since, the assessee has not claimed the benefit in the return of income for the relevant AY, the AO as well as the Ld.CIT(A) were right in denial of exemption to the assessee and their order should be upheld.

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7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee had sold the property for a consideration of Rs.78 lakhs. The assessee has computed long term capital gains by adopting sale consideration shown as per registered Sale Deed and claimed the benefit of exemption u/s.54 of the Act. The AO has rejected the revised statement of total income filed by the assessee to compute long term capital gains from transfer of property on the basis of consideration received as per sale agreement, only on the ground that the claim of the assessee cannot be entertained unless a claim is made by filing revised return. Otherwise, the AO as well as the Ld.CIT(A) never disputed the fact that the assessee has received sale consideration of Rs.78 lakhs from sale of property. Therefore, it is necessary to decide the issue in light of revised computation filed by the assessee along with decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT (supra). The Hon'ble Supreme Court has laid down very clear ratio in the above said case, as per which, the AO cannot entertain fresh claim, unless such claim is made by way of revised return, but the restriction imposed on the powers of the AO, is not applicable to the appellate authorities, which is very clear from the decision of the Hon'ble Supreme Court. Therefore, we are of the considered view that when the assessee has filed a revised statement of total income considering full value of consideration as per

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sale agreement, the Ld.CIT(A) ought to have entertained the fresh claim of the assessee towards computation of long term capital gains and exemption claimed u/s.54 of the Act. Hence, we direct the AO to consider the revised statement of total income filed by the assessee, enhancing the computation of long term capital gains from sale of property on the basis of sale consideration received as per sale agreement. As regards exemption u/s.54 of the Act, we are of the considered view that once, the source of money is not disputed and which has come from sale of property, then any surplus money including additional consideration would also partake character of income generated from that source. This principle is supported by the decision of the ITAT Cochin Bench in the case of ITO v. Abraham Varghese Charuvil in ITA No.30/Coch/2017 dated 26.04.2017. In this case, the source of additional money is not disputed by the AO, because the AO has made additions towards difference in sale consideration of Rs.16,85,000/- on the basis of Sale Deed and sale agreement. Therefore, we are of the considered view that once the source of income is not disputed, then the AO ought to have considered the additional income, if any, from that source as a part of income generated from the source itself. Hence, we direct the AO to consider the revised long term capital gains computed by the assessee on the basis of sale consideration as per sale agreement and allow the benefit of exemption u/s.54 of the Act as per revised computation, because, the investment

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made by the assessee for purchase of house property at Bangalore, is more than the amount of long term capital gains derived from sale of house property.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 09th day of March, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09th March, 2022.

TLN

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

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