

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपध्यक्ष एवं

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND

HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.2297/Chny/2016

(निर्धारण वर्ष / Assessment Year: 2011-12)

R. Appaji (HUF) by L/R Smt. R. Amudha No. 21, 5 th Cross, Jawahar Nagar, Puducherry – 605 005.	बनाम/ Vs.	ITO Ward-1(1), Puducherry.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAHHR-4480-A		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri T. Vasudevan (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri P. Sajit Kumar (JCIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	21-02-2022
घोषणा की तारीख / Date of Pronouncement	:	21-02-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals), Puducherry [CIT(A)] dated 10-05-2016 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act

on 23-10-2013. The concise grounds raised by the assessee read as under:

1. The order of the Commissioner of Income-Tax(Appeals) dismissing the appeal by denying the claim of exemption u/s 54F on the entire investment made is contrary to law, erroneous and unsustainable on the facts of the case.
2. The CIT(A) failed to appreciate that the assessee had computed capital gains on the consideration of Rs.2.10 crores received out of the power of attorney given to one P.Vaidyanathan and there was no basis or material to add any further amounts for computation of capital gains.
3. The CIT(A) was not justified in confirming the addition of Rs.7560850 to the returned sale consideration by holding that assessee had sold some lands independently, whereas, the POA holder confirmed that the entire lands of 1 kani 70 kuzhees were sold by assessee through the power and therefore only Rs.2.10 crores received by assessee is to be considered for computation of capital gains.
4. The CIT(A) further failed to appreciate that the assessee, as a widowed lady, was harassed by illegal occupants and land grabbers and it was impossible to sell the lands independently and that this being the sole reason for entering into POA, ought to have accepted the consideration of Rs.2.10 crores returned by the assessee.
5. The CIT(A) erred in confirming the grant of exemption u/s. 54F only to the extent of Rs.90,87,000/- as against the total amount of Rs.1,91,84,337 reinvested by assessee in another residential property.
6. The CIT(A) failed to appreciate that the assessee purchased a residential property comprising of land and building, which building was in two parts within the same door number and duly complies with the conditions for exemption and hence this would not disentitle the assessee for exemption on a part of the property.
7. The CIT(A) further failed to appreciate that the grant of exemption u/s.54F cannot be restricted by giving a narrow interpretation to a beneficial provision, intended for reinvestment in residential property, which the assessee had duly complied with and hence the denial of exemption on the entire amount of reinvestment was wholly unjustified and untenable in law.
8. The CIT(A) further failed to appreciate that the claim of assessee was in accordance with the provisions of law and the Madras High Court decision in V.R.Karpagam case (373 ITR 127) and hence the denial of exemption on a part of the property was arbitrary and without any statutory basis and hence the exemption u/s.54F is to be granted as claimed by the assessee.
9. The CIT(A) erred in confirming the disallowance of indexation on the improvement cost of Rs.128000 incurred by the assessee on land filling and fencing the property in the computation of capital gains.
10. The CIT(A), in any event, ought to have seen that the computation of capital gains returned by the assessee is correct and there was no basis for the officer to re-compute the capital gains on a much higher figure and hence ought to have deleted the additions made to the returned income.

As evident, the sole subject matter of dispute is computation of capital gains.

2. The Ld. AR disputed the application of Sec.50C. It was also submitted that whole parcel of land was sold through power of attorney holder against aggregate consideration of Rs.210 Lacs and therefore the assessee's computation was to be accepted. The Ld. AR placed on record translated copy of General Power of Attorney (POA) dated 05.08.2010 and the receipt issued by the Power of Attorney holder which is dated 22.12.2010. The Ld. Sr. DR, on the other hand, submitted that the POA as executed by the assessee would clearly show that only part of the land was sold through POA holder. The Ld. Sr. DR also justified the application of Sec.50C and submitted that the valuation adopted by Ld. AO was lower than the valuation done by Ld. DVO. Lastly, Ld. DR submitted that as rightly held in the impugned order, the deduction u/s 54F was to be restricted to one property only. The inspector's report dated 08.07.2019 has been placed on record in support of the submission that one of the property is a commercial building whereas the other building is a residential building and the gap between the two properties is around 20 feet.

Having heard rival submissions and after going through relevant material on record, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee-HUF computed taxable capital gain of Rs.2.09 Lacs on sale of various housing plots situated at Thavalakuppam. The sale of plots took place through general Power of Attorney (POA) holder Shri P.Vaidyanathan. The General Power of Attorney was executed on 05.08.2010. The sale proceeds were reflected by the assessee as Rs.210 Lacs against which commission expenses, indexed cost of acquisition & indexed cost of improvement was claimed. Against resultant

capital gain of Rs.193.93 Lacs, the assessee claimed exemption u/s 54 for investment in residential property for Rs.191.84 Lacs. Thus, the balance amount of Rs.2.09 Lacs was offered to tax as taxable capital gains.

3.2 It was noted by Ld. AO that Smt. B.Amudha who was managing the assessee-HUF made huge cash deposits in Indian Bank. During the course of her own assessment proceedings, it was stated that the cash deposits were HUF funds since the HUF did not have separate bank account. The POA holder Shri P. Vaidyanathan confirmed having received the commission on sale of plots. In the said background, Ld. AO proceeded to examine the computation of capital gains as done by the assessee.

3.3 In this year, total 33 number of plots having aggregate area of 46808 square feet were sold through POA holder. In next year, 3 plots having aggregate area of 6144 square feet were sold by the assessee. The same has been detailed in the assessment order. The guideline value of the land was found to be Rs.550/- per square feet. The Ld. AO also noted that the assessee did not offer any capital gain on sale of area of 13747 square feet which was allegedly sold before executing the power of attorney. It was concluded by Ld. AO that the sale took place between the period 01.04.2010 to 04.08.2010 i.e., before the execution of power of attorney by the assessee.

3.4 Considering all these facts, Ld. AO applied the provisions of Sec.50C and adopted sale consideration as Rs.550/- per square feet on aggregate area of (46808+13747 square feet). The cost of improvement of Rs.1.28 Lacs as claimed by the assessee was denied in the absence of documentary evidences forthcoming from the assessee.

Further, the assessee claimed exemption on two properties for Rs.191.84 Lacs. Considering the provisions of Sec.54F, Ld. AO restricted the exemption with respect to one house property only. Accordingly, the capital gains were re-computed as Rs.233.95 Lacs.

Appellate Proceedings

4.1 During appellate proceedings, it was submitted by the assessee that entire land to the extent of 1 Kani 70 Kuzhees was sold through power of attorney for sale consideration of Rs.210 Lacs and no extra consideration flowed to the assessee. The same was evident from the affidavit / statement of POA holder. The POA holder acknowledged payment of Rs.210 Lacs to the assessee for having sold the entire parcel of land comprising 1 Kani 70 Kuzhees. The Ld. AO went wrong in assuming that the assessee had separately transacted for 13747 square feet of land. There was no material to corroborate the same. The assessee also pleaded for allowance of cost of improvement of Rs.1.28Lacs on the ground that it was reasonable. However, the same could not be proved with documentary evidences. The assessee also assailed the application of Sec.50C on the ground that the land was sold through Power of Attorney and the assessee was paid only an amount of Rs.210 Lacs as sale consideration. The consideration flowed only from POA holder and not from the sale document of plots. The assessee could not stake claim for a higher amount with POA holder and when the lands were sold, it was exclusively in the domain of the POA holder. Therefore, the provisions of Sec.50C would not have application in such a case. The assessee also sought deduction u/s 54F for two properties on the ground that the properties were within one boundary / compound. It was submitted that initially the entire property having 6140 square feet

was owned by one Savary Powline which delved onto two legal heirs to the extent of 3020 square feet and 3120 square feet respectively. The property was separately sold by the legal heirs on 28.11.2001. Finally, the two properties were purchased by the assessee on same date from respective sellers. Thus, the property was a single unit initially and thereafter sub-divided amongst the legal heirs and sold separately. The assessee purchased the same as a single unit for possession and enjoyment. In support, reliance was placed on the decision of Hon'ble Madras High Court in the case of **CIT V/s V.R.Karpagam (337 ITR 127)** which considered the amendment brought in to Sec.54F w.e.f. 01.04.2015.

4.2 However, Ld. CIT(A) confirmed AO's finding that only 46808 square feet of land was sold by the assessee through POA holder whereas the remaining areas was sold by the assessee himself since the assessee could not rebut the same with details of sale of plot with period of sale. Further, the objection to valuation of Rs.550/- per square feet as adopted by Ld. AO was to be rejected since Ld. DVO valued the land at Rs.552/- per square feet. The plea that Sec.50C would have no application, was to be rejected since the sale was done by POA holder as an agent. The assessee raised another plea that the capital asset was converted into current asset which was to be rejected being mere after-thought to avoid the rigors of Sec.50C. Similarly, the claim of cost of improvement was to be rejected for want of documentary evidences.

4.3 Regarding claim of deduction u/s 54F, it was noted that property devolved on to two legal heirs which was sold separately. The assessee purchased the same from respective sellers against two set of documents. Therefore, right from 1995, the properties were enjoyed by

different owners and the alienation was also to two different entities. Simply because the house properties were situated in a single compound, they would not lose independent identity. Upon perusal of erection permission of the two properties as obtained from Pondicherry Planning Authority, it was noted that earlier owners applied for reconstruction on different dates. In one of the applications, the permission was sought to construct two storied residential building whereas in the other application, permission was sought to construct two storied commercial-cum-residential building. The assessee could not show that the properties were legally or practically converted into single unit. Therefore, the claim was to be rejected. In other words, the appeal was dismissed. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. Upon careful consideration of material on record, it could be seen that the assessee, along with another co-owner, has executed General Power of Attorney on 05.08.2010 in favor of Shri P.Vaidyanathan. As per the Schedule, POA encompasses a total extent of land of 1 Kani 70 Kuzhi which has been sub-divided into plots. It further states that total extent of 13747 square feet has been sold by the co-owners earlier and the balance 1 Kani 46 Kuzhi 2 -1/4Veesam is left. Thus, the POA has been executed to that extent. However, as per the receipt dated 22.12.2010, POA is stated to have paid a sum of Rs.210 Lacs against land admeasuring 1 Kani 7 Kuzhi. Therefore, there is clear contradiction between these two documents and the correct factual matrix is required to be brought on record. To resolve the same, we remit the issue back to the file of Ld. AO to ascertain the correct factual matrix. It could be noted that the property under consideration is immovable property and the

sale value of the same could be ascertained on the basis of sale deeds. The Ld. AO is directed to ascertain the aggregate sale consideration arising out of sale of plots of land sold by the assessee during the year. The assessee is directed to file the relevant details / explanation. After ascertaining the sale consideration, the next question would be of application of Sec.50C. The Ld. AO shall consider the submissions / objection of the assessee to the adoption of stamp duty value and re-adjudicate the same. The assessee's plea that Sec.50C would have no application in case of sale executed through POA would not hold much water since no such distinction has been created under the statute. Similarly, the cost of improvement could not be allowed in the absence of any documentary evidences forthcoming from the assessee. The last issue of deduction u/s 54F would also stand restored back to the file of Ld. AO in the light of inspector's report as placed by the revenue before us. The same would be confronted to the assessee and the issue may be re-adjudicated in the light of submissions made and findings arrived at thereafter.

6. The appeal stands partly allowed for statistical purposes in terms of our above order.

Order pronounced on 21st March, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 21-03-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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