

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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.423/Chny/2020
निर्धारण वर्ष /Assessment Year: 2015-16

Mr.Narasimhan Rangarajan,
No.8, Plot No.28, Sixth Street,
Balaji Nagar, Nanganallur,
Chennai.

[PAN: AEGPR 8372 E]

(अपीलार्थी/Appellant)

v. The Income Tax Officer,
Non-Corporate Ward-14(5),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Y. Sridhar, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.G. Johnson, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 13.04.2022
घोषणा की तारीख /Date of Pronouncement : 28.04.2022

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)-14, Chennai, dated 11.12.2019 and pertains to assessment year 2015-16.

2. The brief facts of the case are that the assessee filed his return of income for the AY 2015-16 on 03.06.2016 admitting a total income of Rs.3,00,280/-. During the course of assessment proceedings, the AO noticed that the assessee had sold a vacant site through a power of attorney for a total sale consideration of Rs.2.40 Crs. by entering into a sale agreement dated 15.09.2014. The assessee had purchased 95 cents

:: 2 ::

of land at Melur, Srirangam, Trichy, for a consideration of Rs.53 lakhs vide Document No.3080/2014 dated 19.11.2014. The assessee has computed long term capital gains derived from sale of property after claiming exemption u/s.54EC towards investments in NHA Bonds at Rs.50 lakhs and exemption u/s.54F of the Act, in respect of acquisition of new property for Rs.1,44,74,939/-. The AO did not accept the exemption claimed by the assessee u/s.54F of the Act, on the ground that the assessee could not complete construction of house property within the time prescribed u/s.54F of the Act. The AO discussed the issue at length in light of various facts, including Enquiry Report submitted by the Inspector of Income Tax, Certificate of District Revenue Officer, Trichy dated 09.10.2017 and also documents filed by the assessee and observed that the assessee has failed to complete the construction of new residential house within the time limit prescribed by the Act as provided in Sec.54F of the Act. The other evidences filed by the assessee, including EB connection is provided on commercial rate, which means that the farm house, which is under construction, is not residential in nature. Although, the assessee has utilized the amount deposited in Capital Gains Amount Scheme for construction of farm house, but facts remain that the construction work is in progress and is not yet completed. Therefore, rejected the claim of the assessee and computed long term capital gains at Rs.1,46,01,610/- by disallowing the claim of exemption u/s.54F of the Act.

:: 3 ::

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed submissions on the issue which has been reproduced in Para No.5 at Page Nos.4-7 of the Ld.CIT(A)'s order. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that when entire sale consideration derived from transfer of original asset, has been invested for acquisition of new asset, then merely for the reason that construction of house property was not completed within the due date prescribed under the Act, deduction u/s.54F of the Act, cannot be rejected. The Ld.CIT(A) after considering the relevant submissions of the assessee and also taken note of various judicial precedents, rejected the arguments of the assessee and uphold the findings of the AO in denying deduction claimed u/s.54F of the Act, by holding that the assessee could not furnish any evidences to prove that the house property was completed within three years from the date of transfer of original asset as per Sec.54F of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in confirming the disallowance of amount of deduction u/s.54F of the Act, without considering the materials produced and available on record especially regarding the completion of the construction of house property. The Ld.AR further submitted that the assessee has constructed a farm house, for which, there is no necessity of any approved plan from the authority. Further, the assessee has spent total sale consideration received

:: 4 ::

from transfer of asset for construction of house property. Further, the Inspection Report of Income Tax Officer, Ward-1(3), Trichy, also confirms existence of buildings in the nature of residential house and further, it is under construction. The AO without appreciating above facts, simply disallowed deduction claimed by the assessee. The Ld.CIT(A) without appreciating the facts, has confirmed the additions made by the AO. In this regard, he relied upon the decision of the Hon'ble Madras High Court in the case of CIT v. Sardarmal Kothari reported in (2008) 302 ITR 286 (Mad) and also the decision in the case of CIT v. Smt.Charumathi.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that condition prescribed for claiming exemption u/s.54F of the Act, is to complete construction of house within three years from the date of transfer of original asset. In the present case, evidences filed by the assessee clearly prove that the house was not completed within the due date specified under the Act, and thus, the AO as well as the Ld.CIT(A) have rightly rejected the claim of the assessee and their orders should be upheld.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.54F of the Act, provides for deduction towards capital gains derived from transfer of original asset, in case, sale consideration is invested in acquisition of a new house property. In order to claim deduction u/s.54F of the Act, the assessee should invest entire sale consideration derived from

:: 5 ::

transfer of original asset for purchase/construction of a new house property. The condition precedent for claiming such exemption is that in case of purchase, the house should be purchased within two years from the date of transfer of original asset and in case of construction, the new house should be constructed within three years from the date of transfer of original asset. Various courts have interpreted the provisions of Sec.54F of the Act, and held that it is a beneficial provision for promoting construction of residential house. The Hon'ble jurisdictional Madras High Court in the case of CIT v. Sardarmal Kothari (supra) had considered the provisions of Sec.54F of the Act, and interpreted that the intention of the legislature was to encourage investments in the acquisition of residential house and completion of construction or occupation is not the requirement of the law. The Hon'ble jurisdictional Madras High Court in the case of Smt. CIT v. Smt.Charumathi (supra) had also an occasion to consider the very same issue and held that exemption u/s.54F of the Act, cannot be disallowed for non-completion of the construction of house, when the assessee invested entire sale consideration for purchase of land. The sum and substance of ratio laid down by various High Courts are that since provisions of Sec.54F of the Act, is a beneficial provision which needs to be construed liberally to allow the benefit of deduction. If you go by ratio laid down by the above decision, what is required to be seen to allow the benefit of deduction is that whether the assessee has invested entire sale consideration received from sale of original asset for acquiring new house property or not. But,

:: 6 ::

completion of construction of house property is not material to allow the benefit of deduction.

7. In this case, there is no dispute with regard to the fact that the assessee has invested entire sale consideration for construction of new residential house property. In fact, the Enquiry Report of Inspector also confirms construction of house property in the impugned land. Although, the AO has observed that what was constructed by the assessee is not a house property, but said findings are contrary to the Enquiry Report submitted by the Inspector. As per which, the assessee has constructed a farm house, in the land which is meant for residential purpose of the assessee. It is well settled principle of law that there is no restriction under the law to claim benefit of deduction u/s.54F of the Act, in case, sale consideration invested for construction a farm house. This principle is supported by the decision of the ITAT Jaipur benches in the case of ACIT v. Shri Om Prakash Goyal reported in 53 SOT 158. Therefore, we are of the considered view that once the assessee prove beyond doubt that entire sale consideration received from transfer of original asset, has been invested for acquiring new house property and further, for genuine and bona fide reason, there is a delay in completion of construction of residential house, which was beyond control of the assessee, the benefit of deduction u/s.54F of the Act, cannot be denied. The Ld.CIT(A) without appreciating fact, simply confirmed the disallowance of deduction claimed u/s.54F of the Act. Hence, we set aside the order passed by the Ld.CIT(A) and direct the AO

:: 7 ::

to delete the additions made towards disallowance of exemption claimed u/s.54F of the Act.

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

Order pronounced on the 28th day of April, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th April, 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