

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1906/Chny/2017**
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

Smt. Indu Sekar No. 4/3, Sri Janakas 2 nd Cross Street, Kamakodi Nagar, Valasaravakkam, Chennai – 600 087.	बनाम/ Vs.	ITO Non Corporate Ward -16(3), Chennai.
स्थायी लेखा सं./जी आइ आर सं./ PAN/GIR No. CNVPS-4091-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri N. Arjunraj (CA) for Shri. S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri S. Chandrasekaran (JCIT) – Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	22-09-2022
घोषणाकी तारीख / Date of Pronouncement	:	28-10-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-4, Chennai [CIT(A)] dated 22.06.2017 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30.03.2016. The grounds raised by the assessee read as under:

1. The order of The Commissioner of Income Tax (Appeals) 4, Chennai dated 22.06.2017 in I.T .A. No.43/2016-17/ A. Y .2013-14/CIT (A)-4 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in sustaining the disallowance of the claim of tax exemption u/s 54F of the Act in the computation of Long Term Capital Gains without assigning proper reasons and justification.
3. The CIT (Appeals) failed to appreciate that the misconstruction of the provisions of section 54F of the Act would vitiate the decision in sustaining the disallowance of the said claim in the computation of Long Term Capital Gains.
4. The CIT (Appeals) failed to appreciate that the purposive approach in reckoning the utilization of the sale proceeds/LTCG before the expiry of the due date for filing of the return of income pertaining to the Assessment Year under consideration was completely overlooked and brushed aside, thereby vitiating the decision rendered in para 17 of the impugned order.
5. The CIT (Appeals) went wrong in recording the findings in this regard para 17 of the impugned order without assigning proper reasons an justification.
6. The CIT (Appeals) failed to appreciate that the construction agreement should not be taken as the crucial document for denying the claim of the tax exemption u/s 54F of the Act and ought to have appreciated that the legal theory of substance over form was completely brushed aside and overlooked.
7. The CIT (Appeals) failed to appreciate that the conditions prescribed to make the claim for tax exemption u/s 54F of the Act in the computation of Long Term Capital Gains were satisfied and complied with in all facets, thereby vitiating the findings in para 17 of the impugned order.
8. The CIT (Appeals) failed to appreciate that the decisions cited in support of creating the new asset/two units in the joint names in the same housing project were completely overlooked and brushed aside, thereby vitiating the findings in para 17 of the impugned order.
9. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.
10. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

As is evident, the sole grievance of the assessee is computation of income under the head 'capital gains' and denial of deduction u/s 54F.

2. The Ld. AR advanced arguments assailing the impugned order and relied on various judicial pronouncement. The same has been

controverted by Ld. Sr. DR. Having heard rival submissions and after due consideration of material facts, our adjudication would be as under.

Assessment Proceedings

3.1 During the year, the assessee sold a vacant land measuring 4059 Sq. Ft. through two different unregistered agreements dated 25.03.2013. The assessee reflected sale consideration of Rs.81.18 Lacs and worked out Long-Term Capital Gains for Rs.76.62 Lacs. Against these gains, the assessee claimed deduction u/s 54F. The sale proceeds were stated to be invested in two residential flats located at Golden Opulence, Bypass Road, Poonamalle, Chennai. The sale consideration of two flats was fixed at Rs.151.03 Lacs and entire sale consideration was stated to be utilized for acquisition of the property.

3.2 The Ld. AO noted that the investment was made in two properties i.e., (i) Flat No.3, Tower No.3, 7th Floor in the name of Ms. Dharshini Sekar (minor daughter of the assessee) for Rs.75.25 Lacs; (ii) Flat No.3, Tower No.3, 8th Floor in the name of Ms. Harini Sekar (major unmarried daughter of the assessee) for Rs.75.77 Lacs;

3.3 However, field enquiries revealed that construction work was not complete. The sale took place on 25.03.2013 and therefore, the construction work should have been completed within 3 years i.e., by 24.03.2016. Since the construction was not completed by that date, Ld. AO formed an opinion that the deduction would not be available to the assessee.

3.4 It was further observed that the payment for flat booked in the name of Ms. Dharshini Sekar was made by the assessee whereas the payment for flat booked in the name of Ms. Harini Sekar was made by

herself from bank account maintained in her name jointly with her mother. The deposits in the account were made in the name of Ms. Harini Sekar and the receipts for flats were also issued in her name only. The payment made by Ms. Harini Sekar up-to 31.07.2013 aggregated to Rs.44.88 Lacs. The analysis of bank statement of Ms. Harini Sekar revealed that the funds were transferred in her name as 'repayment of loan given to brother', 'funds transferred from others / Kalpana Sundar'. Thereafter, Ms. Harini Sekar issued cheques to the builders towards purchase of flat. Accordingly, Ld. AO held that the sale proceeds of the capital assets were utilized by the assessee to purchase only one flat in the name of Mrs. Dharshini Sekar. The other flat was purchased directly by Ms. Harini Sekar out of funds given to her by various persons on various dates. The same would be supported by the fact that the assessee invested another sum of Rs.34.54 Lacs in purchase of land and Kondavakkam Village on 13.05.2013 and she did not have funds to make the investment in the other flat.

3.5 Proceeding further, the provisions of Sec.54F(4) require the assessee to deposit unutilized sales proceeds into specified capital gain account scheme before due date as prescribed u/s 139(1). Since no deposit was made, the unutilized amount would be charged to tax.

3.6 Finally, Ld. AO held that the conditions of Sec.54F were not fulfilled since the investment was made in two flats, the investments were not in the name of the assessee, the construction was not complete and unutilized portion was not deposited in capital gains account scheme. The assessee's argument that the flats were proposed to be registered jointly was held to be mere after-thought. Further, the flats were located on different floors and booked in the

name of two individual not with an intention to be used by one family. Finally, the deduction was restricted considering the investment of Rs.44.88 Lacs made by the assessee up-to 31.07.2013 against one flat booked in the name of Ms. Dharshini Sekar. However, this deduction was also not granted on the ground that the construction was in progress and the and condition that the property should have been acquired within 3 years was not fulfilled by the assessee.

3.7 The stand of Ld. AO was confirmed by Ld. CIT(A) by observing that the basic condition of construction of new house within 3 year was not fulfilled by the assessee and therefore, no infirmity could be found in the assessment order. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. We find that the basic facts are not in dispute. From the fact, it emerges that the assessee sold capital asset for Rs.81.18 Lacs and stated to have made investment in two flats for Rs.89.54 Lacs. The investment was stated to be made before due date of filing of return u/s 139(1). The cost of two flats aggregated to Rs.151.03 Lacs. It could be seen that the assessee has invested entire proceeds in acquiring two flats and nothing would be left with her to deposit in capital gains account scheme. It could also be seen that once the assessee has made investment, it would be beyond her control to ensure that the flats were constructed within 3 years. There is nothing on record which would show that the construction got delayed due to any fault on the part of the assessee. Therefore, the reasoning of lower authorities to that extent could not be upheld.

5. Proceeding further, it could be seen that the assessee has made investments in two flats. The deduction could be permissible against two flats had the assessee invested entire sale proceeds of capital asset in the two flats. Unfortunately, the same is not the case here. It could be seen that the investment has been made by Ms. Harini Sekar out of independent sources and the agreement is done in her own name only. Rather the assessee has purchased another land during the year which have been sourced out of sale proceeds and therefore, the plea that entire sale consideration was invested in two flats could not be accepted. The beneficial provisions of Sec.54F, as urged by Ld. AO, could not be stretched to that extent. The peculiar facts of the case support the case of the revenue that entire sale proceeds have not been utilized to make investment in acquisition of flats. Therefore, considering the facts the of the case, the deduction has to be restricted to the extent of investment made in the name of Mrs. Dharshini Sekar only. However, the deduction would be available to the extent of cost of new flat and not merely to the extent of payment made by the assessee before 31.07.2013 since the full effect of beneficial provision has to be given to the assessee. The deduction of Sec.54F against other flat has rightly been denied. The case laws being cited before us have been rendered on particular set of facts and accordingly, the same would apply in those facts only and do not apply to peculiar facts of the present case. The Ld. AO is directed to re-compute the income of the assessee.

6. The appeal stands partly allowed.

Order pronounced on 28th October, 2022

Sd/-
(V. DURGA RAO)
न्यायिकसदस्य /JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 28.10.2022
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