

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 618/Chny/2020  
निर्धारण वर्ष/**Assessment Year:2011-12**

Smt. Krishnaiah Ranganayaki,  
No. 17, Seetharam Nagar,  
Cuddalore 607 001.

Vs. The Income Tax Officer,  
Ward 1,  
Cuddalore.

**[PAN:AEWPR9630P]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri J. Prabhakar, C.A.  
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/ Date of hearing : 09.11.2022  
घोषणा की तारीख /Date of Pronouncement : 18.11.2022

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Puducherry, dated 20.02.2020 relevant to the assessment year 2011-12.

2. The appeal filed by the assessee is delayed by 37 days in filing the appeal due to outbreak of Covid-19 pandemic and accordingly, the delay in filing the appeal is condoned and admitted for adjudication.

3. Facts are, in brief, that the assessee is an individual deriving income from house property, long term capital gain and other sources. On verification of details available on record, the Assessing Officer has noted that the assessee along with her son Sri Srikanth Venkineni had entered into a joint venture development agreement with M/s. Vinayagar promoters and Builders, Visakhapatnam to develop and construct flats on the property at No. 2, MIG at Gangapur Layout, Visakhapatnam measuring 415 sq. yards. The assessee and her son (Co-Owner) retained 90 sq. yards and relinquished the right on the balance 325 sq. yards in *quid pro quo* received sum of ₹.80,00,000/-, a flat measuring 2485 sq. ft on the second floor of the said property and two car parking cost @ ₹. 40,000/- each. The assessee accepted capital gain on transfer of above property of ₹.33,76,458/- (50% of total capital gain being co-owner) after claiming exemption under section 54 of the Income Tax Act, 1961[“Act” in short] in her return of the income.

4. The return filed by the assessee was processed under section 143(1) of the Act and subsequently, the Assessing Officer issued a notice under section 148 of the Act dated 21.03.2018 for reopening of assessment and the reasons recorded and communicated by the

Assessing Officer vide his letter dated 29.05.2018 to the assessee are extracted as under:

*“During the F.Y. 2010-11, the assessee along with her son Sri. Srikanth Venkineni had entered into a joint venture development agreement with M/s.Vinayagar Promoters and builders, Visakhapatnam to develop and construct flats in the property at No.2, MIG at Gangapur Layout, Visakapattinam. As per the development agreement, both assessee and her son Sri. Srikanth Venkineni received a flat measuring 2485 sq.ft. in the second floor, two car parking, undivided share in the land to the extent of 90 sq. yards and a sum of Rs.80,00,000/- from M/s. Vinayagar promoters and builders and claimed exemption u/s.54F.”*

The assessee has raised objection with regard to reopening of assessment and the Assessing Officer has considered the same and concluded the assessment order under section 143(3) r.w.s. 147 of the Act dated 12.12.2018.

5. The assessee carried the matter in appeal before the Id. CIT(A) challenging the reopening of assessment. The Id. CIT(A) has considered the issue of reopening and observed that though the assessment was reopened beyond the period of four years from the end of the relevant assessment year, when the notice under section 148 of the Act was issued, the return of income for the year had not been subject to scrutiny under section 143(3) of the Act and the Assessing Officer has material in his possession. Accordingly, the Id. CIT(A) upheld the reopening of assessment passed by the Assessing Officer.

6. On being aggrieved, the assessee has challenged the reopening of assessment in her appeal before the Tribunal. The Id. Counsel for the assessee has submitted that there is no material available with the Assessing Officer to reopen the assessment. He also submitted that after the verification of the correctness of the claim under section 54F of the Act, the Assessing Officer cannot reopen the assessment unless the Assessing Officer satisfies that there is an escapement of income. It was further submission that in the reasons recorded, the Assessing Officer has no raised the issue of escapement of income and therefore, the reopening is not valid.

7. On the other hand, the Id. DR relied on the orders of authorities below.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the return filed by the assessee was processed under section 143(1) of the Act and subsequently, the case was reopened for the following reasons:

*“During the F.Y. 2010-11, the assessee along with her son Sri Srikanth Venkineni had entered into a joint venture development agreement with M/s.Vinayagar Promoters and builders, Visakhapatnam to develop and construct flats in the property at No.2, MIG at Gangapur Layout, Visakapatnam. As per the development agreement, both assessee and her son Sri Srikanth Venkineni received a flat measuring 2485 sq.ft. in the second floor, two car parking, undivided share in the land to the extent of 90 sq. yards and a sum of Rs.80,00,000/- from M/s. Vinayagar promoters and*

*builders and claimed exemption u/s.54F. In order to verify the correctness of Sec. 54F claim and to assess the escaped income chargeable to tax, I have reason to believe that income chargeable to tax has escaped for assessment and the same requires to be brought to tax by reopening assessment.”*

8.1 From the above, it is very clear that the Assessing Officer has reopened the assessment to verify the correctness of claim made under section 54F of the Act. It is not the case of the Assessing Officer that the claim made by the assessee under section 54F of the Act is either wrong or wrongly allowed. It was only for the purposes of ascertaining the correctness of the claim. In our opinion, the reasons recorded by the Assessing Officer to reopen the assessment for the purpose of verification of the claim made under section 54F of the Act are not in accordance with law. While reopening the assessment, the Assessing Officer has to record his satisfaction that there is an escapement of income chargeable to tax. However, in this case, the reopening was done on the ground to verify the correctness of claim made under section 54F of the Act, which is not in accordance with law. Therefore, we hold that the reopening is invalid.

8.2 That apart, the Id. CIT(A) has recorded that the 4 years had already passed from the end of the assessment year, which means, the reopening was done after 4 years. In the reasons recorded by the Assessing Officer, this fact is not coming out. The Assessing Officer has

not recorded that there is a failure on the part of the assessee to disclose fully and truly all material facts to complete the assessment. On this count also, the reopening is invalid. Accordingly, we quash the notice issued under section 148 of the Act and quash the assessment order passed under section 143(3) r.w.s. 147 of the Act. Thus, the ground raised by the assessee is allowed.

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

Order pronounced on the 18<sup>th</sup> November, 2022 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 18.11.2022

Vm/-

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.