

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1729/Chny/2019
निर्धारण वर्ष /Assessment Year: 2015-16

Mr.Ramalingam Nagarajan,
Flat No.A3, Bharat Flats,
No.34/18,
Karpagam Avenue, 1st Street,
R.A.Puram, Chennai-600 028.
[PAN: ACSPR 5683 C]
(अपीलार्थी/Appellant)

v. The Income Tax Officer,
Non-Corporate Ward-21(3),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.N.Arjunraj, CA
For Mr.S.Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT
सुनवाई की तारीख/Date of Hearing : 02.01.2023
घोषणा की तारीख /Date of Pronouncement : 11.01.2023

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)-9, Chennai, dated 16.04.2019 and pertains to assessment year 2015-16.

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

1. The order of the Commissioner of Income Tax (Appeals) - 9, Chennai dated 16.04.2019 in ITA No.15/CIT(A)-9/2017-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in partly sustaining the re-computation of the long term capital gains as part of the assessment order at Page No.5 without assigning proper reasons and justification.

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3. The CIT (Appeals) failed to appreciate that the sustenance of the restriction of the claim for tax exemption u/s 54 of the Act in the re-computation of the long term capital gains to the extent of the utilization of the exempted capital gains without routing through the prescribed capital gains account on the presumed violation of section 54(2) of the Act was wrong, erroneous, unjustified, incorrect and not sustainable in law.

4. The CIT (Appeals) failed to appreciate that the misconstruction of section 54(2) of the Act would defeat the purposive construction of the said statutory provisions in granting tax exemption for creation of new asset/house and ought to have appreciated that having not disputed the creation of the new asset as mandated in section 54 of the Act, the technical violation of not utilizing the exempted capital gains through the prescribed capital gains account to the extent quantified in the assessment order would not negate the claim for tax exemption as per the computation forming part of the return of income filed for the assessment year under consideration.

5. The CIT (Appeals) went wrong in recording the findings in para 5.1 of the impugned order in this regard without assigning proper reasons and justification and ought to have appreciated that the judicial trend on this issue including the decisions rendered in favour of the tax payer by the Jurisdictional Bench of the Income Tax Appellate Tribunal were completely overlooked and brushed aside.

6. The CIT (Appeals) failed to appreciate that the claim for tax exemption u/s.54 of the Act which formed part of the return of income filed for the assessment year under consideration was proper and correct as per the law prescribed in relation thereto.

7. 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.

8. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The brief facts of the case are that during the Financial Year relevant to the AY 2015-16, the assessee has sold land & building situated at Velan Nagar, Valasaravakkam, Chennai, for a sale consideration of Rs.1,51,00,000/- vide registration document No.512/2015 dated 29.01.2015. The assessee has computed long term capital gains from the sale of land & building at Rs.89,99,443/- and claimed exemption u/s.54 of the Act, for purchase of residential house property at Plot No. A19 & A20, Govindan Nagar, 3rd Cross, Palavakkam, Chennai, for an amount of Rs.90 lakhs. During the course of assessment proceedings, the AO noticed that the assessee has purchased new house property on 29.04.2015 for a consideration of Rs.45 lakhs and also entered into a construction agreement with M/s.Keshthana Infrastructure Pvt. Ltd., and paid advance

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of Rs.6 lakhs on 22.05.2017. Therefore, the AO opined that the assessee has not utilized full amount of capital gains derived from sale of original asset for acquiring new asset and thus, re-computed long term capital gains and also exemption u/s.54 of the Act, and allowed exemption u/s.54 of the Act, at Rs.48,59,420/- as against total exemption claimed by the assessee at Rs.90 lakhs.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has argued that although, he has not deposited unutilized portion of capital gains in 'Capital Gain Account Scheme' as required u/s.54(2) of the Act, but within a period of three years from the date of sale of original asset, the entire amount of capital gains has been utilized for construction of house property. Therefore, the AO is erred in denying the benefit of exemption u/s.54 of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee and also by relying upon the decision of the Hon'ble Supreme Court in the case of Smt.Tarulata Shyam and Others v. CIT West Bengal reported in [1977] 108 ITR 345 (SC) rejected the arguments of the assessee and sustained the additions made by the AO towards disallowance of exemption claimed u/s.54 of the Act. The relevant findings of the Ld.CIT(A) are as under:

5.1 CIT's decision:

The findings of the A.O as per the assessment order have been considered. Further, the written submissions filed by the A.R in this regard have also been considered. The following are relevant for deciding the issue under consideration and simultaneously the issue under consideration is adjudicated as under:

(i) The major issue in this ground of appeal is that the A.O had not granted exemption u/s.54 on the ground that the unutilized LTTCG was not deposited in the

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Capital Gain Account Scheme of Nationalized Bank before the due date of filing the return. It is the contention of the AR that the A.O ought to have allowed the exemption u/s 54 by considering various judicial pronouncements. In this regard, it is stated that the contention of the AR is not acceptable in view of the specific provisions of this statute being Section 54 of the Act which is very clear and categorical.

(ii) Interpretation of Statutes:

In this regard, reliance is placed on the decision of the Hon'ble Supreme Court of India in the case of Smt. Tarulashyam and others v. Commissioner of Income Tax West Bengal [1977] 108 ITR 345(SC). Relevant portion of the decision of the Hon'ble Supreme Court is also reproduced here under:

".....in a taxing act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

Once it is shown that the case of assessee comes within the letter of the law the must be taxed, however great the hardship may appear to the judicial mind to be.

When the language of the section is clear and unambiguous, there is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casusomissus, the defect can be remedied only by legislature and not by judicial interpretation"

As per the specific provisions of Section 54(2), it is categorically stated that the amount of capital gain which is not appropriated ought to be deposited in the Capital Gain Account Scheme. Therefore, as per the principles laid down by the Hon'ble Supreme Court in the case cited above of statutes, when the language of the section is very clear and unambiguous, the same ought to be strictly interpreted. Therefore, it is held that the A.O has rightly held that the appellant has failed to comply with the specific provisions of sections of 54(2) and therefore had rightly disallowed part of the claim of exemption u/s.54 as the requisite amount was not deposited in the Capital Gain Account Scheme. Therefore, the addition made by the A.O on this ground is confirmed. Hence, this ground of appeal is dismissed.

5. The Ld.Counsel for the assessee submitted that the Ld.CIT(A) is erred in partly sustaining the re-computation of long term capital gains and also exemption u/s.54 of the Act, without appreciating the fact that the assessee has utilized full amount of capital gains derived from sale of original asset for acquiring new residential house property within three years from the date of transfer of original asset. Although, the assessee has not deposited unutilized amount of capital gains in 'Capital Gain Account Scheme' as required u/s.54(2) of the Act, but facts remain that the entire amount has been utilized within three years from the date of transfer of original asset

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and therefore, the AO as well as the Ld.CIT(A) ought to have allowed the benefit of exemption u/s.54 of the Act. In this regard, he relied upon the decision of the Hon'ble High Madras Court in the case of CIT v. Smt. Umayal Annamalai reported in [2020] 273 Taxman 146 (Madras) and also the decision of the Hon'ble ITAT Chennai Benches in the case of Mr.P. Shankaran v. ITO in ITA No.1167/Chny/2016.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that as per the provisions of Sec.54(2) of the Act, the assessee should deposit unutilized amount of capital gains in 'Capital Gain Account Scheme' on or before due date for furnishing return of income u/s.139(1) of the Act. Since, the assessee has failed to deposit unutilized amount of capital gains in 'Capital Gain Account Scheme', the AO has rightly allowed proportionate deduction towards amount invested for purchase of new residential house property and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts with regard to impugned dispute are that the assessee has sold a land & building for a consideration of Rs.1,51,00,000/- on 29.01.2015 and computed long term capital gains. The assessee had claimed exemption u/s.54 of the Act, for an amount of Rs.90 lakhs for purchase of another residential house property site on 29.04.2015 and amount spent for construction of house thereon. The AO has allowed proportionate deduction towards exemption claimed u/s.54 of the Act, to the extent of Rs.48,59,420/- being

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consideration paid for purchase of property and stamp & registration fees. However, denied exemption for remaining amount on the ground that the assessee has violated provisions of Sec.54(2) of the Act, in not depositing unutilized amount of capital gains in 'Capital Gain Account Scheme'. We have given our thoughtful consideration to the reasons given by the AO in light of arguments advanced by the Ld.AR and we ourselves do not subscribe to the reasons given by the AR for simple reason that in order to get the benefit of exemption u/s.54 of the Act, the assessee should invest full amount of capital gains for purchase of new residential house property before one year from the date of sale of original asset or within three years from the date of sale of original asset, in case of construction. In case, the assessee is not able to spend full amount of capital gains on or before due date of furnishing of return of income u/s.139(1) of the Act or u/s.139(4) of the Act, then unutilized amount of capital gains should be deposited in 'Capital Gain Account Scheme' in a nationalized bank. In this case, the assessee has invested part of capital gains in purchase of new residential house property on or before due date of furnishing of return of income. However, did not deposit unutilized amount of capital gains in 'Capital Gain Account Scheme' as per the provisions of Sec.54(2) of the Act. The law is very clear in as much as the amount which is not utilized for construction and purchase of property before filing return of income must necessarily be deposited in an account duly notified by the Central Government so as to be exempted. Although, the provisions of Sec.54(2) of the Act, is a

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beneficial which needs to be construed liberally so as to allow benefit to the tax payer, but fact remains that if assessee demonstrate with evidences that full amount of consideration/capital gains is invested in purchase of new residential house property on or before filing return of income, if such filing is even beyond due date specified u/s.139(1) of the Act and within due date specified u/s.139(4) of the Act, then, the benefit of exemption should be allowed. However, in a case, where the assessee has filed return of income on or before due date for filing return of income u/s.139(1) of the Act, but, does not spend full amount of capital gains for purchase or construction of new house property, then, the unutilized amount of capital gains must be deposited in 'Capital Gain Account Scheme'. This principle is supported by the decision of the Hon'ble Bombay High Court in the case of Humayun Suleman Merchant v. Chief Commissioner of Income Tax reported in [2016] 387 ITR 421 (Bombay). In this case, facts with regard to non-compliance of provisions of Sec.54(2) of the Act, are not in dispute. The assessee neither utilized full amount of capital gains for purchase or construction of house property before filing return of income u/s.139(1) of the Act, nor deposited unutilized amount in 'Capital Gain Account Scheme'. Therefore, we are of the considered view that the AO has rightly allowed proportionate deduction towards amount invested for purchase of new house property u/s.54 of the Act. In so far as case laws relied upon by the assessee in the case of Mr.P.Shankar (supra), we find the Tribunal has recorded categorical findings that the assessee has utilized full amount of

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capital gains within three years from the date of sale of original asset and also complied with provisions of Sec.54 of the Act, and under those facts, it was held that when the assessee has satisfied all conditions, further not depositing unutilized amount in 'Capital Gain Account Scheme', benefit of exemption, cannot be denied. In this case, the assessee could not furnish any evidences with regard to completion of construction of house within three years from the date of sale of original asset and also any other evidences to prove that amount has been spent for construction of house property, except filing a statement referring certain payments to M/s.Keshthana Infrastructure Pvt. Ltd., and claimed that said payments are for construction of house property. Therefore, we are of the considered view that the assessee has failed to satisfy conditions prescribed u/s.54 of the Act, for claiming benefit of exemption u/s.54 of the Act, for remaining amount and thus, we are of the considered view that there is no error in the reasons given by the AO and the Ld.CIT(A) to reject the benefit of exemption for balance amount and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the assessee.

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

Order pronounced on the 11th day of January, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**VICE PRESIDENT**

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

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चेन्नई/Chennai,
दिनांक/Dated: 11th January, 2023.
TLN

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