

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.3170/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2013-14

The Assistant Commissioner of  
Income Tax, Circle 3(1), Williams  
Road, Cantonment, Trichy 620 001.

Vs. Shri Shaik Ismail,  
383, East Street, Arasarkulam,  
Aranthangi Taluk,  
Pudukkottai – 614 801.

[PAN:AAAPI2395C]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri P. Sajit Kumar, JCIT  
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate  
सुनवाई की तारीख/ Date of hearing : 15.11.2022  
घोषणा की तारीख /Date of Pronouncement : 24.01.2023

**आदेश /ORDER**

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

This appeal filed by the Revenue is directed against the order of the  
Id. Commissioner of Income Tax (Appeals) 1, Trichy, dated 19.09.2018  
relevant to the assessment year 2013-14.

2. Brief facts of the case are that the assessee filed the return of  
income on 26.11.2013 for the assessment year 2013-14 admitting an  
income of ₹.1,24,41,730/- which includes capital gain of ₹.98,07,591/-.  
The assessee along with five others had sold a property situated at Arcot

Road, Chennai on 27.06.2012 for a consideration of ₹.30,76,00,000/-.

Subsequently, the Assessing Officer found that the guideline value of the said property was at ₹.33,22,08,000/- as per the registered sale deed.

Further, the assessee has claimed exemption to the tune of ₹.71,39,910/- under section 54F of the Income Tax Act, 1961 [“Act” in short]. However, the Assessing Officer noticed from the statement of income that the assessee owned more than one house and hence he is not eligible for claiming exemption. Since, there were discrepancies in respect of capital gain working and in order to bring the income that has escaped assessment, the assessment was re-opened by the issuing notice under section 148 of the Act dated 20.01.2017 and it was duly served on 22.02.2017. However, the assessee has not filed his return of income in response to the notice under section 148 of the Act. Subsequently, notice under section 142(1) of the Act dated 07.09.2017 was issued stating the assessee to file return of income in response to notice under section 148 of the Act and duly served on the assessee on 12.09.2017. In response to this notice, the assessee filed a return of income on 18.09.2017 returning total income of ₹.1,24,41,730/-. After considering the submissions of the assessee and other details, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act dated 30.12.2017 by arriving the long term capital gains at ₹.4,43,17,446/-

and deducting the long term capital gain of ₹.98,07,591/- admitted by the assessee, the balance of ₹.3,45,09,855/- was added to the returned income of the assessee. On appeal, after considering the submissions of the assessee and registration document as well as case law relied upon, the Id. CIT(A) deleted the addition made by the Assessing Officer.

3. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that the Id. CIT(A) has admitted additional evidence without confronting with the Assessing Officer is in violation of Rule 46A of the Income Tax Rules, 1962 and wrongly allowed the claim of deduction of ₹.3,45,09,522/- under section 54F of the Act.

4. On the other hand, the Id. Counsel for the assessee supported the order passed by the Id. CIT(A).

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the assessment order, the Assessing Officer has noted that the assessee owns, Four residential houses-one at Joshier Street, Chennai, second at Arasarkulam, Aranthangi, Third at Shenoy Nagar, Chennai (1/3° Share) and the fourth at No.243/14 Gangadarapuram, Aranthangi. Further the

field enquiry by the Inspector revealed that the assessee owns a residential property consisting of 8 houses at Ezhil Nagar, II Street, Ibrahim Colony, Aranthangi. Therefore, the Assessing Officer has held that as per the provisions contained in Section 54F of the Act, the assessee is not eligible to claim exemption since the assessee owns more than one residential house. Before the Id. CIT(A), the assessee has contended that he owns only one residential house at Joshier Street and hence he is fully within law to claim the benefit of section 54F of the Act. The appellant has settled the house at Shenoy Nagar, Chennai -1/3<sup>rd</sup> share to his sister on 20.01.2010 itself and the copy of the registered settlement deed was filed before the Id. CIT(A). It was further submitted before the Id. CIT(A) that the house at Gangadharapuram, Aranthangi was not a residential house but a commercial building used for running a Cable TV Network. The copy of the registration certificate issued by the Post Office Pudkkottai was filed before the Id. CIT(A). As regards the third house at Arasarkulam Village, Aranthangi, the assessee has submitted before the Id. CIT(A) that the same was gifted to the assessee's wife by way of 'HIBA' and to evidence the same, the Deed of confirmation of oral gift (HIBA) as filed before the Assessing Officer as well as Before the Id. CIT(A). Before the Id. CIT(A), the AR of the assessee has also filed details to show that assessee did not own any building at Aranthangi, and

he only had ownership of the land and the building was constructed by assessee's mother Ms. Faritha Beevi, for which property tax receipts issued by Aranthangi Municipality were produced before the Id. CIT(A) and contended that the assessee had only admitted land rent, and as such contention of AO that this building was owned by assessee is factually incorrect. The assessee has also produced deed of confirmation of oral gift dated 30.04.2012 before the Id. CIT(A). After considering the above details and additional evidences produced before the Id. CIT(A), the Id. CIT(A) has observed and held as under:

*“11. AR has also furnished documents to registration of house in the name of the wife, payment of municipal taxes etc.*

*12. The only reason for denial of 54F benefit seems to be AO's understanding that assessee had more than one residential house and that assessee's contention of having gifted one house to his wife, by way of HIBA was based on concoctions and hence invalid. The ARs of assessee Shri G. Ramesh Kumar and Shri S. Sridhar, Chartered Accountants have produced documents (in Tamil), which when read out to me show that the house in question was later on mutated in wife's name, authenticating the claim of assessee. We may also note that whole Income Tax Act has to be read in harmony, with overall scheme of the law. The personal laws of Mohemmedans stipulate that HIBA, or gift can be oral and there is no requirement to have it compulsorily in writing. Reference can be made to section 64 of Income Tax Act 1961 as per which income from the property transferred for inadequate consideration to wife (i.e. by way of gift etc.) will be clubbed in the hands of husband.*

*13. Hence, even if the property was validly transferred, the income of the same would still be taxed in the hands of assessee,*

*but for the limited purpose of eligibility u/s 54F, the husband will be well within law to claim that such property does not belong to him, but in fact is owned by his wife. This is so, as the law u/s 64 stipulates that any income from the transfer of property, otherwise valid, would only for the purposes of clubbing of income be treated as per section 64. It nowhere says that transfer itself was not valid.*

*14. Harmonious reading between section 54F and section 64 of Income Tax Act 1961 will show that, gift and transfers from husband to wife is allowed, it is even expected, and it is only to prevent benefit of base (non taxable) that section 64 has been formed.*

*15. Now the question is whether HIBA gift is real and is to be accepted as such and if this is done, will the assessee get the benefit of deduction under section 54F? Too much probing and inquiry is not mandated in personal Laws of communities and where the appellant has gone ahead with the gift in written form, even beyond the requirement of oral gift, it appears to be genuine and must be respected over and above the hyper technical attitude of the AO. Respectfully following the decisions cited supra and after considering the facts of the case, I am inclined to accept the argument of the appellant that the House at Arasarkulam was gifted to his wife. As a result, the appellant holds only one Residential House at Joshier Street and therefore his claim of Deduction U/s 54F is in order. In view of the above, the addition of Rs.3,45,09,855/- stands deleted.*

6. On perusal of the appellate order, we find that the assessee has furnished various details and produced documents before the Id. CIT(A) for the first time and the Id. CIT(A) should have called for remand report from the Assessing Officer. However, by considering the details furnished by the assessee, the Id. CIT(A) has deleted the addition of ₹.3,45,09,855/- made by the Assessing Officer appears to

be in violation of Rule 46A of the Income Tax Rules, 1962. Accordingly, we set aside the appellate order and remit the matter back to the file of the Assessing Officer to reconsider the entire facts and material evidences as may be furnished by the assessee and decide the issue afresh in accordance with law by affording sufficient opportunities of being heard to the assessee. The assessee is also directed to furnish complete details before the Assessing Officer as was filed before the Id. CIT(A).

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 24<sup>th</sup> January, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, the 24.01.2023

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.