

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1781/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2005-06**)

Income Tax Officer Ward-2(1), Trichy.	बनाम/ Vs.	Shri Julius No.7, Amalपुरी Colony, Ambalanathan Street, K.K. Nagar, Trichy.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAHPJ-5029-K		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri N. Arjunraj (C.A) for Shri S. Sridhar (Advocate) – Ld. ARs
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri AR.V Sreenivasan (Addl.CIT) – Ld. Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	24-02-2023
घोषणा की तारीख / Date of Pronouncement	:	01-03-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2005-06 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Trichy [CIT(A)] dated 01-01-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 263 of the Act on 13-11-2015. The revenue has filed revised grounds on 02-02-2023 which read as under:

1. The Order of the CIT(A) is bad in law and against the facts and circumstances of the case.

2. Whether, in the facts and circumstances of the case, and in law, the Ld. CIT(A) was right in allowing the deduction U/s. 54 of the Act, despite the fact that the assessee had failed to deposit the unutilized capital gain proceeds in the capital gain account scheme, 1988, on or before the date of furnishing his return of income U/s. 139(1) of the Act?

3. Whether, in the facts and circumstances of the case, the CIT(A) is right in allowing deduction U/s. 54 of the Act without considering the approval for construction of house from city corporation was obtained on 03/05/2007 by Smt. J.Santhi Julius, wife of assessee which is beyond Asst. Year 2005-06 i.e., in Asst. Year 2006-07.

4. Whether, in the facts and circumstances of the case, the CIT(A) is right in allowing deduction U/s. 54 of the Act when the assessee got permission from his office being a central govt. employee by order dated 19/10/2006 and completed in 2007 March. Whereas the property is claimed to be constructed during the fin. Year 2004-05 relevant to Asst. year 2005-06 thereby claiming deduction u/s 54 frivolously.

As is evident, the sole grievance of the revenue is allowance of deduction u/s 54 by Ld. CIT(A).

2. The registry has noted a delay of 07 days in the appeal, the condonation of which has been sought by revenue. Considering the period of delay, the delay is condoned and the appeal is admitted for adjudication on merits.

3. The Sr. DR assailed the impugned order on the ground that the assessee made investment in the name of his wife and secondly, the mandatory condition to deposit the capital gains in prescribed manner was not fulfilled by the assessee. The Ld. AR supported the impugned order and filed written submissions. Having heard rival submissions, the appeal is disposed-off as under.

4. The assessee received 1/3rd share of sale proceeds of a family property and earned Long Term Capital Gains (LTCG). The proceeds were invested by the assessee in construction of another house property and the assessee claimed deduction u/s 54 which was

allowed by Ld. AO in an assessment framed u/s 143(3) r.w.s. 147 on 28.12.2012. However, this order was subjected to revision u/s 263 on the ground that the deduction allowed by Ld. AO was not in order. It was noted by revisional authority that the approval for construction of house was obtained by the assessee's wife on 03.05.2006. Consequently, another assessment was framed u/s 143(3) r.w.s.263 on 13.11.2015 which is subject matter of appeal before us.

5. It transpired that the house was constructed and completed on 28.02.2007 by wife of the assessee i.e., Smt. J. Shanthi Julius and therefore, the claim was not admissible. Another fact was that the assessee did not deposit the sale proceeds in capital gains account scheme before due date of filing of return of income u/s 139(1) as mandated under law. Therefore, the deduction was denied to the assessee and the capital gains of Rs.8.50 Lacs was brought to tax.

6. Before Ld. CIT(A), the assessee submitted that it would be incorrect to assume that the construction was started after obtaining the approval. Further, the assessee paid amount of Rs.7 Lacs towards construction and other related activities during the year which was supported by the fact that the electricity connection was obtained during February, 2006 and payment was also made which would show that the construction activities were started well before the approval taken from municipal authorities. The application for approval was made during December, 2005. The approval could be obtained at any time, even after the completion of the construction.

7. The Ld. CIT(A) concurred that what is required is that the new house should have been constructed within the stipulated time limit which was done by the assessee and accordingly, the claim was

allowable to the assessee. Aggrieved, the revenue is in further appeal before us.

8. From the assessee's submissions as made before Ld. CIT(A), it could be seen that the assessee has fairly demonstrated start of construction activities during the year. The substantial payment of Rs. 7 Lacs was made during the year towards construction activities and therefore, there would be no requirement to deposit the same in capital gains account scheme. Another undisputed fact is that the amount of capital gains earned by the assessee has been utilized towards construction of house property though the new house property has been acquired in the name of the assessee's wife. However, the same, in our considered opinion, would not jeopardise the claim of the assessee considering the fact that the utilisation of sale proceeds towards construction of house property has not been disputed by Ld. AO. Therefore, we do not find any reason to interfere in the impugned order.

9. In the result, the appeal stand dismissed.

Order pronounced on 01st March, 2023.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 01-03-2023
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF