

आयकर अपीलिय अधिकरण, 'ए (एस एम सी)' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A(SMC)' BENCH, CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **653/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2015-16

Senthil Kumar (HUF)
34B/4, Briyant Nagar,
4th Street Middle,
Bryant Nagar,
Tuticorin – 628 008 .

[PAN: ABAHS-1591-K]

(अपीलार्थी/Appellant)

ITO,
v. Ward-4,
Tuticorin.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N. Arjun Raj, CA

प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 03.08.2023

घोषणा की तारीख/Date of Pronouncement : 11.08.2023

आदेश /ORDER

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17.10.2022 and pertains to assessment year 2015-16.

2. At the outset, we find that there is a delay of 159 days in filing of appeal for which petition for condonation of delay along with affidavit explaining reasons for delay in filing of

appeal was filed. The Ld. Counsel for the assessee, referring to petition filed by the assessee submitted that the appellate order was received on 17.10.2022 and as per the law, the last date for filing of appeal was on 16.12.2022. However, the appellant has filed appeal on 24.05.2023, with a delay of 159 days. The reasons for such delay was neither intentional nor for wanton of any undue benefit, but because of ill-health of his wife, as she was suffering from mental illness and was admitted to hospital for a month. The assessee was attending his ailing wife and in that process, could not attend any works including income tax matters etc. However, immediately after discharge of his wife from the hospital, the assessee took steps to file appeal in consultation with counsel which resulted in delay of 159 days. Therefore, considering the facts and circumstances of the case and also in the interests of advancement of substantial justice, the delay may be condoned.

3. The Id. DR, Shri. D. Hema Bhupal, JCIT, strongly opposing petition filed by the assessee for condonation of delay submitted that, although the assessee claims that there is a reasonable cause for not filing of appeal within time

allowed under the Act, but on perusal of medical certificate furnished by the assessee about his wife's ill-health, she was admitted to hospital much later than the due date for filing of appeal. Therefore, the reasons given by the assessee for non-filing of appeal does not come under reasonable cause and hence, petition filed by the assessee should be dismissed.

4. We have heard both the parties and considered relevant contents of petition filed by the assessee, for condonation of delay in filing of appeal. We find that, the assessee could not file appeal within time allowed under the Act due to reasons beyond control, which is evident from the fact that, the assessee was attending his ailing wife, due to her mental illness. Therefore, in our considered view, when it comes to attend income tax matters and ailing wife, then obviously priority should be given to ailing wife, because of emergency in nature. Therefore, considering the fact that the assessee could not file appeal within time allowed under the Act, due to ill-health of his wife, we are of the considered view that reasons given by the assessee does come under reasonable cause for condonation of delay and thus, delay in filing of

appeal is condoned and appeal filed by the assessee is admitted for hearing.

5. The brief facts of the case are that, the appellant is a HUF, filed its return of income for the assessment year 2015-16 on 27.08.2015, admitting a total income of Rs. Nil. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has computed long term capital gains from sale of property and also it had claimed deduction u/s. 54F of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Therefore, the Assessing Officer called upon the assessee to file necessary details. In response, the assessee submitted that it had sold a vacant land on 30.10.2014, for a consideration of Rs. 35 lakhs, whereas the actual value of the property as per the stamp duty authorities was at Rs. 56,34,000/-. It was further stated that, capital gains has been computed by adopting full value of consideration as per the provisions of section 50C of the Act and also claimed deduction u/s. 54F of the Act for construction of new residential house property for a consideration of Rs. 48,89,965/- and declared nil capital gains, even though as per provisions of section 54F

of the Act, the assessee ought to have invested full value of consideration adopted for computation of capital gains at Rs. 56,34,400/-. Since, the assessee has invested partial sale consideration for purchase of new residential house property, allowed proportionate deduction u/s. 54F of the Act and determined taxable long term capital gains at Rs. 16,51,972/-.

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has reiterated its submissions made before the Assessing Officer and contended that deeming fiction provided u/s. 50C of the Act cannot be extend to deny the benefit of section 54F of the Act. In other words, the assessee contended that, for the purpose of deduction u/s. 54F of the Act, actual consideration received from transfer of original asset alone needs to be invested, but not deeming consideration adopted as per the provisions of section 50C of the Act. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of relevant provisions of section 50C(2) and 54F of the Act, rejected arguments of the assessee and sustained additions made towards computation of capital gains by allowing proportionate deduction u/s. 54F of

the Act by considering full value of consideration received from transfer of property and amount invested for purchase of new residential house property. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

7. The Ld. Counsel for the assessee, referring to the decision of ITAT, Chennai Benches in the case of M/s. Baskarababu Usha vs ITO (2022) 193 ITD 573, submitted that the issue is squarely covered in favour of the assessee by the decision of the coordinate bench of ITAT, Chennai Benches, where it has been held that deeming fiction provided for computing full value of consideration as a result of transfer of property is only applicable for determining full value of consideration as per section 48 of the Act and thus, for the purpose of computing deduction u/s. 54F of the Act, actual consideration received as a result of transfer alone needs to be considered. In the present case, the assessee has transferred property for a consideration of Rs. 35 lakhs and invested a sum of Rs. 48,89,965/- for acquisition of new house property and thus, capital gains derived from transfer of property is fully eligible for deduction u/s. 54F of the Act.

8. The Id. DR, on the other hand strongly supporting the order of the Id. CIT(A) submitted that, as per provisions of section 54F of the Act, in order to get deduction towards capital gain, the assessee needs to invest sale consideration received from transfer of property for purchase/construction of new house property. In case the assessee has invested part of sale consideration, then proportionate deduction is allowed. In the present case, the Assessing Officer after considering relevant facts has rightly recomputed long term capital gains and their order should be upheld.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that the assessee has sold a vacant land on 30.10.2014 for a consideration of Rs. 35 lakhs and the guideline value of the property as on the date of sale was at Rs. 56,34,400/-. The assessee has computed long term capital gains from transfer of property by adopting guideline value of the property as full value of consideration and determined long term capital gains at Rs. 51,89,472/-. The assessee has claimed deduction u/s. 54F of the Act, for Rs. 48,89,965/- by investing a sum of Rs.

32,98,000/- for construction of new house property. The Assessing Officer, rejected computation of long term capital gains claimed by the assessee and has recomputed long term capital gains by allowing proportionate deduction u/s. 54F of the Act for Rs. 30,37,500/-. According to the Assessing Officer, for the purpose of deduction u/s. 54F of the Act, the assessee needs to invest full value of consideration accrued as a result of transfer of property.

10. We find that the Assessing Officer completely misconstrued the provisions of section 50C and section 54F of the Act, even though both provisions are operates under different purpose and different intentions. The deeming fiction provided u/s. 50C is only to determine full value of consideration received or accrued as a result of transfer in terms of provisions of section 48 of the Act. The provisions of section 54F of the Act, is for the purpose of allowing beneficial deduction to the tax payers in case they invested consideration received from transfer of property for purchase of another residential house property. As per the provisions of section 54F of the Act, it is very clear that if assessee invested net consideration for purchase of new residential house property,

then deduction is allowed towards entire amount of capital gains. In case, the cost of new asset is less than the net consideration in respect of original asset, then proportionate deduction is allowed. In the present case, the assessee has sold a vacant property for a consideration of Rs. 35 lakhs and has invested a sum of Rs. 32,98,000/- for construction of new house property and has computed deduction u/s. 54F of the Act at Rs. 48,89,965/-. In our considered view, the reasons given by the Assessing Officer to adopt full value of consideration as per the provisions of section 50C of the Act, for the purpose of computing deduction u/s. 54F of the Act, is totally misconstrued and misplaced, because if deeming fiction provided u/s. 50C of the Act is applied to section 54F of the Act, it is impossible for the assessee to invest over and above what was received from transfer of property. Therefore, in our considered view, when the assessee has invested net consideration received as a result of transfer of property, the Assessing Officer ought to have computed deduction u/s. 54F of the Act, by taking into account actual consideration received towards transfer of property rather than consideration as per deeming provisions of section 50C of the Act. This principal is supported by the decision of ITAT, Chennai Benches in the

case of Mrs. Baskarababu usha vs ITO (supra), where the issue has been dealt as under:

"11. As regards adoption of deemed consideration for the purpose of exemption u/s.54F of the Income Tax Act 1961, the Assessing Officer has adopted deemed consideration and computed eligibility for exemption u/s.54F of the Act. The deeming fiction provided for computing full value of consideration as a result of transfer of property as per provisions of section 50C of the Act is only applicable for determining full value of consideration as defined u/s.48 of the Act and thus, for the purpose of computing exemption u/s.54F of the Act, deeming fiction provided u/s.50C cannot be enlarged because, one cannot expect a person to perform impossible things, as when the assessee receives a particular amount from transfer of property, he cannot be expected to reinvest amount over and above consideration received for transfer of property. In fact, that may not be intention of the legislature. If you apply deeming fiction provided u/s.50C to provisions of section 54F of the Act, for computation of exemption, then it is impossible for assessee to fulfill said conditions because no assessee will have consideration over and above what was received from transfer of property. This principle is supported by the decision of ITAT., Visakapatnam Bench in the case of DICT Vs. Dr. Chalasani Mallikarjuma Rao (2016) 75 taxmann.com 270. Therefore, we are of the considered view that the Assessing Officer has erred in adopting deemed consideration for the purpose of computation of exemption u/s.54F of the Income Tax Act, 1961."

11. In this view of the matter and considering facts and circumstances of this case and by following the decision of ITAT, Chennai Benches, we are of the considered view that the Assessing Officer and CIT(A) are erred in re-computing deduction u/s. 54F of the Act, by adopting net consideration as per the provisions of section 50C of the Act. Thus, we direct

the Assessing Officer to accept deduction computed by the assessee as per the provisions of section 54F of the Act and delete additions made towards computation of long term capital gains.

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

Order pronounced in the court on 11th August, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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