

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND**  
**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.41/Chny/2023  
निर्धारण वर्ष /Assessment Year: 2006-07

**Jayaraman Jayasudha,**  
20/6, Easwari Apartment  
Beach Home Avenue,  
Besant Nagar,  
Chennai – 600 090.  
**[PAN: AHJPJ-4767-B]**  
(अपीलार्थी/**Appellant**)

**The Jt. Commissioner of**  
**Income Tax,**  
Business Range-III (i/c),  
Chennai.  
(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri R. Viswanathan, FCA  
प्रत्यर्थी की ओर से /Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/Date of Hearing : 14.03.2024  
घोषणा की तारीख /Date of Pronouncement : 14.03.2024

**आदेश / O R D E R**

**PER MANOMOHAN DAS, J.M:**

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 22-11-2022 and pertains to the Assessment Year [AY] 2006-07.

2. The grounds of appeal of the assessee are as under:

*"1. The order dated 22-11-2022 of the learned National Faceless Appeals Authority, Chennai in ITA No. ITBA / NFAC / S/ 250 / 2022-*

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*23 / 1047563948(1) for the Assessment year AY 2006-07 is contrary to facts, opposed to law and untenable.*

*2. The Ld. NFAC Appellate Authority has erroneously denied the deduction under section 54F when the conditions for deduction fulfilled.*

*2.1 The LD NFAC Appellate Authority has denied the deduction on the short ground that the new asset is in the name of the Husband of the Appellant.*

*2.2 The Ld NFAC Appellate Authority has wrongly observe that the Appellant has sold much after time much after the date of purchase of property by assessee's Husband" as the purchase is within one year time from the date of sale of property by the Appellant.*

*3. The Appellant relies on the case CIT v. Polar Cement (P) Ltd. (1997) reported in 226 ITR 625 / 92 Taxman 541 (SC), wherein the Supreme Court has also accepted the theory of constructive ownership.*

*3.1 The Appellant relies on the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. v. CIT (1992) 196 ITR 188 / 62 Taxman 480 wherein it was held that the provision in a taxing statute granting incentives for promoting growth and development should be construed liberally."*

3. The brief facts of the case are that the assessee is an individual. She is the wife of Mr. A. Kamaraj, the associate editor of Nakheeran, a Tamil Investigative Magazine. An enquiry was carried out by the Investigating wing of the department, and a report dated 05-08-2011 was sent by DDIT (Inv.) Unit – II (1), Chennai, to ITO, B.W. III(3), who is having jurisdiction over the case. On perusal of the report, it was seen that A. Kamaraj had purchased a Flat at No. 2, Mangalaganesh Apartment, No.15, 4<sup>th</sup> Seaward Road, Valmiki Road, Thiruvanmiyur, Chennai – 41 for a sum of Rs. 22.5 lakhs vide sale deed dated 10-01-2005. The sources for the above purchase was stated as loan to the

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tune of Rs. 20.1 lakhs borrowed from Indian Bank, Chennai – 34. On perusal of the cash statement furnished by A. Kamaraj, it was seen that he was received a sum of Rs. 2 lakhs by way of gift from his wife Ms. K. Jayasudha, the assessee during F.Y. 2005-06 (apart from other cash gifts from his wife subsequent years). On further investigation of the sources of gifts given by the assessee to her husband as per the cash flow statement furnished by her, it was noticed that the sources of investment emanated from the sale consideration of her 1/5<sup>th</sup> share of property in 45 Cents of land at S. No.227/1, Perungudi Village which amounted to Rs. 20 lakhs. It was claimed that the possession of the property was handed over to M/s Faery Estates Pvt. Ltd, Mumbai vide declaration dated 20-09-2005. The sale deed was not registered.

4. The assessee filed her Return of Income for the A.Y. 2006-07 on 08-03-2011 admitting Nil income belatedly after claiming exemption u/s 54F of the Act to the tune of Rs. 18,81,800/- on the Long Term Capital Gains earned on sale of property during F.Y. 2005-06. On examination of the manual Return of Income filed by the assessee belatedly on 08-03-2011 nearly 5 years after the due date of filing of Return of Income, it was seen that the assessee had neither invested the proceeds of the sale of the property in another residential property for claiming exemption u/s 54F of the Act nor there was any deposit in

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the Capital Gain Accounts Scheme. Further, as per the Cash Flow Statement of the assessee for the subsequent years for which no Return of Income filed, there was no purchase/construction of residential property. Hence, there was no evidence with regard to claim of exemption u/s 54F of the Act by the assessee which appeared to be as false and resulted in escapement of income above Rs.1 lakhs, the re-assessment proceedings were initiated by the then ITO, B.W-III(3), Chennai after recording reasons thereof with the approval of the then JCIT, B.W-III, Chennai by issue of notice u/s 148 of the Act dated 13-09-2011.

5. In response, assessee appeared and vide letter dated 05-10-2011 requested to treat the belated return filed on 08-03-2011 for A.Y. 2006-07 as Return of Income filed in response to notice u/s 148 of the Act.

6. The case was taken up for scrutiny and notice u/s 143(2) of the Act dated 23-12-2011 was issued. Subsequently, a detailed questionnaire along with notice u/s 142(1) of the Act dated 13-02-2012 was issued asking the assessee to justify her claim of exemption u/s. 54F of the Act along with relevant supportive document evidence.

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7. The case was later transferred to JCIT, B.R-III, Chennai for the purpose of completing scrutiny assessment. Assessee furnished copies of bank statement/property document pertaining to purchase and sale of property and other related documentary evidences in support her claim and offered clarifications. The assessee claimed that she had invested in a property in the name of her spouse and claimed exemption u/s 54F of the Act on the LTCG to the tune of Rs.18,81,800/- on sale of her property. A copy of the sale deed dated 10-01-2005 in respect of the property purchased in the name of her spouse, A. Kamaraj along with related documents in respect of source for purchase were also furnished.

8. The Id. Assessing Officer [AO], on examination of the materials, observed that Shri A. Kamaraj had purchased the said property for a consideration of Rs. 22.5 lakhs by obtaining loan from the Indian Bank vide sale deed dated 10-01-2005 under an agreement dated 18-11-2004. Accordingly, the Id. AO rejected the claim of the assessee and vide order dated 11-03-2013 has made addition of Rs. 18,83,338/- to the total income of the assessee.

9. Being aggrieved, the assessee filed 1<sup>st</sup> appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 22-11-2022 dismissed the appeal of the assessee.

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10. Being aggrieved, the assessee filed the present appeal before the Tribunal.

11. Heard the representatives of both the parties and perused the materials on record.

12. The Ld. AR submitted that the assessee sold her landed property and purchased a new asset in the name of her husband within the prescribed period and therefore, the Id. CIT(A) committed an error by confirming the disallowance of long term capital gain by the Id. AO. On the other hand, the Ld. DR supported the orders of the lower authorities.

13. We noticed that the Id. CIT(A) dismissed the claim of the assessee. The Id. CIT(A) vide his order dated 2-1-2022, inter alia, observed that the assessee sold an immovable property on 20-09-2005; whereas the property in the name of her husband was purchased on 10-01-2005 which was much before the sale of property by assessee. Further, the husband of the assessee took loan of Rs.20,00,000/- from Bank and Rs. 2,00,000/- was received from the assessee as gift. The gift was also made much before the date of sale of the property by assessee. That means, the gifted amount was not from out of sale proceeds of the property.

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14. The Id. CIT(A) further observed that, the loan was not taken jointly. Assessee's husband obtained loan and he had paid interest to the tune of Rs. 1,49,497/- and claimed deduction u/s 24(b) of the Act in the return of income for A.Y. 2006-07.

15. We have observed that the sale deed under which the husband of the assessee purchased the property on 10-01-2005, the 1st installment of the sale consideration was paid on 18-11-2004. That means, agreement to purchase the property by the husband of the assessee was much earlier than the property sold by the assessee on 20-09-2005.

16. Again, the assessee was the guarantor of the loan obtained by her husband, A. Kamaraj. A guarantor is not the borrower of a loan. The liability of a guarantor towards a loan is secondary. Assessee is not the co-purchaser of the property with his husband. Consideration for the purchase of property paid by the husband of the assessee. Therefore, from the aforesaid discussion, it cannot be said that the property was purchased out of the sale proceeds of the property of the assessee. As the property purchased by the loan amount and amount received as gift by the husband of the assessee, he, the husband of the assessee is the owner of the purchased property.

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17. The assessee relied on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Podar Cement Pvt. Ltd.* 226 ITR 625 (SC). In this case, the Hon'ble Supreme Court held that "owner" is a person who is entitled to receive income from the property in his own right. This decision will not help the assessee, because, as per our considered opinion, the assessee has no right to receive income from the property in her own right. How the assessee will exercise right to receive income from the husband's property in her own right in the case in our hand? In our opinion, the assessee, during the lifetime of her husband will not be able to exercise such right.

18. The assessee, further relied on the decision of the Hon'ble Apex Court in the case of *Bajaj Tempo Ltd. v. CIT (1992) 196 ITR 188* in support of his case. The Hon'ble Apex Court in this case inter alia held that the provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. Here we observe that, this decision of the Hon'ble Apex Court is not supporting the case of the assessee. The facts of the case of the assessee in our hands are totally different. Further, in our considered opinion, the beneficial provision of the Income Tax Act should be interpreted strictly.

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19. In view of the aforesaid discussions, it is our considered opinion that the assessee is not the owner of the property as she did not pay consideration amount to the seller, she is not the borrower of the loan out of which the property has been purchased by her husband in his name. Thus, we find that the lower authorities have correctly decided the case of the assessee and we uphold the decision of the lower authorities.

20. In the result, the appeal of the assessee is dismissed.

*Order pronounced in the open Court on 14<sup>th</sup> March, 2024.*

**Sd/-**  
**(मंजुनाथ. जी)**  
**(Manjunatha. G)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated 14<sup>th</sup> March, 2024.

EDN/-

**Sd/-**  
**(मनोमोहन दास)**  
**(Manomohan Das)**  
**न्यायिक सदस्य/Judicial Member**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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