

आयकर अपीलीय अधिकरण, मुंबई “ई” खंडपीठ
Income-tax Appellate Tribunal -“E”Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and C.N. Prasad,Judicial Member

आयकर अपील सं./I.T.A./44/Mum/2015,निर्धारण वर्ष /Assessment Year: 2010-11

ACIT-35(1), 310, C-12, 3 rd Floor Pratyakshakar Bhavan, BKC Complex, Bandra (E),Mumbai-400 051.	Vs.	Smt. Hemlata Manikrao Hamilapurkar 1801, Somerset CHS Ltd., Powai Mumbai-400 076. PAN:AAAPH 8475 Q
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Shri N. Sathya Moorthy-DR

Assessee by: Rajesh S. Shah

सुनवाई की तारीख / Date of Hearing: 21.07.2016

घोषणा की तारीख / Date of Pronouncement: 29.07.2016

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 14.10.2014 of the CIT(A)-28,Mumbai,the Assessing Officer(A.O),has filed the present appeal.Assessee,an individual,filed a return of income on 31/07/2010,showing total income at Rs. 1.43 crores.The AO completed assessment on 20.3.2013,u/s.143 (3) of the Act,determining the income of the assessee at Rs.3.58 crores.

2.Solitary ground of appeal is about allowing deduction u/s.54 of the Act.During the assessment proceedings,the AO noted that the assessee had sold rights in flats no.703 and 2104,Torino building, Powai,Mumbai against which deduction u/s.54F was claimed,that the occupancy certificate for the building was given by the Municipal Corporation on 02/01/2010,after the water connection was made available.He held that the sale made by the assessee was of rights into flats and that it was not the case of sale of flats per se.He noted that the assessee owned three

more house properties. Therefore, he held that the assessee was not entitled to get direction u/s.54F of the Act, amounting to Rs. 2.14 crores.

3. Aggrieved by the order of the AO, The Assessee Preferred an Appeal before the First Appellate Authority (FAA) and made elaborate submissions. It was specifically argued that the occupancy certificate for the building was received on 31/08/2009, that the AO had wrongly mentioned that said certificate was issued in January, 2010. The FAA called for a remand report from the AO. He directed the assessee to offer comments on the remand report of the AO.

3.1 After considering all the material, he held that the assessee had sold two flats during the year, that she had claimed deduction u/s.54F of the Act in mistake, that she should have made the claim u/s.54, that the matter was brought to the notice of the AO vide letter dated 11/02/2013, that once the basic fact was brought to the notice of the AO he should have not ignored the claim and should have completed the assessment considering the submissions made by the assessee, that the AO completed the assessment considering the deduction claimed in the return only, that only just taxes should be collected from the taxpayer, that ignorance of taxpayer should not be taken advantage by the AO. He further held that the assessee owns more than one residential houses on the date of sale of original asset, that she did not fulfill the conditions for grant of deduction u/s.54F of the Act, that since there is no such prohibition u/s.54 the AO should have considered the claim during the assessment proceedings, that the occupation certificate for the building was obtained on 31/08/2010, that for the purpose of calculating ratable value by the Municipal Corporation the date of 02/01/2010 was adapted after the water connection was obtained by the developer, that the said date could not be considered as the date of occupation for the purpose of determining the ownership of the flat sold by the assessee, that the said date could be valid for levy of municipal taxes and the

conclusion of ratable value,that it had no significance for the purpose of determining the ownership of the flats,that she had sufficiently demonstrated that the possession of the flats for the purpose of doing furniture work was obtained on 07/07/2009,that the possession of the flat was more important than the physical occupation,that the possession of the flats was taken by the assessee before the date of its sales,that it could not be held that what was sold by the assessee was the right in the flat and not the flats themselves,that she was entitled to deduction u/s.54 of the Act.Finally,the FAA allowed the appeal filed by the assessee.

4.Before us, the Departmental Representative(DR) supported the order of the AO and Authorised Representative(AR) relied upon the order of the FAA. During the assessment proceedings the assessee had requested the AO to allow the deduction u/s. 84, that the certificate from municipal authority was not relevant for determining the allowability of deduction.

5. We have perused the material available on record.We find that initially the assessee had made claim u/s.54F of the Act,that during the assessment proceedings she requested the AO to consider the claim u/s.54 of the Act,that the AO ignored the submission made by the assessee,that the FAA allowed the appeal holding that possession of immovable property should not be equated with occupation.It is a fact that the assessee had started furniture work in the flat.Therefore,water connection or other formalities should not be deciding factor to deny or allow a deduction that is a part of a benevolent provision.Therefore, in our opinion the order of the FAA does not suffer from any legal infirmity. Upholding the same we, decide the effective Ground of appeal against the AO.

As a result,appeal filed by the AO stands dismissed .
फलतःनिर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है .

Order pronounced in the open court on 29th July, 2016.
आदेश की घोषणा खुले न्यायालय में दिनांक 29 जुलाई, 2016 को की गई।

Sd/-

(सी.एन. प्रसाद /C.N. Prasad)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29.07.2016.

Jv. Sr. PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR " C " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.