

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.264/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013.

Subramanyam Baskaran,
C/o. S.R. Chandrasekaran,
"Sahana" No.9, II Main Road,
Raja Annamalaipuram,
Chennai 600 028.

Vs. The Income Tax Officer,
International Taxation 1(1)
Chennai 600 034.

[PAN AIEPB 3789M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. S. Krishnan, FCA
: Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 07-06-2016

घोषणा की तारीख /Date of Pronouncement : 29-07-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-16, Chennai in ITA No.81/A-16/2012-2013, dt 30.11.2015 for the assessment year 2012-

2013 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised the following grounds of appeal:-

01. "On the facts and in the circumstance of the case and, in law the Commissioner of Income Tax (Appeals) erred in confirming the order dated 4th February, 2015 of the Income Tax Officer International Taxation I(1) Chennai without appreciating the fact that as per provisions of Sec. 54 of the Income Tax Act the balance of capital gains amounting to ₹35,93,157/- was also invested in acquiring new capital asset in the form of a residential property before filling of the return thus duly complying with the provisions of Sec. 54 of the Act.

02. The appellant prays that the disallowance of ₹35,93,157/- made in respect of investments new capital asset in the form of a residential property be deleted".

3. The Brief facts of the case is that the assessee is Non Resident and filed return of income on 25.07.2012 with total income of ₹4,14,010/- and the total income includes income from house property, capital gains and other sources. The return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued. In compliance to notice, the Id. Authorised Representative appeared and filed details called for vide letter dated 02.05.2014. The Id. Assessing Officer further called for Details of rental agreement, copies of sale deeds of the property sold and proof of claim of exemption u/s.54F of the Act. The Id. Assessing Officer verified the Documents

and found during the previous year the assessee sold residential property for ₹1,80,00,000/- and after adjusting indexed cost of acquisition the long terms capital gains are worked out to ₹1,21,35,203/- and was claimed as exempted on investment in another residential property at Porur. The Id. Assessing Officer found that the assessee has entered into construction agreement in respect of Porur Residential property with M/s. Alliance Retreat Pvt. Ltd vide agreement dated 12.10.2007 on certain terms and conditions in respect of schedule of property, cost of construction, payment schedule, completion of delivery possession. The Id. Assessing Officer perused the terms and referred at page 3 to 5 of the assessment order and observed that as per the agreement the developer has to complete construction of the property within 24 months before financial year 2009-2010 and if there is any delay in project implementation the assessee is eligible to receive compensation as per the terms agreed. Considering the facts that the agreement was entered on above said date and the possession to be delivered by Builder by constructing house property in the financial year 2009-2010. The Id. Assessing Officer is of the opinion that the assessee claim u/sec. 54F of the Act on acquiring a new residential property has to be partially allowed and compared with the Builder agreement with investment amount were the assessee has paid substantial

amounts very much prior to the sale of the property in financial year 2011-2012, and highlighted the provisions of Sec. 54 of the Act and assumed that the assessee should have purchased house property one year before the sale of property or within two years after the sale of the property or construct residential house within three years of sale of property and to obtain the benefit of construction of new residential property, the assessee should have deposited the Long term capital gains before due date of filing of return of income u/s.139(1) of the Act in Capital Gains Accounts Scheme. Since the assessee has not complied the prerequisites of capital gains account scheme and assessee is not eligible for exemption u/s.54 of the Act. The Id. Authorised Representative filed explanation that the assessee has originally booked the new residential property in the year 2007 and paid advance amounts but due to adverse real estate market conditions and the financial hardship of the promoter and the project could not take off till mid 2011 and Registration of undivided share of land (UDS) was made in Feb 2012 and builder has completed the construction of the property and Handed over occupancy in December, 2013 and also issued completion certificate. The Id. Authorised Representative explained the sources for investment in new residential property being sale proceeds of property sold in September, 2011 and loan from HDFC Bank Limited and complied the

stipulated conditions under provisions of u/s.54 of the Act and claimed exemption. The Id. Assessing Officer verified the information with documentary evidence and calculated the investment in Porur property ₹85,42,006/- being one year before the sale of property were the agreement was entered by the assessee in financial year 2007-2008 and the assessee deemed to have become the owner of the property during said period were substantial amount towards cost of property was paid. The Id. Assessing Officer concludes by considering the payments made one year prior to date of sale of original property and Restricted exemption to ₹85,42,006/- and re-determined Long term capital gains at ₹35,93,197/- and assessed total income. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds and reiterated the facts and the findings of the Id. Assessing Officer. The Id. Assessing Officer erred in restricting the Long term capital gains to ₹.85,42,006/- invested before one year as against the actual sum of ₹1,21,35,203/- claimed exemption u/s.54 of the Act on investment in new residential property. The Id. Authorised Representative supported the arguments with evidence and produced a copy of completion certificate, sale deed copy, proof of re-investment in new property,

purchase documents and relied on judicial decisions of Karnataka High Court in the case of *CIT vs. Subramanya Bhat (1987) 165 ITR 571* and ITAT decision of *ACIT vs. Subhash Sevaram Bhavnani (2012) 23 taxmann. 94(Ahd)* and Hon'ble Delhi High Court decision in the case of *CIT vs. Ashok Kumar Ralhan (2014) 46 Taxmann.com 416* and the action of the Id. Assessing Officer that the assessee is entitled for exemption only in respect of amount invested before one year of sale of property under the provisions of Sec. 54 of the Act is not correct and prayed for allowing the appeal. The Id. Commissioner of Income Tax (Appeals) considered the grounds and findings of the Id. Assessing Officer and judicial decisions. The Id. Commissioner of Income Tax (Appeals) relied on the provisions u/s.54 of the Act and observed that the assessee has entered into agreement with Builder in financial year 2007-2008 and for construction of property much earlier than sale of property in September, 2011 and concurred with the findings of the Id. Assessing Officer and distinguished the decision relied by Id. Authorised Representative and held that the assessee is entitled for exemption u/s. 54 of the Act only for payment made during one year prior to date of sale and confirmed the order of the Id. Assessing Officer. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee filed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative reiterated the submissions made in the assessment and appellate proceedings and argued the grounds and explained the circumstances. The fact that the assessee has original booked the property in the year 2007 and due to unfavourable financial condition of the promoter, the project could take off in mid 2011 and UDS share of land was registered in February, 2012 after the sale of property in September, 2011 and new residential property was handover to the assessee in December, 2013 as per completion certificate issued dated 12.12.2013. Further, the assessee has obtained loan from HDFC Bank Limited for the purpose of new residential property. The findings of the Id. Assessing Officer relying on judicial decisions cannot be considered and the Id. Authorised Representative also dealt on the provisions of Sec. 2(47) of the Act and provisions of Sec. 53A transfer of property Act and supported the case with judicial decisions and payment details. Further placed reliance on the judgment of Delhi High Court in the case of *CIT vs. R.L. Sood (2000) 245 ITR 72* and prayed for allowing the appeal.

6. Contra, the Id. Departmental Representative relied on the orders of Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The crux of the issue emphasized by the Id. Authorised Representative that the Id. Commissioner of Income Tax (Appeals) erred in confirming the findings of the Id. Assessing Officer in granting partial exemption u/s.54 of the Act. The provisions of Sec. 54 are beneficial and stipulated conditions shall not mandatorily be complied. The provisions of Sec. 54 as under:-

*“54. [(1)] [Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset [***], being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of [one year before or two years after the date on which the transfer took place purchased], or has within a period of three years after that date [constructed, a residential house], then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

(i) if the amount of the capital gain [is greater than the cost of [the residential house] so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain

arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain”.

The contention of the Id. Assessing Officer that the assessee is eligible for exemption only in respect of payments made before one year of date of sale and restricted the claim to ₹.85,42,006/- are dealt as under:-

Date of entering into construction agreement	12.10.2007
Sale of property	Sept 2011
Due date of filing of return u/sec. 139(1) of the Act.	31.07.2012
Due date of filing of return u/sec. 139(4)	31.03.2014
Undivided share of land registered by Builder	Feb 2012
Completion certificate issued by the builder	12.12.2013

The Id. Authorised Representative further explained that the assessee has also obtained loan from HDFC Bank for construction and demonstrated that the undivided share of land of new property was registered in Feb. 2012 after sale of property in September, 2011 and the assessee took the possession of House Property in December, 2013, and relied on Judicial orders. The Id. Authorised Representative drew our attention to page 149 referring to the Villa completion certificate dated 5.12.2013 and ledger account copy of the Builder at page no.150 & 151 were payments made by the assessee for the period 1st April 2007 to 11th March, 2015, are disclosed. On verification of the ledger account for payments made one year before the sale of property in September, 2011, we find on comparing the payments for

said period with the contention of the Id. Assessing Officer that assessee had paid only ₹85,42,006/- and confirmed by the Id. Commissioner of Income Tax (Appeals). There exist difference in amounts paid by the assessee, and require reconciliation. Considering the apparent facts, materials, information, judicial decisions and ledger accounts we are of the opinion that the Ledger Accounts shall be verified by the Assessing Officer and therefore set aside the order of Commissioner of Income Tax (Appeals) and we remit the disputed issue to the file of the Id. Assessing Officer for verification and Reconciliation of payments and the assessee shall be provided with adequate opportunity of being heard before passing the order on merits and the appeal is allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on Friday, the 29th day of July, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 29.07.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF