

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

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1791/Mds/2015

निर्धारण वर्ष /Assessment year : 2011-2012.

Income Tax Officer,
Non-Corporate Ward 2(2)
Trichy

Vs. Shri. N. Chandran,
C-67, 10th Cross West Extension,
Thillainagar,
Trichy -18.

(अपीलार्थी/Appellant)

[PAN AADPC 4441N]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. A.V.Sreekanth, IRS, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 21-04-2016

घोषणा की तारीख /Date of Pronouncement : 11-05-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Revenue is directed against order of the Commissioner of Income-tax (Appeals)-2, Tiruchirapalli, in ITA No.127/2014-15/CIT(A)/TRY dt 20.05.2015 for the assessment year 2011-

2012 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Revenue has raised the following grounds:-

2.' The Id. CIT(A) has erred in deleting the addition of ₹51,76,378/- made by the Assessing Officer by disallowing the claim towards deduction u/s.54F made by the assessee.

3. The Id. CIT(A) has erred in deleting the addition towards the unexplained cash credit of ₹83,303/- made by the Assessing Officer under section 68".

3. The Brief facts of the case the assessee is an individual deriving income from business and income from capital gains filed return of income on 28.09.2011 admitting total income of ₹3,74,680/- and was processed u/s.143(1) of the Act on 08.02.2012. The case was selected for scrutiny and notice u/s.143(2) of the Act was issued. Further notice u/s.142(1) was issued calling for the books of account and bank statements. In compliance to above notices, the Id. Authorised Representative of assessee appeared and filed details for verification. The Assessing Officer found that assessee has sold agricultural lands and holding Chitta and Adangal and has not undertaken any agricultural operation and sold the agricultural land. Further invested long term capital gains in construction of residential house at Kodaikanal and filed evidences. The assessee incurred cost of construction of house including land and supported with vouchers and bills aggregating to ₹46,30,000/-.

The Assessing Officer verified construction agreement and to confirm whether the aggregate amount was utilized for the construction of residential property and issued summons u/s.131 of the Act to Contractor. The contractor appeared and produced approved plan and confirmed ₹46,30,000/- received from the assessee by cash and cheques. The assessee has purchased residential plot on 24.11.2010 and undertook construction of the residential property. The Id. Assessing Officer on verifying the municipal tax receipt found it at higher rate and also mismatch of address on comparison with the approval plan. The Id. Assessing Officer for clarification on construction has issued summons u/s.131 of the Act to the assessee on 25.02.2014. In compliance to proceedings assessee appeared and explained the issues at page 3 of Assessing Officer order as under:-

'I have purchased a property at Kodaikanal on 24.11.2010 at Kodai Clouds N Garden in Plot No.33 Eastern side. I have entered construction agreement with Ramakrishnan, Contractor on 17th October, 2010 payments for construction has been released before and after construction agreement. I confirm that I have only one property at Kodaikanal. I have let out that property ground floor only for my friends only and I have received rent for the period ending 31.03.2013 of ₹6,67,500/- during the financial year (2012-13). It is a seasonal income''.

The Assessing Officer based on the statement recorded u/sec. 131 of the Act of the contractor and assessee found that the assessee has offered ₹16,67,500/- income from said property in the assessment year 2013-14, as income from business and not under income from house property.

The Assessing Officer under surmises based on the subsequent years return of assessment year 2013-14 presumed the property constructed is in nature of Business Asset and not a residential house and denied the claim of exemption u/s.54F of the Act for the said assessment year 2011-2012. The only grievance of the Assessing Officer being the exemption u/s.54F of the Act is eligible for residential house but not for residential house used for commercial purpose. The Id. Assessing Officer with above findings has calculated long term capital gains of ₹51,76,378/- and made addition with other disallowances including unexplained investments u/s.69 on deposits in the bank account and loans obtained during the said financial year. In the assessment proceedings, the Id. Assessing Officer to strengthen the disallowance relied on the report of Inspector on his visit to place of property and advertisement issued by the assessee for usage on internet. The Id. Assessing Officer found that assessee has constructed in the nature of Bungalow and residential house and not complied the requisite conditions of Sec. 54F and denied the claim and assessed total income ₹62,39,315/- and raised demand. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative substantiated the arguments and findings of the Assessing Officer in the assessment proceedings and argued on the grounds raised against

disallowance and supported with written submissions at relevant page 2 of

Commissioner of Income Tax (Appeals) order as under:-

"The Authorised Representative further told that the Appellant purchased a residential house property constructed out of the land purchased by the Appellant which was let out by the appellant @ 2,000/- per day seasonally. The same fact was confirmed from the cash books of his business. It was ascertained by ₹6,67,000/- as the "Income from Business" in the P&L account for the year ended on 31.03.2013 as seasonal income -Kodaikanal House as furnished in the Return of Income for the A.Y.2013-14. It is noted that the Appellant has not mentioned it as Income from the House Property and so the Assessing Officer construed it not as a Residential house and decided that it did not entitle for the claim of exemption u/s.54F as per the IT Act, 1961. But the Appellant's Authorized Representative presents that firstly, the appellant has built a residential house out of the sale proceeds(Capital Gains) obtained by him due to transfer of his property. Secondly, the Authorized Representative submits that Section 54F does not postulate the subsequent user of the asset as a criterion for determination of allowance, i.e. it does not want such a residential property must be used only and solely for the residential purpose. The Authorised Representative cited the decisions of the Hyderabad Tribunal in K. Prathiba Vs. Income Tax Officer 7(3), 44 taxman.com 282 and Shri. Shyamlal Tandon vs. Income Tax Officer 7(4) ITA No.1774/Hyd/12 which supports the view of the appellant".

The Id. Commissioner of Income Tax (Appeals) based on the submissions and grounds of the assessee and supporting materials has applied the rational thinking on disputed issue and gave a categorical finding in his order and directed the Assessing Officer to allow the deduction observed at page 5 of his order as under:-

"Further on this issue the appellant submits that the subsequent user of the asset is not the criterion for determination of allowance u/s 54F. The appellant placed his reliance on the decision in the case of K.Prathiba vs ITO 44 Taxman.com 282 by the Hyderabad Tribunal and also in

the case of Shri Shyamlal Tandon vs ITO ITA No. 1774/Hyd112. The ratios laid down in these two cases are similar to the facts of the instant case under consideration. The Tribunal had categorically held that the fact of determining the eligibility is only to be examined at the time of construction of the property and the subsequent user is not a ground for denial. In the case of the appellant he had built a house at Kodaikanal and he had been using the same for himself and during the seasons he had let it out for temporary occupation. These persons also had used the property for their residence only. There is no commercial activity had been carried on like using the property as a shop or godown. Disallowance u/s 54F cannot be denied on the subsequent change in the usage of property for non residential use or commercial use. Once it is recognized as residential property constructed or obtained within the stipulated period as required u/s 54F, merely because of change in the use of such property for non residential purposes, it cannot be said that what was acquired by the assessee was not a residential property. Subsequent change in the user of the property does not disentitle the assessee to relief U/S 54F of the Act. Mere non residential use subsequently could not render the property ineligible for benefit u/s 54F if it is otherwise a residential property. This view has been held also by the Delhi Bench of the Tribunal in the case of Mahavir Prasad Gupta vs JCIT (5 SOT 353). Respectfully following the said decisions mentioned supra the Assessing Officer is directed to allow the deduction U/S 54F in the case of the appellant. The appellant succeeds on this ground of appeal”.

Further on the issue of unexplained cash credit the Id. Commissioner of Income Tax (Appeals) elaborately dealt based on the submissions of the assessee and the findings of the Assessing Officer and deleted the addition to the extent of ₹83,303/- and partly allowed the ground of the assessee. Aggrieved by the order of Commissioner of Income Tax (Appeals), the Revenue has assailed an appeal before the Tribunal.

5. Before us, the Id. Departmental Representative substantiated the arguments based on the findings of the Assessing Officer were the property was used for commercial purpose and in the nature of bungalow and let out for seasonal occupation for tourists at Kodaikanal and not eligible for exemption u/s.54F of the Act. The Id. Commissioner of Income Tax (Appeals) has erred in deleting the addition without considering the facts that the assessee utilized the property for non residential purpose and the action of the Commissioner of Income Tax (Appeals) is bad in law and violation of conditions u/s.54F of the Act. The action of Commissioner of Income Tax (Appeals) in deleting the addition of ₹83,303/- is without any evidence and prayed for setting aside the Commissioner of Income Tax (Appeals) order.

6. Contra, the Id. Authorised Representative relied on the findings and order of the Commissioner of Income Tax (Appeals) and supported the arguments with judicial decisions for allowability of exemption u/s54F of the Act.

7. We heard the rival submissions and perused the material on record and judicial decisions cited. The Id. Departmental Representative contention that Commissioner of Income Tax (Appeals) has erred in allowing the exemption u/s.54F of the Act though the assessee has used the property for commercial purpose and the assessee is using the

property for seasonal occupation for tourists and has given advertisement for usage on media. The Id. Authorised Representative substantiated his arguments that the property constructed is a residential house and due to change in nature of subsequent usage cannot be a ground for denial of exemption u/sec.54F of the Act. The house property constructed is purely residential and let out on temporary occupation and used for the residence by the assessee. We perused the assessment order where the Assessing Officer has summoned the contractor and has recorded statement on construction cost based on construction agreement and approved plan was produced in the proceedings. The Id. Assessing Officer has verified the copy of approved plan and construction of the property which is not disputed by the Id. Assessing Officer. The assessee relied on sanctioned plan issued by the City Corporation and constructed the residential house. The Id. Assessing Officer having accepted the approved plan cannot know agitate that the property is a commercial property due to usage by the occupants. The Id. Assessing Officer relied on the income tax return filed for the assessment year 2013-14 where the assessee has offered income from property as business income as it was let out on daily basis. The fact that the assessee has constructed the property and complied with the provisions Sec. 54F of the Act as under:-

“54F. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (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] (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;*
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

[Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head “Income from house property”.]

The observation of the Id. Assessing Officer that the residential property means a house property should be used for residential purpose and not for commercial purpose cannot be accepted. The assessee has purchased a plot and constructed the residential property within time limit allowed as per the provisions of Sec. 54F of the Act which is not disputed by the

Assessing Officer. The Id. Commissioner of Income Tax (Appeals) has dealt exhaustively on the submissions of the assessee on the construction and usage supported the facts with judicial decision for claim of exemption u/s.54F of the Act. Considering the apparent facts, provisions of law, judicial decisions and findings in appellate proceedings, we are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) who has explained elaboratively viz-a-viz the explanations of the assessee and we uphold the same and dismiss the ground of the Revenue.

8. On the issue of deletion of unexplained credit ₹83,303/-. The Id. Departmental Representative erred that Commissioner of Income Tax (Appeals) has deleted the amount without considering the facts and evidence on record.

9. The Id. Authorised Representative relied on the findings of the Commissioner of Income Tax (Appeals).

10. We heard the rival submissions and perused the material on record. The Id. Departmental Representative contention that the evidence available with them and the Commissioner of Income Tax (Appeals) has confirmed the partial addition excluding ₹83,303/-. We are of the opinion that if the Department is having any authentic evidence the same

has to be relied in the assessment proceedings or appellate proceedings. The Commissioner of Income Tax (Appeals) gave a realistic findings on this disputed issue at page 7 of his order confirming the partial addition and deleting ₹83,303/-. Therefore, we are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) on this ground and confirm the same.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced on Wednesday, the 11th day of May, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:11th May, 2016.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

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