

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.3107/Chny/2019
निर्धारण वर्ष/Assessment Year: 2016-2017

Shri T. Pandian,
S/o P. Thirumaran, Plot No. 4,
Shalimar Garden Fifth Street,
Injambakkam, Chennai 600 115.
[PAN:AFNPP7417G]

Vs. The Income Tax Officer,
Non Corporate Ward 15(4),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 07.03.2023
घोषणा की तारीख /Date of Pronouncement : 24.03.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai, dated 30.05.2019 relevant to the assessment year 2016-17.

2. The appeal filed by the assessee for the assessment year 2016-17 is delayed by 91 days in filing the appeal, for which, the assessee has filed a petition for condonation of the delay in the form of an affidavit, to which; the Id. DR has not raised any serious objection. Consequently,

since the assessee was prevented by sufficient cause, the delay of 91 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed his return of income on 20.06.2016 for the assessment year 2016-17 declaring an income of ₹.9,88,060/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. Thereafter, the case was selected for scrutiny under CASS and notice under section 143(2) of the Act was issued on 04.08.2017 and duly served on the assessee. After following due procedure, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 21.12.2016. In the assessment order, the Assessing Officer has noted that the assessee has sold the property in survey No. 98/4A2 at Injambakkam village for a consideration of ₹.60,00,000/- and also claimed sale expenses of ₹.9,220/-. The assessee had also received ₹.2,00,00,000/- for the property of 2.09 acres in survey No. 226/1, 226/2A, 2269B situated in Sembakkam village in Thiruporur panchayat union. The assessee has claimed deduction under section 54F in respect of property purchased for consideration of 2,00,00,000/- on 04.10.2017. After considering the explanations of the assessee against the show-

cause notice, the Assessing Officer has denied the claim of deduction under section 54F of the Act on the ground that the assessee has not fulfilled the procedural requirement laid down by the law of depositing into the capital gain account scheme with a nationalized bank before the due date of furnishing of return. Accordingly, the Assessing Officer assessed the income at ₹.1,99,22,230 by taking capital gains at ₹.1,89,34,171/-. On appeal, by considering the submissions of the assessee as well as various case law, the Id. CIT(A) confirmed the disallowance of the deduction claimed under section 54F of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By filing copy of the judgement in the case of CIT v. Mt. Umayal Annamalai [2020] 118 taxmann.com 80 (Madras), the Id. Counsel for the assessee has submitted that the issue involved in this appeal is squarely covered in favour of the assessee and prayed for the same.

5. On the other hand, the Id. DR supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee has claimed deduction under section 54F of the Act in respect of property

purchased for a consideration of ₹.2,00,00,000/-. However, the Assessing Officer denied the claim of deduction under section 54F of the Act on the ground that the assessee has not fulfilled the procedural requirement laid down by the law of depositing sale proceeds into the capital gain account scheme with a nationalized bank before the due date of furnishing of return, which was confirmed by the Id. CIT(A).

6.1 Similar issue was subject matter in appeal before the Hon'ble Jurisdictional High Court in the case of CIT v. Smt. Umayal Annamalai (supra), wherein, the Hon'ble High Court has observed and held as under:

4. *The learned Tribunal, with regard to exemption under Section 54 F(1) of the Act, with respect to capital gains earned by the assessee during the previous year, has given the following finding of facts in paragraph 8 and the relevant portion of paragraph 8 is quoted hereunder:*

'The assessee has complied the provisions considering the dates as under:-

- (i) Date of transfer of original asset: 14.2.2005*
- (ii) The date of filing of return: 17.3.2006*
- (iii) Due date of return for the Assessment year 2005-06: 31.07.2005*
- (iv) Due date of filing belated return: 31.03.2007*
- (v) Possession of the property: 15.12.2007*

"On considering the provisions of law and facts of the case, the assessee has invested Rs.68,00,000/- before due date of filing belated return i.e. 31.03.2007 and took the possession as per the findings of the Commissioner of Income Tax (Appeals) on 15.12.2007, being within three years from the date of transfer/sale of original asset being 14.02.2005. The assessee has not invested in Capital Gain Account Scheme before 139(1) of the Act but complied with the conditions u/s.54F(1) of the Act by purchasing and construction of residential property within three years from the date of transfer of original asset which is not disputed in the assessment proceedings or in appellate proceedings. The provisions of Sec. 54F are beneficial provisions and are to be considered liberally in the aspect of limitation period. But the investment in residential property is must which the assessee has proved with evidence and complied before the lower authorities. The

learned Commissioner of Income tax (Appeals) relied on the legal provision and submissions of the assessee exhaustively with judicial decisions. Considering the factual aspects, genuineness of the transactions and beneficial aspects of the provisions, we are of the opinion that the Commissioner of Income Tax (Appeals) has rightly construed the findings and the explanation of the assessee with observation in his order and allowed the deduction u/s.54F of the Act. Therefore, we are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) and dismiss the ground of the Revenue.'

5. *Though the Revenue stake involved in the present case is much below the limit of rupees one crore for withdrawal of the appeal by the Revenue, since the present case involved some audit objection because of exemption in the said Circular, the learned counsel for the Revenue press the appeal on merits.*

6. *However, after hearing both the learned counsel, we are satisfied that the finding of the facts arrived at by the learned Tribunal are perfectly in order and justified and correct on the basis of facts stated in the quoted paragraph 8 of the order. The assessee has clearly satisfied the conditions for availing the benefit of exemption under section 54F of the Act, as it has purchased new property and has taken the possession within the stipulated period of three years, as aforesaid. Thus, we do not find any perversity in the said findings of facts given by the learned Tribunal.*

7. *Therefore, in our opinion, no substantial question of law arises in the present appeal filed by the Revenue and it is without any merits. Accordingly, the appeal filed by the Revenue is dismissed. There shall be no order as to costs.*

6.2 In the present case also, the assessee has complied with the provisions considering the dates as under:

| | | |
|-------|--|--------------|
| (i) | <i>Date of transfer of original asset</i> | : 13.04.2015 |
| (ii) | <i>The date of filing of return</i> | : 20.06.2016 |
| (iii) | <i>Due date of return for the Assessment year 2016-17</i> | : 31.07.2016 |
| (iv) | <i>Date of sale agreement for purchase of residential property</i> | : 09.01.2016 |
| (iv) | <i>Possession of the property</i> | : 04.10.2017 |

Even though the assessee has not invested the sale proceeds in Capital Gain Account Scheme, but complied with the conditions under section 54F(1) of the Act by purchasing an independent house for a consideration of ₹.2 crores by executing sale agreement on 09.01.2016 by paying advance of ₹.50 lakhs and the remaining amount of ₹.1.50 crores was

paid on the date of registration of sale deed on 04.10.2017, which are not in dispute. The provisions of section 54F of the Act are beneficial provisions and are to be considered liberally in the aspect of limitation period. But, the investment in residential property is must which the assessee has proved with evidence and complied before the lower authorities. Under the above facts and circumstances of the case and respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Smt. Umayal Annamalai (supra), we set aside the order of the Id. CIT(A) and direct the Assessing Officer to allow the deduction section 54F of the Act to the assessee.

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

Order pronounced on 24th March, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 24.03.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.