

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.973/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

Shri Ramasubramaniam Sridhar Paul 334/45B, B-Block, Flat 201-202 Urban Ville Velachery Main Road, Velachery, Chennai-600 042.	बनम / Vs.	ITO Non-Corporate Ward-19(7) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ANWPS-2829-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Ms. Hema Muralikrishnan (Advocate) - Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT)- Ld. Sr. DR

सुनवाईकी तारीख/ Date of final Hearing	:	06-03-2024
घोषणाकी तारीख / Date of Pronouncement	:	13-03-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 10-08-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 147 of the Act on 08-12-2019. The grounds taken by the assessee are as under: -

- 1.The impugned order passed by the Commissioner of Income Tax (appeals), National Faceless Appeal Centre (NFAC), [herein after referred to as CIT(A)] is erroneous in law, contrary to the facts of the case and liable to be set aside.
- 2.The CIT(A) is wrong in confirming the disallowance of exemption claimed u/s.54F of the Act on the ground that the amount deposited in capital gain deposit scheme was not invested in purchase or construction of any property within the stipulated time period as per sub-section (1) of Sec.54F of the Act.
- 3.The CIT(A) failed to understand that Sec.54F does not mandate that the very sum deposited in capital gains account should be invested in purchase or construction of any property within the stipulated time. All that Sec.54F stipulates is that the assessee should purchase or construct a residential property within the stipulated time and does not contain any mandate with regard to the source from which such purchase or construction should be made.
- 4.The CIT(A) erred in confirming the disallowance u/s.54F on the ground that the appellant had entered into a construction agreement for 2 residential flats on 19.01.2011 and purchased undivided share of land in the residential complex, namely 'Urbanville' vide agreement dt.07.02.2011, whereas the property on sale of which exemption u/s.54F was being claimed was sold on 24.02.2012 and therefore the purchase of land as well as construction agreement were beyond one year prior to the date of purchase.
- 5.The CIT(A) failed to appreciate the fact that though agreement for purchase of undivided share of land was entered into on 07.02.2011, physical possession of the same was given to the appellant herein only after completion of construction, which is within the period of 3 years from the date of sale of the original (old) asset. Further, in any event, though the construction agreement was entered into on 19.01.2011, payments for construction were made during 01.06.2011 to 14.06.2013 and therefore the same is also within the period of 3 years from the date of sale of the original (old) asset. Hence, the appellant is entitled for exemption u/s.54F of the Act.

As is evident, the sole issue that fall for our consideration is assessee's claim of deduction u/s 54F.

2. The Ld. AR advanced arguments supporting the case of the assessee and also relied on various judicial decisions supporting the case of the assessee. The Ld. Sr. DR submitted that the stipulations of Sec.54F were not fulfilled by the assessee. Having heard rival submissions, the appeal is disposed-off as under.

3. From the case records, it emerges that the assessee sold certain plot during February, 2012 and the sale proceeds thereof were invested in capital gain scheme. It also transpired that the assessee purchased another plot at VGP Selvanagar, Velachery Village on 27-02-2014. As per requirements of Sec.54F, the construction of new plot should have

been completed within 3 years of sale of the original asset. However, in the Balance Sheet as on 31-03-2015, the plot at Selvanagar was still shown as plot. Therefore, it was concluded that the nature and value of the asset had not changed and the construction of the plot was not completed within stipulated time period. Considering the same, entire capital gain of Rs.56.36 Lacs was to brought to tax in this year. Forming formation of belief of escapement of income, the case was reopened and notice u/s 148 was issue to the assessee.

4. The assessee submitted that the plot was sold on 24-02-2012 for Rs.75 Lacs giving rise to capital gain of Rs.56.36 Lacs. This amount was deposited in capital gain scheme pending purchase of another property. The plot at VGP Nagar was purchased on 27-02-2014 for Rs.95 Lacs. In the alternative, it was submitted that another property was purchased at Urbanvile, Velachery Main Road on 07-02-2011 which would also qualify for deduction u/s 54F. However, Ld. AO noted that the construction agreement for the same was entered on 19-01-2011. The assessee filed possession receipt dated 05-02-2013 for having received the possession of the apartment. The Ld. AO formed an opinion that the original plot was sold on 24-02-2012 and therefore, the investment ought to have been made within stipulated time period in terms of Sec. 54F. As against this, the investment was made in Urbanvile on 07-02-2011. The construction agreement was made on 19-01-2011 which was beyond one year prior to date of sale of original asset. The assessee did not purchase new asset within a period of one year prior nor constructed new asset within a period of three years as stipulated. Therefore, the capital gains of Rs.56.36 Lacs was brought to tax and an assessment was framed against the assessee.

5. During appellate proceedings, the assessee submitted that clause nos. 3 & 4 of construction agreement stipulated period of 18 month for completion of construction from the date on which the builders get approval. Further, the payment for construction for Rs.81.84 Lacs was made between 01-06-2011 to 14-06-2013 which was evident from the receipts issued by the builder. The possession of the flat was taken on 05-02-2013 which was well within the stipulated period of three years. Accordingly, the assessee laid its claim towards deduction u/s 54F.

6. However, Ld. CIT(A), upon perusal of capital gain bank passbook, observed that the amount of Rs.75 Lacs was withdrawn only on 27-02-2014 and 28-02-2014 and this particular money was not utilized for purchase or construction of a new house. Concurring with the observation of Ld. AO that the purchase / construction of new asset was not completed within stipulated time, Ld. CIT(A) confirmed denial of impugned deduction to the assessee. Aggrieved, the assessee is in further appeal before us.

7. The basic facts as well as relevant dates are not in dispute. From the facts, it emerges that the assessee has deposited the sale consideration in capital gain account scheme which was withdrawn on 27-02-2014 and 28-02-2014. On the other hand, the assessee purchased new asset (plot) on 07-02-2011 and entered into construction agreement on 19-01-2011. The lower authorities has considered these dates as the relevant dates to examine the claim of the assessee overlooking the fact that the construction agreement had stipulations that the construction would be completed in 18 months from the date when the builder gets approval. The payment towards construction for Rs.81.84 Lacs has been made between 01-06-2011 to 14-06-2013 and

the possession has been obtained on 05-02-2013. All these events are within the stipulated period of one year prior and two years thereafter as counted from 24-02-2012. In our opinion, there is no requirement that specific money as deposited in capital gain account scheme should be utilized towards new investment. The assessee may make investment from other funds as available with him and the same would not jeopardize the claim of the assessee. The decision of Pune Tribunal in **Sohanlal Mohanlal Bhandari vs. ACIT (104 Taxmann.com 161)** supports this view. The bench held that it is open for the assessee to use either own or borrowed funds for purchase or construction of new residential house and it is nowhere provided that only sale proceeds of original asset should be utilized for this purpose. Therefore, we direct Ld. AO to grant impugned deduction to the assessee.

8. The appeal stands allowed in terms of our above order.

Order pronounced on 13th March, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 13-03-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF