

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

[BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
AND SHRI V. DURGA RAO, JUDICIAL MEMBER]

I.T.A.No. 106/Mds/2012
Assessment year : 2008-09

Shri R.K.P.Elayarajan
C/o K.Balasubramanian,Advocate
D1, 4th Floor, Krishna Paradise
6, Ramachandra Road
Mylapore, Chennai 600 004

vs The Dy. CIT
Circle I
Vellore

[PAN AAHE 8987 F]
(Appellant)

(Respondent)

Appellant by : Shri K.Balasubramanian,
Advocate Tax Consultant
Respondent by : Shri Shaji P. Jacob, Addl. CIT
Date of Hearing : 13-06-2012
Date of Pronouncement : 15-06-2012

ORDER

PER N.S. SAINI, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order of the CIT(A)-IX, Chennai, dated 31.10.2011.

2. The assessee has taken the following grounds of appeal:

“1.1 Orders of the authorities below are contrary to law, weight of evidence and probabilities of the case.

1.2. Authorities below erred in disallowing the claim of the appellant u/s 54F to the tune of ₹ 27,44,063.

1.3. Learned Commissioner of Income-tax (Appeals) erred in confirming the decision of the assessing officer to the effect that appellant did not deposit the sale consideration, on sale of shares, in capital gains account scheme before due date for furnishing return and hence appellant is not eligible for deduction u/s 54F, except to the extent of Rs.3 lakh, allowed by CIT (A) u/s 54F, which amount was paid by the appellant to the builder before the said due date for construction of a flat at Velachery Chennai.

1.4 They failed to appreciate that appellant not having filed his return of income for AY 2008-09 within the time allowed u/s 139(1), is eligible to do so till 31-3-2009 which is the extended time u/s Sec.139(4) and accordingly he filed it on 9-1-2009.

1.5 The authorities below failed to appreciate the schema of Sec.54, 54F etc., ie., to encourage owning of house so that shortage of housing can be overcome and that the appellant invested the major portion of the sale consideration in a residential which is the only house owned by appellant and therefore, too narrow and strict interpretation of sec.54F(4) of the Act may not be called for.

1.6 Without prejudice to the above, the authorities below failed to appreciate that appellant having filed his return of income on 9-1-2009 ie., before the extended due date of filing of return under Sec.139(4) he is entitled to exemption u/s 54F to the extent of amounts paid to the builder before 31.3.2009 ie., ₹ 15,00,000.

1.7 Therefore, learned CIT (A) having allowed only ₹ 3 lakhs, ought to have allowed the balance ₹ 12,00,000 also u/s 54F.

1.8 Reliance for the above proposition is placed on the following case laws.

- a) CIT vs Ms. Jagriti Aggarwal [2011] 245 CTR (P&H) 62
- b) Fathima Bai vs ITO [2009] 32 DTR (Kar) 243
- c) CIT vs Rajesh Kumar Jalan [2006] 206 CTR (Gau)"

3. The sole issue involved in this appeal is that the CIT(A) erred in confirming the action of the Assessing Officer in not allowing deduction u/s 54F of the Act except to the extent of ₹ 3 lakhs allowed by the CIT(A) since the assessee had not deposited the sale consideration in the capital gains account scheme before the due date for furnishing of return.

4. The brief facts of the case are that during the year under consideration the assessee derived long term capital gains of ₹ 38,64,751/- on sale of shares. The assessee claimed deduction u/s 54F of the Act for ₹ 27,44,063/- in his return of income on the ground that he has invested the capital gains in acquisition of a residential flat at Chennai. The Assessing Officer found that the due date for filing of return of income by the assessee was 31.7.2008 and the assessee should have either invested the entire sale consideration in the residential flat or in capital gains account with any authorized bank on or before 31.7.2008. The Assessing Officer observed that the assessee has furnished copy of sale deed for transfer of the undivided share of land in his favour by the flat promoter wherefrom it is seen that it is executed on 19.9.2008 which is after the due date for filing of return of income by the assessee u/s 139(1) of the Act. The assessee could produce evidence to the extent of payment of ₹ 3 lakhs only to the flat promoter before the above due date. Therefore, the

Assessing Officer did not allow deduction u/s 54F of the Act to the assessee.

5. On appeal filed by the assessee, the CIT(A) allowed the deduction of ₹ 3 lakhs paid for the purchase of residential property and disallowed the balance capital gains of ₹ 24,44,063/- for the reason that the agreement for purchase of residential property with the builder M/s Mehta Havens Ltd was entered into on 2.5.2008 and ₹ 3 lakhs was paid on the very same day which was before the due date of filing of the return of income on 31.7.2008.

6. Being aggrieved, the assessee is in appeal before us.

7. The A.R of the assessee submitted that the assessee not having filed his return of income for assessment year 2008-09 within the time allowed u/s 139(1) was eligible to do so till 31.3.2009 which was the extended time u/s 139(4) and accordingly, he filed his return of income on 9.1.2009. He further submitted that both the Assessing Officer and the CIT(A) failed to appreciate the scheme of section 54 and 54F which is to encourage owning of house so that shortage of housing can be overcome and that the assessee has invested major portion of the sale consideration in a residential house which was the only house owned by the assessee and therefore, too narrow and strict interpretation of section 54F(4) of the Act may not be called for.

He submitted that the assessee having filed his return of income on 9.1.2009 which was before the due date for filing of return of income u/s 139(4) was entitled to exemption u/s 54F to the extent of amount paid to the builder before 31.3.2009 i.e ₹ 15 lakhs. Therefore, the CIT(A) should have allowed deduction of the balance amount of ₹ 12 lakhs u/s 54F also. He placed reliance on the following decisions:

- a) CIT vs Ms. Jagriti Aggarwal [2011] 245 CTR (P&H) 62
- b) Fathima Bai vs ITO [2009] 32 DTR (Kar) 243
- c) CIT vs Rajesh Kumar Jalan [2006] 206 CTR (Gau)361

8. On the other hand, the Id. DR fully justified the order of the CIT(A) and filed a copy of the decision of Hon'ble Kerala High Court in the case of CIT vs V.R.Desai, [2011] 197 Taxman 52, and submitted that the Hon'ble High Court has held that as the assessee neither deposited the sale proceeds for construction of the building in the bank before the date of filing return nor was the sale proceeds utilized for construction of new property, exemption claimed u/s 54F was not admissible.

9. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. We find that the undisputed relevant facts of the case are that the assessee derived long term capital gain of ₹ 38,64,751/- on net sale consideration of long term capital asset of ₹ 51,75,000/- during the

year under consideration. In respect of the above long term capital gain of ₹ 38,64,751/-, the assessee claimed in his return of income filed on 9.1.2009 exemption u/s 54F of ₹ 27,44,063/- on the ground of investment in purchase of new residential flat. It is not in dispute that the assessee is eligible for exemption u/s 54F in respect of his investment made in new residential flat. The only dispute before us is whether the assessee is eligible for deduction u/s 54F with reference to the amount of ₹ 3 lakhs which he invested for the purchase of new residential house before 31.7.2008 as held by the CIT(A) or with reference to ₹ 15 lakhs which was invested by the assessee upto 9.1.2009 as claimed by the assessee before us.

10. The assessee, in support of his contention, has placed reliance on the decisions of CIT vs Ms. Jagriti Aggarwal [2011] 245 CTR (P&H) 62, Fathima Bai vs ITO [2009] 32 DTR (Kar) 243, and CIT vs Rajesh Kumar Jalan [2006] 206 CTR (Gau)361.

11. On the other hand, the DR supported the order of the CIT(A) and placed reliance on the decision of the Hon'ble Kerala High Court in the case of CIT vs V.R.Desai, [2011] 197 Taxman 52.

12. We find that the relevant provisions of sub-section (4) of section 54F is as under:

"4 The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under s. 139..... "

13. Thus, in the instant case, we find that the eligible new asset was not purchased within one year before the date on which the transfer of the original asset took place. Thus, the amount which is not utilized by the assessee for the purchase of new asset before the date of furnishing the return of income u/s 139 was required to be deposited as per the provisions of sub-section(4) for availing deduction u/s 54F in respect of those amounts also. In other words, as per the plain language employed in the above sub-section(4), only the amount which was actually utilized by the assessee for the purpose of purchase of the new residential house before the date of furnishing of the return of income u/s 139 shall only be eligible for computation of deduction u/s 54F(1) of the Act. We find that in the instant case it is not in dispute that the return of income for the relevant year was filed by the assessee on 9.1.2009, which is the date of furnishing of return of income u/s 139 by the assessee. Thus, in our considered view, the amount utilized by the assessee for purchase of new residential house before 9.1.2009 qualifies for consideration with reference to which deduction u/s 54F(1) is to be computed. Thus, the CIT(A) was

not justified in holding that only the amount which was utilized by the assessee before 31.3.2008 only qualifies for deduction u/s 54F of the Act. The assessee claimed before us that ₹ 15 lakhs was utilized by him for the purchase of new residential flat on or before 9.1.2009. We, therefore, set aside the orders of the lower authorities on this issue and direct the Assessing Officer to verify the amount which was invested by the assessee before the date of furnishing of return of income u/s 139 by the assessee and thereafter allow the deduction u/s 54F(1) with reference to the said amount as per law. Needless to mention that he shall allow reasonable and proper opportunity of hearing to the assessee before adjudicating the issue afresh.

14. Before parting with this appeal, we would like to observe that the decision relied on by the DR is distinguishable on facts and is not applicable for deciding the issue under consideration. In that case, the Hon'ble Kerala High Court found that consideration for transfer of long term capital asset was actually not utilized by the assessee either for construction of new residential house or for depositing the same in any bank under the notified scheme of 54F of the Act. The Hon'ble High Court found that the assessee allowed the partnership firm to retain the consideration amount with the firm for its business purposes. We find that the facts involved before us are not similar and the issue involved is also quite different. The issue before us is

whether the amount which was utilized by the assessee for making investment in purchase of new residential house before the date of filing of return u/s 139(4) qualifies for deduction u/s 54F(1) or only the amount which was utilized for investment in purchase of new residential house before the due date of filing of return u/s 139(1) alone qualifies for deduction u/s 54F(1) of the Act. We find that on the above issue view taken by us above in this order is fully supported by the decision of the Hon'ble P&H High Court in the case of CIT vs Jagriti Aggarwal (supra) wherein it was held that section 139 includes section 139(4) also. Therefore, the appeal of the assessee is allowed in the manner indicated above.

15. In the result, the appeal of the assessee is allowed.

Order pronounced on Friday, the 15th of June, 2012,
at Chennai

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Dated: 15th June, 2012
RD

Copy to: Appellant/Respondent/CIT(A)/CIT/DR