

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

**BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

ITA No.232/Mds/2013

(Assessment Year : 2009-10)

Mr. I.Ifthiqar Ashiq
M/s. Dr.Anita Sumanth,
Advocates,
51/24, Nungambakkam High Road,
Chennai-600 034.
PAN: AAHPI1576Q
(Appellant)

Vs. Income Tax Officer,
Business Ward-III(1),
121, M.G.Road,
Chennai-600 034.

(Respondent)

Appellant by : Dr. Anita Sumanth, Advocate
Respondent by : Shri S.Jayaraman, CIT

Date of Hearing : 27th May, 2013
Date of Pronouncement : 11th June, 2013

ORDER

Per Vikas Awasthy, JM:

The appeal has been filed by the assessee impugning the order of the CIT(A)-VIII, Chennai dated 14.12.2012 relevant to the assessment year 2009-10.

2. The brief facts of the case are that the assessee filed his e-return of income on 4.11.2009 for the assessment year 2009-10 declaring total income of ₹ 5,62,600/-. The case of the assessee was selected for scrutiny and notice under

section 143(2) was issued to the assessee on 23.08.2010. In the return of income, the assessee had claimed deduction under section 54F of the Act. During the course of assessment, the assessee disclosed that apart from property purchased at Kodaikanal for ₹ 1,14,88,000/- , the assessee owns residential house at Sidharth Heights and commercial property at Raahat Plaza, Chennai. The assessee had purchased property at Kodaikanal from the sale proceeds received from sale of land measuring 16.96 cents at Kazura Garden, 1st Main Road, Nilankarai. The Assessing Officer rejected the claim of the assessee under section 54F, on the ground that the assessee is owner of two properties one residential house property at Sidharth Heights and another commercial property at Raahat Plaza. For claiming exemption under section 54F it is essential that on the date of transfer the assessee does not own more than one residential house property other than the new asset. The Assessing Officer was of the view that the term 'residential property' and 'commercial property' have not been defined under the provisions of the Income-tax Act. The residential

property can be converted into commercial property and commercial property can be converted into residential property by virtue of its use. The Assessing Officer rejected the claim of the assessee, as the assessee failed to satisfy the condition in the proviso (a)(i) to section 54F(1).

Aggrieved against the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) upheld the findings of the Assessing Officer and dismissed the appeal of the assessee. Now, the assessee has come in second appeal before the Tribunal impugning the order of the Commissioner of Income Tax (Appeals) .

3. Dr.Anita Sumanth, advocate appearing on behalf of the assessee submitted that apart from the new property purchased at Kodaikanal, the assessee is owner of one residential house at Sidharth Heights and another commercial property at Raahat Plaza, Chennai. The commercial property has been let out and is being exclusively used for commercial purposes. The income received from

letting out of commercial property is assessed under the head “Income from House Property”. The Income Tax Act does not provide any other head for assessing rental income received from letting out of commercial property. The view of the authorities below that rental income from letting out of commercial property assessed under the head “Income from House Property” leads to the conclusion that the assessee is owning another residential property is misconceived. The learned counsel for the assessee submitted that the assessee had placed various documents viz. water supply bills, planning permit issued by Madras Metropolitan Development Authority etc. to show that the building where the assessee is owning the property is a commercial building were not taken into consideration. The learned counsel for the assessee has placed on record rent agreements executed between the assessee and various tenants in respect of the property owned by the assessee at Raahat Plaza to show that the property is a commercial property and is not being used for residential purposes.

4. On the other hand, Shri S. Jayaraman, appearing on behalf of the Revenue, vehemently opposing the submissions made by the counsel for the assessee relied on the order of the Commissioner of Income Tax (Appeals).

5. We have heard the submissions made by the representatives of both the sides. We have also perused the orders of the authorities below as well as rent agreements placed on record by the learned counsel for the assessee. A perusal of the impugned order shows that the authorities below have erred in coming to the conclusion that the assessee owns two residential properties as the income received from the commercial property is assessed under the head "Income from House Property". The Commissioner of Income Tax (Appeals) has observed that since the assessee has claimed deduction under section 24 of the Act, the assessee cannot claim property at Raahat Plaza to be commercial property.

We are of the view that the CIT(A) has committed an error in coming to such a conclusion. The Income Tax Act does not create any distinction between rental income from

house property and rental income from commercial building. Rental income from residential and/or commercial building has to be assessed under section 22 of the Act under the head "Income from House Property" subject to certain exceptions.

6. The provisions of section 22 relating to charging of income under the head "income from house property" are reproduced herein below:-

“22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

7. A perusal of section 22 shows that the term used in section is 'building', it is not qualified by the word 'residential'. There has been several decisions where the income from letting out of commercial buildings/warehouses/factory premises were held to be assessable under the provisions of section 22. This view has

been affirmed by the Hon'ble Supreme Court of India in the case of Shambhu Investment P. Ltd. Vs. CIT reported as 263 ITR 143(SC).

The Hon'ble Karnataka High Court in the case of CIT Vs. Bhoopalam Commercial Complex & Industries (P) Ltd. reported as 262 ITR 517 (Kar), in the facts and circumstances of the case held that rental income from commercial complex is liable to be assessed under the head "income from house property". Thus, in the instant case the Commissioner of Income Tax (Appeals) has erred in holding that since the income from commercial property is assessed under the head "income from house property" the property is residential.

8. The learned counsel for the assessee has placed before us copies of rent agreements between the assessee and his various tenants in respect of property owned by him at Raahat Plaza, NSK Salai (Arcot Road) Vadapalani, Chennai. The counsel has also placed on record bills raised by the Chennai Metropolitan Water Supply and Sewerage

Board, wherein it has been mentioned that the charges levied are non-domestic. The documents placed on record clearly shows that the property is being used for commercial purpose only.

9. From the documents on record and facts of the case, we are of the considered opinion that the property situated at Raahat Plaza, Arcot Road, Chennai is a commercial property. The impugned order passed by the Commissioner of Income Tax (Appeals) is set aside and the deduction claimed by the assessee under section 54F of the Act on account of investment in new residential house at Kodaikanal is allowed.

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

Order pronounced in the open court on Tuesday , the 11th day of June, 2013 at Chennai.

Sd/-
(Dr. O.K.Narayanan)
Vice-President

Dated the 11th June, 2013.
Chennai
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Sd/-
(Vikas Awasthy)
Judicial Member

Copy to: (1) Appellant (4) CIT(A)
(2) Respondent (5) D.R.
(3) CIT (6) G.F.