

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2974/Mds/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Puranchand & Family (HUF),
No.11, Lloyds Lane,
Chennai – 600 014.

v. The Income Tax Officer,
Non-Corporate ward 12(3),
Chennai – 34.

PAN : AAEHP3644P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K. Balasubramanian, CA

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 05.01.2017

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 13, Chennai dated 15.09.2016 and pertains to the assessment year 2012-13.

2. Shri K. Balasubramanian, the Ld. representative for the assessee submitted that the assessee HUF, sold 122.840 carat of diamonds on 02.01.2012 for a total consideration of ₹57,12,060/-. The

long term capital gain computed at ₹42,65,619/-. According to the Ld. representative, there was no dispute about sale of diamonds and the computation of long term capital gain at ₹42,65,619/-. According to the Ld. representative, the assessee purchased a house property at door No.23, Llyods Road, First Land, Royapettah, Chennai – 14 along with three other coparceners of HUF on 14.10.2011 for a total consideration of ₹1,35,00,000/-. 1/4th share of the assessee HUF comes to nearly ₹38,08,750/-. The purchase of property along with other coparceners of HUF is also not in dispute. According to the Ld. representative, the Assessing Officer found that the sale deed was executed in the individual name of the Karta and not in the name of the HUF. The Assessing Officer has disallowed the claim of exemption under Section 54F of the Income Tax Act, 1961 (in short 'the Act'), on the ground that the sale proceed of the diamond was not utilized by the assessee for purchasing the property. The Assessing Officer found that the borrowed funds were utilized for purchasing the new asset. The Assessing Officer has also disallowed the expenditure incurred by the assessee for renovation. Referring to the first issue of disallowance, namely purchase of property in the individual name of the Karta, the Ld. representative for the assessee submitted that the Bangalore bench of this Tribunal in ITO v Ramesh Kumar (HUF) in ITA No.628/Bang/2010 examined this issue and found that a Karta of

HUF or a coparcener of HUF can hold a property on behalf of the HUF. Placing reliance on the judgment of Karnataka High Court in DIT v Mrs. Jennifer Bhide [2011] 15 taxmann.com 82 (Kar.), the Ld. representative submitted that the Karnataka High Court found that there was no requirement that the investment should be in the name of the assessee only. In the case before the Karnataka High Court, the assessee sold the property and purchased another property in the joint name of herself and her husband. The Karnataka High Court found that merely because in the sale deed, the assessee's husband name was also mentioned, the benefit of deduction cannot be denied on that ground. Therefore merely because the property was registered in the name of the Karta of HUF, the Assessing Officer cannot disallow the claim of deduction under Section 54F.

3. Referring to the utilization of borrowed funds, the Ld. representative for the assessee submitted that the property was in fact purchased on 14.10.2011 before 2½ months of the sale of diamond on 02.02.2012. Therefore, the assessee cannot use the sale proceeds of the diamond for purchasing the property. In other words, the sale proceeds cannot be utilized before the diamond was actually sold. Referring to Section 54F of the Act, the Ld. representative submitted that Section itself provides for investment in the immovable property

within a period of one year before the sale of the capital asset. Therefore, the assessee can invest the sale proceedings before one year or before the sale of the asset itself. Therefore, there is no prohibition in the Section 54F of the Act, for allowing deduction when the assessee has invested the funds before sale of the capital asset. Hence, borrowing the funds for the purpose of acquiring capital asset before one year from the date of sale of the capital asset cannot be a reason for disallowing the claim of the assessee.

4. On the contrary, Shri B. Sahadevan, the Ld. Departmental Representative submitted that the diamond said to be belonging to HUF. According to the Ld. D.R., the HUF is an independent assessable unit. Shri Puranchand is an individual and assessable as such in his individual capacity. Therefore, when the diamond belongs to HUF, the capital gain has to be assessed only in the hands of HUF. Therefore, for the purpose of claiming exemption under Section 54F of the Act, the investment has to be made only in the hands of HUF and not in the individual name of Puranchand. Hence, the Assessing Officer has rightly rejected the claim of the assessee.

5. The Ld. Departmental Representative further submitted that for the purpose of claiming deduction under Section 54F of the Act, the

assessee has to necessarily invest the sale proceeds of the capital asset. The sale proceeds do not mean the borrowed funds. Therefore, when the assessee invested the borrowed funds, the same cannot be a reason for allowing the claim of the assessee. Moreover, even though the assessee claims that the capital asset was renovated after purchase, the assessee has not obtained any approval from the Corporation of Chennai. Therefore, the Assessing Officer has rightly disallowed the claim of the assessee which was confirmed by the CIT(Appeals).

6. We have considered the rival submissions on either side and perused the material available on record. The assessee sold a capital asset namely diamond and claims exemption on the capital gain under Section 54F of the Act. The Assessing Officer rejected the claim of the assessee on three grounds.

- 1) First, the capital asset was purchased in the individual name of coparcener of HUF.
- 2) Borrowed funds were used for purchase of the new asset and not the sale proceeds of the diamond.
- 3) There was no construction on the new asset.

7. As regards the investment made in the individual capacity, even though HUF is an independent assessable unit under Income Tax Act, under the common law, HUF cannot be considered to be a legal entity. The HUF has to be represented through any one of the coparceners. Therefore, when the assessee HUF invested the funds in the name of any one of the coparcener, it has to be construed that the investment was made in the name of HUF. When the nucleus of the HUF fund was used for purchase of a property in the name of any one of the coparcener, the property belongs to the HUF, even though the property was registered in the individual name of one of the coparcener. The property belongs to all the coparceners in equal shares as members of HUF. Therefore, the Assessing Officer is not justified in rejecting the claim of the assessee especially, when the investment was made in the name of Karta of HUF.

8. Now coming to second reason for disallowance of claim of the assessee, the Assessing Officer found that only the borrowed funds are used for purchase of new asset. As rightly submitted by the Ld. representative for the assessee, provisions of Section 54F of the Act, requires the assessee to purchase a property one year before the date of the sale or two years after the date of the sale of asset. If the assessee could not invest within the time frame provided in the Act,

the same has to be deposited in any one of the capital gain account within the due date provided for filing the return of income under Section 139(1) of the Act. No one could expect the assessee to utilize the sale proceeds of the capital asset or the capital gain arising from such sale before the date of the sale of the capital asset. The assessee cannot have any sale proceeds before the date of the sale. Therefore, this Tribunal is of the considered opinion, when the assessee borrowed the funds and utilized in purchasing the capital asset and thereafter uses the sale proceeds or capital gain for repaying the loan borrowed, that would amount to sufficient compliance of the requirement of Section 54F of the Act. Therefore, merely because the borrowed funds were used when the property was purchased before the date of the sale of asset, this Tribunal is of the considered opinion, this cannot be a reason for disallowing the claim of the assessee.

9. Now, coming to the last reason for disallowance by the Assessing Officer that no construction was made, admittedly, the assessee has purchased a land and building. Therefore, it is not a case of new construction. The assessee claims that the building was renovated to make it fit for human habitation after purchase. This Tribunal is of the considered opinion, when the assessee has

purchased a building and made some investment for making it fit for human habitation, the same has to be treated as part of the investment from out of the capital gain and the Assessing Officer is not justified in rejecting the claim of the assessee on the ground that the assessee has not filed any proof / plan from the Corporation of Chennai. For the purpose of renovation and maintenance, the Corporation may not give any approval or planning permission. The assessee has to necessarily obtain the planning permission and building approval in case there was new construction or an additional construction over and above the existing building. In the case before us, it is not the case of the assessee that there was additional construction or new construction. The admitted case of the assessee that the existing building was made it fit for human habitation. Therefore Assessing Officer is not justified in disallowing the claim of the assessee.

10. In view of the above, we are unable to uphold the orders of both the lower authorities. Accordingly, the orders of both the lower authorities are set aside and the addition is deleted. The Assessing Officer is directed to allow the claim of exemption under Section 54F of the Act, to the extent of the amount invested on or before the date of filing of return of income as provided under Section 139(1) of the Act.

11. In the result, the appeal of the assessee stands allowed.

Order pronounced on 31st January, 2017 at Chennai.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 31st January, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.