

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री एम. बालगणेश, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1990/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Assistant Commissioner of  
Income Tax,  
Non Corporate Ward 21(1),  
Chennai - 600 034.

v. Shri M. Raghuraman,  
902, Siddhagiri,  
DK Santhu Marg,  
Near Joy Hospital, Chembur,  
Mumbai – 400 071.

(अपीलार्थी/Appellant)

PAN : AABPR 5280 J  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. C. Yamuna, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 18.01.2018

घोषणा की तारीख/Date of Pronouncement : 08.02.2018

### **आदेश /O R D E R**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-9, Chennai, dated 30.05.2017 and pertains to assessment year 2013-14.

2. There was a delay of 2 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. D.R. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. The only issue arises for consideration is deduction claimed by the assessee under Section 54 of the Income-tax Act, 1961 (in short 'the Act'). No one appeared for the assessee even though the notice of hearing was issued to the assessee. Therefore, we heard Ld. Departmental Representative and proceed to dispose of the appeal on merit.

4. Smt. C. Yamuna, the Ld. Departmental Representative, submitted that the assessee claimed deduction under Section 54 of the Act. According to the Ld. D.R., the new flat in which the investment was said to be made was not completed. Even though the payment was made to the promoter, the undivided share in the land was not registered and the possession of the flat was not given to the assessee. In the absence of completion of construction, according to the Ld. D.R., the assessee is not eligible for deduction under Section 54 of the Act.

5. We heard the Ld. Departmental Representative and perused the relevant material available on record. On perusal of the order of the CIT(Appeals) it appears that the entire sale consideration was reinvested in a new flat within the stipulated period. The question arises for consideration is when the payment was made within the stipulated period and the construction could not be completed by the developer of the flat, whether the assessee is eligible for deduction under Section 54 of the Act?

6. We have carefully gone through the provisions of Section 54 of the Act which reads as follows:-

"54 (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family the capital gain arises from the transfer of a long-term capital asset being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset) and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference

between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil ; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain 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 utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

**Provided** that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of

three years from the date of the transfer of the original asset expires ; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."

7. A bare reading of Section 54 of the Act clearly says that in case the assessee purchased a residential house in India or constructed a residential house in India within the period stipulated in Section 54(1) of the Act, the assessee is eligible for exemption under Section 54 of the Act. Section 54(2) of the Act clearly says that in case the capital gain, which is not appropriated by the assessee towards purchase of new asset or which is not utilized in purchase of residential house or construction of residential house, then it shall be deposited in a specific account. In this case, it is not the case of Revenue that capital gain was not appropriated or it was not utilised. The fact is that the entire capital gain was paid to the developer of the flat. In other words, the assessee has utilised the entire capital gain by way of making payment to the developer of the flat.

8. Section 54(2) of the Act does not say that in case the assessee could not get the possession of the property, he is not entitled for exemption under Section 54 of the Act. The requirement of Section 54 of the Act is that the capital gain shall be utilised or

appropriated as specified in Section 54(2) of the Act. The assessee has complied with the conditions stipulated in Section 54(2) of the Act, therefore, the CIT(Appeals) has rightly allowed the appeal of the assessee. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

9. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on 8<sup>th</sup> February, 2018 at Chennai.

sd/-

(एम. बालगणेश)

(M. Balaganesh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 8<sup>th</sup> February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-9, Chennai-34
4. Principal CIT-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.