

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2739/Mds/2017
निर्धारण वर्ष /Assessment year : 2014-2015

Smt. M.K. Vithya,
No.34 F, Hotel Ramakrishna,
Polur Road,
Tiruvannamalai 606 601.

Vs. The Income Tax Officer,
Ward 1,
Tiruvannamalai.

[PAN ADYPV 9912F]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Ms. K. Hemalatha, ACA
प्रत्यर्थी की ओर से /Respondent by : Shri. N. Madhavan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 09-01-2018
घोषणा की तारीख /Date of Pronouncement : 09-01-2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

Assessee in this appeal assails restriction of its claim of ₹76,40,792/- made u/s.54F of the Income Tax Act, 1961 (herein after referred to as 'the Act') to ₹37,73,230/-, while computing capital gains arising on sale of a property.

2. Ld. Counsel for the assessee submitted that assessee had sold equity shares held by her in M/s. Aar Vee Hotels Pvt. Ltd during the relevant previous year for a total consideration of ₹81,00,000/-. As per the Id. Authorised Representative, whole of such consideration was utilized by the assessee for acquiring a land and constructing a residence in Samudiram Village, Tiruvannamalai. Further, as per the Id. Authorised Representative, Id. Assessing Officer had made a spot inspection of the site and found that the construction was ongoing and construction materials were lying at the site. According to the Id. Authorised Representative, the time limit for completion of construction of a residential house, for preferring a claim u/s.54F of the Act, expired only on 15.03.2017 since the transfer of equity shares giving rise to the capital gains was effected on 14.03.2014. As per the Id. Authorised Representative, Id. Assessing Officer took a view that assessee had not deposited the unutilized portion of sale consideration in an account under Capital Gains Accounts Scheme, before 31.07.2014, which was the due date for filing of return for the impugned assessment year u/s.139(1) of the Act. Contention of the Id. Authorised Representative was that the Id. Assessing Officer allowed such claim only to the extent of withdrawals made by the assessee from her bank accounts which were appropriated for the purchase of the land upto 31.07.2014. As per the Id. Authorised Representative,

such withdrawals aggregated to ₹40,00,000/- and Id. Assessing Officer took a view that balance of ₹41,00,000/- out of the total consideration of ₹81,00,000/- received on sale of shares, was not eligible for deduction u/s.54F of the Act. Ld. Authorised Representative submitted that the Id. Assessing Officer restricted the claim of deduction to the former amount and brought the balance to tax as long term capital gains. Contention of the Id. Authorised Representative was that the construction of the residential house was completed well before 15.03.2017 and therefore by virtue of the judgment of Hon'ble Karnataka High Court in the case of *CIT vs. K. Ramachandra Rao*, 277 CTR 522 the claim was allowable. According to her, the question of making investment in an account under Capital Gains Accounts Scheme was not relevant where the assessee had constructed a residential house within a period stipulated u/s.54F (1) of the Act. As per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) confirmed the disallowance without any good reason.

3. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below submitted that assessee admittedly did not deposit the unutilized amount in an account under Capital Gains Accounts Scheme and therefore was not

eligible for claiming deduction u/s.54F of the Act. According to him, the Assessing Officer had allowed the claim of the assessee to the extent she utilized the consideration received by him on sale of the shares, for the purpose of investment in new residential house before the last date for filing the return for impugned assessment year which was 31.07.2014.

4. We have considered the rival contentions and perused the orders of the authorities below. Argument of the assessee is that construction of the residential house on which it was claiming deduction u/s.54F of the Act was completed prior to 15.03.2017 and hence within the time period allowed for constructing a new residential house u/s.54F(1) of the Act. The question whether exemption could given under Section 54F of the Act where investment in a new residential house was made within three years from the date of transfer of the asset giving rise to the capital gains, even when the assessee had not deposited the unutilized amount in Capital Gains Accounts Scheme, before the due date prescribed for filing of return u/s.139(1) of the Act, had come up before the Hon'ble Karnataka High Court in the case of *K. Ramachandra Rao (supra)*. In the said case also concerned assessee had completed the construction after due date for filing the return but before the three year period stipulated

u/s.54F(1) of the Act and had not deposited the unutilized sale consideration in a bank account under Capital Gains Accounts Scheme. Their lordships held that once construction of a new residential house was completed within the three years period, failure of the assessee in not depositing the unutilized sale consideration in a bank account under Capital Gains Accounts Scheme, during the interregnum was not fatal to a claim u/s.54F(1) of the Act. Paras 3 to 5 of the judgment is reproduced hereunder:-

3. 'The two substantial questions of law which arise for consideration in these batch of appeals are as under :

"(1) Whether the assessee is entitled to the benefit conferred under s. 54F when the sale consideration is utilized for construction of a residential house on a site which is owned by him within one year from the date of transfer ?

(2) When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under s. 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under s. 139(1) of the IT Act ?"

4. Re. Point No. 1

Sec. 54F deals with capital gains on transfer of certain capital assets not to be charged in case of investment on house. It reads as under :

"54F. (1) Subject to the provisions of sub-s. (4), where, in the case of an assessee being an individual or an HUF, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (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, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under s. 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under s. 45 :

Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head 'Income from house property'.

Explanation.—For the purposes of this section,—

.....

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration

received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under s. 45 on the basis of the cost of such new asset as provided in cl. (a), or, as the case may be, cl. (b), of sub-s. (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under s. 45 on the basis of the cost of such new asset as provided in cl. (a) or, as the case may be, cl. (b), of sub-s. (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(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 utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under s. 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-s. (1) of s. 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-s. (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-s. (1), then,—

(i) the amount by which- (a) the amount of capital gain arising from the transfer of the original asset not charged under s. 45 on the basis of the cost of the new asset as provided in cl. (a) or, as the case may be, cl. (b) of sub-s. (1),

exceeds

(b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-s. (1) been the cost of the new asset,

shall be charged under s. 45 as 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 the unutilised amount in accordance with the scheme aforesaid,"

Sec. 54F(1) provides, in the case of an assessee being an individual or an HUF, the capital gain arises from the transfer of any long-term capital asset, not being a residential house and the assessee 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 a residential house, the capital gain shall be dealt with in accordance with the said provision. This is subject to the provisions of sub-s. (4).

Sub-s. (4) stipulates if the amount of 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 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 of the Act shall be deposited by him before furnishing such return in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under s. 139(1) of the Act in an account in any such bank or institution as specified and utilized in accordance with any scheme which the Central Government may, by notification in the Official Gazette frame in this behalf.

Sub-s. (4) is attracted only to a case where the sale consideration is not utilized either for purchase or for construction of a residential house. It has no application to a case where the assessee invests the sale consideration derived from the transfer either in purchasing the property or constructing the residential house within the period stipulated in s. 54F(1). The proviso to s. 54F puts an embargo on the application of s. 54F to cases which are mentioned in the said proviso. That is to be eligible for the benefit under s. 54F(1) the assessee should not be owning more than one residential house other than the new asset acquired or he should not purchase any residential house other than the new asset within a period of one year after the date of transfer of residential asset or construct any residential house other than the new asset within a period of three years after the date of transfer of the residential asset. In the entire scheme there is no prohibition for the assessee putting up construction out of sale consideration received by such transfer of a site which is owned by him as is clear from the language used. It is open for the assessee to put up a residential construction or to purchase a residential house. It is not the requirement of law that he should purchase a residential site and then put up construction. Therefore, in the instant case admittedly the assessee has purchased a vacant site on 31st March, 2001. He sold the original asset on 27th Aug., 2003 on which date he was already owning a site. In fact even before sale of the original asset he had started construction on such site by availing loan from the bank. In terms of s. 54F(1) all investments made in the construction of the residential house of the said site within a period of one year prior to 27th Aug., 2003

would be eligible for exemption under s. 54F(1). Similarly, all investments in the said construction after 27th Aug., 2003 within a period of three years therefrom is also eligible for exemption. Therefore, the argument that such investment in putting up a residential construction cannot be made on a site owned by him to be eligible for exemption is without any substance. Both the appellate authorities have rightly extended the benefit to the assessee and there is no error committed by them which calls for interference.

5. Re. Question No. 2 :

As is clear from sub-s. (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in s. 54F(1), if the assessee wants the benefit of s. 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words, if he want of claim exemption from payment of income-tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then s. 54F(4) is not at all attracted and therefore, the contention that the assessee has not deposited the amount in the bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct".

We are therefore of the opinion that assessee was eligible for claiming exemption u/s.54F of the Act for the full amount utilized by it for construction of a new residential house within three year period allowed u/s.54F(1) of the Act. However, whether assessee had completed the residential house within the said period and how much

was invested by the assessee within the said period for such residential house, requires verification by the Id. Assessing Officer. We therefore set aside the orders of the authorities below and remit the issue back to the file of the Id. Assessing Officer for the limited purpose of verifying the quantum of investment made by the assessee for construction of the new residential house within the period mentioned in Sec.54F(1) of the Act and allow such deduction, if the construction of the house was completed within a said period.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on Tuesday, the 9th day of January, 2018, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:9th January, 2018.

KV

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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