

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

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

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3354/Chny/2016

निर्धारण वर्ष /Assessment Year : 2012-13

Smt. Waheeda Asif Abbas,
New No.19, 6th Street,
Gopalapuram, Chennai - 600 086.

v. The Income Tax Officer,
Non Corporate Ward 3(5),
Chennai.

PAN : AAQPW 4303 C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से / Respondent by : Shri V. Nandakumar, JCIT

सुनवाई की तारीख/Date of Hearing : 29.11.2018

घोषणा की तारीख/Date of Pronouncement : 03.12.2018

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-4, Chennai, dated 20.10.2016 and pertains to assessment year 2012-13.

2. The first issue arises for consideration is with regard to assessment of capital gain of the minors in the hands of the assessee.

3. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the minor daughters got the property by way of settlement deed from their grandmother, therefore, it is their property. After obtaining permission of the High Court under Guardians And Wards Act, according to the Ld. counsel, the property was sold. While getting permission, the High Court imposed a condition that sale proceeds shall be deposited in the bank account. Accordingly, it was deposited in the bank account. Since the property was of the minors, according to the Ld. counsel, it cannot be assessed in the hands of the assessee. On a query from the Bench whether the deposit in the bank account was made in the Capital Gains Account as specified in the Income-tax Act or mere fixed deposit? The Ld.counsel could not clarify the nature of deposit, therefore, he submitted that the matter may be remitted back to the file of the Assessing Officer to verify the nature of deposit and thereafter decide the issue.

4. Referring to the provisions of Section 64(1A) of the Income-tax Act, 1961 (in short 'the Act'), the Ld.counsel for the assessee submitted that the word "any such income" as appearing in Section 64(1A) of the Act may not include the capital gain arising out of transfer of property which was obtained by the minors from their grandparents.

5. We heard Shri V. Nandakumar, the Ld. Departmental Representative also. It is not in dispute that the property at the time of transfer belonged to the minors and after obtaining permission from competent court of law under Guardians And Wards Act, the same was sold and the sale proceeds were said to be deposited in fixed deposit. It is not known whether such deposits were made in the Capital Gains Account as specified under Section 54F of the Act. The condition imposed by the court is for the purpose of Guardians And Wards Act to safeguard the interest of minors during their minority. Income-tax Act, being a special enactment for the purpose of claiming exemption under Section 54F, the assessee is expected to deposit the sale proceeds in the specified account as required under Section 54F of the Act. Therefore, this Tribunal is of the considered opinion that it needs to be verified whether the assessee has deposited in the Capital Gains Account or not.

6. We have carefully gone through the provisions of Section 64 of the Act. The word "any such income" as appears in Section 64(1A) of the Act includes capital gain arising out of the sale of the property obtained by the minors from their grandparents by way of settlement. Therefore, the Assessing Officer has rightly clubbed the minors' income in the hands of the assessee. Since the nature of bank deposit is not readily available for verification, this Tribunal is of the considered opinion that the matter

needs to be verified by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the matter is remitted back to the file of the Assessing Officer only for a limited purpose of verifying whether the capital gain was deposited in the specified Capital Gains Account as required under Section 54F of the Act. The Assessing Officer shall verify the nature of deposit and thereafter decide the issue whether the assessee is eligible for exemption under Section 54F of the Act or not.

7. The next issue arises for consideration is investment of sale proceeds in the name of the assessee and her husband.

8. The Assessing Officer disallowed the claim of the assessee under Section 54F of the Act on the ground that the assessee's husband was not having any share in the property sold by the assessee. Since the investment was made in the name of the assessee and her husband, the Assessing Officer restricted the investment to the extent 50%. This Tribunal is of the considered opinion that under the common law, assessee and her husband are one and same. Therefore, when the investment was made in the name of the assessee and her husband, it has to be considered that investment was made by the assessee. In a male dominating society, investment made in the name of the husband is also to be considered as investment. While adjudicating the issue arises for consideration, the prevailing customary practice in the society cannot

be ignored by the judicial authorities. Therefore, even though the property sold stands in the name of assessee alone and the investment was admittedly made in the name of assessee and her husband, this Tribunal is of the considered opinion that the object of enactment to promote housing facility in the country is achieved and the assessee's husband cannot be considered as a third party as far as the assessee's investment is concerned. Therefore, this Tribunal is of the considered opinion that the assessee is eligible for exemption under Section 54F of the Act even though the investment was said to be made in the joint name of assessee and her husband. Therefore, we are unable to uphold the orders of the authorities below. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to grant exemption under Section 54F of the Act.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 3rd December, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 3rd December, 2018.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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