

आयकरअपीलीयअधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

डॉ. ओ. के. नारायणन, उपाध्यक्ष एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE Dr. O.K. NARAYANAN, VICE PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ **I.T.A. No.1958/Mds/2013**
(निर्धारण वर्ष / Assessment Year : 2006-2007)

Y. Malarvizhi
Old No.15, New No.78,
Parameswari Nagar Extension
I street, Adayar,
Chennai 600 020.
[PAN :BKVPM 1840E]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs Business Ward IV(2),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri.T.Banusekar, C.A.,
प्रत्यर्थी की ओर से/ Respondent by : Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 10.11.2014.
घोषणा की तारीख /Date of Pronouncement : 10.11.2014.

आदेश / ORDER

PER VIKAS AWASTHY, JUDICIAL MEMBER

The present appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-V, Chennai, dated 02.07.2013 for the assessment year 2006-2007.

2. In appeal, the assessee has impugned the findings of First Appellate Authority in denying the claim of exemption u/s.54/54F of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')

3. The facts as emanating from the records are: The assessee alongwith three co-owners sold a property at Purasaiwalkam High Road, Chennai on 23.01.2006 for a consideration of ₹.40,00,000/- and got 1/4th share ₹.10,00,000/- in sale proceeds. The assessee purchased a plot on 03.01.2007 and allegedly constructed a residential building thereon between October, 2007 and March, 2008. The total amount invested by the assessee in the new asset was ₹.20,52,000/-. The assessee claimed exemption u/s.54 of the Act on her share of Capital gains arising from sale of joint property. During the course of scrutiny assessment, the Assessing Officer observed that the assessee is not eligible to claim exemption u/s.54, as the new asset purchased is a vacant land. Aggrieved by the assessment order dated 26.11.2011, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) upheld the findings of Assessing Officer and dismissed the appeal of the assessee.

4. Shri. T. Banusekar, appearing on behalf of the assessee

submitted that the assessee had sold residential property on 23.01.2006 and invested the sale proceedings in purchase of residential plot on 3.1.2007 and constructed building thereon during the period October, 2007 and March, 2008. The assessee had complied with the provisions laid down u/s. 54/54F and thus is eligible to claim exemption. The learned Authorized Representative further submitted that as per provisions of section 54 of the Act, the time limit for investing the amount in purchase of residential property is one year before or two years after the date of sale of capital asset or the sale proceeds shall be utilized for construction of residential house within a period of three years after the date of transfer of original asset. Further, sections 54(2)/ 54F(4) stipulates a condition that if the amount of Capital gain is not utilized in accordance with the provisions of Section 54(1)/54F(1) before the date of furnishing of return of income u/s. 139, the assessee should deposit the sum before furnishing such return in the specified bank under Capital Gain Accounts Scheme 1988. In the present case, the assessee has utilized entire sale proceeds before the due date of filing return of income u/s. 139(4) relevant to the assessment year 2006-07 i.e. 31.03.2008. The residential building was completed in March, 2008 itself. The learned AR in support of his submissions placed reliance on several decisions of

the co-ordinate bench of the Tribunal and the following decisions rendered by different Hon'ble High Courts to say that the 'due date' for filing return to claim exemption u/s.54/54F is as envisaged u/s. 139(4) of the Act.

- (i) *CIT vs. MS. Jagriti Aggarwal, reported as 339 ITR 610 (P&H).*
- (ii) *Fathima Bai Vs. ITO, reported as 32 DTR (Kar) 243.*
- (iii) *CIT vs. Rajesh Kumar Jalan, reported as 286 ITR 274 (Gauhati)*

5. Shri. A.V. Sreekanth, representing the Department (DR), Vehemently supported the findings of the Commissioner of Income Tax (Appeals) and submitted that the assessee is not eligible for claiming exemption u/s. 54 or 54F of the Act. A perusal of sale deed would show that the property purchased by the assessee is a vacant land and not a residential property. The learned DR further submitted that the assessee has not complied with the condition laid down in Section 54(2)/54F(4) before filing of return u/s.139 of the Act. The learned DR strongly opposed the argument raised by the AR of the assessee and prayed for dismissing the appeal.

6. We have heard the submissions made by the representatives of both sides and have perused the orders of the authorities below, as well as, the decisions relied on by the AR. In appeal, the assessee has raised as many as ten grounds. However, the learned AR of the assessee has confined his submission only with respect to claim of assessee u/s. 54/54F. The authorities below have rejected the claim of the assessee u/s. 54 on the ground that after sale of original asset, the assessee has not invested the sale proceeds in purchase/construction of residential house. The property purchased by the assessee is a vacant land. On the other hand, the stand of the assessee is that the assessee purchased a land and has constructed a residential house thereon by investing the sale proceeds of the original asset. The amount has been invested in construction of new residential asset before the due date of filing of the return as is envisaged u/s 139(4) of the Act i.e. 31.03.2008 relevant to the assessment year 2006-07.

7. The fact that the assessee purchased a vacant plot No.12A &12B, Corporation Old Door No.50/1, New No.78, Parameswari Nagar, First Street Extension, Adyar, Chennai 20, measuring 1216 sq.ft on 03.01.2007 has not been disputed by the Revenue. The case of the assessee is that a residential building was constructed on the said plot

before the 'due date' of filing of return u/s. 139 for the assessment year 2006-07. The Hon'ble Punjab and Haryana High Court in the case of CIT vs. Jagriti Aggarwal (supra) while adjudicating the issue relating to time limit for making deposits under scheme viz a viz purchase of new property for availing exemption u/s.54 has held, that 'due date' for furnishing the return of income u/s. 139(1) of the Act is subject to the extended period provided u/s. 139(4) of the Act. While holding so the Hon'ble High Court considered and concurred with the decision of Hon'ble Karnataka High Court rendered in the case of Fathima Bai Vs. ITO (supra) and the decision of Hon'ble Gauhati High Court in the case of CIT vs. Rajesh Kumar Jalan(supra).

8. So far as the time lime for assessee to invest the amount of Capital gains in purchase /construction of new residential asset or investment in Capital Gains Scheme, u/s.54(2)/54F(4) is concerned, it has been affirmed by the Hon'ble High Courts that the 'due date' refers to extended 'due date' under sub-section (4) of Section 139 of the Act.

9. We have observed from the records that the assessee has not placed on record any document to show that the residential building was raised before the 'due date' of filing return of income u/s.139(4)

of the Act. The file is remitted to the Assessing Officer for limited purpose to verify from records, whether the residential building had come into existence before 31.03.2008. The assessee is directed to produce relevant documentary evidence before the Assessing Officer to show that residential building had come into existence before the aforesaid date. The Assessing Officer after verifying the fact shall grant benefit of exemption u/s. 54/54F, of the Act, accordingly.

10. In result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing on Monday, the 10th of November, 2014 at Chennai.

Sd/-
(डॉ. ओ. के. नारायणन)
(DR. O.K. NARAYANAN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(विकासअवस्थी)
(VIKAS AWASTHY)
न्यायिकसदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:10.11.2014.

K.V

आदेशकीप्रतिलिपिअग्रेषित/Copy to: 1. अपीलार्थी/Appellant
2.प्रत्यर्थी/Respondent3. आयकरआयुक्त (अपील)/CIT(A)4.
आयकरआयुक्त/CIT5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF.

