

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

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकरअपीलसं./**ITA No.: 405/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2012-13,

**The Asst. Commissioner of  
Income Tax,**  
Non-Corporate Circle-15,  
Chennai.

**Justice N. Kannadasan,**  
vs. 39/4, Gangai Street,  
Kalashetra Colony,  
Besant Nagar,  
Chennai – 600 090.

**PAN: AAQPK 8571Q**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं./**ITA Nos.: 1941 & 1942/CHNY/2018**

निर्धारण वर्ष/Assessment Years: 2013-14 & 2014-15

**Justice N. Kannadasan,**  
39/4, Gangai Street,  
Kalashetra Colony,  
Besant Nagar,  
Chennai – 600 090.

**The Income Tax Officer  
/Asst. Commissioner of  
Income Tax,**  
vs. Non-Corporate Ward -15(3) /  
Non-Corporate Circle-15(1),  
Chennai.

**PAN: AAQPK 8571Q**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्वकीओरसे /Revenue by  
निर्धारितकी ओर से/Assessee by

: Shri P. Sajit Kumar, JCIT  
: Shri S. Sridhar, Advocate &  
Shri N. Arjun Raj, CA

सुनवाई की तारीख/Date of Hearing : 16.02.2023

घोषणा की तारीख/Date of Pronouncement : 17.02.2023

**आदेश / O R D E R****PER MAHAVIR SINGH, VICE PRESIDENT:**

These three appeals, one by Revenue and two by assessee, are arising out of different orders of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.183/2015-16/CIT(A)-15, 618/2016-17/CIT(A)-15 & 511/2015-16/CIT(A)-15 dated 27.11.2017, 28.02.2018 & 28.02.2018 respectively. The assessments were framed by the ITO, Non-Corporate Ward 15(2) / 15(3), Chennai, vide orders dated 30.03.2015 & 31.03.2016 for the assessment years 2012-13 & 2013-14 both u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') and by the ACIT, Non-Corporate Ward 15(1), Chennai for the assessment year 2014-15 u/s.144 of the Act vide order dated 22.12.2016.

**Revenue's appeal in ITA No.405/CHNY/2018**

2. The only issue in this appeal of Revenue is against the order of CIT(A) directing the AO to verify and allow the claim of deduction u/s.54F of the Act, whereas the CIT(A) has no power to set aside or examine the issue afresh as per the provisions of section 251(1)(a) of the Act. For this, Revenue has raised the following Ground No.2:-

2) The Ld CIT(A) erred in directing the AO to verify the details with supporting documents and to allow deduction u/s 54F.

2.1)The CIT(A) ought to have appreciated that as per section 251(1) (a) of the Act, has been omitted with the "power to set aside" or "examining the issue afresh" effect from 01.06.2001 as per Finance Act 2001.

2.2)The Ld CIT(A) failed to note that there was no pucca sale deed conveying the house property in favour of the assessee.

2.3 )The Ld CIT(A) failed to note that the contrary clause 4 of the said agreement dated 10/12/2011 allows 5 years from date of agreement to execute the sale deed. The assessee is not able to produce any sale deed by which the assessee's wife transferred her residential house property in favour of the assessee till this date, though more than 3 years have lapsed.

2.4)The Ld CIT(A) failed to that as per requirement off section 54F the assessee should have purchased a new residential property within the period of 2 years from the date of sale. Since the assessee has not purchased a new residential property within the period of 2 years the assessee has not satisfied the primary condition laid down under section 54F.

2.5)The Ld CIT(A) failed to note that, the date of transfer of the property was on 25/06/2011, On the said date, the assessee is owner of flat at Bangalore acquired in March 2011 and another property which was agreed to be sold through agreement dated 1st February 2012 only. On the date of transfer of the property, the assessee is owning two residential house properties.

2.6)The Ld CIT(A) failed to note that, one of the conditions for allowing deduction u/s 54F is that the assessee should not own more than one residential house on the date of transfer for claiming the exemption under the said condition. In the assessee's case, the assessee was owning more than one residential house and therefore he is not entitled to any exemption under section 54F.

3. Briefly stated facts are that the assessee filed his return of income for the relevant assessment year 2012-13 on 20.11.2013 and claimed exemption u/s.54F of the Act, for an amount of Rs.2,91,39,659/-. The AO during the course of assessment proceedings noticed that the assessee has acquired land i.e., ACC Shed situated at Plot No.7 (SP), Ambattur Industrial Estate, MTH Road, Ambattur, Chennai -58 ad-measuring 29,031 Sq.ft., from his spouse Smt. S.K.Geetha by way of settlement deed dated 06.04.2011. The AO noted that the assessee has sold part of vacant land ad-measuring 19,988 Sq.ft., acquired at Ambattur Industrial Estate for a total consideration of Rs.4 crores on 25.06.2011. The assessee computed capital gain at Rs.3,37,85,112/- and claimed exemption u/s.54F of the Act for an amount of Rs.2,91,39,659/- being investment made in purchase of new residential house at Kalashetra Colony, Chennai by purchasing residential house from his spouse for a total consideration of Rs.3.45 crores by way of agreement for sale dated 10.12.2011. The AO going through the AIR details noted that the assessee has also purchased land ad-measuring 27,542 sq.ft., from Ambattur Clothing Limited on 30.06.2011 jointly with Shri A. Krishnamurthy for a total

consideration of Rs.2,93,10,000/-. In this, the assessee's share was to the extent of Rs.1,59,73,950/-.

3.1 The AO required the assessee to explain the source and investment and assessee explained that he has sold property measuring 18,988 sq.ft., at Plot No.7/10B, Ambattur Industrial Estate, MTH Road, Ambattur, Chennai – 58 for a total consideration of Rs.4 crores. Out of settlement of 2011 with his wife Smt. S.K. Geetha, the assessee has purchased a house property at 39/41, Kalashetra Colony, Besant Nagar, Chennai-90 for a total consideration of Rs.3.45 crores by entering into agreement of sale dated 10.12.2011. The consideration for the purchase of property at Besant Nagar was paid out of the property measuring 1254 sq.ft. at Padikuppam Road, Ambattur Taluk for a sum of Rs.1.10 crores purchased by the assessee and flat at Bangalore for a consideration of Rs.15 lakhs, totaling to Rs.1.25 crores. The above consideration was paid out of agreement of sale entered with Smt.S.K. Geetha by way of agreement of sale dated 01.02.2012. Rs.50 lakhs was directly credited to his wife's account out of sale proceeds at Plot No.7/10B, Ambattur Industrial Estates, MTH Road, Chennai – 58, Rs.26 lakhs was paid from IOB account No.1990, Rs.1,55,50,310/-

was paid for the purchase of property measuring half share of building 3200 sq.ft. and the undivided share of the land measuring 7835 sq.ft. from M/s. Ambattur Clothing Ltd., at No.3/86-E, Ambattur Industrial Estate by wife. The separate agreement of sale was entered into between the assessee and his wife for transfer of the properties. The assessee further explained that he has purchased property bearing No.39/41, Gangai Street, Kalashetra Colony, Besant Nagar, Chennai from his wife Smt. S.K. Geetha for a total consideration of Rs.3.45 crores and taken possession of the said property on 10.12.2011.

3.2 The AO examined the claim of assessee in regard to claim of exemption u/s.54F of the Act and held that the assessee is not entitled for the claim of exemption due to the following reasons:-

- (a) The AO denied the claim of exemption on the reason that the alleged purchase of residential house by assessee from his wife Smt. S.K. Geetha at Besant Nagar for a total consideration of Rs.3.45 crore, the assessee could not produce the sale deed even though more than 3 years have elapsed. The AO noted that although date of agreement

dated 10.12.2011 was entered but there is no pacca sale deed having the house property in favour of the assessee even after five years from date of agreement. According to him, the assessee has not purchased any residential property within a period of two years, the exemption claim u/54F of the Act amounting to Rs.2,91,39,659/- is not admissible. He also noted that the assessee has already purchased a flat at Bangalore vide sale deed dated 31.03.2011 for a consideration of Rs.15 lakhs.

(b) The another reason given by the AO is that the above agreement is unregistered document and hence, the assessee cannot claim exemption u/s.54F of the Act.

(c) Another reason given by AO is that on the date of transfer of property on 25.06.2011, the assessee owned flat at Bangalore which was acquired in March, 2011 and another property which was agreed to be sold through agreement dated 01.02.2012 only. According to AO, on the date of transfer of property, the assessee owns two residential house property. Hence, the assessee is not eligible for claim of

exemption u/s.54F of the Act. Therefore, the AO disallowed the claim of exemption u/s.54F of the Act.

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after considering the facts in entirety allowed the claim of exemption u/s.54F of the Act by considering that the property was sold when possession was handed over on receipt of full consideration. As regards to AO's observation that the assessee has two houses, the AO has not considered that as on that date another property was landed property only. Therefore, the CIT(A) allowed the claim of deduction u/s.54F of the Act but subject to verification of documents by the AO factually. The CIT(A) finally decided the issue in para 4.3.3 & 4.4.4 as under:-

4.3.3, I have considered both the points of view. Respectfully following the decisions relied on by the appellant, I am of the considered opinion that the receipt of full property was sold when its possession was handed over on consideration. Therefore, I do not agree with the AO that there was no sale of the property on the date of signing of agreement. Now, coming to the AO's observation that the appellant had two houses, the appellant has categorically denied the same by describing the complete set of facts which the AO has not considered during the assessment proceedings. The appellant has further objected that natural justice was not rendered by the AO before denying the appellant's claim of deduction u/s 54F.

4.3.4. After considering the appellant's elaborate submission, I am of the considered opinion that the appellant's claim of deduction u/s 54F is prima facie acceptable. However, since the AO has not examined the relevant particulars narrated by the appellant in his submission mentioned above



under para 4.2, the AO is directed to examine the same with supporting documents allow the deduction u/s 54F, if the appellant's submission is factually correct.

Aggrieved, now Revenue came in appeal before the Tribunal.

5. Before us, the Id. Senior DR Shri P. Sajit Kumar argued that the property purchased by assessee for a consideration of Rs.3.45 crores from his wife was never registered as sale deed and even after expiry of more than three years the property was in the name of his wife because no pacca sale deed has been registered. He argued that the assessee was having already one property as on the date i.e., 22.12.2011, sale deed executed in relation to purchase of property situated at Padikuppam vide Doc.No.5619/2011. The Id. Senior DR stated that once the assessee is already having one property and purchasing another property on 22.12.2011 i.e., property at Padikuppam is clearly hit by the provisions of section 54F, proviso (a)(ii) of the Act, which reads as under:-

54F (1)

(a)

(i) 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

According to him this property is purchased i.e., any other residential house, other than the new asset, within a period of one

year after the date of transfer of original asset, the assessee is not eligible for claim of exemption under this provision of section 54F of the Act.

5.1 He further submitted that as evident from copies of the deeds enclosed by the counsel for the assessee, the assessee has entered into a purchase cum construction agreement for a residential flat on 22-12-2011 in a project undertaken by M/s Pace Builders (M) Pvt. Ltd. The total consideration of Rs.80,00,000/- (eighty lakhs) involved in the agreement comprised of Rs.6,68,200/- towards the cost of undivided share of land and Rs.73,31,800/- towards the cost of flat. Though it was a complete flat purchase agreement, the assessee gave colour to it as though it was purchase of a land and thereafter entering into a construction agreement. To provide a legal cover and with an intent to avoid payment of stamp duty on the cost of flat, the assessee opted to register only the portion of the un-divided share of land on 22-12-2011. This is verifiable at page-7 of the submission. He further stated that the CIT(A) failed to take into cognizance this substance over form and also over looked the specific legal restrictions placed by sub clause (ii) of clause (a) of the proviso to section 54F when such admittance are accepted.

Further, as held by various judiciaries, as far as investment in a new residential unit, as envisaged under section 54 and 54F, it is the date on which such investment and not the date of taking possession is the criteria, is squarely applicable in this case. Even if such an agreement, specifically entered to take the double benefit of evasion of state stamp duty on purchase of flat as well as avail the tax benefit under the Income Tax Act. Are to be considered as legally accepted norm and cannot be considered as deemed investment in a new property, the clause 3 of the agreement mentions the 24 month time lines by which the flat would be handed over. This 24 month timeline again clearly attracts another restrictive clause (iii) of clause (a) of the proviso to section 54F which prohibits an assessee's availing the tax benefit u/s 54F if any construction of another residential property is carried out within three years from the date of transfer of the new residential unit on which section 54F benefit has been availed. Either way, the assessee is not entitled to the claim of benefit us 54F as, it has violated the restrictive clauses (ii) & (ii) of clause (a) of the proviso to section 54F. CIT(A) ought to have applied the consequential law while accepting such arguments of the assessee while giving a relief, especially when an assessee is availing tax benefit relief since

they are to be provided only to those who are truly eligible and ready to meet the additional conditions to avail such benefit/relief.

6. On the other hand, the Id.counsel for the assessee took us through the sale deed executed by assessee on 22.12.2011, which is enclosed in assessee's paper-book at page 11 that this property is landed property only and to prove this, the Id.counsel took us through page 17 of assessee's paper-book wherein the sale deed is enclosed and the relevant description of property is land and out of the total land, assessee has purchased 404.91 sq.ft., out of undivided share, which is schedule 'D' property. The Id.counsel read out the following:-

“WHEREAS the VENDORS are the absolute owner of the land bearing Ward-1, Block No.65, Padikuppam Main Road, Padikuppam, the land comprised New T.S.no.113/3 (part), 113/4 (part) & 113/5 (part), total measuring an extent of 255.7655 Cents are 1,11,411.45 sq.ft at Padi Village, Ambattur Taluk, Thiruvallur District, more detailed in the Schedule “D” hereunder

WHEREAS the VENDORS desirous to sell an extent of 404.91 Sq.ft. of Undivided Share out of 255.7655 Cents in the Schedule “D” property and more fully described in the Schedule “E” hereunder to and in favour of the PURCHASER herein for a sum of Rs.6,68,200/- (Rupees Six Lacs Sixty Eight Thousand Two Hundred Only) free from all encumbrances.

The Id.counsel further took us through the sale cum construction agreement which is enclosed at assessee's paper-book and assessee

has paid a sum of Rs.80 lakhs as consideration for construction of house and stated that the house has not yet started construction and assessee's land is actually land at Padikuppam, the provisions of section 54F(1) proviso (a)(ii) of the Act will not apply because it applies only to residential house. The Id.counsel for the assessee then drew our attention to entire events and dates, which are as under:-

Date	Particulars
10.12.2011	Sale agreement entered into by the Appellant with the Appellant's wife towards purchase of a residential property situated at Kalakshetra Colony, Chennai (New Asset) for a total consideration of Rs.3,45,00,000/-
22.12.2011	Sale deed executed by the Appellant in relation to purchase of the property situated at Padikuppam vide Doc No.5619/2011
22.12.2011	Sale cum Construction Agreement in relation to purchase of the property situated at Padikuppam
31.03.2015	Assessment order passed in the case of Smt. Geetha (Appellant's wife) for the AY 2012-13
27.11.2017	CIT(Appeals) order passed in the case of Smt. Geetha (Appellant's wife) for the AY 2012-13
06.09.2019	ITAT order passed in the case of Smt. S.K. Geetha (Appellant's wife) for the AY 2012-13

The Id.counsel stated that the assessee has already occupied by taking possession of the property purchased i.e., Kalashetra Colony, Chennai property from his wife at a sale consideration of Rs.3.45 crores as against sale of land on 25.06.2011 at Ambattur

for a total consideration of Rs.4 crores and invested the long term capital gain of Rs.2,91,39,659/- and claimed exemption. Admittedly, it is a fact that the above property purchased by assessee on 22.12.2011 at Padikuppam is land only and not a house and hence, the same is not hit by the provisions of section 54F(1) proviso (a)(ii) of the Act.

6.1 Secondly, the assessee entered into sale agreement with his wife towards purchase of this residential property situated at Kalashetra Colony, Chennai on 10.12.2011 and assessee has fulfilled all the conditions of section 53A of Transfer of Property Act although the sale deed is not registered but the transaction is completed. Even the Id.counsel took us through the assessment order passed in the case of Smt. S.K. Geetha for assessment year 2012-13, wherein the capital gain declared is accepted as it is. The Id.counsel took us through the assessment and argued that the Revenue has accepted the sale of house property situated at 39/41, Gangai Street, Kalashetra Colony, Besant Nagar, Chennai for a consideration of Rs.3.45 crores to her husband by way of agreement for sale dated 10.12.2011. He argued that once this is a position, the AO cannot deny the claim of deduction. The CIT(A)

has allowed exemption u/s.54F by noting that the exemption is not hit because the assessee has actually purchased undivided share of land on 22.12.2011. We are of the view that the findings of CIT(A) is within the parameters of law and facts of the case. Hence, we find no infirmity in the findings of CIT(A) allowing the claim of exemption.

6.2 As regards to another objection of Revenue that under the provisions of section 251(1)(a) of the Act, the CIT(A) has no power to set aside or sending the issue back for examining the issue afresh. We agree with the contention of the Revenue but by going through the decision of CIT(A), we noted that the CIT(A) has only directed the AO to examine this supporting documents but he has actually allowed the claim of deduction u/s.54F of the Act on principle. According to us, this is not setting aside of the issue or remanding the matter back to the file of the AO for fresh consideration, simpliciter verification is not barred u/s.251(1)(a) of the Act. Hence, we find no infirmity in the order of CIT(A) and the same is confirmed. **The appeal of Revenue is dismissed.**

**Assessee's Appeal in ITA No.1941/CHNY/2018**

7. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO disallowing trading loss on sale of shares at Rs.19.45 lakhs. For this assessee has raised various grounds, which need not to be reproduced.

7.1 We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee invested in purchase / trading of shares by way of futures and options in the name of his daughter and suffered loss of Rs.19.45 lakhs and claimed the same in the return of income. The AO and CIT(A) both disallowed the claim only on the reason that the assessee could not furnish the details. The AO observed in the following lines "*The A.R. was asked about the transactions and proof for such loss with DMAT account of the assessee. The A.R. has not produced any evidences in support of the trading activities. The primary onus to prove the sources in respect of trade transaction squarely lies on the assessee. In spite of adequate opportunities were provided to the assessee, it is evident that the assessee has failed to discharge his primary onus of proving genuineness and source of the transaction.*"

The CIT(A) confirmed the action of the AO by observing as under:-



“But the point for consideration is not the source of transaction alone but the quantification of the loss from the activity of trading in futures and options which requires to be proved with reference to demat account maintained for this purpose. In spite of adequate opportunities given by the CIT(A), the appellant could not submit any evidences in support of purported trading activity.”

7.2 Now before us, the Id.counsel for the assessee only requested one more opportunity as he has already submitted the details before CIT(A) and even before AO i.e., bank transactions but could not submit the Demat Account. The Id.counsel drew our attention to the submissions made before CIT(A) which is reproduced in para 4.2, which reads as under:-

“The appellant had invested huge amount for trading in shares by way of futures and options in the name of his daughter and claimed a loss of Rs.19,45,000/-. The appellant has transferred the funds to his daughter’s bank account SB A/c No.83920 (PNB Adyar), who was just a student and does not have any source of income. The appellant furnished details pertaining to the bank transactions which were not considered by the AO. In spite of the above explanation, the AO disallowed the above loss on the ground that the appellant had failed to discharge the genuineness and source of the transaction, which is not correct.”

7.3 When these were confronted to Id. Senior DR, he objected vehemently for setting aside this issue to the file of the AO.

8. After hearing rival contentions and going through the facts of the case, we are of the view, let the assessee be given one more

chance to produce Demat account and the details of banking transactions to prove that the assessee has actually suffered loss of Rs.19.45 lakhs. The assessee will also file details by quantifying the loss and will prove with reference to Demat account maintained for this purpose. In term of the above, the issue is remanded back to the file of the AO. **The appeal of the assessee is allowed for statistical purposes.**

### **Assessee's Appeal in ITA No.1942/CHNY/2018**

9. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of Rs.5 lakhs u/s.69 of the Act was received from Shri K. Kesavan. For this, assessee has raised various grounds, which need not to be reproduced.

9.1 We have heard rival contentions and gone through facts and circumstance of the case. We noted that the assessee could not submit the relevant supporting documents with regard to amount received from Shri K. Kesavan amounting to Rs.5 lakhs. Even the order of CIT(A) is non-speaking and how he reached to the conclusion that the AO has given sufficient opportunities. Even from

the assessment order, we could not make out how this amount was disallowed and added u/s.69 of the Act because the individual entry was not discussed by the AO. Hence, keeping in view of facts in mind, we remand this issue back to the file of the AO. Needless to say, assessee will file all the details to prove his case. **In term of the above, the appeal of the assessee is allowed for statistical purposes.**

10. In the result, the appeal filed by the Revenue in ITA No.405/CHNY/2018 is dismissed and the appeals filed by assessee in ITA Nos.1941 & 1942/CHNY/2018 are allowed for statistical purposes.

Order pronounced in the open court on 17<sup>th</sup> February, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 17<sup>th</sup> February, 2023

**RSR**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. निर्धारिती/Assessee

2. राजस्व/Revenue

3. आयकरआयुक्त (अपील)/CIT(A)

4. आयकरआयुक्त /CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.