

आयकर अपीलीय अधिकरण, A/“SMC” न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
A /“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य , के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1664/Mds./2016

(निर्धारण वर्ष /Assessment Year :2005-06)

Smt.Sushila Gulecha,  
No.402,Mint Street,  
Chennai 600 079.

The ITO,  
**Vs.** Ward VIII(3),  
Chennai-6.

**PAN AARPS 1707 R**

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Mr.D.Anand,Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr.A.V.Sreekanth,JCIT, D.R

सुनवाई की तारीख/ Date of hearing

: 07.12.2016

घोषणा की तारीख /Date of Pronouncement

: 22.12.2016

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal is filed by the Assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-5, Chennai dated 28.03.2016 pertaining to assessment year 2005-06.

2. There was a delay of 07 days in filing this appeal by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Id. Representative and the Id. DR. The Id.A.R explained that the delay was due to mixing of the documents in the office of Chartered Accountant and the delay in filing the appeal is neither willful nor wanton and only due to inadvertence. We find that there was sufficient cause for not filing the appeal within the stipulated time. Therefore, we condone the delay of 7 days in filing the appeal and admit the appeal.

3. The first ground in this appeal is with regard to challenging the reopening of assessment. At the time of hearing, the Id.A.R did not press this ground. Accordingly, this ground is dismissed as not pressed.

4. The facts of the case are that the assessee had invested the sale proceeds of the shares amounting to Rs.61.15 lacs in the A.Y.2004-05 (LTCG) for purchasing land and old building at Orms Road valued at Rs.62.64 lacs. The house was in a dilapidated state

and was not in a habitable condition. At the time of purchasing the aforesaid property, the appellant had only one residential property at Mint Street. The assessee claimed benefit under section 54F during the A.Y.2005-06 on sale of shares and investment in residential house during the A.Y.2005-06. The said claim made by the assessee was disallowed by the assessing officer by observing that the assessee had not acquired any new residential property and that the assessee already owns 2 house property one at Ormes road and the other at Mint Street. Aggrieved with the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A).

4.1 On appeal, Ld.CIT(A) had sought details regarding the date of purchase and sale of shares vide his letter dated 8.03.2016. The assessee had requested for time to furnish the aforesaid vide his letter dated 21.03.2016. The Ld.CIT(A) declined to grant time to the appellant and dismissed the appeal by observing that the assessee claimed exemption under section 54F. The assessee had to prove that he did not own more than one residential house, other than the new asset, on the date of transfer of original asset (Shares). According to Ld.CIT(A), the assessee has to establish that the

original assets were transferred after the demolition of the building at Ormes road. However, in spite of giving sufficient opportunity the appellant failed to prove that he did not own more than one residential property, other than the new asset, on the date of transfer of the original asset (shares). Hence, the Ld.CIT(A) confirmed the order of Id. Assessing Officer. Against this assessee is in appeal before us.

5. Before us, Id.A.R submitted that the undisputed fact is that the demolition order of Corporation of Chennai is dated 2.03.2005. As per proviso to sub clause (a)(i) of section 54F(1), section 54F shall not apply if the assessee owns more than one residential house , other than the new asset, on the date of transfer of original asset. Thus it is requires to be seen whether the original asset (shares) were sold prior to 2.03.2005 or subsequent to 2.03.2005 to ensure whether the appellant could be entitled for benefit under section 54F. The Id.A.R prayed that the issue may be remitted back to the file of the assessing officer or to CIT(A) to verify the date of sale of shares and thereafter to give consequent relief to the assessee , if the assessee is so entitled.

6. On the other hand, Id.D.R supported the order of lower authorities and argued that the assessee has not provide that he is owing not more than one residential house before the lower authorities other than the new asset, on the date of transfer of residential asset. Since the assessee has to establish that the original asset has been transferred after the demolition of the building situated at Ormes road i.e. after 02.03.2005. As such the Revenue authorities denied the claim of assessee.

7. We have heard both the parties and perused the material on record. The assessee sold the shares in the assessment year under consideration and claimed deduction u/s.54F of the Act. It is an admitted fact that at the time of sale, assessee owning two residential properties, one is at Mint Street and another at Ormes road. The claim of assessee is that the residential property Ormes road was demolished vide order from Corporation of Chennai dated 02.03.2005. As such the assessee is entitled for deduction u/s.54F of the Act. However, the assessee not denied the fact that the assessee is owning one more residential house at Mint Street. As per Sec.54F, the assessee owns more than one residential house other than the

new asset, on the date of transfer of original asset, the assessee does not entitle for deduction u/s.54F of the Act. Being so, the assessee had not fulfilled with the condition laid down in proviso (a)(i) in Sec.54F of the Act. Accordingly, denial of exemption u/s.54F of the Act by the lower authorities is justified.

8. In the result, the appeal of assessee is dismissed.

Order pronounced on 22<sup>nd</sup> December, 2016 at Chennai.

Sd/-  
(चंद्र पूजारी)  
(CHANDRA POOJARI)  
लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,  
Dated the 22<sup>nd</sup> December, 2016.

K s sundaram.

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        |