

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.860/CHNY/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri A.M. Subramanian, Old No.2/12 (New No.2/9/12), Pillayar Street, Pullkattai Post, Periyar Taluk, Madurai – 625 703.	Vs	The Deputy Commissioner of Income Tax, Non Corporate Circle – 3, Madurai.
PAN: AHKPS3012K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकर अपील सं./I.T.A.No.1196/CHNY/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

The Asst. Commissioner of Income Tax, Non Corporate Circle – 3, Madurai.	Vs	Shri A.M. Subramanian, Old No.2/12 (New No.2/9/12), Pillayar Street, Pullkattai Post, Periyar Taluk, Madurai – 625 703.
		PAN: AHKPS3012K
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri B. Ramakrishnan, FCA
राजस्व की ओर से /Revenue by	:	Shri S. Mohd. Mustafa, JCIT

सुनवाईकीतारीख/Date of hearing	:	31.01.2018
घोषणाकीतारीख /Date of Pronouncement	:	05.03.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

Both the Assessee and the Revenue has filed an appeal against the order of the Ld. Commissioner of Income Tax

(Appeals)-3, Madurai dated 20.02.2017 in ITA No.0043/2016-17 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. Assessee's Appeal:

The assessee has raised two grounds in his appeal however the crux of the issue is that the Ld.CIT(A) has erred in restricting the claim of deduction U/s.54F of the Act from Rs.3,38,76,455/- to Rs.2,10,76,603/- by excluding the portion of the residential building which was used for business purpose.

3. Revenue's Appeal:

The Revenue has raised several grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in granting exemption U/s.54F of the Act.

4. The brief facts of the case are that the assessee is an individual earning income from business as partner in M/s. Saravana Cloth Store and also engaged in share trading business, filed his return of income for the assessment year 2013-14 on 31.03.2015 electronically admitting total income of Rs.43,05,990/-. Initially the return was processed U/s.143(1) of

the Act and subsequently the case was selected for scrutiny under CASS. Finally assessment order was passed U/s.143(3) of the Act on 31.03.2016 wherein the Ld.AO computed the Long Term Capital Gain of the assessee at Rs.2,29,14,340/- by granting deduction U/s.54F of the Act to the extent of the value of the building used for residential purpose and by excluding the value of the building used for commercial purpose which works out to Rs.82,75,000/-.

4. On appeal, the Ld.CIT(A) further analyzing the issue observed that the assessee had utilized the third floor of the building extending to 3310 sq.ft., and 40% of the basement which works out to 1584 sq.ft., for residential purpose and the balance area was used for commercial purposes out of the total extent of 15,490 sq.ft. Thereafter the Ld.CIT(A) proportionately arrived at the value of the property constructed and used for residential purpose at Rs.2,10,77,603/- and arrived at the long term capital gain of Rs.1,27,98,862/- as against Rs.27,38,089/- admitted by the assessee and Rs.2,29,14,340/- worked out by the Ld.AO. Thus the Ld.CIT(A) granted deduction of Rs. 2,10,77,603/- U/s. 54F of the Act to the assessee.

6. Before us the Ld.AR submitted that the assessee had constructed the entire building for residential purpose and therefore benefit U/s.54F of the Act has to be granted on the entire value of the building constructed. He further relied in the decision of various judicial authorities cited herein below:-

- (1) *Mahavir Prasad Gupta V. JCIT in [2006] 5 SOT 353 (Delhi) – Delhi Tribunal*
- (2) *Amit Gupta V. DCIT in [2006] 6 SOT 403 (Delhi)*
- (3) *Shyamala Tandon V. Income Tax Officer in [2014] 43 taxmann.com 155 (Hyderabad – Trib.)*
- (4) *K. Pratibha V. ITO in [2014] 45 taxmann.com 282 (Hyderabad – Trib.)*
- (5) *N. Revathi V. ITO in [2014] 45 taxmann.com 30 (Hyderabad – Trib.)*

He therefore pleaded that the addition made by the Ld.AO by denying the benefit of deduction U/s. 54F of the Act may be deleted. The Ld.DR on the other hand vehemently argued in support of the order of the Ld.AO and prayed for sustaining the same.

7. We have heard the rival submissions and carefully perused the materials on record. On the plain reading of the provisions of Section 54F of the Act, we do not find any bar on the assessee as how he has to put to use the new residential property constructed / purchased by him for claiming the benefit of deduction U/s.54F of the Act. Section 54F of the Act only stipulates that the assessee should have constructed / purchased a residential house within

the stipulated time in order to claim the benefit of deduction. This proposition is fortified by the decision of various Judicial forum enumerated herein below. The Delhi Bench of the Tribunal in the case Mahavir Prasad Gupta Vs. JCIT reported in 101 TTJ 1078 has held that the use of the property is not a relevant criteria to consider the eligibility for claiming benefit U/s.54F of the Act. The only criterion is whether the assessee has constructed / purchased a residential house with in the stipulated period mentioned in the Act. Similarly in the case Amit Gupta Vs. DCIT reported in 6 SOT 403 on the identical situation, the Delhi Bench of the Tribunal has held as follows:-

“The requirement of section 54F is that the property should be a residential house. The expression ‘residential house’ has not been defined in the Act. The popular meaning of the word is a place or building used for habitation of people. It is used in contradistinction to a place which is used for the purpose of business, office, shop, etc. It is not necessary that a person should reside in the house to call it a residential house. If it is capable of being used for the purpose of residence, then the requirement of Section 54F is satisfied. The fact that the assessee did not actually use the same for his residence would not disentitle him to the claim of exemption under section 54F.”

Similar view was expressed in the decision of the Hyderabad Bench of the Tribunal in the case Shyamlal Tandon Vs. ITO reported in 62 SOT 105.

10. Following the ratio laid down by the various Judicial Authorities cited herein above and the provisions of Section 54F of the Act, we hereby direct the Ld.AO to grant the benefit of deduction U/s. 54 of the Act to the assessee for the entire value of the building constructed without looking into as to how the Residential property was utilized by the assessee.

11. Since we have allowed the appeal of the assessee in favour of the assessee the ground raised in the Revenue's appeal will not survive, and accordingly held against the Revenue.

10. In the result the assessee's appeal is allowed and the Revenue's appeal is dismissed.

Order pronounced on the 05th March, 2018 at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 05th March, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व /Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |