

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH : CHENNAI

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

एवं श्री एस जयरामन, लेखा सदस्य

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER &  
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER**

**ITA No.2777/Chny/2019**

**AND**

**C.O. No.106/Chny/2019**

**Assessment year : 2016-17**

The Income Tax Officer,  
O/o Corporate Ward – 2(2),  
Room No.514, 5<sup>th</sup> floor,  
Wanaparthi Block,121,M G Road,  
Chennai.

**Vs. Smt. Rekha Shetty,**  
No. 359, North Main Road,  
Anna Nagar West,  
Chennai 600 101.

**[ PAN AAHPR 3883 R ]**

**(Appellant)**

**(Respondent/  
Cross Objector)**

Revenue by : Ms. Vijaya Prabha, Addl. CIT, D.R

Assessee by : Mr. G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing : 07-07-2020

घोषणा की तारीख /Date of Pronouncement : 20-07-2020

**आदेश / ORDER**

**PER S.JAYARAMAN, ACCOUNTANT MEMBER**

The Revenue filed this appeal against the order of  
Commissioner of Income Tax (Appeals)-6, Chennai in ITA No.32/CIT

(A)-6/2018-19 dated 19.06.2019 for assessment year 2016-17. The assessee has filed a cross-objection in support of the same order of the CIT(Appeals). Hence, we heard both the appeal and the cross-objection together through Virtual Court and disposing them by this common order.

2. The facts in brief are , Smt.S.Rekha Shetty, the assessee, an individual and a senior citizen, received her share from the sale of an immovable property ,sold on 19.10.2015. In her return of income filed for assessment year 2016-17, she claimed deduction, inter alia, at ₹.4,33,00,000/- under section 54, being the amount utilized towards a new house purchased on 26.08.2016. During the assessment proceedings, the A.O. found that the due date for filing the return under Section 139(1) was on 05.08.2016, but , the assessee had deposited the amount in Capital Gains Accounts Scheme (CGAS) on 18.08.2016 only and finally utilized it in purchasing the new house on 26.08.2016. Since the amount was not deposited in CGAS within the due date of filing of return under Section 139(1) of the Act, the Assessing Officer did not allow the assessee's claim of deduction. Aggrieved against that order, the assessee filed an appeal before the CIT(A). During the appellate proceedings before the learned CIT(A), the assessee explained , inter alia, that she had negotiated with the owner of the new property, M/s. Securities Analysis (India) P Ltd,

during June, 2016 and the Directors of the company and their authorized signatory were stationed/residing in Mumbai Only. The owners had assured her that they will come to Chennai and register the property soon, i.e. immediately after the negotiations in June, 2016. But, the owners took considerable time and thus there was a delay on the owner's part to come to Chennai and register the property. When it was getting delayed too long, she decided to deposit the amount in CGAS and accordingly, did it on 18.08.2016. A week later, ie on 26.08.2016, the owner visited Chennai and registered the property in the name of assessee. Therefore, the assessee pleaded that the delay of 12 days in depositing the amount in CGAS is not intentional and she has not exploited the sale consideration received from the old property for any other purposes during the period 05.08.2016 to 18.08.2016, the deduction under Section 54/54F etc., being beneficial provisions, therefore, the exemptions available under the section should not be denied for the procedural lapses, if any, etc. The learned CIT (A), after examining the relevant facts, viz,

- i) The due date to file the return u/s 139(1) : 05.08.2016
- ii) The due date to file the return u/s 139(4) : 31.03.2018
- iii) Date of filing the return : 20.06.2016
- iv) Date of purchase of new property(Registered) : 26.08.2016
- v) Date of depositing in CGAS : 18.08.2016

and after considering various case laws, viz

- a) CIT Vs. Rajesh Kumar Jalan of Guwahati High Court (2006) 286 ITR 274
- b) Fathima Bai Vs. ITO (I.T.A. No. 435 of 2004 of Karnataka High Court date 17.10.2008)
- c) CIT Vs. Jagtar Singh chawla (2013) 33 taxmann.com 38(P&H)
- d) ITO Vs. Nilima Abhijit Tannu (2019) 106 taxmann.com 256(Mumbai Tribunal)

and the assessee's submissions etc. held, inter alia, that the provisions of section 54 (2) of the Act are pari -materia with section 54F of the Act. Therefore, if the assessee utilizes the amount in purchasing (or constructing) the new residential house before the due date of filing the return under Section 139 of the Act, (which includes the due date mentioned at sub-section(4)), then , the assessee becomes eligible for the deduction under Section 54 /54F of the Act, irrespective of the fact whether the assessee deposited the amount in the specified schemes before investing it in the new house or not. Since in this case, the assessee has purchased the new property on 26.08.2016 itself, which is well before the due date of filing the return under Section 139(4), the utilization of the amount in purchasing a new residential property is within the time limits permitted in the provisions of section 54(2) of the Act and accordingly, the assessee

becomes eligible for the deduction under Section 54 . Therefore, the learned CIT(A) directed the A.O. to allow the deduction under Section 54 to the assessee in respect of the new house purchased. Aggrieved against that order, the Revenue filed this appeal before the Tribunal.

3. The Ld. D.R. submitted that the learned CIT (A) ought to have considered the decisions of the Ahmedabad Tribunal in the case of Anitha Ajay Shad Vs. ITO reported in 167 ITD 613 (Ahd) and of the Chennai Tribunal in the case of ITO Vs. Chimanlal Kalidas Vankawala reported in 98 taxmann.com 433(Chennai), which are in favour of Revenue. Further, the Ld. D.R. submitted that learned CIT (A) erred in directing the A.O. to allow deduction under Section 54 by holding that the assessee is eligible to claim deduction under Section 54 as she has utilized the amount before the due date for filing the return of income under Section 139(4), which is not in accordance with Section 54(2) of the Act, as per which the assessee should have deposited the disputed amount in Capital Gains Accounts Scheme (CGAS) on or before the due date for filing the return under Section 139(1) ie on or before 05.08.2016.

4. Per contra, the Ld. A.R supported the order of the learned CIT(A) and relied on the decision of the Hon'ble Jurisdictional High Court in the case of Venkata Dilip Kumar Vs. CIT reported in 111

taxmann.com 180 and the decisions of the Chennai Tribunal in the cases of ; Shri Kasi Vishwanathan Ramanathan Vs. ITO, in I.T.A. No. No.2040/Chny/2017 dated 29.05.2020 and Smt M.K.Vithya Vs. ITO in I.T.A. No. No.2739/Chny/2017 dated 09.01.2018.

5. We heard the rival submissions and perused the materials available on record. The facts narrated in para-2 of this order, supra, are not disputed. Therefore, the issue in this case is whether the assessee is entitled for the benefit of deduction under Section 54 in respect of the disputed sum, when she has utilized such sum towards purchase of the new house on 26.8.2016 and thus complied with the provisions of section 54(1), even though the said sum was not deposited in the capital gains account scheme as required under Section 54(2). The same issue arose before the Hon'ble jurisdictional High Court in the case of Venkata Dilip Kumar Vs. CIT (2019) 419 ITR 298 (Mad), the relevant portion of the decision is extracted as under :

"14. .... ..

*While the compliance of requirement under section 54(1) is mandatory and if complied, has to be construed as substantial compliance to grant the benefit of deduction, the compliance of requirement under section 54(2) could be treated only as directory in nature. If the assessee with the material details and particulars*

*satisfies that the amount for which deduction is sought for under section 54 is utilised either for purchasing or constructing the residential house in India within the time prescribed under section 54(1), the deduction is bound to be granted without reference to section 54(2), which compliance in my considered view, would come into operation only in the event of failure on the part of the assessee to comply with the requirement under section 54(1). Mere non-compliance of a procedural requirement under section 54(2) itself cannot stand in the way of the assessee in getting the benefit under section 54, if he is, otherwise, in a position to satisfy that the mandatory requirement under section 54(1) is fully complied with within the time limit prescribed therein.*

*15. At this juncture, the Division Bench decision of the Karnataka High Court made in I. T. A. No. 47 of 2014 in the case of CIT v. K. Ramachandra Rao is relevant to be quoted, wherein while considering the scope of section 54F(1) to 54F(4) of the Income-tax Act, it has been observed as follows :*

*"If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then section 54F(4) is not at all attracted and therefore, the contention that the assessee has not deposited the amount in the bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."*

*16. Learned counsel for the Revenue relied on the decision of the Supreme Court reported in Commissioner of Customs v. Dilip Kumar and Co. reported in [2018] 6 GSTR-OL 46 (SC) ; [2018] SCC Online SC 747 in support of her contention that exemption notification should be interpreted strictly and the burden of proof of its applicability would be on the assessee. I have already pointed out that the assessee, in this case, has claimed that it has utilised the*

*disputed sum towards the cost of the additional construction within the period of three years from the date of the transfer and therefore, if such contention is factually correct, it is to be held that the assessee has satisfied the mandatory requirement under section 54(1) to get deduction. Therefore, I find that the above decision relied on by the Revenue is not helping the case of the respondents under the facts and circumstances of the present case.*

*17. The claim of the assessee for deduction of the disputed sum towards the additional construction cost was rejected only on the ground that the said sum was not deposited in the capital gains account. In view of my findings rendered supra, the Revenue is not justified in making such objection. On the other hand, it has to verify as to whether the said sum was utilised by the petitioner within the time stipulated under section 54(1) for the purpose of construction. If it is found that such utilisation was made within such time, the Revenue is bound to grant deduction.”*

From the above, it is clear that for seeking benefit of deduction under Section 54 of the Act, the assessee should have substantially complied with section 54(1). In this case, the assessee should have purchased the residential house within two years from 19.10.2015, ie the date of transfer. She has utilized such sum towards purchase of the new house on 26.8.2016 itself. Further, she had explained the reasons for not-depositing the amount in Capital Gains Accounts Scheme which is also not disputed. Since the assessee has substantially complied with section 54(1), therefore, a mere non-



compliance of a procedural requirement under section 54(2) itself cannot stand in the way of the assessee in getting the benefit under section 54. Therefore, we do not find any reason to interfere with the order of the learned CIT (A). The Grounds raised in the appeal of the Revenue stand dismissed.

6. Since we upheld the order of learned CIT (A) in Revenue's appeal, the Cross Objections filed by assessee in support of the order of learned CIT (A) stands allowed.

7. In the result, the appeal filed by the Revenue is dismissed and the Cross Objections filed by the assessee is allowed.

Order pronounced on 20<sup>th</sup> July, 2020 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai

दिनांक/Dated: 20<sup>th</sup> July, 2020.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF