

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2252/Chny/2017

निर्धारण वर्ष / Assessment Year: 2013-14

Pushpa Sankar,  
New No. 7, Old No. 14,  
Sai Suraksha, 11<sup>th</sup> Street,  
Nandanam Extension,  
Chennai – 600 035.

Income Tax Officer,  
v. Non Corporate Ward 2(5),  
Chennai – 600 034.

**[PAN: AEWPP 6101P]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. R. Sivaraman, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 17.11.2021

घोषणा की तारीख/Date of Pronouncement

: 26.11.2021

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-2, Chennai, dated 27.06.2017 and pertains to assessment year 2013-14.

2. The assessee has raised following grounds of appeal:

"1) The order of the CIT(A) dated 27.06.2017 is against law and facts of the case.

2) The CIT(A) erred in confirming the disallowance of deduction claimed u/s 54 of Rs.49,02,370.

3) The CIT(A) erred in not appreciating the fact that the investment in the Nandanam Property was indeed a purchase and not one of construction of property, the transaction, in substance, being for a purchase of a ready built flat from a builder.

4) Without prejudice, the CIT(A) erred in holding that the new flat at Nandanam is not eligible for deduction u/s 54 as the construction has been completed prior to the sale.

5) The CIT(A) erred in not appreciating the fact the purchase has taken place within one year before the transfer of the appellant's property (the agreement for sale of appellant's property was executed on 10.08.2012 and the date of purchase of property (undivided share) at Nandanam was 24.08.2011 ). In this connection, the appellant relies on the Supreme Court Judgment in the case of Sanjeevlal Vs CIT 365 ITR 389 (SC)

6) The CIT(A) failed to appreciate that the appellant had sold the original asset and invested in new assets , acquired by way of purchase or construction and became eligible for the benefit of Sec.54.

7) The CIT(A) erred in holding that the appellant is eligible for deduction u/s 54 in respect of one property only against two properties claimed by the appellant, as the properties are separated by distance.

8) The CIT(A) erred in not appreciating the fact that as per Sec.54, deduction is available in respect of more than one property until the amendment made w.e.f 01.04.2015 by the Finance (No.2) Act 2014.

9) CIT(A) ought to have allowed relief on the simple rationale of the following judgments without adding parameters on her own.

1) CIT Vs Khoobchand M Makhija (2014) 43 Taxmann.com 143

2) G.Chinnadurai Vs ITO (2016) 74 Taxmann.com 227 (Mds)

3) CIT Vs V R Karpagam ( 226 Taxmann 197)

For these and other grounds that may be adduced before or at the time of hearing the Hon'ble ITAT may be pleased to direct the AO to allow deduction u/s 54 in respect of the Nandanam Property.”

3. The brief facts of the case are that during the financial year relevant to assessment year, the assessee sold residential flat located at Abhiramapuram, Chennai for a consideration of

Rs. 1,67,38,000/- and computed long term capital gains, after claiming exemption u/s. 54 of the Income Tax Act, 1961 (herein after "the Act") towards purchase of another residential house property. The claim of deduction u/s. 54 of the Act was in respect of investment in purchase of land located at Nandanam Extension and also in respect of another property located at ECR, Kilpathupattu Village, Villupuram District, which was purchased in the name of Shri R Sankar, the spouse of the assessee. During the course of assessment proceedings, the AO on the basis of details filed by the assessee allowed deduction u/s. 54 of the Act in respect of property at Kilpathupattu Village. However, denied exemption claimed in respect of flat at Nandanam on the ground that the assessee has purchased flat beyond one year prior to the date of sale of original asset. The assessee carried the matter in appeal before the Ld. CIT(A), but could not succeed. The Ld. CIT(A) affirmed findings recorded by the AO, and denied the benefit exemption claimed u/s. 54 of the Act. Aggrieved by the Ld. CIT(A), the assessee is in appeal before us.

4. The Ld. AR for the assessee referring to dates and events submitted that the assessee had entered into an agreement

for sale of original asset on 10.08.2012 and has received advance amount of Rs. 25 lakhs by cheque. Further, the sale deed was executed in favour of the purchaser on 05.11.2012. The assessee had also reinvested sale consideration received for sale of original asset for purchase of another residential house property by entering into a construction agreement with a builder on 24.08.2011. The possession of flat was handed over on 07.04.2012. If date of agreement of sale of original asset was considered, then investment made for purchase of residential house is well within one year before the date of sale of original asset and thus, the assessee is entitled for exemption u/s. 54 of the Act. Even otherwise, if you take date of sale deed of original asset and date of possession of flat, then, also investment made by the assessee for purchase of new residential house is within one year from the date of sale of original asset. Therefore, the AO as well as the Ld. CIT(A) were erred in rejection of exemption claimed by the assessee.

5. The Ld. DR on the other hand strongly supporting order of the Id. CIT(A) submitted that as per the law, the assessee shall purchase new residential house property before one year from the date of sale of original asset and if the date and

events are considered, investment made for purchase of new house was beyond the specified date and thus, the assessee is not entitled for exemption claimed u/s. 54 of the Act.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has sold original asset by entering into a sale agreement on 10.08.2012 which was followed by execution of sale deed in favour of buyer on 05.11.2012. The assessee had also purchased new residential house property by entering into a construction agreement with builder on 24.08.2011 and said new house property was handed over to the assessee on 07.04.2012. If you consider the date of agreement of sale of original asset i.e., 10.08.2012 and date of agreement with builder for purchase of new residential house property i.e., 24.08.2011, new asset purchased by the assessee is within one year before the date of sale of original asset. Even otherwise, if you go by the date of sale deed of original asset i.e., 05.11.2012 and the possession of new property i.e., 07.04.2012, then also investment made by the assessee for purchase of new residential house property is within one year prior to the date of sale of original asset.

Therefore, we are of the considered view that exemption claimed by the assessee u/s. 54 of the Act in respect of reinvestment of sale consideration for purchase of another residential house property cannot be denied. The AO and Ld. CIT(A) without appreciating the facts has simply rejected exemption claimed by the assessee. Hence, we direct the AO to allow exemption claimed u/s. 54 of the Act in respect of purchase of new flat at Nandanam Extension.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 26<sup>th</sup> November, 2021 at Chennai.

**Sd/-**

(वी दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(जी. मंजुनाथ)

**(G. MANJUNATHA)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 26<sup>th</sup> November, 2021

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्था/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |