

Case :- INCOME TAX APPEAL No. - 161 of 2011

Appellant :- Ajay Kumar

Respondent :- Income Tax Officer 2(2), Agra

Counsel for Appellant :- Manish Goyal, Siddharth Singhal

Counsel for Respondent :- C.S.C. (Income Tax Dept.), Shambhoo Chopra

Hon'ble Bharati Sapru, J.

Hon'ble Vinod Kumar Misra, J.

Heard Sri Siddharth Singhal, learned Counsel for the appellant and Sri Piyush Agragal, learned Counsel for the department.

This is an assessee's appeal under Section 260A of the Income Tax Act, 1961 against the order passed by the Tribunal dated 08.04.2011 whereby the Tribunal has rejected the application for exemption filed by the assessee under Section 54 F of the Income Tax Act. The questions of law sought to be answered are hereunder:-

"A. Whether in the facts and circumstances of the present case the assessee will be entitled for exemption contemplated under Section 54F of the Income Tax Act where within the stipulated period the assessee has purchased plot for construction of residential house but constructions has not been completed?

B. Whether phrase '*constructed residential house*', inter-alia, will include investment in purchase of residential plot and investment in payment of development charges for use of plot ?

C. Whether it is necessary for application of Section 54F of the Income Tax Act that constructions should be completed within the stipulated period in order to avail the benefit of exemption under the said Section ?"

The facts of the case are that the assessee was having half share in his ancestral property situated at Bodla in District Agra admeasuring 3496 Sqm. The same was sold for Rs.88.00 lacs and in the year 2005-06 the assessee invested an amount of Rs.14,10,500/- for purchasing a plot of land for construction of a

residential flat from M/s. Ansal Housing and Construction Ltd., New Delhi. This inter-alia, included the amount spent by the assessee towards external development charges of Rs.68,750/-. The assessee also spent an amount of Rs.125/- for seeking sanction of map for construction of the house from Agra Development Authority. The assessee, therefore, claimed for exemption, inter-alia, under Section 54F of the Income Tax Act as according to the assessee the capital gains from the sale of the ancestral land and due investment of the same for constructions of residential house is entitled for exemption under the said section. Accordingly, the assessee claimed deduction under the said section during the Assessment Year 2006-07.

The assessing officer, however, disallowed the said exemption claimed by the assessee in view of the fact that since the constructions were not done of the residential house and merely plot was purchased for construction of residential house, hence, the assessee is not entitled for claiming the aforesaid exemption under Section 54F of the Act. Against the aforesaid order the assessee filed an appeal before the Commissioner Income Tax (Appeals), who passed the order on 16.07.2009 and allowed the appeal of the assessee by reversing the order of the assessing officer on Section 54F of the Income Tax Act. In the said course Commissioner Income Tax (Appeals) relied upon the judgement of Hon'ble Madras High Court as well as upon CBDT Circular No.667 dated 18.10.1993.

Against the order dated 16.07.2009 the revenue filed an appeal before the Income Tax Appellate Tribunal giving rise to ITA No.428/Agra/2009. Income Tax Appellate Tribunal, Agra Bench, Agra who vide judgement and order dated 08.04.2011 has allowed the

appeal filed by the revenue and has restored the order passed by the assessing officer.

The Tribunal has examined the matter at length and recorded a clear finding of fact, which reads hereunder:-

"We have also gone through the decision of Hon'ble Madras High Court in the case of CIT vs. Sardar Mal Kothari and Another (supra). In this case also the assessee had purchased the plot and substantially completed the constructions within the specified period, but the construction was not fully completed. When the matter traveled to the High Court, the Hon'ble High Court took the view that the assessee is entitled for the exemption. Coming to the facts of the case of assessee, in pith and substance, it is a fact that the assessee has not started the construction within the specified period and the development charges have been paid to M/s Ansal Housing and Construction Ltd. for the development of the road and other facilities in the colony where the plot is situated at a pre-determined rate depending on the size of the plot. Mere payment of the development charges to the builder does not mean that the assessee has started construction, which is essential condition or claiming exemption u/s 54F of the I.T. Act. We, accordingly, set aside the order of CIT (A) and restore the order of Assessing Officer."

Thus, there is a conclusive finding of fact that the assessee had not even started the construction between the specified period.

Learned Counsel for the department has drawn the attention of the Court to a Division Bench decision of this Court in the case of **Ranjit Narang v. Commissioner of Income Tax** reported in **(2009) 317 ITR 332 (All)** wherein also the Court has held that the provisions of Section 54F of the Act specifically situations where the assessee in order to save himself from payment of tax of capital gains decides to either purchase or construct a house within the specified period and if he fails to do so then the statute provides as to when the capital gains are to be treated as having arisen and in which year they are to be taxed.

Learned Counsel for the department has also relied on

a decision of Punjab and Haryana High Court in the case of **Pawan Kumar Garg v. Commissioner of Income Tax** reported in **(2009) 311 ITR 397 (P & H)** wherein also the Court has held that no benefit under Section 54F of the Act could be given to the assessee, who had failed to fulfil the primary ingredients of proving either the constructions of a house or the purchase of a house. In fact there is not such a whisper that the construction had been started or that any portion at all had been built.

On facts the position is clear as has been stated above by the Tribunal.

In view of this, the Tribunal has rightly affirmed the order passed by the assessing officer and has denied the benefit of Section 54F of the Act to the assessee.

The questions of law are, therefore, answered in favour of the department and against the assessee.

The appeal is dismissed as above. No costs.

Order Date :- 2.2.2017
S.P.