

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री धुव्वुरु आर.एल रेड्डी ,न्यायिक सदस्य एवं श्री जीमंजुनाथ ., लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.:3258/CHNY/2018

निर्धारण वर्ष / Assessment Year: 2013-14

Shri Jagdish Rajesh,
Plot No.144, Flat No.S-1,
Kamarajar Street,
Chendurpuram, Kattupakkam,
Chennai – 600 056.

The Income Tax Officer,
v. Non Corporate Ward - 20(3),
Chennai – 34.

PAN: ADYPR 2029M
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Ms. Nithya Sankaran, CA
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 12.08.2021

घोषणा की तारीख/Date of Pronouncement

: 31.08.2021

आदेश /O R D E R

Per G Manjunatha, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals) – 14, Chennai, dated 31.08.2018 and pertains to assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant has satisfied all the conditions for claiming exemption u/s.54F and is thereby entitled for the said exemption in the facts and circumstances of the case.
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that the appellant had in fact invested an amount higher than the net consideration in the undivided share of land itself and hence is eligible for claiming exemption u/s.54F.
5. For that the Assessing Officer failed to appreciate that it was for reasons beyond the control of the appellant that the construction could not be completed within the period of 15 months as stated in the agreement entered into with the builder.

3. The brief facts of the case are that the assessee is an individual, derives income from salary and income from capital gains, filed his return of income for the assessment year 2013-14 on 05.07.2013 admitting total income of Rs.21,42,800/-. Subsequently, the assessee has filed revised return on 05.09.2014 admitting total income of Rs.7,84,900/- after claiming exemption u/s.54F of the Act, for Rs.13,57,906/-. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has derived long term capital gain from sale of property and claimed exemption u/s.54F of the Income Tax Act, 1961 (hereinafter the 'Act') and hence, called upon the assessee to file necessary evidences. In response, the assessee submitted that he has sold a vacant housing plot on 19.12.2012 for a consideration of Rs.19,20,000/- and computed long term capital

gain. The assessee further claimed that he had purchased another new asset on 07.07.2014 for a consideration of Rs.33,00,000/- and constructed residential house thereon and claimed exemption u/s.54F of the Act. The AO after considering relevant submissions of the assessee and also taken note of provisions of section 54F of the Act, observed that although the assessee has reinvested consideration received for transfer of old asset within two years from the date of sale of the old asset and has also completed construction within 3 years, but has not satisfied the conditions prescribed under sub-section (4) of Section 54F of the Act, by investing the sale consideration in capital gain deposit scheme on or before furnishing return of income and hence, opined that the assessee is not entitled for deduction u/s.54F of the Act and hence, rejected deduction claim of Rs.13,57,906/- and added back to total income.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee contended that even if sale consideration is not deposited in capital gain deposit scheme, as required under sub-section (4) of Section 54F of the Act, but if such consideration is used for purchase / construction of new asset on or before due date

u/s.139(4) or 139(5) of the Act, then deduction cannot be denied. In this regard, relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Jagriti Aggarwal (2011) 339 ITR 610. The CIT(A) after considering relevant submissions of the assessee and also by following certain judicial precedents including the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Jagriti Aggarwal, *supra*, held that the assessee has reinvested entire sale consideration of Rs.19,20,000/- for purchase of land by paying consideration of Rs.33 lakhs within the due date as mentioned u/s.139(4) & 139(5) of the Act. However, it is not clear whether the house property was constructed within 3 years from the date on which transfer of original asset. Therefore, he has set aside the issue to the file of the AO and directed him to cause necessary enquiries and decide the issue in accordance with law. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Id.AR for the assessee submitted that the Id.CIT(A) has erred in setting aside the appeal to the file of AO even though, he has agreed that the assessee has reinvested sale consideration before the extended due date of furnishing return of income u/s.139(4) & 139(5) of the Act. The Id.AR further submitted that there is no dispute with regard to the fact that the assessee has

constructed house property within 3 years from the date of sale of old asset. In fact, the AO in Para 2.6 of his assessment order had categorically admitted that the assessee has completed construction within 3 years, but has rejected the claim only for the reason that consideration for transfer of original asset was not deposited in capital gain deposit scheme before filing return of income. Therefore, once the CIT(A) having accepted the fact that there is no requirement to deposit sale consideration in capital gain deposit scheme, when such consideration was used for purchase of new asset within extended due date u/s.139(4) or 139(5) of the Act, he has erred in directing the AO to once again verify whether the construction of house property was completed or not.

6. The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that there is no error in findings recorded by the CIT(A) because facts with regard to date of completion of new house was not forthcoming from the order of the AO and hence, there is no merit in the arguments of the assessee that the CIT(A) has erred in directing AO to verify the issue.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is a well settled principle of law that even if sale consideration was not

utilized for acquiring new asset within the due dates specified under the Act, deduction can be claimed, if consideration is deposited in capital gain deposit account scheme as required u/s.54F(4) of the Act. However, deduction cannot be denied if such consideration is used for purchasing / constructing new house on or before extended due date of furnishing return of income u/s.139(4) or 139(5) of the Act. This legal principle is supported by the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Jagriti Aggarwal, *supra*. It is also well settled principle of law that if assessee utilized full value of sale consideration received for transfer of old asset for purchasing another vacant land for construction of house property and furnished necessary evidences to prove that house property was constructed later on, deductions cannot be denied merely for the reason that construction of house property was not completed within 3 years from the date of transfer of original asset. This legal principle is supported by the decision of ITAT, Chennai in the case of Mrs. Seetha Subramaniam vs. ACIT, (1996) 59 ITD 0094. In light of above legal position, if we examine the facts of present case, it is an admitted fact that the assessee has reinvested entire sale consideration of Rs.19,20,000/- for purchase of land and constructed residential house property. It is also not in dispute that the assessee has completed construction of house property within 3

years from the date of sale of old asset. In fact, the AO in his assessment order at Para 2.6 had admitted that the assessee has completed construction of new house within 3 years. Therefore, we are of the considered view that once the assessee has reinvested its entire sale consideration for purchase / construction of another new asset within extended due date of filing return of income u/s.139(4) & 139(5) of the Act, and also filed necessary evidences to prove that construction of house property was completed within 3 years from the date of sale of original asset, then there is no reason for the Id.CIT(A) to direct the AO to once again verify whether house property was constructed within 3 years from the date of transfer of original asset. Hence, we set aside the direction given by the CIT(A) and direct the AO to allow deduction claimed u/s.54F of the Act.

8. In the result, all the appeal filed by the assessee is allowed.

Order pronounced in the court on 31st August, 2021 at Chennai.

Sd/

(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st August, 2021

Sd/-

(जी. मंजुनाथ)
(G. Manjunatha)

लेखा सदस्य /Accountant Member

RSR

1. अपीलार्थी/Appellant
4. आयकर आयुक्त /CIT

2. प्रत्यर्थी/Respondent
5. विभागीय प्रतिनिधि/DR

3. आयकर आयुक्त (अपील)/CIT(A)
6. गार्ड फाईल/GF.