

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2016

Pronounced on : 30.08.2016

CORAM :

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Tax Case Appeal No. 497 of 2016

The Commissioner of Income Tax,
Chennai

.. Appellant

Vs.

Mr. Ajit Thomas
Director
A.V. Thomas Leather & Allied
No. 64, Rukmani Lakshmi pathy
Salari, Egmore,
Chennai -600 008.

.. Respondent

Prayer: Appeal filed under Section 260A of Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, Chennai dated 06.11.2015 in I.T.A.No.1453/Mds/2015.

For Appellant

: Mrs. Hema Murali Krishnan
Junior Standing Counsel for I.T

COMMON JUDGMENT
(Judgment of the Court was made by D. KRISHNAKUMAR, J)

This Appeal has been filed by the Revenue against the order of Madras 'B' Bench, Chennai dated 06.11.2015 in I.T.A. No.1453/Mds/2015 on the file of the Income Tax Appellate Tribunal.

2. The facts of the case are as follows :-

The respondent herein/ Assessee, filed Return of Income for the assessment year 2012-2013 on 20.07.2012, admitting a total income of Rs.78,57,110/-. The return was processed under Section 143(1) and the case was selected for scrutiny through CASS and notice under Section 143(2) dated 06.08.2013 was served on the assessee/ respondent herein. As per the jurisdiction notification dated 15.11.2014, an intimation dated 17.11.2014, under Section 129 was sent to the assessee/ respondent herein. In response to the notice under Section 143(2), an authorised representative of the assessee appeared before the assessment officer and the assessment was completed under Section 143(3) of the Income Tax Act, 1961. On 28.11.2014, the impugned order was passed by the Assessment Officer, disallowing the claim under Section 54F of the Income Tax Act, 1961. On completion of the assessment, the Assessing Officer withdrew the benefit of Section 54F of the Income Tax Act, 1961, in the case of the assessee. The disallowance of exemption claimed under Section

54F is Rs.2,47,52,000/-, as per the Assessment Order issued by the Assessing Officer.

3. Aggrieved by the aforesaid order, the assessee preferred an appeal in ITA No. 256/14-15/A-1 dated 26.02.2015 before the Commissioner of Income Tax (Appeal), on the following grounds :-

1. *The order of the Assessing Officer insofar as it denies exemption to the appellant under Section 54F of the Act is erroneous, against the provisions of law and contrary to the facts and circumstances of the case.*
2. *The Assessing Officer should have found that the appellant does not own the property at Vijayaraghavachari Road as it was settled by him on his wife Mrs. Shanthi Thomas on 24.02.2003 under general law and hence, the appellant does not own more than one house property at the time of transfer of the original asset giving rise to capital gain in the present case. The Assessing Officer should have found that Transfer of Property Act, 1882 is to be considered and not Section 27(i) of the Act*

which is applicable only for the purposes of Section 22 to 26 of the Act.

3. *The Assessing Officer erred in relying on the provisions of Section 27(i) of the Act, which is a deeming provision for the purpose of denying exemption to the appellant under Section 54F of the Act. He should have found that the concept of deemed ownership is recognized only under Section 27 (i) of the Income Tax Act and it is only for the purpose of Section 22 to 26 of the Act and cannot be extended to Section 54F of the Act. The Assessing Officer erred in not appreciating that the concept of "Deemed" ownership cannot be extended to Section 54F and the deeming fiction cannot operate unless the same is built in Section 54F.*
4. *The assessing Officer should have found that the provisions of Section 27(i) are restricted for the limited purpose of assessing the income from the house property under Sections 22 to 26 of the Act and not for the purpose of other provisions of the Act and consequently, should be interpreted only in terms of ownership as*

*envisaged under general law applicable to real property as held by the Supreme Court in the cases of **Commissioner of Income Tax vs. Poder Cement Private Limited & Others [226 ITR 625] and Mysore Minerals Limited vs. Commissioner of Income Tax [239 ITR 775].***

5. *Without prejudice to the above contention, in any case, the Assessing Officer should have found that if the logic adopted with reference to Vijayaraghavachari Road property is applied to the vacant land (at Sholinganallur), the sale of which has given rise to capital gain in the present case and which again was settled on the appellant by his wife Mrs. Shanthi Thomas and falls within the scope of Section 64 (1)(iv) of the Act, the capital gain arising on the sale of the said property cannot be brought to tax in the hands of the appellant.*

4. Considering the case of the assessee, the Commissioner of Income Tax (Appeal) has observed that the property situated at No.24 Vijaya Raghavachari Road, T. Nagar, Chennai-17, was transferred by the appellant in the name of his wife Mrs. Shanthi Thomas, by virtue of settlement deed dated 24.02.2003 and so in the year 2011, when the assessee's land property situated at Sholinganallur, was sold. Hence, the assessee possessed only one property i.e. the residential property at Kodaikanal. While assessing, the Assessment Officer under the presumption that the appellant was in possession of two residential houses on the date of transfer of property, denied the exemption. But, the house property situated at No.24 Vijaya Raghavachari Road, T. Nagar, Chennai-17 stands in the name of the assessee's wife, namely, Mrs. Shanthi Thomas and therefore, the Commissioner of Income Tax (Appeal) came to a conclusion that the assessee had only one property at Kodaikanal and hence the denial of exemption of the Assessment Officer, on the ground that as per Section 27(i) of the Income Tax the assessee is a deemed owner of the property and so he is not eligible for exemption under Section 54F, was reversed and allowed the appeal filed by the assessee. Aggrieved by the aforesaid order passed by the Commissioner of Income Tax (Appeal), the Revenue preferred an appeal before the Income Tax Appellate Tribunal in I.T.A. No.1453/Mds./2015 for the

assessment year 2012-13, on the following grounds :

1. Income from house property transferred by the assessee to his wife (spouse) is assessable in his hands under Section 64(1) (iv) read with Section 27(i) of the Income Tax Act and hence the said property is deemed to be owned by the assessee.
2. The gain arising on sale of vacant land is assessable in the hands of his wife under Section 64(1)(iv) since the said land at Sholinganallur which yielded the capital gain (from which deduction under Section 54F is claimed by the assessee) was settled on the assessee by his wife as admitted by him. Hence, deduction is not permissible under Section 54F in respect of income assessable in the hands of his wife.

5. It is not disputed that the house property situated at No.24, Vijaya Raghavachari Road, T. Nagar, Chennai-17, originally belonged to the assessee and thereafter it was transferred in the name of the assessee's wife Mrs. Shanthi Thomas, by execution of a settlement deed during the year 2003. Case of the Revenue is that the assessee is not entitled for exemption under proviso (b) of Section 54F (1) of the Income Tax Act, as it states that the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable

under the head "Income from house property". The Tribunal has considered the provisions under Section 54F of the Act, by observing that the Assessing Officer had passed the impugned Assessment order, without taking into consideration the provisions under Section 27(i) of the Act, which is a deeming provision applicable for Sections 22 to 26 of the Act. Section 54F of the Act is a provision granting deduction to the assessee and so the other provisions of the Act, which are relied on by the Assessing Officer, cannot be construed that Section 27 (i) can also be read with Section 54F for the purpose of the ownership of the property. According to the Tribunal, it has to be construed that the assessee is not the owner of the residential house situated at No.24, Vijayaraghavachari Road, T.Nagar, Chennai and so, as per Section 54F of the Act, the assessee/ respondent herein, is entitled to get exemption. In view of the above said finding, the Income Tax Appellate Tribunal dismissed the appeal filed by the Revenue.

6. Being not satisfied with the order passed by the Tribunal, the Revenue has preferred the instant appeal before this Court, on the following substantial questions of law :

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee was entitled to deduction under Section 54F of the Income Tax Act ?

2. Is not the finding of the Tribunal bad by granting relief under Section 54F especially when income from house property transferred by the assessee to his wife is assessable in his hands under Section 64(1)(iv) read with Section 27(i) of the Act as he is the deemed owner of the property ?
3. Whether the finding of the Tribunal is correct in holding that the property gifted to the wife cannot be held as self owned property for the purpose of claiming deduction under Section 54F ?

7. Learned counsel for the Revenue contended before this Court that the assessee has sold the vacant land measuring 11,881 sq.ft. in Sholinganallur Village and realised a long term capital gain of Rs.2,47,52,000/- but the respondent had claimed exemption under Section 54F. The assessee has purchased a new residential property, a flat, at 4th floor in Midland Apartments, Turn Bulls Road, Chennai worth about Rs.2,88,85,100/-. Prior to the purchase of the above said asset, it was noticed from the schedule of income of the house property that the assessee had held the house property at No.24, Vijayaraghavachari Road, T. Nagar, Chennai-17 and a residential house at Kodaikanal. Therefore, the Assessing Officer came to a conclusion that the benefit of Section 54F of the Income Tax Act sought for by the assessee, is not eligible

to him, since he was holding more than one residential property. The exemption sought by the assessee was rejected by the Assessing Officer, based on the provisions under Section 27(i) of the Act, which deals with "Owner of the house property". Therefore, she submitted that the Assessing Officer has rightly come to a conclusion and had disallowed the exemption claimed under Section 54F of the Act.

8. Learned Junior Standing Counsel representing the Revenue, drew our attention to Section 54F of the Income Tax Act, which is extracted below :-

"Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

54F. (1) *[Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or [two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in*

accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this subsection shall apply where the assessee owns on the date of the transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "*Income from house property*", *other than the new asset.*' —

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period

of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property."

9. The issue involved for consideration in the instant appeal is, whether Section 27(i) of the Act could be read along with Section 54F, for the purpose of "Owner of house property" under the said provision. Section 27(i) is extracted below :-

"Owner of house property", "annual charge", etc., defined.

27. *For the purposes of sections 22 to 26—*

(i) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred; "

The aforesaid provision comes under Chapter-4 of the Income Tax

Act, for the purpose of the charging Income Tax under the head of "Income from house property" and for fixing annual value of the property. But, from the facts of the case on hand, where the assessee claims relief of exemption of tax in respect of a residential house, exemption under such section is not available, since the assessee owns more than one residential house, other than the new asset, on the date of transfer of the original asset. The assessee is otherwise eligible for grant of exemption, if he satisfies the condition specified as per the amendment to the proviso, with effect from 1st April 2001, to permit exemption under Section 54F, where the assessee has one residential house or constructed a house, after transfer. So, the language of the said provision under Section 54F, which is unambiguous and clear and if the assessee satisfies the conditions as per the provisions of the said Act, then the assessee is eligible for grant of exemption under Section 54F in Chapter IV of the Income Tax. Further, grant on transfer of certain capital assets not to be charged in case of investment on residential houses.

10. The contention of the learned Counsel representing the Revenue that the meaning of the owner has been defined under Section 27(i) of the Act, for the purpose of deemed to be the owner of the property, has to be interpreted. In support of the said contention, the learned counsel relies on the decision of the Hon'ble

Supreme Court in the case of **Mysore Minerals Limited vs. Commissioner of Income Tax [239 ITR 775]**, wherein the meaning of "owner" has been observed as follows :

" The Podar Cement's case [1997] 226 ITR 624 (SC) is under the Income-Tax Act and has to be taken as a trend-setter in the concept of ownership. Assistance from the law laid down therein can be taken for finding out the meaning of the term "owned" as occurring in Section 32(1) of the Act. In our opinion, the term "owned" as occurring in Section 32(1) of the Income-Tax Act, 1961, must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc."

11. In the case of **Commissioner of Income Tax vs.**

Poder Cement Private Limited & Others [226 ITR 625], the Hon'ble Supreme Court has considered the meaning of "Owner" under the context of Section 22 and 27 of the Indian Income Tax, 1922. The afore cited decision was considered by the Hon'ble Supreme Court for the purpose of the rental income to be calculated on the bonafide annual value of the property. The facts of the said case relates to the provisions of Section 22 of the Act, where charges of the income arises from house property and not the ownership of house property. Such income from house property can be real or notional. It has been further stated that the owner is the person who in his own right can use the house property or derive income from it and only such owner has to be taxed under the head "Income from house property". Therefore, in that case, learned Senior Counsel has interpreted the language of Section 22 of the Act in the context of that particular section, the Hon'ble Supreme Court has interpreted the meaning of "ownership". The Hon'ble Supreme Court has held that "owner" means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, the Registration Act, etc. But, in the context of Section 22 of the Income Tax Act 1961, having regard to the ground realities and further having regard to the object of the Income Tax Act, 'to tax the income', the "owner" is a person who is entitled to receive

income from the property in his own right. So, in the afore cited decisions, the Hon'ble Supreme Court have considered the provisions under Section 22 and 27 of the Income Tax Act 1961, for the purpose of determining "annual value of the property". Therefore, the decisions of the Hon'ble Supreme Court, cited supra by the Revenue, do not apply to the facts of this case. Whereas, in this case, as categorically held by the Commissioner of Income Tax (Appeal) and the Tribunal that Section 27(1) of the Act is a deeming provision applicable only for Sections 22 to 26, in computing the annual value of the property and as such deeming provision cannot be extended to deny the exemption under Section 54F of the Act.

12. Therefore, we are of the considered view that Section 54F of the Act, for granting exemption applies for the purpose of capital gain of transfer of certain capital assets not to be charged in the case of investment in residential house. To this context, Section 54F would apply as an independent provision, to the instant case. Therefore, the Commissioner of Income Tax (Appeal) and the Income Tax Appellate Tribunal have rightly come to the conclusion that Section 27(i) of the Act is not applicable to the facts of the present case. For the reasons stated supra, we are not inclined to entertain the instant appeal and the substantial questions of law raised in this Tax Appeal, is answered against the

Revenue.

13. Accordingly, the TCA No. 497 of 2016 is dismissed, at the stage of admission itself. No order as to costs.

(S.M.K., J.) (D.K.K., J.)
30.08.2016

Index : Yes

avr

To

The Income Tax Appellate Tribunal
Chennai.

S.MANIKUMAR, J
AND
D.KRISHNAKUMAR, J

avr

Tax Case Appeal No.497 of 2016

30.08.2016

To

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Judgement in

Tax Case Appeal No. 497 of 2016

From

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR