

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वुरु आर एर रेड्डी, न्यायिक सदस्य एंश्री एस बाराकृष्णन, रेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अनीर सं./ I.T.A. No. 226/Viz/2020

(ननधधारण वषा/ Assessment Year :2015-16)

Vs. Income Tax Officer,

Dattatreya Varma Penmatsa,
Visakhapatnam.

Ward-3(1),
Visakhapatnam.

PAN: AEMPP 5994 A

(अनीरधथी/ Appellant) (प्रत्यथी/ Respondent) अनीरधथी की ओर से/

Appellant by : Sri NSSH Bhaskar, CA प्रत्यधथी की ओर से/ Respondent

by : Sri Sankar Pandi, Sr. AR

सुनवधई की तधरीख / Date of Hearing : 24/05/2022

घोषणध की तधरीख/Date

of Pronouncement

: 15/07/2022 ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. CIT(A)-1, Visakhapatnam in ITA No. 10177/2017-18/CIT(A)-1/VSP/2020-21, dated 17/09/2020 arising out of the order U/s. 143(3) of the Act passed by the Ld. AO for the AY 2015-16.

2. Brief facts of the case are that the assessee is a civil contractor filed his return of income for the AY 2015-16 declaring total income of Rs. 62,08,350/-. Subsequently, the case was selected for scrutiny through CASS and notice U/s. 143(2) was issued on 20/09/2016. The AO concluded the assessment U/s. 143(3) of the Act assessing the total income of Rs. 1,32,02,792/-

by disallowing the deduction u/s 54 of the Act. Aggrieved by the order of the Ld. AO, assessee filed an appeal before the Ld. CIT(A)-1, Visakhapatnam. The Ld. CIT(A) confirmed the addition made by the AO and dismissed the appeal. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us.

3. The only issue raised by the assessee is denial of exemption of Rs. 32,57,272/- U/s. 54 of the Act on the ground that the assessee has commenced the construction of the residential house property before the sale of long term capital asset.

4. The Ld. AR argued that the assessee had purchased the land on 28/12/2012, on which the construction of residential building was commenced before the sale of capital asset. The Ld. AR further submitted that the cost of land be included while calculating the deduction U/s. 54 of the Act. The Ld. AR also relied on the Board Circular No.667, dated

18/10/1993. The Ld.

3

AR also relied on the decision of the Hon'ble High Court in the case of C. Aryama Sundaram vs. CIT reported in [2018] 97 taxmann.com 74 (Madras). Per contra, the Ld. DR submitted that the AO has rightly considered the cost of construction subsequent to the date of sale made by the assessee. Therefore, he prayed that the order of the Revenue authorities be upheld.

5. We have heard the rival contentions and the material available on record.

Admitted facts are that the assessee has sold his property being a residential house on 28/02/2015 for Rs. 1,23,03,000/- and claimed indexed cost of acquisition of Rs. 55,83,116/- and arrived at long term capital gains of Rs. 67,19,884/-. The assessee while filing his return of income claimed Rs. 67,19,884/- as deduction U/s. 54 of the Act stating that the amount was utilized for the construction of residential property completed on 28/03/2015. The assessee also provided the break-up of expenditure for construction of new house at Rs. 32,74,325/- for FY 2013-14, Rs. 93,53,354/- for FY 2014-15 and Rs. 27,00,000/- for FY 2015-16. It is observed from the orders of the Revenue Authorities that

the assessee was allowed an

4

deduction of Rs. 34,62,612/- out of Rs. 67,19,884/- claimed by the assessee on the ground that the cost of construction prior to date of sale is not eligible for deduction U/s. 54 of the Act. However the Ld. AR relied on the Board Circular No.667, dated 18/10/1993 which is reproduced below:

“Whether, in cases where the residential house is constructed within the specified period, the cost of such residential house can be taken to include the cost of the plot also.

1. Section 54 and 54F provide for a deduction in cases where an assessee has, within a period of one year before or two years after the date on which the transfer of a capital asset taken place, purchases, or has within a period of three years after that date constructed, a residential house. The quantum of deduction is itself dependent upon the cost of such new asset. It has been represented to the Board that the cost of construction of the residential house should be taken to include the cost of the plot as, in a situation of purchase of any house property, the consideration paid generally include the consideration for the plot also.

2. The Board has examined the issue whether, the cases where the residential house is constructed within the specified period, the cost of such residential house can be taken to include the cost of the plot also. The Board are of the view that the cost of the land is an integral part of the cost of the residential house, whether purchased or build. Accordingly, if the amount of capital gain for the purpose of section 54, and the net consideration for the purposes of section 54F, is appropriated towards purchase of a plot and also towards construction of a residential house thereon, the aggregate cost should be considered for determining the quantum of deduction U/s. 54/54F, provided that the acquisition of plot and also the construction thereon, are completed within the period specified

in these sections.”

6. We therefore find merit in the argument of the Ld. AR that the date of completion of the construction should be within the period as specified U/s. 54 of the Act and the commencement of construction is not the criteria as mentioned in section 54 of the Act. Section 54(1) is extracted below for reference:

54. (1) *Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (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, one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

- (i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or*
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:*

Further, we also find merit in the argument of the Ld. AR that the cost of land even though purchased prior to the date of sale of

6

residential house on 28/2/2015, shall be allowed as a deduction U/s. 54 based on the ratio laid down in the case of C. Aryama Sundaram vs. CIT (supra). The Ld. AR invited our attention to paras 22 and 23 of the judgment of the Hon'ble Madras High Court wherein it is held as under:

“22. It is axiomatic that section 54(1) of the Act does not contemplate that the same money received from the sale of residential house should be used in the acquisition of new residential house. Had it been the intention of the Legislature that the very same money that had been received as consideration for transfer of a residential house should be used for acquisition of the new asset, section 54(1) would not have allowed adjustment and/or exemption in respect of property purchased one year prior to the transfer, which gave rise to the capital gain or may be in the alternative have expressly made the exemption in the case of purchase, subject to purchase from any advance that might have been received for the transfer of the residential house which resulted in the capital gain.

23. At the cost of repetition, it is reiterated that exemption of capital gain from being charged to income tax as income of the previous year is attracted when another residential house has been purchased within a period of one year before or two years after the date of transfer or has been constructed within a period of three years after the date of transfer of the residential house. It is not in dispute that the new residential house has been constructed within the time stipulated in section 54(1) of the said Act. It is not requisite of section 54 that construction could not have commenced prior to the date of transfer of the asset resulting in capital gain. If the amount of capital gain is

greater than the cost of new house, the difference between

7

the amount of capital gain and the cost of the new asset is to be charged under section 45 as the income of the previous year. If the amount of capital gain is equal to or less than the cost of new residential house, including the land on which the residential house is constructed, the capital gain is not to be charged under section 45 of the said Act.”

7. It is not disputed by the Revenue that the new residential house has been constructed within the time stipulated in section 54(1) of the said Act. It is the cost of the new residential house and not just the cost of construction of the new residential house which is to be allowed as deduction. In view of the above by respectfully following the ratio laid down in the case of C. Aryama Sundaram vs. CIT (supra) where the cost of new residential house which should necessarily include the cost of land, cost of materials used in the construction, the cost of labour and other relatable cost of construction of the residential house has to be considered for the purpose of deduction U/s. 54 of the Act. We therefore direct the Ld. AO to consider the cost of land purchased by the assessee while computing the deduction U/s. 54 of the Act and we allow the appeal of the assessee.

8. In the result, appeal of the assessee is allowed.

8

Pronounced in the open Court on the 15th July, 2022.

Sd/- Sd/-

(द्वि. आर.एर रेड्डी) (एस बाराकृष्णन) (DUVVURU RL REDDY)
(S.BALAKRISHNAN) न्यायकसदस्य/JUDICIAL MEMBER रेखा
सदस्य/ACCOUNTANT MEMBER

Dated : 15.07.2022

OKK - SPS

आदेश की प्रतिलिपि अग्रपि/Copy of the order forwarded to:-

1. ननधधाररती/ The Assessee – Dattatreya Varma Penmatsa, D.No. 50-1-66/2, ASR Nagar Colony, Seethammadhara, Visakhapatnam, Andhra Pradesh – 530 012.
2. रधजस्व/The Revenue – Income Tax Officer, Ward-3(1), Visakhapatnam.
3. The Principal Commissioner of Income Tax-1, Visakhapatnam. 4. आयकर आयुक्त (अनीर)/ The Commissioner of Income Tax (A)-1, Visakhapatnam.
5. ववभधगीय प्रनतननधध, आयकर अनीरीय अधधकरण, ववशधखधनटणम/ DR, ITAT, Visakhapatnam
6. गधर्ा फधईर / Guard file

आदेशधनुसधर / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam

