

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
**BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: **422/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2012-13

Zannathul Firdouse,
Flat C-104, Raheja Regency,
147, Santhome High Road,
R A Puram,
Chennai – 600 028.

[PAN: AADPZ-6639-H]

(अपीलार्थी/Appellant)

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

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख/Date of Pronouncement

The Income Tax Officer,
v. International Taxation Ward -
2(2),
Chennai.

(प्रत्यर्थी/Respondent)

: Shri. B. Ramakrishna, FCA

: Shri. D. Hema Bhupal, JCIT

: 28.08.2023

: 31.08.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-16, Chennai, dated 14.02.2023 and pertains to assessment year 2012-13.

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

"1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.

2. For that the Learned Commissioner of Income Tax (Appeals) erred in upholding the order passed u/s 147 r.w.s. 143(3) of the Income Tax Act, reopened without there being any tangible/valid reason that income had escaped assessment.

3. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the denial of exemption claimed u/s 54F of the Act for Rs. 64,92,456/- and thereby bringing it to tax as 'Long Term Capital Gains'.

4. For that the Learned Commissioner of Income Tax (Appeals) erred in rejecting the alternate plea made by the appellant during the appellate proceedings to consider the residential flat bought on 24.05.2012 at "Raheja Regency", No. 90/71, Santhome High Road, Chennai - 600028 for a consideration of Rs. 1,45,00,000- for claiming exemption u/s 54F in respect of the Long Term Capital Gains arising from sale of land at Zamin Pallavaram, without proper reasoning.

5. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the interest levied u/s 234A of the Act, in consequent to the above upheld denial of exemption claimed.

6. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the interest levied u/s 234B of the Act, in consequent to the above upheld denial of exemption claimed.

7. For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the denial of exemption claimed and/or grant such other relief as this Hon'ble Tribunal may deem fit."

3. The brief facts of the case are that, the appellant is an individual and has filed her return of income for the assessment year 2012-13 on 01.06.2013, admitting a total income of Rs. 2,76,760/-. During the financial year relevant to assessment year 2012-13, the appellant along with 7 other family members entered into a Joint Development Agreement

(JDA) dated 01.04.2011, for development of 72092 sq.ft. of land at Zameen Pallavaram Village. As per JDA, the appellant and the co-owners has received 91833 sq.ft. of super built up area comprised in 70 residential apartments and 3 penthouses along with 27 covered car parking and 49 open car parking. The appellant has computed long term capital gains from transfer of property in pursuant to JD Agreement dated 01.04.2011 for assessment year 2012-13, by taking her share of consideration received for transfer of property. The appellant had also claimed deduction u/s. 54F of the Act towards constructed flats to be received from builder. The Assessing Officer, denied deduction u/s. 54F of the Act, on the ground that the assessee has claimed deduction for multiple flats and further construction of property was completed beyond the due date specified as per the provisions of section 54F of the Act. Since, the construction of property was not completed even as on 04.03.2016, the Assessing Officer denied deduction u/s. 54F of the Act and computed long term capital gains at Rs. 64,92,456/- and added back to the total income.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id.CIT(A), the assessee justified deduction claimed u/s. 54F of the Act, in light of certain judicial precedents including the decision of Hon'ble High Court of Madras in the case of Smt. V.R. Karpagam vs CIT [2014] 50 Taxmann.com 55 (Mad). The assessee had also made an alternative claim for deduction u/s. 54F of the Act, in respect of purchase of a residential flat on 24.05.2012, for a consideration of Rs. 1,45,00,000/- and argued that, assuming for a moment, the assessee is not entitled for deduction u/s. 54F of the Act, for flats constructed by the builder as per JD agreement dated 01.04.2011, the appellant can very well claim deduction for new residential house property purchased on 24.05.2012, because she had complied with provisions of section 54F of the Act. The Id. CIT(A), after considering relevant submissions of the assessee opined that, the assessee is not entitled for deduction u/s. 54F of the Act, because she has violated twin conditions as laid down u/s. 54F by purchasing a new residential flat on 24.05.2012, in addition to new flats on which the benefit of deduction claimed u/s. 54F of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Ld. Counsel for the assessee, submitted that Id. CIT(A) has erred in not allowing deduction claimed u/s. 54F of the Act, towards new residential flat purchased on 24.05.2012 for a consideration of Rs. 1,45,00,000/-, even though the assessee has satisfied all conditions prescribed u/s. 54F of the Act for claiming the benefit of deduction. The Ld. Counsel for the assessee, further submitted that no doubt, the builder did not complete the construction of residential apartments on or before three years, for the assessee to be eligible for claiming deduction u/s. 54F of the Act. But, fact remains that completion of construction of flats in pursuant to JD agreement is in the hands of the assessee. Since, the assessee has offered capital gains for taxation in respect of transfer of land in pursuant to JD agreement, the consequent deduction if any available to the assessee in respect of consideration in the form of built up flats should be allowed, even though the assessee did not satisfy the conditions of completion of house property, because the completion of construction is not in the hands of the appellant. He further submitted that, assuming for moment, the assessee is not entitled for deduction u/s. 54F of the Act for residential flats to be received in pursuant to JD agreement, but she can very well claim deduction for a new

residential flats purchased on 25.04.2012, because said purchase is within due date for filing of return of income u/s. 139(1) of the Act. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer.

6. The Id. Sr. AR, Shri. D. Hema Bhupal, JCIT, supporting the order of the Id. CIT(A) submitted that, there is no dispute with regard to the fact that construction of house property was not completed within three years from the date of transfer of original asset. Further, the assessee has violated other conditions prescribed u/s. 54F of the Act, by purchasing one more residential property within one year from the date of transfer of original asset. Since, the assessee did not satisfied conditions for claiming deduction, the Assessing Officer and CIT(A) has rightly rejected deduction claimed u/s. 54F of the Act and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the transfer of property in pursuant to JD Agreement dated 01.04.2011 and consideration

received in pursuant to said JD Agreement was not in dispute. In fact, the assessee and the Assessing Officer both agreed that there is a transfer of immovable property and consideration has been received for said transfer. The only dispute is with regard to the deduction u/s. 54F of the Act. The assessee has claimed deduction u/s. 54F of the Act, towards flats to be received in pursuant to JD Agreement. The Assessing Officer, denied deduction u/s. 54F of the Act on two grounds. First reason given by the Assessing Officer is that the assessee has acquired multiple flats in violation of conditions prescribed u/s. 54F of the Act. Further, the construction of new residential house property was not completed on or before three years from the date of transfer of original asset. There is no dispute with regard to the fact that, the assessee has claimed deduction u/s. 54F of the Act for multiple flats and said claim is in accordance with law, in light of the decisions of various High Courts including the Hon'ble High Court of Madras in the case of Smt. V.R. Karpagam vs CIT (Supra). A similar issue has been taken by the Hon'ble High Court of Karnataka in the case of K.G. Rukminiamma vs CIT [2011] 196 Taxmann 87 (Kar). Therefore, we cannot find fault with the claim of the assessee

on this ground alone. In so far as second reason given by the Assessing Officer is that, the construction of house property was not completed within three years from the date of transfer of original asset. We find that the assessee has admitted the fact that the builder did not complete construction of house property on or before three years from the date of transfer of original asset. Therefore, we cannot find fault with the reasons given by the Assessing Officer to reject deduction u/s. 54F on this ground.

8. Be that as it may. The assessee has made a new claim before the CIT(A) and sought deduction u/s. 54F of the Act, in respect of purchase of new residential house property purchased on 25.04.2012 for a consideration of Rs. 1,45,00,000/-. The Id. CIT(A) rejected alternate claim made by the assessee without discussing how such claim cannot be admitted. No doubt, the assessee is not entitled to claim deduction u/s. 54F of the Act, for flats received in pursuant to JD Agreement, because as per the Assessing Officer, completion of construction of said flats was completed in the financial year 2021. Since, construction of flats was not completed for the impugned assessment year, those flats

cannot be treated as purchase or acquired by the assessee for the purpose of deduction u/s. 54F of the Act. If you leave behind flats to be received by the assessee in pursuant to JD Agreement for the purpose of claiming deduction u/s. 54F of the Act, then the alternate claim made by the assessee before the Id. CIT(A) should be examined, in light of purchase of new residential house property on 25.04.2012, and also in light of conditions prescribed u/s. 54F of the Act. As per section 54F of the Act, in order to get deduction for capital gains, the assessee should purchase new residential house property one year before or two years after the date of transfer of original asset. Further, in so far as construction of property is concerned, it should be completed within three years from the date of transfer of original asset. In the present case, the assessee has purchased a new residential house property on 25.04.2012, which is within two years from the date of transfer of original asset. The assessee has satisfied other conditions because, the new residential house property was purchased on or before due date for filing return of income u/s. 139(1) of the Act and thus, she need not to keep sale consideration in capital gains deposit account scheme as per the provisions of section 54F(4) of the Act. Since, the

appellant has satisfied all conditions prescribed for claiming deduction u/s. 54F of the Act, in our considered view, the Id. CIT(A) ought to have allowed alternate claim made by the assessee for deduction u/s. 54F of the Act. Thus, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to allow deduction u/s. 54F of the Act, in respect of residential house property purchased by the assessee on 25.04.2012.

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

Order pronounced in the court on 31st August, 2023 at Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/Judicial Member



Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 31st August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF