

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.101/Chny/2024
निर्धारण वर्ष/Assessment Year: 2012-13

Shri Chandra Bhavani Sankar, 1/3A, Vinayakar Koil Street, Thalambur, Chennai-600 130.	v.	The ITO, NCW-16(2), Chennai.
[PAN: AEYPB 1764 J]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Sathyanarayanan, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	02.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.08.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 17.11.2023 for the Assessment Year (hereinafter in short "AY") 2012-13.



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2. Ground No.1 is the action of the Ld.CIT(A) confirming the action of the AO denying exemption u/s.54F of the Income Tax Act, 1961 (hereinafter in short "the Act").

3. The brief facts are that the assessee filed return of income (RoI) for AY 2012-13 on 31.07.2012 declaring total income of Rs.31,70,459/-. The income of the assessee consists of salary of Rs.29,62,540/-, income from other sources Rs.18,520/- and Long Term Capital Gain (hereinafter in short "LTCG") of Rs.4,14,479/- and losses of current year at Rs.1,25,080/- and after claiming deduction under Chapter-VIA of Rs.1 lakh, the total income was arrived at Rs.31,70,459/-. Later, the RoI was selected for scrutiny under CASS, and the AO completed the assessment on 30.03.2015 by making following additions:

- LTCG re-computed at Rs.66,53,379/-
- Savings bank interest Rs.20,218/-
- Unexplained cash credit u/s.68 of the Act Rs.59,90,000/-

And thus, the AO assessed the total income of the assessee at Rs.1,54,19,580/- as against the returned income of Rs.31,70,459/-.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), wherein, he agitated only two issues i.e. (i) disallowance of claim u/s.54F of the Act & (ii) addition u/s.68 of the Act.



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5. First, we will consider the disallowance of claim made by the assessee u/s.54F of the Act.

6. We have heard both the parties and perused the records and it is noted that during the year under consideration, the assessee had sold the land at Noombal Village, for a consideration of Rs.78,48,000/- on 29.02.2012 and admitted LTCG and claimed deduction u/s.54F of the Act to the tune of Rs.57,41,274/- on the investment of Rs.70,53,806/- made in the new constructed house. However, according to the AO, the assessee has extended his old house by constructing first floor to the existing ground floor, which construction was started a year back before the date of transfer; and the AO noted that as per the provisions of Sec.54F of the Act, assessee could only have purchased a residential house one year before the transfer; and since, no new residential house was purchased/constructed and it was only an extension of the old house, the AO disallowed the claim of the assessee u/s.54F of the Act. On appeal, the Ld.CIT(A) has confirmed the action of the AO. We don't countenance the impugned action of the Ld.CIT(A)/AO. We note that u/s.54(1) of the said Act, the capital gain arising from transfer of a residential house is not to be charged to income tax as income of the previous year, if the assessee has within a period of one year before or two years after the date of transfer of that residential house, purchased another residential house in India or has within a period of three years



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after the date of transfer constructed a residential house in India and if the amount of the cost of the residential house, so purchased or constructed is equal to or less than the amount of capital gain. Thus, it can be seen that the assessee would be allowed deduction u/s.54F of the Act if he purchased a residential property one year before or after two years from the date of transfer or constructed a residential house within three years from the date of transfer. In this case, admittedly, the assessee had constructed a house (*first floor on the top of the ground floor building which was already existing*) and claimed deduction u/s.54F of the Act on the constructed first floor, which has been denied only on the ground that such a claim u/s.54F of the Act can be allowed only if an assessee constructed a house within three years from the date of transfer. This reason of the AO can't be accepted, because, u/s.54F of the Act, inter-alia, if the assessee had purchased a house one year before the date of transfer, then, assessee could have successfully claimed deduction u/s.54F of the Act. In other words, prior purchase of house is allowable deduction. And in this case, it is not disputed that assessee has sought deduction of construction of first floor (residential house) of the already existing ground floor building which construction was commenced prior to transfer of property in question and is well within the time stipulated u/s.54(1) of the Act. For taking such a view, we rely on the decision of the Hon'ble Madras High Court in the case of C. Aryama v. CIT



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in Tax Case Appeal No.520 of 2017 dated 06.08.2018, wherein, the Hon'ble Madras High Court on similar issues has held as under:

14. Under Section 54(1) of the said Act, the capital gain arising from transfer of a residential house is not to be charged to income tax as income of the previous year, if the assessee has within a period of one year before or two years after the date of transfer of that residential house purchased another residential house in India or has within a period of three years after the date of transfer constructed a residential house in India and if the amount of the cost of the residential house so purchased or constructed is equal to or less than the amount of capital gain.

15. It is a well settled principle of construction and interpretation of statutes that statutory provisions should, to the extent feasible, be interpreted and/or construed in accordance with plain meaning of the language used in those provisions.

16. On a plain reading of Section 54(1) of the said Act, the transfer of a long term asset, which would include a residential house, would be chargeable to income tax as a capital gain, except in circumstances specified in the said section.

17. It is not necessary for this Court to go into the question of mode and method of computation of capital gain as there is no dispute in this regard, which requires adjudication in this appeal.

18. The question is, whether any part of the capital gain from transfer of the residential house is exempt from the capital gain tax and if so to what extent?

19. The conditions precedent for exemption of capital gain from being charged to income tax are:

(i) The assessee should have purchased a residential house in India either one year before or two years after the date of transfer of the residential house which resulted in capital gain or alternatively constructed a new residential house in India within a period of three years from the date of the transfer of the residential property which resulted in the capital gain.

(ii) If the amount of capital gain is greater than the cost of the residential house so purchased or constructed, the difference between the amount of the capital gain and the cost of the new asset is to be charged under Section 45 as the income of the previous year.

(iii) If the amount of the capital gain is equal to or less than the cost of the new residential house, the capital gain shall not be charged under Section 45.

20. What has to be adjusted and/or set off against the capital gain is, the cost of the residential house that is purchased or constructed. Section



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54(1) of the said Act is specific and clear. 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 adjusted. The cost of the new residential house would necessarily include the cost of the land, the cost of materials used in the construction, the cost of labour and any other cost relating to the acquisition and/or construction of the residential house.

21. A reading of Section 54(1) makes it amply clear that capital gain is to be adjusted against the cost of new residential house. The condition precedent for such adjustment is that the new residential house should have been purchased within one year before or two years after the transfer of the residential house, which resulted in the capital gain or alternatively, a new residential house has been constructed in India, within three years from the date of the transfer, which resulted in the capital gain. The said section does not exclude the cost of land from the cost of residential house.

22. It is axiomatic that Section 54(1) of the said Act does not contemplate that the same money received from the sale of a 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 case of prior 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 a 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 the new house, the difference between 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 the 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.

24. For the reasons discussed above, the appeal is allowed. The questions framed above are answered in favour of the appellant assessee and against the respondent revenue. The first question is answered in the affirmative and the second question is answered in the negative. No costs.

7. And also, we take note of the decision of this Tribunal in the case of Smt. Kethsial Justin v. ITO dated 18.06.2018 in ITA No.781/Chny/2018,



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wherein, similar question arose, and in that case, the assessee had put up a new dwelling unit on the first floor of existing residential house and claimed that the cost incurred for construction of such new dwelling unit as eligible for deduction u/s.54F of the Act. However, the AO was of the opinion that it was only an extension of the existing building and there was no dwelling unit or residential house. However, the Tribunal didn't agree and noted that there was separate stair-case for the construction done in the first floor and approved plan of the Engineer, which showed existence of kitchen for the first floor building as well as separate water connection, separate electricity connection, etc. In such circumstances, the Tribunal held that the construction of a new residential house to its existing residence qualifies for deduction u/s.54F of the Act, and the Tribunal also noted the decision of the Hon'ble Madras High Court in the case of Shri V. Pradeep Kumar v. CIT reported in [2007] 290 ITR 90 [Mad.HC] which has been relied by the AO to deny the claim u/s.54F of the Act. In the case of Pradeep Kumar (supra), there was a definite finding of fact that there was no tangible material to form a belief that a residential house/dwelling unit was constructed; and it was found that it was only an extension of existing building by 382 feet that too after demolishing an existing ACC roofed out-house. In such factual circumstances, the Hon'ble Madras High Court held that assessee couldn't claim deduction u/s.54F of the Act. Therefore, according to us, in the



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present case, the AO erred in relying on the decision of the Hon'ble High Court in the case of Shri V. Pradeed Kumar, because, the facts were entirely different. Likewise, the decision of the Hon'ble Kerala High Court in the case of Pushpa v. ITO reported in [2013] 31 taxmann.com 33 (Ker) is also not applicable, because, in that case there is a finding of fact that assessee had only extended the first floor construction; meaning no new dwelling unit was constructed. Therefore, both case laws are not applicable in the facts of the present case.

8. Instead, in the present case, we note that the assessee has filed the following relevant documents to prove that a new dwelling unit was constructed on the top of the ground floor, which are noted as under:

- i. Approved plan from CMDA to construct top floor on ground floor.
- ii. Proof of new electricity meter connection (refer Page Nos.71-76 of Paper Book.
- iii. New water connection (Page Nos.77-82 of Paper Book)
- iv. Enhanced property tax receipt reflecting enhanced payment of property tax when compared to pre-extension period.
- v. Photographs to support construction of a new residential house, which shows separate stair-case for the construction done in the first floor, kitchen, bed-room, etc.

9. After having carefully examining the above documents, we are of the opinion that the assessee had discharged the burden to prove construction of a residential house/dwelling unit (first floor with separate stair-case, kitchen, new electrical connection, water connection, etc.) and it is not disputed that construction of the new dwelling/residential unit



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was within the time stipulated u/s.54F of the Act. Therefore, assessee is eligible for claiming deduction u/s.54F of the Act and therefore, we set aside the impugned order of the Ld.CIT(A) and direct the AO to grant deduction claimed u/s.54F of the Act.

10. Ground No.2: Coming to the next ground against the action of the Ld.CIT(A) confirming the addition made u/s.68 of the Act to the tune of Rs.59,90,000/-. The AO noted that the assessee had constructed a house (first floor) in the relevant Assessment Year before the transfer of property in February, 2012 and therefore, he asked the assessee to prove source of the funds for the construction of the first floor, because, the transfer of the property at Noombal Village, was an event after the commencement of the construction. In order to prove the nature & source of the money, the assessee contended (i) the sale consideration of Rs.78,48,000/- was received on 21st October, 2011 ('4' months before the Sale Deed was executed on 29.02.2012 and (ii) that he received Rs.59,90,000/- from his father/mother/brothers & sisters. In this regard, the assessee explained that he had executed on stamp paper an agreement for purchase of land on 25.07.2007 (i.e. AY 2008-09) from his father late Mr. C. Krishnama Naidu (vendor) for a consideration of Rs.75 lakhs which was paid through cheque/cash (refer Page Nos.43-50 of paper book), wherein, the details of cheques and payments in cash are given. According to the Ld.AR, since the property in question (6.15 acres



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at KVB Puram Village) had dispute relating to title/ownership i.e. with the assessee's brothers & sisters, the said agreement/transaction didn't fructify; and therefore, the assessee received back Rs.75 lakhs, out of which, Rs.59.90 lakhs were in cash which was used for construction of new building which was referred to at Ground No.1 (supra). The AO has conceded after verification that assessee had received the sale consideration of Rs.78.48 lakhs on 21st October, 2011 (i.e. '4' months before Sale Deed was executed) which fact is noted by the AO at Para No.4.5 of his assessment order. However, his allegation was that since assessee had started the construction of the first floor before October, 2021, what was the source of money ? [i.e, for starting the construction before 21st October, 2011]. As noted, that assessee had in his hands Rs.78.48 lakhs on 21st October, 2011. And the AO has added u/s.68 of the Act Rs.59.90 lakhs without making any enquiry even after the assessee had placed on record the agreement of sale of 6.15 acres of land at K.V.Puram Village, wherein, assessee had paid Rs.75 lakhs and got it back on cancellation of the agreement. The Ld.AR brought to our notice that the Ld.CIT(A) had conducted enquiry by issuing notice u/s.133(6) of the Act, to the late vendor through his son Shri C. Durga Sankar (refer Page Nos.55-57 of the paper book) and pursuant to which, the mother of the assessee (wife of vendor) replied vide letter dated 08.03.2017 (refer Page No. 53 of the Paper Book) that her husband had passed away; and



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she confirmed about the execution of sale agreement in 2007 [between her husband and the assessee]; and also informed Ld.CIT(A) that due to dispute between the siblings (regarding the division of land, sharing of money, etc.), the sale transaction didn't take place; and consequently, her husband/siblings returned the consideration/advance amount he received from the assessee. And the Ld.CIT(A) in order to enquire about the veracity of the same, even issued notice u/s.133(6) to all the brothers of the assessee, (i) Shri C. Uma Shankar (ii) Shri Gowri Shankar, (iii) Shri C. Girija Shankar and (iv) Shri C. Durga Shankar; and pursuant to it, they confirmed the fact regarding agreement of sale in 2007 which was later cancelled by their father and also that they have duly returned the money to the assessee. Copy of their replies are found placed at Page Nos.58-60 of the Paper Book. Further, according to the Ld.AR, he has come to know that the Ld.CIT(A) even had issued notice to the Stamp Vendor to ascertain whether the agreement for sale dated 25.07.2007 which was executed on stamp-paper was genuine or not; and had verified about the veracity of the stamp-paper purchased from that stamp vendor which shows the genuineness of the said document. However, according to him, when the investigation was at this stage, unfortunately, the appeal proceedings migrated to the faceless regime and he couldn't access the other evidences collected by the Ld.CIT(A); and prayed that in the light of the contemporaneous evidence like bank statement of



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assessee which shows that assessee in order to purchase the property in 2007 for a consideration of Rs 75 Lakhs, got loan partly from Axis Bank which amount was given in cheque to the vendor, and the balance amount of Rs.46 lakhs was withdrawn from Axis Bank between 25.07.2007 to 10.11.2007 and given to father/siblings [as consideration for purchase of 6.15 acres at K. V. Puram], sec.68 addition be deleted.

11. We note from the bank statement of assessee that he had withdrawn an amount of Rs.21 lakhs on 25.09.2007 and an amount of Rs.9 lakhs on 09.11.2007, and Rs.16 lakhs on 10.11.2007. Thus, we find that assessee had withdrawn Rs.46 lakhs between 25th July to 10th November, 2007; and during the hearing, we had called for the original sale agreement dated 25.07.2007 [between assessee and his father] and finds that sale agreement dated 25.07.2007 was indeed executed between assessee and his father Shri C. Krishma Naidu (vendor) for the schedule property admeasuring 6.15 acres at KVB Puram Village, for a total consideration of Rs.75 lakhs (copy found placed at Page Nos.43-50 of the Paper Book); and we also find the details of payment made (which details are found recorded at the reverse side of Page No.43 i.e. Page No.44 of the Paper Book and at Page Nos.47 & 49 of Paper Book). The veracity of the agreement for sale (*though not registered*) is proved by perusal of the original Sale agreement; and it was brought to our notice that the Stamp Vendor has also corroborated the genuineness of the sale



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of stamp paper to assessee before 25.07.2007; and the fact that consideration of Rs.75 lakhs has been transferred through cheque & cash is proved from the details of which have been noted in the said agreement as noted (supra) as well as the loan sanctioned by Axis bank & bank statements; and the same has been confirmed/corroborated by the assessee's brothers and mother; and that the sale agreement of 2007 has been cancelled/not acted upon; and that the mother/wife of vendor as well as brothers has confirmed that due to cancellation of sale agreement, the amount has been returned back to the assessee, which fact is corroborated by the document [copy of receipt of payment back to assessee from C. Krishnama Naidu on cancellation of deal for an amount of Rs.25 lakhs (on 02.05.2011), Rs.28 lakhs on 15.11.2011 & Rs.4 lakhs on 20.02.2012 i.e. total amount of Rs.57 lakhs was paid back to assessee between May, 2011 to February, 2012]. And we note that the AO had accepted that assessee had received Rs.78,48,000/- (refer Para No.4.5 of assessment order) on 21.10.2011. Therefore, in the overall factual background, we are of the opinion that assessee had discharged the burden to prove that an amount of Rs.57 lakhs was in his hands, which was received from his family members in the relevant year under consideration, apart from the amount of Rs 78,48.000/- received on 21.10.2011; and further, we note that assessee had withdrawn an amount of Rs.13.90 lakhs between 01.08.2009 to 16.07.2010. Therefore,



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the assessee succeeds in proving the nature and source of Rs 59.90 lakhs, and therefore, addition made of Rs.59.90 lakhs was not warranted. In such an event, no addition u/s.68 of the Act is sustainable and directed to be deleted.

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

Order pronounced on the 09th day of August, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 09th August, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF