

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

डॉ. ओ.के. नारायणन, उपाध्यक्ष एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE Dr. O.K. NARAYANAN, VICE PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / **I.T.A. No. 01/Mds/2013**

निर्धारण वर्ष / Assessment Year : 2006-07

B.Sivasubramanian,
99/43,
Second Agraharam,
SALEM-636 001

Income Tax Officer,
Ward I(1),
SALEM

Vs

[PAN: AMOPS 9402 Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T.Vasudevan, Advocate
प्रत्यर्थी की ओर से / Respondent by : Shri T.N.Betgeri, JCIT

सुनवाई की तारीख / Date of hearing : 06-03-2014
घोषणा की तारीख / Date of Pronouncement : 12-03-2014

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

The appeal has been filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-Salem dated 31-10-2012 relevant to the Assessment Year (AY) 2006-07.

2. The assessee is a an individual and has filed his return of income for the AY.2006-07 on 20-07-2006 declaring his income as ₹1,01,899/-. The case of the assessee was selected for scrutiny and notice u/s. 143(3) of the Income Tax Act, 1961 (herein after referred to as 'the Act') was issued to the assessee on 30-01-2007. In the scrutiny assessment order, addition of ₹3,45,000/- was made by dis-allowing the claim of the assessee u/s.54F of the Act. The assessee preferred an appeal against the assessment order. The CIT(Appeals) confirmed the addition of ₹3,45,000/- vide order dated 23-01-2009. Thereafter, the assessee filed second appeal before the Tribunal. The Tribunal in ITA No.550/Mds/2009, vide order dated 04-09-2009 set aside the order of the authorities below and remitted the matter back to the Assessing Officer to decide the same afresh after verifying and examining the nature of construction i.e., whether it is a case of reconstruction after demolition or renovation and extension of existing house.

3. In the second innings, the Assessing Officer held that the assessee has failed to produce evidence to show that it is not renovation but construction of a new house, the assessee cannot claim the benefit of exemption u/s.54F of the Act. The Assessing

Officer vide order dated 18-01-2010 passed u/s.143(3) r.w.s.254, made addition of ₹3,33,984/- on account of Long Term Capital Gain.

The assessee, aggrieved against the assessment order, filed appeal before the CIT(Appeals). The CIT(Appeals) held that since there is no approved plan for the new construction, the assessee is not entitled to claim exemption u/s.54F and thus confirmed the addition made by the Assessing Officer.

Now, again the assessee has come in second appeal before the Tribunal assailing the order of the CIT(Appeals).

4. Shri T.Vasudevan, appearing on behalf of the assessee submitted that in the period relevant to the AY.2006-07, the assessee had sold shares. The Long Term Capital Gain from the sale of shares was worked as ₹3,33,985/-. The assessee was not entitled for exemption u/s.10(36) and 10(85) on Long Term Capital Gain as the sale of shares was not made through recognized stock exchange. The assessee utilized the sale proceeds of the shares in construction of a residential house after demolishing the old house and thus claimed exemption u/s.54F of the Act. Since, the assessee had constructed a new residential house in place of the old existing building, the assessee did not get the plan approved

from the Municipal Corporation. However, on 08-02-2007, the Salem Corporation issued an interim order which shows that the assessee has put up new construction without the permission of the Salem Corporation. The Id.Counsel for the assessee placed on record the copy of the interim order dated 08-02-2007 from the office of the Commissioner of Salem Corporation. The Id.Counsel further placed on record a copy of the building plan as well as estimation for the new construction after demolishing of the walls and roofs of the existing building.

5. On the other hand, Shri T.N.Betgeri, appearing on behalf of the Revenue submitted that the assessee has miserably failed to place on record any document to show that the assessee has undertaken construction of a new residential house. The Assessing Officer has categorically stated that the assessee has failed to produce approved building plan from the Municipal Corporation of Salem. The Id.DR contended that at the best it can be a case of renovation for which the assessee is not eligible to claim exemption u/s.54F.

6. We have heard the submissions made by the representatives of both the sides. We have also perused the

orders of the authorities below as well as the documents placed on record by the Id.Counsel for the assessee. It is not disputed that the assessee is not in possession of plot on which a residential building is in existence. The assessee has allegedly utilized the Long Term Capital Gain arising from the sale of shares towards the construction of a new residential house after demolition of old building on the plot-in-question. The assessee has claimed exemption u/s.54F on the ground that the assessee has invested Long Term Capital Gains arising from sale of shares towards construction of a new house within the prescribed period as mentioned in the Act. However, the contentions of the assessee has been rejected by the authorities below for the reason that the assessee has not placed on record the approved building plan from the Municipal Corporation. The assessee has admitted the fact that the new residential house has been constructed without the approval of the Municipal Corporation. Rather, in support of his contentions, the Id.Counsel for the assessee has placed on record an interim order dated 08-02-2007 from the Corporation of Salem, wherein it has been stated that the assessee has constructed a new building without the permission of the Commissioner of Salem Corporation. The assessee has also

placed on record the building plan and the estimation for the construction of a new house of demolition of the existing building.

Reliance cannot be placed on the building plan as it is not approved by any statutory authority. However, the fact that the assessee has constructed a new house is proved by the interim order issued by the Corporation of Salem wherein it has been stated that the assessee has put up a new construction without permission of the Commissioner, Salem Corporation.

The provisions of section 54F mandates the construction of a residential house, within the period specified. However, there is no condition that the building plan of the residential house constructed should be approved by the Municipal Corporation or any other competent authority. If any person constructs a house without approval of building plan, he will be raising construction at his own risk and cost. As far as for availing exemption u/s.54F, approval of building plan is not necessary. The approved building plan, certificate of occupation etc. are sought to substantiate the claim of new construction. In the present case, the fact that the assessee has raised new construction is evident from the interim order issued by the Corporation of Salem.

7. We are of the considered opinion that in view of the above facts, it is evident that the assessee has put up a new construction in place of old residential building, thus, the assessee is entitled to claim exemption u/s.54F. The impugned order is set aside and the appeal of the assessee is allowed.

Order pronounced on Wednesday, the 12th March, 2014 at Chennai.

Sd/-
(Dr. O.K. NARAYANAN)
VICE PRESIDENT

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Dated: 12th March, 2014

TNMM

Copy to: Appellant/Respondent/CIT(A)/CIT/DR