आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री चंद्र पूजारी,लेखा सदस्य एवं श्रीजी. पवन कुमार,न्यायिकसदस्यकेसमक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1005/Mds/2015

निर्धारण वर्ष /Assessment year : 2008-2009

Shri. R. Srinivasan (HUF) 5/33, Agraharam, Kattuputhur –Via, Trichy Dist 621 207.	**Vs.**	The Income Tax Officer, Ward I(1) Trichy 620 001.
[PAN AAAHR 0264B] **(अपीलार्थी/Appellant)**		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. M. Narayanan, C.A.,
प्रत्यर्थी की ओर से /Respondent by : Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 08-06-2016
घोषणा की तारीख /Date of Pronouncement : 15-07-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-I, Tiruchirapalli, in ITA No.390/2010-11/CIT(A)/TRY, dt 05.02.2015 for the assessment year

2008-2009 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

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

> *2. The Learned Commissioner of Income Tax (Appeals) erred in holding that once the Assessing Officer adopted the same value as that of DVO for working out capital gains tax, no further objections can be entertained on this issue, ignoring the Judicial pronouncements under similar / identical circumstances, which are in favour of the Appellant.*
>
> 3. *The Learned Commissioner of Income Tax (Appeals) has erred in not at all considering the additional grounds submitted by the Appellant before deciding the case ; he has simply mentioned the additional grounds and the Judicial pronouncements quoted by the Appellant without any discussion on the same.*
>
> 4. *The learned Commissioner of Income Tax (Appeals) ought to have appreciated that where the full value of the consideration received as per sale agreement has been invested in the new house property, exemption u/s 54F is to be given for the full LTCG, as Section 54F is an exemption provision and a complete code in itself and and deeming fiction contained in any other provision cannot be brought into section 54F, as held out in various Judicial Pronouncements.*
>
> 5. *Without prejudice to above claim of full exemption of LTCG, it is submitted that the Learned Commissioner of Income Tax (Appeals) erred in not considering the plea of the Appellant to consider the full value of the investment of Rs 17,31,975/- in the new house property whereas the Assessing Officer has restricted the exemption to Rs 15,37,000/- , being the amount deposited initially in the Special Capital Gains Deposit Account".*

3. The Brief facts of the case are that the Assessee is assessed in status of HUF and is in the business of finance and filed Return of income on 05.02.2009 with total income of ₹1,23,100/- and return of

income was processed u/s.143(1) of the Act. Subsequently, the case was taken up for scrutiny under CASS and notice u/s.143(2) of the Act was issued. In compliance to notices, the ld. Authorised Representative of assessee appeared from time to time and produced Books of Account as called for. In the assessment proceedings, the ld. Assessing Officer found that the assessee has sold land on 03.12.2007 at Abishekapuram Village, Trichy and received sale consideration ₹15,67,125/- as against market value/guideline value of stamp duty ₹33,22,305/-. The ld. Assessing Officer on request of the assessee referred the property to Valuation Officer and the DVO has determined market value of the property at ₹24,45,000/- u/s.16A(5) of the Wealth Tax Act r.w.s. 50C(2) of the Income Tax Act. The ld. Assessing Officer determined capital gains based on the DVO value and worked out Long Term Capital Gains of ₹7,21,294/- whereas the assessee has entered into agreement for residential flat with two others in Bangalore on 06.11.2009 but sale deed was registered on 29.03.2010 for a consideration of ₹51,95,926/- and the assessee's share in the investment being ₹17,31,975/- and claimed the exemption u/sec. 54F of the Act. Bu the ld. Assessing Officer has not allowed exemption as the new residential asset was purchased on 29.03.2010 after a period of two years and three months and Assessed total income including long term capital gains ₹8,44,394/-

and raised demand. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the ld. Authorised Representative of assessee argued the grounds and explained the facts that the ld. Assessing Officer has erred in adopting the value of DVO, as vacant land sold at Trichy is situated on the banks of Uyyakondan Canal, a low lying areas as per registered deed and the assessee has deposited the sale proceeds amount with State Bank of Travancore. The fact that the land sold was adjacent to Canal and it has become drainage and further due to odd shape of the plot which requires Heavy filing of mud for usage. The adoption of market value determined for stamp duty cannot be applied considering the facts and location of the land. Further, the ld. Assessing Officer has restricted the claim in the construction of the house property to the extent of ₹15,37,000/- as against ₹17,31,975/- towards assessee share. The assessee has entered into agreement with Builder on 06.11.2009 and the possession was taken on 29.03.2010 on registering deed within three years from the date of transfer of original asset. The assessee filed additional grounds and relied on the judicial decisions but the ld. Commissioner of Income Tax (Appeals) found that the assessee has requested for valuation by DVO were the DVO has fixed the value at ₹24,45,000/-. The ld. Assessing Officer have

adopted the valuation but the assessee was prevented from filing the objections on the value. But, the ld. Commissioner of Income Tax (Appeals) confirmed the order of Assessing Officer. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

5. Before us, the ld. Authorised Representative of assessee argued the grounds and reiterated the submissions made in the assessment and appellate proceedings and contention of the ld. Authorised Representative that the vacant land sold at Trichy is on the banks of Canal which being low lying area for a consideration of ₹15,67,125/- by registered deed on 03.12.2007 and the assessee has deposited the sale consideration with State Bank of Travancore in accordance with the provisions of Sec. 54F(4) of the Act till the construction of the house. The ld. Assessing Officer in the assessment proceedings As per provisions of Sec. 50C adopted the guideline of the property at ₹33,22,305/- and at the request of the assessee, the ld. Assessing Officer referred to valuation officer and fixed the DVO value at ₹24,45,000/- which was not accepted and assessee was prevented from filing objections on valuation report and the ld. Assessing Officer while computing Long Term Capital Gains has restricted claim of investment in House property to the extent of ₹15,35,000/-instead of 1/3rd share being ₹17,31,975/- The assessee has deposited the sale

consideration of plot in Capital Gains Account Scheme and assessee was not provided with adequate opportunity to rebut the DVO valuation. Further, the ld. Authorised Representative submitted that the assessee has invested sale consideration by entering into sale agreement on 06.11.2009 for investment in new house property and complied the provisions of Sec. 54F of the Act were as the provisions of Sec. 50C of the Act are deeming provisions and cannot be applied as the assessee has invested net sale consideration in construction of Residential property which is not disputed by the Revenue and prayed for allowing the appeal.

6. Contra, the ld. Departmental Representative relied on the orders of Assessing authority and opposed the grounds.

7. We heard the rival submissions, perused the material on record and judicial decision. The only crux of the disputed issue argued by the ld. Authorised Representative that the assessee has invested entire net sale consideration in the construction of house property alongwith two others at Bangalore which is not disputed and complied the stipulated conditions of provisions of Sec. 54F of the Act that within three years from the date of transfer of original Asset i.e. 3rd December, 2007 and assessee should construct and take possession of the residential property on or before 3rd December,

2010. But the assessee has entered into agreement of construction on 06.11.2009 for construction of house property at Bangalore alongwith two others and sale deed was registered on 29.03.2010 much before the stipulated date. Therefore, there is no dispute on violation of stipulated conditions of Sec. 54F of the Act. Further, on the aspect of applicability of provisions Sec. 50C of the Act, the ld. Authorised Representative submitted that the guideline is to be considered for the purpose of stamp duty valuation and not for assessment. Further, the vacant land sold at Trichy is on canal and low lying areas formed into drainage pit which shall not fetch the such market value. The Section 50C of the Act provisions are deeming fictions and the assessee has not received sale consideration other than the amount specified in the sale deed. Under provisions of Sec. 54F of the Act, net consideration has to be invested in the Residential property but not the deeming value being fiction. The ld. Authorised Representative relied on the decisions of *Prakash Karnawat vs. ITO, (2011) 16 taxmann.com 357(jp), Gyan Chand Batra vs. ITO, (2010) 133 TTJ 482 (JP), Nand Lal Sharma vs. ITO (2015) 61 taxmann. com 271 (Jaipur-Trib), ACIT, Kanpur vs. M/s. The Upper India Chamber of Commerce, in ITA No.601/LKW/2011 in assessment year 2008-2009, dated 05.11.2014, Lucknow Bench and Subash Chand vs. ACIT in ITA Nos. 571 to 573/Chandi/2011, dated 28.11.2011, Chandigarh Bench*. We

considered the Co-ordinate Bench decision in the case of Shivkumar Lakshman vs. ITO in ITA No.402/Mds/2015, dated 29.05.2015 were it was held at para 9, page 6 as under:-

> *''9. We have considered the rival submissions on either side and perused the relevant material on record. The question arises for consideration is that for the purpose of granting deduction under Section 54F of the Act, whether the sale consideration disclosed in the sale deed has to be taken or the value adopted by the SubRegistrar for registering the document has to be taken. This Tribunal is of the considered opinion that for the purpose of granting deduction under Section 54F of the Act, the value disclosed in the sale deed has to be adopted rather than the value determined by the Sub-Registrar on the basis of guideline value. Actual sale consideration as reflected in the sale deed has to be adopted in the absence of any other material to indicate that the assessee has received any on-money over and above the amount disclosed in the sale deed. In this case, it is nobody's case that the assessee received on-money over and above the sale consideration disclosed in the sale deed. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has to adopt the actual sale consideration of ₹90 lakhs for the purpose of considering the claim of exemption under Section 54F of the Act''.*

Respectfully following the Co-ordinate Bench decision, we allow the appeal of the assessee.

8. In the result, the appeal of the assessee in ITA No.1005/Mds/2015 is allowed.

Order pronounced on Friday, the 15th day of July, 2016, at Chennai.

Sd/-	Sd/-
(चंद्र पूजारी)	**(जी. पवन कुमार)**
(CHANDRA POOJARI)	**(G. PAVAN KUMAR)**
लेखा सदस्य /ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai
दिनांक/Dated:15.07.2016
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	3. आयकर आयुक्त (अपील)/CIT(A)	5. विभागीय प्रतिनिधि/DR
2. प्रत्यर्थी/Respondent	4. आयकर आयुक्त/CIT	6. गार्ड फाईल/GF