

In the High Court of Judicature at Madras

Dated : 13.10.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Tax Case Appeal No.899 of 2015

The Commissioner of Income Tax,
Chennai.Appellant

Vs

Smt.Fabiola StephenRespondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 21.3.2014 made in I.T.ANo.54/Mds/2014 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai against the order of Commissioner of Income Tax, Chennai-X dated 26.11.2013 passed in C.NO.6502(72)/2013-14/X for the assessment year 2009-10 against the order of Income Tax officer, Business ward III(3), Chennai-34 dated 11.11.2011 for the assesment year 2009-10 for the Pan No.ABJPS9860Q

For Appellant : Mr.M.Swaminathan, Sr. Standing Counsel
for Mr.T.Ravikumar

Judgment was delivered by V.RAMASUBRAMANIAN, J

This tax case appeal is filed by the Revenue raising the following substantial questions of law :

"(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assumption of jurisdiction by the Commissioner of Income Tax under Section 263 was not sustainable in law?

(ii) Is not the finding of the Tribunal bad, especially when the assessee has sold the property on 21.6.2007 and investment in the bonds of NHAI had not been made within

six months from the date of sale as stated in Section 54 EC? and

(iii) Whether it was proper for the Tribunal on the material placed holding that Section 263 order was bad especially when the assessee has committed default on the conditions laid under the statute as the same would fall only in the assessment year 2009-2010?"

2. Heard Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue.

3. The respondent/assessee sold a plot of land for a consideration of Rs.20,67,000/- on 21.6.2007. For the assessment year 2008-09, she deposited an amount of Rs.18,25,000/- in the capital gains account scheme within the stipulated time and availed exemption under Section 54.

4. But, the assessee should have actually deposited the net consideration of Rs.20,29,500/- in the capital gains account scheme. However, in the assessment year 2009-10, the assessee closed the deposit in the capital gains account scheme and invested in the bonds of NHAI, an amount of Rs.18,30,000/- on 30.6.2008 and availed exemption under Section 54EC. But, under Section 54EC, the assessee should have made the investment in the bonds within six months from the date of transfer of the original asset.

5. Since the assessee was clearly in error, the Commissioner of Income Tax issued a notice under Section 263 proposing to revise the assessment. The assessee appeared before the Commissioner and submitted that the amount was originally deposited under the capital gains account scheme as per the advice of the bankers. But later, she found out that in order to avail exemption under Section 54EC, the amount had to be invested in the specified assets. Therefore, she withdrew the amount from the capital gains account scheme and invested the same in NHAI bonds. The bonds were also not redeemed within three years.

6. However, overruling the submissions of the assessee, the Commissioner passed an order on 26.11.2013 withdrawing the exemption granted under Section 54EC. Aggrieved by the said order, the assessee went before the Tribunal. The Tribunal allowed the appeal. Aggrieved by the order of the Tribunal, the Revenue is before us.

7. It is true that the assessee did not deposit the amount within the period stipulated namely six months for claiming

exemption under Section 54EC. But unfortunately, this is a case where the assessee, being a lady and an individual, appears to have been misled by the banker. She deposited a major portion of the proceeds in the capital gains account scheme on the advice of the banker. Therefore, the lenient view taken by the Tribunal, though not strictly in accordance with law, does not call for interference.

8. Accordingly, we dismiss the appeal.

-s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner of Income Tax, Chennai

2.The Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai.

3.The Income Tax officer, Business Ward III(3)
Chennai-34

4.The Assistant Registrar
Income Tax Appellate Tribunal
III rd floor Rajaji Bhavan,
Besant Nagar, Chennai-90

5.The Commissioner of Income tax Chennai X

+1 cc to Mr.M.Swaminathan vide sr.55847

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