IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.902 of 2017

Smt.Hema Harathi,
Represented by Power of Attorney
Holder Mr.Koka Prabhakar Rao,

... Appellant

-vs

The Income Tax Officer,
Ward - I(2),
International Taxation,
Chennai - 600 034.

... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Bench 'C', Chennai, dated 11.01.2017 in ITA.No.2922/MDS/2016 for the assessment year 2013-14.and against the order of the Commissioner of Income Tax (Appeals)-16, Chennai-34, dt:24/08/2016, made in ITA.No.78/CITCA)-16/2013-14, for the assessment year 2013-14 and against the order of the Inocme Tax officer (International Taxcation)-1(2), Chennai-34, dt:29/12/2015, made in Permanent No.AIQPH8226F for the assessment year 2013-14.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.S.Rajesh
Sr. Counsel for
Mr.Karthik Ranganathan

JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal filed by the appellant under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order of the Income Tax Appellate Tribunal Bench 'C', Chennai, dated 11.01.2017 in ITA.No.2922/MDS/2016 for the assessment year 2013-14.

2.The above appeal has been filed by raising the following substantial question of law:-

> “Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in denying the claim of appellant u/s. 54 of the Act?"

3.Heard Mr.R.Sivaraman, learned counsel appearing for the appellant/assessee and Mr.Karthik Ranganathan, learned Senior Standing Counsel for the respondent/revenue.

4.The brief facts which are necessary for disposal of the appeal are hereinunder:

The assessee is a non-resident and for the assessment year 2013-14, she filed return of income dated 12.07.2013 admitting NIL taxable income. The case was selected for scrutiny, the Assessing Officer completed the assessment under Section 143(3) of the Act by order dated 29.12.2015 by assessing the income at Rs.70,58,354/- by disallowing the claim for exemption under Section 54 of the Act. The reason for doing so being that the investment in the property was made beyond the time limit stipulated in the Act and the date of transfer of the property was made only on 15.11.2012 and the same cannot be reckoned as 29.08.2012. Against such order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) (CITA), Chennai. Before the CITA, the assessee produced the copy of the sale agreement which was not accepted by the Assessing Officer and rejected as an after thought. Accordingly, the CITA confirmed the order passed by the Assessing Officer. Aggrieved by the same, the assessee preferred an appeal before the Tribunal which has dismissed the assessee's appeal by the impugned order.

5.The assessee's case is that she sold a property for consideration of Rs.1 Crore and claimed long term capital gain of Rs.71,03,270/- and claimed the entire gain as an exemption under Section 54 of the Act. This was rejected by the Assessing Officer on the ground that there is a dispute in the date of acquisition of the property. The assessee's case was that the date on which possession was handed over has to be reckoned for the purpose of computing capital gains, whereas the Assessing Officer took the date of registration of sale deed for the purpose of examining the claim exemption under Section 54 of the Act.

6.We have perused the impugned order passed by the Tribunal and the documents which are placed before us.

7.The undisputed facts which emerge from the documents placed before us are as follows:

The assessee entered into an agreement for sale dated 18.09.2012. In this agreement, it has been recorded that the total sale consideration of the property is Rs.1 Crore. The agreement records that the purchaser has paid a sum of Rs.1 lakh by cheque. The Power of Attorney holder of the assessee was one Dr.K.Surekha. Further, the agreement records that a sum of Rs.20 lakhs has been paid by RTGS transfer to the SBI NRO account of Dr.K.Surekha. The balance amount of Rs.79 lakhs was agreed to be paid on or before 10.11.2012. The agreement also contemplates payment of penalty in the event of default in completing the sale transaction. Clause 8 of the agreement states that the vendor and the purchaser agree and undertake to complete the sale transactions within the stipulated period and that the vendor herein has handed over vacant possession of the schedule mentioned property and the original title deeds to the purchaser on 29.08.2012, the date on which the first advance for the property was made and agreed to execute/register the sale deeds or the General Power of Attorney or any deed or deeds required by the purchaser to and in favour of the purchaser or his nominee or nominees. In paragraph 7 of the order passed by the Tribunal, the payments made to the assessee have been recorded. From the details mentioned therein, it is clear that a sum of Rs.20 lakhs has been received as sale consideration by means of RTGS on 14.09.2012. These payments are not in one lumpsum but split up into various figures amounting to Rs.20 lakhs. Further, in the tabulated statement, a sum of Rs.1 lakh has been shown to have been received by encashment of cheque on 20.09.2012.

8.Thus, in our considered view, the payments made on 14.09.2012 by RTGS and the cheque which was issued for Rs.1 lakh has been correctly recorded in the agreement for sale. Apart from that, in paragraph 7 of the sale deed dated 15.11.2012 registered as Document No.8254 of 2012 on the file of the District Registrar, Madras (South), it has been recorded that the original title deeds were handed over to the purchaser and the purchaser was put in vacant possession of the property on 29.08.2012, the date on which the first advance was given by the purchaser to the vendor. Therefore, in our considered view, the

CITA and the Tribunal ought not to have rejected the document as an after thought or disbelieve the claim of the assessee in support of the plea of exemption under Section 54 of the Act. The CITA had stated that the agreement for sale is an after thought as it was not produced before the Assessing Officer. In our considered opinion, the view taken by the CITA is incorrect because the assessee has offered an explanation stating that before the assessment proceedings were going on, Dr.K.Surekha died in a road accident and the assessee came from the foreign Country, steps were taken by her to search the document which was not readily available or traceable and after much effort the document was secured and she made a plea to admit the document as an additional document under Rule 46A of the Income Tax Rules, 1962. Therefore, we find that there is no lack of bonafide or genuinity on the part of the assessee in not producing the agreement before the Assessing Officer and the explanation offered appears to be reasonable, fair and warranting acceptance. Thus, in our considered view in the peculiar facts and circumstances of the case, we are inclined to accept the stand taken by the assessee that the date of handing over the possession of the property should be reckoned for all purposes to sustain the claim for exemption under Section 54 of the Act.

9.The decision of the High Court of Karnataka in the case of Commissioner of Income Tax vs. Sambandam Udaykumar reported in (2012) 19 taxmann.com 17 (kar.) render support to our finding. In the said decision, it was held that once it is demonstrated that consideration received on transfer of a capital asset has been invested either in purchase or in construction of a residential house, even though the transactions are not complete in all respects as required under law, the same would not disentitle the assessee from the benefit of exemption under Section 54 of the Act.

10.The decision in the case of Commissioner of Income Tax, Bangalore vs. Mrs.Shakuntala Devi reported in (2016) 75 taxmann.com 222 (Karnataka) also comes to the aid of the assessee. In the said case, the assessee sold a flat on 04.02.2003 for total consideration of Rs.1.70 Crores and worked out long term capital gains of Rs.1.44 Crores. The assessee therein claimed exemption undr Section 54 of the Act on the ground that she had re-invested the said amount for purchasing another property by paying advance of Rs.1.66 Crores. An agreement to purchase the said property was entered on 08.09.2003 and between April 2003 to September 2003, a further sum of Rs.2.40 Crores was paid by the assessee. However, the sale transaction was not concluded nor registration had taken place and the balance consideration was not paid within two years. The Court held that the consideration paid by the assessee under the Memorandum of Understanding dated 08.09.2003 would fully cover the consideration of capital gains for being eligible to claim exemption under Section 54 of the Act.

11.In the case of Commissioner of Income Tax vs. Sardarmal Kothari reported in (2008) 302 ITR 286 (Madras), the assessee claimed exemption of capital gain tax under Section 54A of the Act. This was rejected by the Assessing Officer on the ground that the construction was not completed. This order was confirmed by the CITA and further confirmed by the Tribunal. The Hon'ble Division Bench held that there is no dispute about the fact that the assessee has invested the entire net consideration of sale of capital asset in the land itself and subsequently, the assessees have invested large sums of money in the construction of the house. The cost of investment in land and the cost of expenditure towards the construction of the houses was not in dispute. The only ground on which the Assessing Officer had non-suited the assessee for the claim of exemption was that the houses have not been completed and there remains some more construction to be made. After considering the documents produced by the assessee and noting the fact that the assessee had purchased the land by investing the capital gains and they have also constructed the residential house which was established by producing material evidence and based on those documents held that the requirement of the statutory provision has been complied with by the assessee.

12.In the light of the above, we are convinced that on the given facts and circumstances, the date of handing over of vacant possession of the property along with the title deeds to the purchaser shall be reckoned for all purposes from 29.08.2012. Accordingly, the tax case appeal filed by the assessee is allowed and the substantial question of law is answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Officer,
Ward - I(2),
International Taxation,
Chennai - 600 034.

2.The Income Tax Appellate Tribunal Bench 'C',
Chennai.

3.The Commissioner of Income Tax (Appeals),
121, Mahatma Gandhi Road, Chennai-34

+1cc to Mr.R.Sivaraman, Advocate, S.R.No.88537

+1cc to Mr.Karthik Ranganathan, Advocate, S.R.No.87784

MR(CO)
GSP(25/01/2019)