IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.10.2020

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.414 of 2020 and
C.M.P.No.6477 of 2020

1. The Commissioner of Income Tax
Chennai - 5 (i/c)
Office of the Principal Commissioner
of Income Tax,
Aayakar Bhavan, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai - 600 034

2. The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 3,
New Building, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Chennai - 600 034 .. Appellants/Respondents

Vs.

Venkata Dilip Kumar
Kartha - HUF ..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the Order of this Court made in W.P.No.16249 of 2018 dated 05.11.2019.

W.P.No.16249/2018: Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to Call for the records of the Order No. C.No. 1(3)/PCIT-5264/ CR-5/ AAIHV5089G/ 2017-18 dated 08.03.2018 passed by the 1st respondent in proceedings U/s 264 of the Income Tax Act 1961 and to quash the same and consequently to direct the respondents to revise the Assessment and allow additional exemption of Rs. 57.25 Lakhs due U/s. 54 of the Income Tax Act 1961 to the petitioner for the Assessment Year 2014-15 .

For Appellants : Mr.Prabhu Mukunth Arunkumar
Standing counsel

For Respondent : Mr.A.Abdul Ravoof

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This appeal by the Revenue is directed against the order passed in W.P.No.16249 of 2018 dated 05.11.2019. The said Writ Petition was filed by the respondent herein praying for issuance of Writ of Certiorarified Mandamus to quash the order passed by the 1st appellant dated 08.03.2018, in a proceedings under Section 264 of the Income Tax Act, 1961 ['the Act' for brevity] and consequently, direct the appellants to revise the assessment and allow additional exemption of Rs.57.25 Lakhs due under Section 54 of the Act for the assessment year 2014 - 2015.

2. The assessing officer, namely, the 2nd appellant herein, completed the assessment under Section 143(1) of the Act by intimation dated 29.06.2015. Aggrieved by such order, the assessee filed a petition under Section 264 of the Act before the Principal Commissioner of Income Tax, Chennai claiming that additional cost of construction to the tune of Rs.1,02,13,527/- as deduction under Section 54 of the Act, ought to have been allowed. The said petition was rejected by order dated 08.03.2018 holding that assessee had deposited only Rs.1.50 Crores in the capital gain deposit account with State Bank of India, only this amount is eligible for deduction under Section 54 of the Act and any amount, even if it is spent for construction of property, cannot be considered for deduction under Section 54 of the Act because the amount was not the amount from the deposit in the capital gain account. The said order passed by the first appellant was put to challenge by the respondent by filing a Writ Petition.

3. The assessee primarily placed his case on the decision of High Court of Karnataka in the case of Commissioner of Income Tax Vs. Shri.K.Ramachandra Rao in I.T.A.No.47 of 2014 dated 14.07.2014. In the said decision, it has been held that when the assessee invests entire sale consideration in construction of a residential house within three years from the date of transfer can be denied exemption under Section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under Section 139(1) of the Act.

4. Further, it has been held that it is clear from the Sub Section(4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within a period stipulated under Section 54(F)(1), if the assessee wants the benefit of Section 54F, then, he should deposit the said capital gains in an account, which is duly notified by the Central Government. If he wants to claim exemption from payment of income tax by retaining the cash, then, the said amount is to be invested in the said account. If the intention is not to retain cash, but to invest in construction, or any purchase of the property and if such investment is made within the period stipulated, then, Section 54F(4) is not at all attracted. Therefore, the contention that the assessee has not deposited the amount in the bank, as stipulated and therefore, he is not entitled to the benefit, even though he has invested the money in construction is also not correct.

5. The assessee in the Writ Petition further contended that the requirement to deposit under capital gains deposit scheme arises only when assessee claims exemption under Section 54 of the Act without paying tax on the amount. Further, the assessee's tax payment has been paid prior to raising the claim for exemption under Section 54 of the Act, hence what is sought for revision under Section 264 of the Act is only a refund and return of the excess amounts, which were already paid towards Income Tax during the assessment year 2014-2015.

6. The revenue resisted the prayer sought for in the Writ Petition by contending that Section 54F(2) of the Act is very clear and is an exemption provision and there cannot be any deviation or no justification whatsoever, which can supersede the non-compliance of provisions of Section 54(2) of the Act. The revenue further contended that the respondent / Writ Petitioner failed to deposit 57.25 Lakhs in the Capital Gains Deposit Scheme with any Nationalised Bank and hence become ineligible to avail the benefit.

7. The revenue sought to distinguish the decision in the case of K.Ramachandra Rao on facts and relied upon the decision of the Hon'ble Supreme Court in Commissioner of Customs V. Dilip Kumar reported in 2018 SCC online SC 747 and submitted that exemption provision under Section 54(2) requires to be strictly interpreted.

8. The asessee filed a reply affidavit to the counter affidavit filed by the revenue among other things, assessee contended that even in the assessee's individual case, the Tribunal by order dated 24.01.2019 on similar facts, granted

relief, interfered with the order passed by the assessing officer and directed the assessing officer to re-examine all the documents and this order covers 75% of the transaction and therefore, it should apply to the balance 25% of the transaction, which is in the hands of HUF, the respondent / Writ Petitioner. Therefore, the assessee contended that the order passed by the 1st appellant should be set aside and the assessing officer should be directed to re-examine the cost overrun submissions.

9. The learned Single Judge considering the contentions placed before it, discussed about Section 54 of the Act and after noting the legal position pointed out that the dispute is only with regard to balance sum spent on additional construction cost, which according to the revenue is not entitled for deduction under Section 54 of the Act, since it was deposited in the capital gain account, as required under Section 54(2) of the Act. The learned single Judge further opined that Section 54(2) would come into operation only in the event of failure on the part of the assessee to comply with the requirement under Section 54(1) of the Act and mere non compliance of a procedural requirement under Section 54(2) itself cannot stand in the way of the assessee in getting the benefit under Section 54, if he is, otherwise, in a position to satisfy that the mandatory requirement under Section 54(1) is fully complied with within the time limit prescribed therein.

10. At this juncture, the Court took into consideration the decision of K.Ramachandra Rao and allowed the Writ Petition and remanded back the matter to the 2nd appellant to pass fresh order by considering the issue as to whether the disputed amount, claimed by the assessee as deduction, has been utilised by the assessee towards additional construction within a time limit prescribed under Section 54(1) of the Act.

11. The Revenue is on appeal before us contending that there are two sub-sections to Section 54 and both sub-sections lay down mandatory requirements for the purpose of enjoying exemption from tax on capital gains. Therefore, to state that Sub-Section (1) as mandatory and Sub-Section (2) as directory, is incorrect interpretation. Further, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Dilip Kumar reported in 2018 SCC Online SC 747 to emphasis the point exemption notification should be interpreted strictly.

12. Further, Revenue places reliance on the decision in the case of Humayun Suleman Merchant V. CIT reported in [2016] 73 Taxmann.com 2 (Bombay) wherein it has been held that where the assessee had filed return of income and entire amount, which was

subject to capital gain tax had not been utilised for purpose of construction of new house nor were unutilised amounts deposited in notified bank Accounts in terms of Section 54F(4) before filing return of income, assessing officer rightly computed deduction under Section 54F, restricting exemption under Section 54F proportionately to amount invested.

13. Mr.Prabhu Mukunth Arunkumar, learned counsel for the appellant / department submitted that in the decision Humayun Suleman Merchant, the Court noted the decision in K.Ramachandra Rao and observed as to how the decision was rendered sub-silentio because no argument was made with regard to the requirement of deposit in the notified bank account in terms of Section 54F(4) of the Act before the due date as provided in Section 139(1) of the Act. In this regard, the learned counsel has referred to the following paragraphs of the said decision :

> 6. (o) Mr. Chatterji, learned Senior Counsel next submitted that in any case the issue now stands concluded in favour of the Appellant by the decision of the Karnataka High Court in K. Ramachandra Rao's case (supra) wherein an identical question came up for consideration and it was held that even where the assessee had not deposited the unutilized Capital Gain in an account which was duly notified by the Central Government in terms of Section 54F(4) of the Act, the benefit of Section 54F(1) of the Act would still be available. The Court held that if the intention was not to retain the capital gains but was to invest it in construction of property within the period stipulated in Sub-Section (1) of Section 54(F) of the Act then Section 54F(4) of the Act is not at all attracted. We are with respect unable to accept the reasoning adopted by Karnataka High Court in K. Ramachandra Rao's case (supra). The mandate of Section 54F(4) of the Act is clear that amount which has not been utilized in construction and/or purchase of property before filing the return of income, must necessarily be deposited in an account duly notified by the Central Government, so as to be exempted.
>
> 6(p). Further, Section 54F(4) of the Act specifically provides that the amounts which have not been invested either in purchase/construction of house have to be deposited in the specified accounts before the due date of filing of return of income under Section 139(1) of the Act. The aforesaid aspect it appears was not noticed by the Karnataka High Court. In any case, the entire basis of the decision of the Karnataka High Court in K. Ramachandra Rao's case (supra) is the

intent of the parties. In interpreting a fiscal statute one must have regard to the strict letter of law and intent can never override the plain and unambiguous letter of the law. It is true that normally while construing an all India Statute like the Income Tax Act, we would not easily depart from a view taken by another High Court on an issue arising for our consideration. This on consideration of certainty and consistency in law. However, the view of the other High Courts are not binding upon us unlike a decision of the Apex Court or of Larger or a Co-ordinate Bench of this Court. Thus if on an examination of the decisions of the other High Court we are unable to accept the same, we are not bound to follow/accept the interpretation of the other High Courts leading to a particular conclusion. In this case we find that the decision of the Karnataka High Court in K. Ramachandra Rao's case (supra) was rendered sub-silentio i.e. no argument was made with regard to the requirement of deposit in notified bank account in terms of Section 54F(4) of the Act before the due date as provided in Section 139(1) of the Act. As observed in Salmond's Jurisprudence 12th Edition :

"The rule that a precedent sub silentio is not authoritative goes back at least to 1661(m) when Counsel said : 'An hundred precedents sub-silentio are not material'; and Twisden J agreed : 'precedents sub-silentio and without argument are of no moment'. This rule has ever since been followed."

14. Mr.Abdul Ravoof, learned counsel appearing for the respondent / assessee argued to sustain the impugned order and would submit that the Writ Appeal filed by the revenue has become infructuous owing to the fact that the 1st appellant has passed an order under Section 264(7) of the Act dated 20.02.2020 and granted relief to the assessee. Therefore, it is submitted that the Writ Appeal may be dismissed as infructuous and the order passed by 1st appellant dated 20.02.2020 shall be directed to be given effect to.

15. Mr.Prabhu Mukunth Arunkumar, learned standing counsel for the appellant on the other hand, would contend that at the time when the appeal was entertained, the Division Bench of this Court has recorded that the revenue has made out a prima facie case, granted interim stay on 18.03.2020. Further more, because of the order of stay, the order passed by the 1st appellant dated 20.02.2020 has not been given effect to. Further, it is submitted that the decision of K.R.Ramachandra Rao, does not lay down the correct proposition and the Court is required to

interpret the exemption provisions strictly as the impugned order is likely to be taken as precedent.

16. We find that the appeal was filed on 13.01.2020, however, it was an improper filing and the Registry returned the papers on 28.01.2020 noting that memo valuation was not given, all corrections in the memo to be incorporated in the copies, batta to be filed with full address of respondents, not sufficiently stamped, not signed by Advocate, dates and events, date of filing, synopsis, grounds, not properly filed and typed set has not been filed. Further, ten days time was granted to the revenue to represent the matter. However, the papers were represented only on 02.03.2020, as per the date of seal, on which date, the typed set of papers and documents were received by the Registry, therefore, for all purposes the appeal was properly filed only on 02.03.2020. Much prior to that, the 1st appellant has passed giving effect to order dated 20.02.2020 granting relief to the respondent.

17. The argument of Mr.Prabhu Mukunth Arunkumar, learned counsel for the appellants / revenue is that in the event, revenue succeeds in this appeal, that order can always be rectified and fresh order can be passed.

18. We find from the order passed by the 1st appellant dated 20.02.2020 that it has not been passed without prejudice to the rights of the department in pursuing the Writ Appeal against the order in the writ petition. In fact, the 1st appellant records in the order that taking cognizance of the direction issued by the High Court, assessee was heard and in pursuant to the Court's decision, the additional cost of construction incurred by the assessee for claiming deduction under Section 54 of the Act was allowed and then, relief has been granted.

19. Therefore in our considered view, the revenue cannot pursue this appeal after implementing order passed in the writ petition. However, we take note of the argument of Mr. Mr.Prabhu Mukunth Arunkumar, learned standing counsel for the appellant with regard to the legal issue, which has been decided by the learned Writ Court by following the decision in K.Ramachandra Rao. On that issue, we are of the primafacie view that finding rendered in Humayun Suleman Merchant, appears to reflect the correct position of law. We have referred to relevant paragraphs of the Judgment above. However, since we hold that the writ appeal has become infructuous, we leave the question of law open for being agitated in an appropriate proceedings and consequently, we are inclined to vacate the finding rendered by the learned Single Judge on the question of law, which was decided therein. We are inclined to make such observation, because the exemption provisions requires to be

strictly interpreted, as per decision of the Hon'ble Supreme Court in the case of Dilip Kumar mentioned supra.

For the above reasons, the Writ Appeal is dismissed as having become infructuous, the finding rendered by the learned Single Judge on the question of law stand vacated and the question is left open. The 1st appellant is directed to give effect to his order passed under Section 264(7) of the Act dated 20.02.2020 within a period of four weeks from the date of receipt of copy of this Judgment. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Commissioner of Income Tax
   Chennai - 5 (i/c)
   Office of the Principal Commissioner
   of Income Tax,
   Aayakar Bhavan, Wanaparthy Block,
   121, Mahatma Gandhi Road,
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   Non-Corporate Circle - 3,
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   121, Mahatma Gandhi Road,
   Chennai - 600 034

+1cc to Mr.A.Abdul Ravoof, Advocate, sr no.34273

W.A.No.414 of 2020 and
C.M.P.No.6477 of 2020

BR(CO)
RMP(27/11/2020)