IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE Mr.JUSTICE **T.S.SIVAGNANAM**

and

THE HONOURABLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

Tax Case Appeal No.480 of 2018 and

C.M.P.No.10253 of 2018

Mr.Gaurav Syal .. Appellant

Vs.

Income Tax Officer,
Non-Corporate Ward - 16(3)
Chennai - 600 034 .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.301/Mds/2017 dated 02.11.2017 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai for the Assessment Year 2012-2013.

For Appellant : Mr.R.Lakshmi Ratan

For Respondent : Ms.R.Hemalatha
Senior Standing Counsel

JUDGMENT

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

This appeal, at the instance of the assessee filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai in ITA No.301/Mds/2017 dated 02.11.2017 for the Assessment Year 2012-2013.

2. The present Tax Appeal is admitted on 24.07.2018 on the following Substantial Questions of Law:

> *"1. Whether the Tribunal was right in holding that the assessee is not entitled to claim deductions under Section 54 of the Income Tax Act, 1961?*
>
> *2. Whether the Tribunal was right in holding that the withdrawals made from the capital gains accounts of the assessee was not used towards construction of a residential house?"*

3. We have heard Mr.R.Lakshmi Ratan, learned counsel for the appellant / assessee and Ms.R.Hemalatha, learned senior standing counsel for the respondent / revenue.

4. We find that there are several issues, which were subject matter for consideration before the Tribunal in the appeal filed by the revenue challenging the order passed by the Commissioner of Income Tax (Appeals)-4 (for brevity 'CITA') dated 18.11.2016 where the relief was granted to the assessee. In this appeal, the only issue is, with regard to claim of deduction under Section 54 of the Act.

5. The learned counsel for the appellant would submit that with regard to the issue placed before the CITA, who has reiterated the same, rendered a categorical finding and there is no discrepancy. However, Tribunal came to the conclusion that the assessee is not able to produce any evidence in support of their contention. In this regard, the learned counsel has drawn our attention to the findings rendered by the CITA and the observations made in Paragraph Nos.12 to 16 of the order dated 18.11.2016:

> *"12. I have perused the above contentions of the appellant. The original capital asset was sold by the appellant on 16.05.2011. The amount of capital gains was at Rs.1,76,79,812/-. Out of this, as sum of Rs.50 Lakhs was invested by the appellant in the Rural electrification Corporation Ltd., u/s 54 EC. The REC Bond was purchased on 10.11.2011 vide the application number 1037698 which was invested within*

the stipulated period as laid down in section 54EC. The remaining amount of capital gains was deposited in Capital Gain Account as under:

- Rs.50,00,000/- on 27.07.2012 with State Bank of India vide Account No.32450380105

-Rs.33,00,000/- on 30/07/2012 with State Bank of India vide Account No.32455024095.

- Rs.12,05,000/- on 30/07/2012 with State Bank of India vide Account No.32455028058.

-Rs.25,000/- with State Bank of India vide Account No.32449616206

The total amount invested in the Capital Gains Scheme Account works out at Rs.95,30,000/-

13. Out of the total amount of capital gains, a sum of Rs.24,31,000/- was invested in the purchase of the land for constructing a new residential house as per the provisions of Section 54 of the Act. An amount of Rs.1,94,380/- and Rs.24,450/- was incurred towards Stamp Duty and Registration Charges for the purchase of plot for constructing the residential house. The total amount of investment works out to Rs.26,49,830/-. This investment was made by the appellant prior to the date of sale of the orginal asset. However, the amount of investment had originated from the advance of Rs.25,00,000/- received from the purchaser of the original capital asset on 18.10.2010 vide cheque number 773545, drawn on State Bank of India. I have verified the relevant sale deed executed on 16.05.2011 and at Page 12 of the Deed, the *relevant facts regarding the payment of advances to the shareholders are mentioned. The name of the appellant is figuring at serial number (iii) as vendor no.III.*

14. The appellant had paid an amount of Rs.5,00,000/- as advance to the builder for construction of house property on 06.01.2012 vide cheque no.311829.

15. The total amount of investment as per Section 54 EC and in the capital gains account works out to Rs.1,76,79,830/- which was invested after the date of sale of the original asset on 16.05.2011 and prior to the date of filing of the return of income on 31.07.2012 except the amount of Rs.26,49,830/- invested in the purchase of land for the construction of house property which was investedfrom the amount of advance received from the purchaser of the original capital asset. It is pertinent to mention here that out of Rs.95,30,000/- deposited in the capital gains account, the appellant had withdrawn and incurred Rs.95,53,249/- towards payment to the builder for construction of the new house property. These payments were made during the period from 15.03.2013 to 21.04.2014.

16. From the perusal of the above facts, it is found that the appellant has invested a sum of Rs.1,27,03,079/- (95,53,249/- + 26,49,830/- +5,00,000/-) towards the construction of house property and purchase of the plot for constructing the house property. Since the investment of Rs.1,27,03,079/- (Rs.95,30,000/- was routed through the Capital Gain Account) was made prior to the due date of filing of the return of income i.e., 31.07.2012, the appellant was eligible to claim the *deduction of Rs.1,26,79,812/- u/s 54 of the Act. The observation of the AO that the construction of new house property was not completed within the period of three years, as stipulated u/s 54 of the Act. The observation of the tO thatthe construction of new house property was not copleted within the period of three years, as stipulated u/s 54 of the Act, cannot be accepted in view of the decisions in the cases of Kishore H.Galaiya V. ITO (ITA No.7326/M/2010; Seetha Subramaniam V. ACIT (1996 (59) ITD 94 Madras; CIT V. Sardamal Kothari (2008 (302) ITR 286 (Mad) wherein it was held that the asessee can claim exemption even if construction was not completed on time if a substantial payments towards cost of construction was made by the assessee within the period of three years from the date of sale of the original asset. In the present case of the appellant, the entire amount of Rs.1,27,03,079/- has been invested in the construction of the new house property (Including the purchase of plot) within the period of three years from the date of sale of the original asset. The ratio of the above stated judgements squarely applies to the present case of the appellant. Further, as contended by the appellant, the delay in the completion of construction work was beyond his control. Hence, in view of the above facts of the case and also considering the above mentioned case laws, the disallowance of exemption claimed by the appellant u/s 54 of the Act, is deleted."*

6. We find that the Tribunal has remanded the other issues to the Assessing Officer for re-adjudication. In fact, the Assessing officer denied the claim for deduction under Section 54 of the Act only on the ground that the assessee has not completed the construction before 16.05.2014. It is the submission of the appellant / assessee that the said aspect was also not properly appreciated by the Tribunal. We find that the assessing officer has not given elaborate reasons as to why the assesseee was not entitled for deduction under Section 54 of the Act. It is the submission of the learned counsel that decision of the Division Bench of this Court in Commissioner of Income Tax V. Sardarmal Kothari [(2008) 302 ITR 286] would come to the aid of the assessee.

7. Per contra, Ms.R.Hemalatha, learned senior standing counsel for the revenue would submit that the law laid down in the decision of Commissioner of Income Tax V. Sardarmal Kothari and other decisions relied on by the learned counsel for the appellant have been dealt with and considered in subsequent decisions. However, the order passed by the Tribunal this aspect has not been dealt with in a proper perspective, especially when CITA has given elaborate reasons as to why the assessee is entitled for deduction under Section 54 of the Act.

8. Therefore, we are inclined to interfere with the order passed by the Tribunal, at the same time, we propose to remand the matter to the assessing officer for fresh consideration since other issues have also been remanded to the assessing officer for re-adjudication.

For the above reasons, the appeal filed by the assessee is allowed, the order dated 02.11.2017 passed by the Income Tax Appellate Tribunal is set aside and the matter is restored to the file of the assessing officer to decide the claim of the assessee for deduction under Section 54 of the Act and the assessee is entitled to raise all points, which were placed by him before the CITA. Consequently, the substantial questions of law are left open. Connected miscellaneous petition is closed. No costs.

[T.S.S.J.,] [V.B.S.J.,]
15.10.2020

Internet: Yes
Speaking Judgment / Non speaking Judgment

To

The Income Tax Appellate Tribunal,
'A' Bench, Chennai

ssd

T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

ssd

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