

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI  
&  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.456 of 2017

Commissioner of Income Tax,  
Chennai.

.. Appellant

Vs.

Smt. Umayal Annamalai

.. Respondent

Prayer: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "A" Bench, dated 22.04.2016 in ITA.No.415/Mds/2015 against the Order of the Commissioner of Income Tax (Appeals), Chennai -34, made in ITA No. dated against the Order of the Commissioner of Income-Tax(Appeals)-VI, Chennai-34 dated 30/10/2014 made in ITA NO.709/13-14/A-VI, and against the Order of the Commissioner of Income Tax (Appeals), Chennai -34, made in ITA No. dated against the Order of the Income Tax Officer made in the order of the Assistant Commissioner of Income-Tax, Circle-I, Cuddalore, dated 4/12/2009 and made in PAN/GIR NO.AGSPA6407B/U-11706 for the Assessment year 2005-2006.

For Appellant : Mr. J. Narayanasamy  
Sr. Standing Counsel

For Respondent(s) : Mr.N.Quadir Hoseyn

O R D E R

(Delivered by Dr.Vineet Kothari, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2. Heard Mr.J.Narayanaswamy, learned Senior Standing counsel appearing for the appellant Department and Mr.N.Quadir Hoseyn, learned counsel appearing for the respondent.

3. The Revenue has filed the present appeal under Section 260-A of the Income Tax Act, purportedly raising the following substantial questions of law for consideration.

" 1. Whether on the facts and in the circumstances of the case the tribunal was right and justified in granting exemption u/s 54F when the unutilised portion of the sale proceeds were not deposited in the capital gains account scheme before the due date for filing of return u/s 139(1)?

2. Whether on the facts and in the circumstances of the case the tribunal was right in interpreting the provisions of section 54F to conclude that the assessee is entitled for exemption ignoring the ration of the decisions reported in 197 taxman 52?"

4. The learned Tribunal, with regard to exemption under Section 54 F(1) of the Act, with respect to capital gains earned by the assessee during the previous year, has given the following finding of facts in paragraph 8 and the relevant portion of paragraph 8 is quoted hereunder;

' The assessee has complied the provisions considering the dates as under:-

(i) Date of transfer of original asset :  
14.2.2005

(ii) The date of filing of return  
: 17.3.2006

(iii) Due date of return for the  
Assessment year 2005-06 :  
31.07.2005

(iv) Due date of filing belated return :  
31.03.2007

(v) Possession of the  
property :  
15.12.2007

"On considering the provisions of law and facts of the case, the assessee has invested Rs.68,00,000/- before due date of filing belated return i.e. 31.03.2007 and took the possession as per the findings of the Commissioner of Income Tax (Appeals) on 15.12.2007, being within three years from the date of transfer/sale of original asset being 14.02.2005. The assessee has not invested in Capital Gain Account Scheme before 139(1) of the Act but complied with the conditions u/s.54F(1) of the Act by purchasing and construction of residential property within three years from the date of transfer of original asset

which is not disputed in the assessment proceedings or in appellate proceedings. The provisions of Sec. 54F are beneficial provisions and are to be considered liberally in the aspect of limitation period. But the investment in residential property is must which the assessee has proved with evidence and complied before the lower authorities. The learned Commissioner of Income tax (Appeals) relied on the legal provision and submissions of the assessee exhaustively with judicial decisions. Considering the factual aspects, genuineness of the transactions and beneficial aspects of the provisions, we are of the opinion that the Commissioner of Income Tax (Appeals) has rightly construed the findings and the explanation of the assessee with observation in his order and allowed the deduction u/s.54F of the Act. Therefore, we are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) and dismiss the ground of the Revenue.'

5. Though the Revenue stake involved in the present case is much below the limit of rupees one crore for withdrawal of the appeal by the Revenue, since the present case involved some audit objection because of exemption in the said Circular, the learned counsel for the Revenue press the appeal on merits.

6. However, after hearing both the learned counsel, we are satisfied that the finding of the facts arrived at by the learned Tribunal are perfectly in order and justified and correct on the basis of facts stated in the quoted paragraph 8 of the order. The assessee has clearly satisfied the conditions for availing the benefit of exemption under section 54F of the Act, as it has purchased new property and has taken the possession within the stipulated period of three years, as aforesaid. Thus, we do not find any perversity in the said findings of facts given by the learned Tribunal.

7. Therefore, in our opinion, no substantial question of law arises in the present appeal filed by the Revenue and it is without any merits. Accordingly, the appeal filed by the Revenue is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax,  
Chennai.

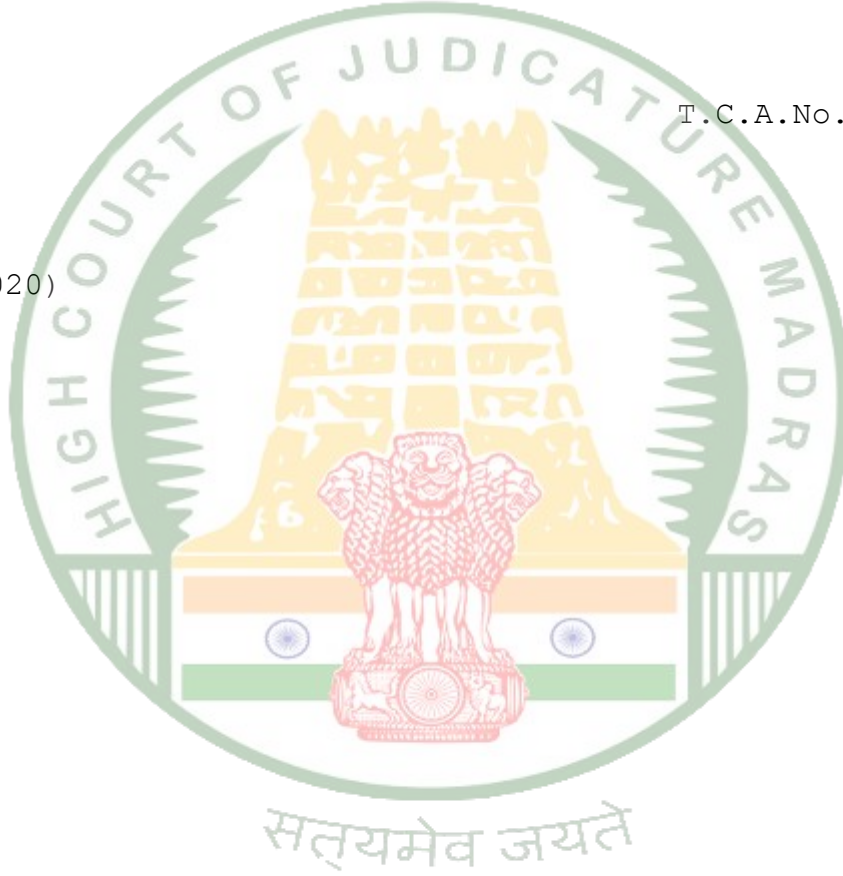
2.The Income Tax Appellate Tribunal  
'A' Bench, Chennai

3.The Assistant Commissioner of Income Tax  
Circle-I, Cuddalore

+lcc to Mr.N.Quadin Hoseyn, Advocate in SR.NO..25087

T.C.A.No.456 of 2017

VG-II (CO)  
RV (29/9/2020)



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