IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.27949 of 2018
& WMP Nos.32518 & 32519 of 2018

Shri Arvind Jain,
1/171-B, Mariamman Koil Street,
Mugalivakkam,
Chennai - 600 125.

.... Petitioner

Vs

1.The Income Tax Officer,
Non Corporate Ward 22 (1),
No.7, 1st Floor, Ramakrishna Street,
West Tambaram, Chennai 600 045.

2. The Principal Commissioner of Income Tax,
Chennai - 7, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

.... Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st and 2nd Respondent in PAN: AAFPJ8106M and quash the impugned order dated 21.01.2016 of the 1st respondent and the consequent order in C.No.7032(4)/ Pr.CIT-7/16-17 dated 26.03.2018 of the 2nd respondent and directing the 1st respondent to grant exemption under Section 54F of the income Tax Act to the petitioner in respect of the return filed for the assessment year 2013-14.

For Petitioner	:	Mr.B.Ramanakumar
For Respondents	:	Mrs.Hema Muralikrishnan, Senior Standing Counsel

O R D E R

The petitioner challenges an order of assessment dated 21.01.2016 and an order passed by the Commissioner of Income Tax dated 26.03.2018 in terms of Section 264 of the Income Tax Act, 1961 (in short 'Act').

2. The petitioner admittedly sold a property at Thandalam, Sriperumbudur Taluk on 27.02.2013 for a total sale consideration of Rs.41.00 lakhs and purchased a property at Thirumudivakkam for a total sale consideration of Rs.69,33,800/- under a registered sale deed dated 29.05.2013 with the avowed intention of constructing a house there. Though he commenced efforts in this direction, with the onset of torrential rains in November, 2015 that continued till 31.12.2015, and that flooded the land entirely, the petitioner abandoned the proposal for construction.

3. In the meantime, a return of income has been filed for the Assessment Year (A.Y.) 2013-14 claiming exemption under Section 54F of the Act, which provides for an exemption of the proceeds from sale of residential house if the said proceeds were invested in (i) the purchase of another residential property within a period of 24 months from date of sale or (ii) the construction of an alternate residential property within a period of 36 months from date of sale.

4. When the matter came up for completion of assessment, the Chartered Accountant appears to have represented to the Assessing Officer that the petitioner was not pursuing his claim for exemption under Section 54F, perhaps on account of the abandonment of the Thirumudivakkam project. Recording the aforesaid, the exemption sought was reversed and the capital gains was brought to tax in order of assessment dated 21.01.2016.

5. The petitioner, thereafter, made an investment in an alternate residential property by entering into a construction agreement on 23.01.2016 with one, Awesome Builders Private Limited. The construction agreement is stated to have been registered on 26.02.2016 and the flat itself, along with the undivided share in land registered on 26.02.2016. According to the petitioner, this would suffice for claiming exemption in terms of Section 54F. Thus, the petitioner moved the Commissioner of Income Tax seeking revision of order of assessment dated 21.01.2016.

6. The impugned order of the Commissioner of Income Tax dated 26.03.2018 rejects the claim for exemption under Section 54F on the ground that the exemption does not cover investment made in a flat that was under development/under construction.

7. The submissions of the Revenue are to the effect that the three year period in this case, if the investment were to be

seen as an investment in construction, would expire on 27.02.2016, whereas the completion certificate is dated 31.07.2017. Thus, the transaction would, according to them, fall within the second limb of Section 54, as being purchase of flat, since it is impossible for the builder to have constructed a flat between 23.01.2016 and 26.02.2016, on which date, the flat is stated to have been handed over to the petitioner. In this case, the time available for investment is 24 months from 27.02.2013 and the investment having taken place beyond the period of two years, the relief sought for by the petitioner is not liable to be granted.

8. I may refer, in this connection to a decision of this Court in the case of Commissioner of Income Tax V. Sardarmal Kothari and another (302 ITR 286) wherein a Division Bench of this Court has held that for the purpose of claim of exemption under Section 54F, it would suffice if the assessee were able to establish that the entire net consideration had been deployed in the new construction within the stipulated statutory period. The completion of construction per se could extend even beyond.

9. Be that as it may and without further reference to the merits, a perusal of the impugned orders of assessment and revision reveal to me that the facts of the transaction in this particular case have not been looked into at either level. The Assessing Authority did not have the benefit of examination of the facts by virtue of the request of the petitioner for withdrawal of the claim under Section 54F. As far as the Commissioner of Income Tax is concerned, the claim has been rejected merely by reference to two Circulars, i.e., 471 and 672 dated 15.10.1986 and 16.12.1993 respectively, stating that the Circulars do not cover cases of investment in construction of flats.

10. I am hence of the view that the matter requires proper examination by the Assessing Authority after hearing the petitioner.

11. In the light of the discussion as aforesaid, the impugned order of assessment and revision are set aside. The assessee will appear before the first respondent on Monday, the 27th of January, 2020 at 10.30 a.m., without expecting any further notice in this regard. After hearing the petitioner and consideration of all/any materials that may be placed on record before him, an order of assessment shall be passed de novo by the Assessing Authority within a period of two (2) weeks from date of conclusion of personal hearing. It is made clear that

none of the observations made in this order shall stand in the way of an independent application of mind by the Assessing Officer.

12. This Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

sl

To

1.The Income Tax Officer,
Non Corporate Ward 22 (1),
No.7, 1st Floor, Ramakrishna Street,
West Tambaram, Chennai 600 045.

2. The Principal Commissioner of Income Tax,
Chennai - 7, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

+1cc to Mr.Ramanakumar, Advocate SR.No.1870

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.2005

Writ Petition No.27949 of 2018
& WMP Nos.32518 & 32519 of 2018

PA(CO)

GMY(27/01/2020)