(2015) 08 MAD CK 0028

In the Madras High Court

Case No : T.C.(A) No. 692 of 2015

Commissioner of Income Tax — APPELLANT

Vs

S. Sudhakar — RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 260A, 263, 54, 54(1)

Citation : (2015) 08 MAD CK 0028

Hon'ble Judges : V. Ramasubramanian and T. Mathivanan, JJ.

Bench : Division Bench

Advocate : T.R. Senthilkumar, for the Appellant

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The Revenue has come up with the above appeal under Section 260A of the Income Tax Act, 1961, raising the following questions of law:--

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was entitled to exemption under Section 54 of the Income Tax Act, when the assessee failed to construct a habitable house within a period of three years from the date of transfer?"

2. Heard Mr. T.R. Senthilkumar, learned Standing counsel for the Revenue.

3. The assessment for the assessment year 2008-09 in respect of the respondent herein was completed on 29.12.2009 under section 143(3) . In the return of income, the assessee claimed a long term capital gain of Rs. 1,58,43,569/- and claimed exemption under section 54 to the extent of Rs. 1,18,94,408/-. He had also claimed a long term capital loss brought forward from the assessment year 2006-07 of Rs. 41,10,207/-.

4. Subsequently, the Commissioner of Income Tax-I, Coimbatore, issued an order dated 30.3.2012 under section 263 of the Income Tax Act, holding that the order

of assessment passed under section 143(3) was contrary to law and that the claim of exemption allowed under Section 54 was wrong. The Commissioner directed the assessing officer to redo the assessment afresh as per the law.

5. Therefore, notices was issued and after giving opportunity, the assessing officer passed an order dated 11.3.2013 holding that the assessee could not complete the construction of habitable residential house, within a period of three years, as required under section 54 so as to claim exemption. Consequently, the assessing officer disallowed the claim and computed the taxable income as Rs. 1,19,54,550/-.

6. As against the order of assessment, the assessee filed a statutory appeal in Appeal No. 46/13-14. The first appellate authority dismissed the appeal by an order dated 10.6.2014 on the ground that the construction of the residential house was not completed within the stipulated period. Therefore, the assessee filed a further appeal before the Tribunal. The Tribunal allowed the appeal of the assessee by an order dated 19.12.2014 forcing the Revenue to come up with the present appeal.

7. As seen from the order of the Tribunal, the assessee and two others sold their residential property situate at Annanagar, Chennai on 28.11.2007 for a total sale consideration of Rs. 2,75,00,000/-. Out of his share of the sale consideration, the assessee purchased three adjoining residential sites in a residential lay out known as "Midas Park" at Bangalore on 10.3.2008 at a total cost of Rs. 1,18,94,408/-. The assessee paid an advance of Rs. 70,00,000/- on 28.6.2008. This payment was by way of two cheques. The payment was to a Builder by name Concept City Developers. The Builder was supposed to construct a residential house for the assessee. Admittedly, the Builder obtained approval for the building plan for construction of a pucca residential house at Plot Nos. 21, 22 and 23 in Survey No. 85 at Hegganahalli Village. The construction was claimed to have been completed vide a letter dated 12.11.2010 issued by the Builder. However, it was, later, found that there was no prior approval. The Builder appears to have got it only after a no objection certificate was issued by the Airports Authority of India, Bangalore on 28.12.2011. The local authorities approved the building plan on 19.4.2012, only after the issue of no objection certificate by the Airports Authority, since the plot was located near the Bangalore Airport.

8. In the facts and circumstances narrated above, the Tribunal took note of an order passed by a Coordinate Bench in the case of ACIT v. SHRI. PRAKASH CHAND BORA (ITA 1490/Mds/2013) for the assessment year 2007-08. In the said case, the Tribunal held that the assessee was entitled to deduction under section 54(2) to the extent of the amount paid on or before two years.

9. The Tribunal also took note of another decision of a Coordinate Bench in SMT. V.A. THARABAI v. DCIT (, (2012) 19 Taxmann.com 276) and a decision of the Madhya Pradesh High Court in Smt. Shashi Varma Vs. Commissioner of Income

Tax, as well as CBDT Circular No. 667 dated 18.10.1993 and came to the conclusion that the assessee was entitled to the benefit of section 54 . We are of the considered view that the Tribunal did not commit any error of law in deciding the issue in favour of the assessee. The benefit of section 54(1) is available, if the assessee has, within a period of one year before or two years after a date on which the transfer took place, purchased, or has, within a period of three years after that date, constructed, a residential house in India. The fact that the assessee sold the residential house at Chennai on 28.11.2007 and the fact that he purchased three adjoining residential house-sites on 10.3.2008 are not in dispute. The fact that the purchase of the residential sites was at a cost of Rs. 1,18,94,408/- and the fact that an advance of Rs. 70,00,000/- was paid to a builder on 28.6.2008 are also not in dispute. Therefore, the assessee has actually purchased three residential sites within a year and had entrusted the work of construction to a builder. If the completion of construction had been delayed on account of the delay in the Airports Authority of India in giving clearance and the Town Planning Authority giving approval to the building plan, the benefit of section 54 cannot be denied to the assessee. After all, the object of section 54(1) is to ensure that if the sale proceedings are invested in a residential house, the assessee should be entitled to the benefit. Therefore, the order of the Tribunal does not call for interference. Hence, the appeal is dismissed.