IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-12-2025

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

TCA Nos. 1161, 1163, 1164 and 1162 of 2009

C.Aryama Sundaram
C/o. R.Balasubramanian, Advocate, 108, Armenian Street, Chennai-1.

..Appellant in all TCA's

Vs

The Commissioner Of
Income Tax, Chennai-VI, Chennai-600 034.

..Respondent in all TCA's

Common Prayer: Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, 'A' Bench, Chennai dated 27.10.2006 passed in I.T.A.Nos.3329/MDS/2004, 0091/MDS/2004, 0294/MDS/2004 and 489/MDS/2005 for the assessment years 2001-2002, 1999-2000 and 2001 – 2002.

In all TCA's

For Appellant(s): Mr. Arvind P. Datar, Senior Counsel
for Mr. S. Raghunathan,
Ms. Sharanya Vaidyanathan,
Mrs. Vardhini Karthik

For Respondent(s): Mr. J.Narayanaswamy
Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

The Tax case (Appeals) relate to assessment years (AY) 1999-2000 and 2001-02. The assessee is the appellant. The substantial questions of law that have been admitted on 19.01.2010 are common to both appeals and read as follows:

> *'1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was not entitled to exemption under Section 54 of the Income Tax Act, 1961, in respect of his assessment to Income-Tax for 1999-2000?*
>
> *2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that such exemption was not available to the assessee, by virtue of the Joint Development Agreement entered into by the assessee?*
>
> *3. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in refusing to permit the assessee to raise the alternate contention regarding exemption under Section 54F of the Act, inspite of the well laid down law that the respondent, in any appeal before the Tribunal, could defend the order appealed against not only for reasons set out in the order appealed against, but on other factual and legal aspects also?'*

2. Mr.Arvind P.Datar, learned Senior Counsel appearing for Mr.S.Raghunathan, learned counsel for the assessee, assails the impugned order of the Income Tax Appellate Tribunal ('ITAT'/'Tribunal'), which is a common order for both years making the following submissions.

3. The appellant had returned capital gains for both years arising out of the sale of a residential property at No.25, Cathedral Road, Chennai – 600 086 ('property'/'property in question'). The appellant had been a confirming party in a Joint Development Agreement (JDA) dated 15.12.1994 entered into between the

owners, his parents, C.R.Sundaram (HUF), C.R.Sundaram, (individual) and Kamakshi Sundaram, with Chaitanya Builders and Leasing Private Limited (builders/developers).

4. The agreement provided for sale of 2.5% undivided share of the property to certain third parties, 47.5% of undivided share to the developers and 50% of the total super built-up area to the owners. While so, the property had, admittedly, been demolished in 1995 pursuant to the execution of the JDA, C.R.Sundaram passed away on 03.11.1996.

5. In the financial years relevant to AY 1999-2000 and 2000-01, there had been sales of 13,949.180 and 1073.024 sqft. by the appellant and his mother. We are, in the present appeals, concerned with the computation of capital gains only in respect of the appellant, as the return of income filed by the appellant's mother has been accepted.

6. Incidentally, the appellants' mother had also claimed relief under Section 54 of the Income Tax Act, 1961 (in short 'Act') as had the appellant. The distinction is that in the case of mother, the capital gains had been deposited in the Capital Gains Scheme as per Section 54(2) of the Act. The claim has been accepted.

7. The return of income filed by the appellant too, had been accepted initially. Thereafter, proceedings for re-assessment had been initiated. The

appellant had sought relief under Section 54 of the Act on the ground that he had re-invested in a residential property in New Delhi on 30.01.2001 and was hence eligible for relief under Section 54 of the Act. Overriding the objections, orders of re-assessment had been framed on 27.02.2003 (AY 1999-2000) and 29.03.2004 (AY 2001-02) on the ground that there was no proof placed before the officer with regard to re-investment. Hence, the entire amount had been brought to tax as Long Term Capital Gains.

8. The appellant filed first appeals and the Commissioner of Income Tax (Appeals) (in short 'CIT(A)') allowed the appeals on 07.11.2003 and 19.11.2004, accepting the position that the appellant had re-invested in the residential property in New Delhi on 30.01.2001. The documents in relation to the purchase had been placed before the first appellate authority and find reference in his order. In appeals before the Tribunal at the instance of the Revenue, the argument of the assessee was rejected on various grounds.

9. Firstly, the Tribunal held, by way of common order for both years, that (i) Section 54 was not applicable to the facts of the case, as re-investment had not been made under Section 54(2), (ii) the residential property had been demolished in year ending 31.03.1995 itself, and hence, there was no residential house that stood on the property in the financial years relevant to assessment years when capital gains benefit had been claimed, (iii) the appellant had taken clearance from the competent authority in 1994 itself and the date of transfer for the purpose of

computation of capital gains must be taken to be 1994 as that was the date, according to the Tribunal, that the assessee had itself adopted. It is as against the aforesaid order that the present appeals have been filed, laying the substantial questions of law that have been extracted in paragraph 1 supra.

10. Per contra, Mr.J.Narayanaswamy, learned Senior Standing Counsel for the Department defends the impugned order, pointing out that the Tribunal was factually correct in stating that Section 54 is not applicable to the facts of the instant case. He submits that Section 54 addresses those situations of sale of property used for residence. In the instant case, it was admitted that the residential property had been demolished in year ending 31.03.1995 and hence, as in financial years relevant to AYs 1999-2000 and 2001-02, there was no house that stood upon the property in question.

11. He insists that the re-investment ought to have been made only by way of deposit in light of the specific stipulation in Section 54(2) of the Act. That apart, the JDA referred to various Power of Attorney (POA) that were issued by the owners and those particulars have not been made available before the authorities. Hence, the authorities could not be faulted for denying the claim of the appellant.

12. The sales of the property have been made over 4 financial years and hence, even assuming that the benefit of Section 54 was available, it would not be granted in the manner as claimed by the assessee. Finally, he would submit that

the date of transfer for the purpose of grant of relief under Section 54 must be with reference to the date of JDA only.

13. We have heard the rival contentions of both parties and studied the material papers.

14. The facts are not in dispute. The subject property belonged to the appellant's father, mother and HUF. A development agreement was entered into on 15.12.1994 between his father (HUF and individual capacity) and his mother, the appellant being a confirming party, along with Chaitanya Builders and Leasing Private Limited. The JDA stated that the owners had entered into the agreement for sale of 2.5% of undivided share to certain third parties and transfer of 47.5% of the undivided share to the developers.

15. In consideration of the aforesaid transfer, the developers agreed to allot and construct for the owners at their cost, 50% of the total superstructure as per specification. At the time of execution of the JDA, the developers had agreed to remit monetary consideration for a sum of Rs.1.15 crores and the owners confirmed receipt of the aforesaid amount.

16. A specific query was put to the appellant as to whether this amount had been taken into account in the computation of capital gains and Mr.Datar, on instructions, would submit that the amount figured in the capital gain computation of Kamakshi Sundaram, mother of the appellant. Hence, we are not concerned

with that amount as far as the computation of capital gain in the present case is concerned.

17. At the relevant point in time, Chapter XXC of the Income Tax Act required an assessee intending to sell immovable property to obtain Income Tax clearance in Form 37-I of the Income Tax Rules, 1962, and the JDA provided for Income Tax clearance to be obtained by the owners. We have been given a copy of order under Section 269-UL(1) of the Act dated 15.12.1994 on an application made by C.R.Sundaram (HUF), C.R.Sundaram and Kamakshi Sundaram in respect of the proposed sale of the subject property for a consideration of Rs.2,99,42,600/-.

18. To this extent, the finding of the Tribunal at paragraph 7 that '*the assessee at that stage took clearance from the competent authority. Copy of Form 37-I of the Income-Tax Rules, 1962 filed before the Appropriate Authority of the Income-tax Department was placed before us'* is incorrect, as the application had been filed by the owners and the appellant was, in 1994, not an owner of the property, he having inherited a portion of the property only post the demise of C.R.Sundaram on 03.11.2006.

19. In the order of assessment for AY 1999-2000, the Assessing Authority has proceeded on the simplistic basis that there was no proof for re-investment, and the order also does not indicate that sale deed dated 30.01.2001 had been

produced before the officer. No proof is placed before us to the effect that this document was produced before the Assessing Authority at the time of assessment. However, this may not be fatal to the case of the appellant, since the computation of capital gains in the statement accompanying the return of income is based on the factum of such re-investment and hence the Assessing Authority was aware of the basis of computation.

20. That apart, before the CIT(A), the document was admittedly produced, as the order of the CIT(A) makes specific reference to this document. Hence, we are of the considered view that much water had flown under the bridge as far as the production of the document is concerned and, in any event, the documents forms part of the records of the Department. This, in our considered view, would suffice.

21. As far as the assessment for AY 2001-02 is concerned, the order is more detailed and the relief under Section 54 has been rejected for the reasons that

i) the size of the land admeasured 33,532 sq.ft., whereas the building was much smaller in proportion;

ii) the building had been demolished as early as in 1995 and hence, no building existed in that property. Though the Assessing Authority states that no building existed for 7 years, the building is stated to have been demolished in early 1995 and the order of assessment and the claim for capital gain has been made in 1999-2000, after the elapse of 4 years;

iii) the consideration of 1.3 crores received as advance ought to have been invested which has not been so invested by the assessee. We have noted the position that the advance as above had been included in the capital gains computation of the appellant's mother. Hence the finding of the officer to this effect, is not correct.

22. Ultimately, both orders of assessment were adverse to the assessee on the aspect of claim under Section 54 of the Act and appeals were filed before the Commissioner of Income tax (Appeals) that came to be allowed by separate orders.

23. The CIT(A) took note of the claim of the appellant under Section 54 of the Act and the re-investment in residential property on 30.01.2001. He has returned a categoric finding that under sale deed dated 30.01.2001, residential property had been purchased at Plot No.137 in Block No.171, Sunder Nagar, New Delhi, admeasuring 0.179 acres (870 sq. yards).

24. The order records that the xerox copies of the sale deed had been produced (see paragraph 2.3, internal page 5 of order of CIT(A) dated 07.11.2003 for AY 1999-2000). It is the aforesaid order that has been followed for the subsequent year as well. Hence, and as the conditions under Section 54 of the Act has been satisfied, the appeal came to be allowed.

25. Coming to the order of the Tribunal, there is an error at paragraph 7 thereof, where the Tribunal observes that, according to the assessee, the date of transfer for the purpose of capital gain should be 15.12.1994. This runs contrary to the admitted factual position that sale deeds had been executed by the appellant and his mother only in March, 1999 in favour of M/s.VVA Constructions Pvt. for transfer of undivided interest in the subject property (See paragraph 6 internal page 3 of the order of the Tribunal dated 27.10.2006). Hence, the date of transfer should be taken to be 1999 only, and it could not have been the contention of the assessee that the transfer took place in 1994.

26. As the first two substantial questions of law relate to whether the conditions under Section 54 of the Act have been complied with, we extract the provision below, to the extent to which it is relevant for this matter:

> ***'Profit on sale of property used for residence.***
>
> ***54.*** *(1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

. . . . . .

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall, subject to the third proviso to sub-section (1) be deemed to be the cost of the new asset:'

27. In our considered view, the transaction must be seen in a wholistic conspectus. The admitted sequence of the events is that, the JDA was executed on 15.12.1994, and enter-upon permission granted to the builders/developers. Demolition of the house was in early 1995. The appellant's father passed away on

03.11.1996. It is true that development continued and the appellant and his mother executed deeds in March, 1999 for the sale of their shares of the property.

28. Section 54 requires the satisfaction of the conditions that, firstly, that the property transferred is one, wherefrom the income would be assessable under the head 'house property' and second, the gain from the transfer must be invested in the manner stipulated under the provision. The assessee has been extended the option either to invest the capital gain in another residential house (i) within one year before the date on which the transfer of the original asset took place, (ii) two years after the date on which the transfer took place or (iii) construct a house within three years within the date of transfer.

29. In the present case, the date of transfer is March, 1999. Hence, the purchase of asset in New Delhi on 30.01.2001 would fall within the period of one year after the date on which the transfer took place, per the stipulation under Section 54(1) of the Act. The Department has argued that as the property has been demolished in 1995 itself, Section 54 would be inapplicable in the year 1999. We do not agree as, in our view, the transaction must be seen wholistically.

30. It has not been disputed that No.25, Cathedral Road, Chennai – 600 086 is a residential property. The JDA had been executed in 1994 and as a consequence, the house had been demolished in 1995 to pave the way for the developmental activity to take place. It is true that developmental activity took

place from 1995 onwards. However, in our view, the execution of the JDA does not per se, give rise to the incident of transfer, and it has never been the case of the authorities that the transfer of the asset took place in 1994 on execution of the JDA.

31. Mr.Narayanaswamy has taken a plea that POAs have been issued under the JDA and those particulars have not been looked into by the authorities. Evidently, the JDA will provide for execution of POAs to facilitate the development. However, to decide a claim under Section 54, only the satisfaction of the conditions under that provision would be relevant.

32. In the present case, the execution of the JDA, and permissions to the Developer to enter the premises, were only for the limited purpose of development. In such circumstances, the Department cannot expect that the house must stand in the same condition till such time the transfer/sale was executed. Admittedly, the sale/transfer of capital asset by the appellant was only in March 1999. Hence the incident of transfer, for the purpose of capital gains, ought to be taken as March 1999, as the transaction must be seen as a continuous sequence of events. In our view, and in the above circumstances, the date of transfer ought to be taken as March 1999 only, and capital gains has rightly been offered for AYs 1999-2000 and 2001-02.

33. One of the reasons for the rejection of the claim under Section 54, by the Tribunal is that the assessee has not invested the gain in Capital gains in a Scheme under Section 54(2). Section 54(2) states that if the amount of capital gain has not been appropriated in a new asset, then it shall be deposited in the Bank or Institution as specified under the Capital Gains Scheme by the Central Government, as notified in the Official Gazette.

34. In the present case, the circumstance adumbrated under Section 54(2) does not stand attracted, as the assessee has exercised the option of re-investment in residential property within the time stipulated under Section 54(1) of the Act. Section 54(2) cannot be insisted upon effacing the option available to an assessee to either invest the gain in a Scheme, or re-invest/construct a new property. The assessee in this case has availed the option of re-investment in property within the stipulated time, and that would suffice.

35. According to Mr.Narayanaswamy, the transfer is spread over a period of four years. We are, in the present appeals, concerned with the transfers effected in March 1999 and 2000, and the gains arising only from the same. We make it clear that if there are any gains for other years, it is for the Department to have proceeded in that respect, in accordance with law.

36. The Tribunal negates the plea for relief under Section 54 also on the basis that no income has been offered from house property. There is no necessity

to do so, as Section 54 only requires that income from the property in question, should be assessable under the head 'house property'. This conclusion of the Tribunal is contrary to the statutory stipulation.

37. Substantial questions of law Nos.1 and 2 are answered in favour of the assessee and adverse to the revenue.

38. Coming now to substantial question of law No.3, the assessee is aggrieved by the conclusion of the Tribunal declining consideration of the alternate plea for exemption under Section 54F of the Act. The rejection of the plea is in the following terms:

> *'10. An alternate contention was raised by the learned counsel for the assessee to the effect that the applicability of exemption under Section 54F be considered in the facts and circumstances of the case. The learned departmental representative vehemently objected to the alternate plea. Reference was made to the decision of the Hon'ble Kerala High Court rendered in the case of C.K.Gopinathan Vs. CIT, 260 ITR 213. In this case, it was held that an alternative contention not raised before the Assessing Officer or the Commissioner (Appeals) cannot be considered by the Tribunal. Besides, the assessee is not in appeal. These are departmental appeals. The assessee did not file any cross-objection. Therefore, in our opinion, the alternate contention raised by the assessee for the first time before the Tribunal is not tenable.'*

39. There is a factual error in paragraph 10 to the extent to which the Tribunal states that the alternate contention of Section 54F was not raised either before the Assessing Officer or before the CIT(A). In this case, the assessee has

raised the plea before the Assessing Officer and the same has been rejected. To this extent, there is an error in the order of the Tribunal.

40. It is however a fact that the rejection has not been challenged before the CIT(A). Mr.Datar submits that the powers of the Tribunal are plenary and wide. Referring to the judgments of the Supreme Court in *Commissioner of Police, Bombay V. Gordhandas Bhanji*[1], of this Court in *Commissioner of Income-Tax (Central), Madras V. Indian Express (Madurai) Pvt. Ltd.*[2] and of the Bombay High Court in *Ciba of India Ltd. V. Commissioner of Income-Tax*[3], he argues that there is a duty cast upon the Tribunal to make a proper determination of the tax arising in a particular case.

41. Specific reference is made to the observations in the decision in *Indian Express (Madurai) Pvt. Ltd.*[4] to state that an assessment is a continuous process involving the Assessing Officer, CIT(A) and the Tribunal, and of those of Earl Cairns L.C. in the House of Lord in *Julius V. Lord Bishop of Oxford* [5] that we will refer to shortly. Hence, according to the appellant, it was incumbent upon the Tribunal to have decided the alternate plea for relief under Section 54F and the rejection of the request, amounts to shirking of the duty cast upon the Tribunal which calls for interference by the Court.

---

[1]AIR 1952 SC 16
[2]140 ITR 705
[3]202 ITR 1
[4]Foot Note supra (2)
[5]5 APP. Cas. 214

42. Per contra, Mr.Narayanaswamy would submit that there is nothing erroneous in the rejection of the alternate claim by the Tribunal for several reasons. Firstly, the plea had been raised in an appeal filed by the Income Tax Department. Secondly, the issue of relief under Section 54F did not arise from the order of the CIT(A), and thirdly, the Tribunal did not have any of the facts before it to have considered the claim in proper perspective. Hence the substantial question of law relating to this issue, must be rejected.

43. In the order of assessment, the Assessing Authority states incidentally, at paragraph 7, that the claim could not be accepted even under Section 54F, as clause (a) of the proviso to Section 54F barred such claim. The appellant did not contest this conclusion before the CIT(A), hence attained finality at that stage.

44. Though the appellant had no necessity to approach the Tribunal either by way of appeal or cross-objection, as it had succeeded before the CIT(A), it could have done so solely to serve as a platform to raise an additional ground putting forth the alternate claim under Section 54F, and stipulating that it satisfied all conditions for such grant.

45. In *Jute Corporation of India Ltd. V. Commissioner of Income Tax*[6] and *National Thermal Power Co. Ltd. V. Commissioner of Income Tax*[7] the Supreme Court has considered the veracity or otherwise of raising additional

[6]187 ITR 688
[7]229 ITR 383

grounds/producing additional evidence at the stage of second appeal before the Tribunal. The settled position is that the Tribunal has, in terms of Section 254 of the Act, wide powers to both entertain additional evidence as well as additional grounds.

46. The only caveat as far as the latter is concerned is that all material facts necessary to determine the additional ground must be available before the Tribunal. In the absence of the facts, the Tribunal can, at its discretion, admit the additional ground of appeal if found necessary, and remand the matter to the Assessing Authority for proper consideration of the facts and law. In the present case, this question does not arise as the assessee did not advance any additional claim before the Tribunal.

47. We do not agree with the assessee's submission that the claim under Section 54F would be an automatic consequence of the rejection of the claim under Section 54. Section 54F is a self-contained provision that stipulates, in the proviso thereunder, certain conditions which the assessee must satisfy in order to be entitled to the claim. We extract below Section 54F(1) and the proviso:

> *'54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period*

of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where—

(a) the assessee,—

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property"

……’

48. The question as to whether the appellant owns only one house property is not a matter of record, simply because Section 54F has not been the subject matter of consideration before any of the authorities. The Tribunal could certainly have

considered the alternate claim if only such claim had, in fact, been put forth before it with all facts necessary to decide it. In the absence of a claim, the Tribunal had no choice but to reject the plea for relief under Section 54F.

49. The decision of the Bombay High Court in *Ciba of India Ltd.*[8] does not advance the case of the assessee. In that case, the question related to whether certain expenditure must be treated as revenue or capital. The Bombay High Court held that if the claim for revenue expenditure is to be disallowed, then the capitalisation of that expenditure would have to be correspondingly considered by the authorities, as the two claims are only two sides of the same claim.

50. In the present case, we are not concerned with such a situation. Sections 54 and 54F are not two sides of the same coin. They are stand-alone provisions requiring satisfaction of the conditions mentioned therein. Any claim for relief by an assessee can be considered and granted by the authorities only if a claim is made indicating compliance with those conditions. Likewise, the judgment in *Gordhandas Bhanji*[9] also not advance the case of the assessee for the same reasons.

51. That was a matter where the Court was concerned with the non-performance of certain duties (issuance of a licence) by a statutory authority, and at paragraph 47, the Supreme Court states as follows:

[8]Foot Note Supra (3)
[9]Foot Note Supra (1)

'47. ....

'"It was objected as to this that there is no specific law which compels him to exercise the discretion. Rule 250 merely vests a discretion in him but does not require him to exercise it. That is easily met by the observations of Earl Cairns L.C. in the House of Lord in Julius V. Lord Bishop of Oxford 5 App. Cas. 214 at 222, 223, observations which have our full and respectful concurrence:-

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."'

52. The sum and substance of the above observations is that there is a discretion that vests in the Commissioner of Police for performance of a specific duty, and such power is coupled with a duty to be exercised as and when the circumstances so demand.

53. Undoubtedly, the Tribunal has wide powers enabling it to consider an alternate claim, though at its discretion. However, such power can be exercised only if the assessee performs its duty to put forth the claim in proper form and manner, disclosing clearly the compliance of all statutory pre-conditions for the claim. The Tribunal cannot be compelled to admit and adjudicate upon issues, in the absence of a claim along with necessary documents/pleadings to establish compliance with the statutory conditions under Section 54F.

54. This has admittedly not been done, and hence we do not find anything untoward in the conclusion of the Tribunal in this regard. Accordingly, substantial question of law No.3 is answered against the assessee and in favour of the revenue.

55. T.C.(A) Nos.1163 and 1164 of 2009 are disposed as above.

56. As far as T.C.(A) Nos.1161 and 1162 of 2009 are concerned, no substantial questions have been admitted for resolution, and hence, these Tax case (Appeals) are dismissed. No costs.

(A.S.M.,J.) **(K.G.T.,J.)**

17-12-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

SL

DR.ANITA SUMANTH J.

AND

K.GOVINDARAJAN THILAKAVADI J.

SL

TCA Nos. 1161, 1163, 1164 and 1162 of 2009

17-12-2025

To

1. The Commissioner Of
   Income Tax, Chennai-VI, Chennai-600 024.

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