

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT
CHANDIGARH

ITA No. 71 of 2012 (O&M)

Date of Decision: 20.3.2013

The Commissioner of Income Tax, RohtakAppellant

Versus

Shri Jagtar Singh ChawlaRespondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE JUSTICE MS. RITU BAHRI**

Present: Shri Inderpreet Singh, Advocate, for the appellant.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Hemant Gupta, J.

The Revenue is in appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') against an order dated 30.6.2011 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' New Delhi (for short 'the Tribunal') in ITA No. 4923/Del/2010 for the assessment year 2007-08.

The Revenue has sought the following substantial question of law:-

“Whether on the facts and circumstances of the case, the Hon'ble ITAT, New Delhi is justified in law in reversing the finding of CIT(A) in confirming the addition of Rs.76,85,829/- made by the Assessing Officer by

disallowing the claim of exemption u/s 54F of the I.T. Act as the assessee failed to deposit the unutilized consideration of capital gains in the Capital Gains Accounts Scheme as per the limit prescribed under the Act?

As per facts on record, the assessee sold his agricultural land and residential house at Karnal for Rs.2,16,00,000/- and Rs.8,25,000/- respectively, vide sale deed dated 20.6.2006. On the same date, the assessee claims to have written a letter to the Bank to deposit the said amount in the capital gain account, but it appears that the said amount was not deposited in the capital gain account. However, the same was deposited in a "Flexi General Account", which is a saving as well as fixed deposit account. The assessee purchased a residential house from the sale proceeds so received.

The Revenue disallowed the claim of the assessee under Section 54F of the Act and added a sum of Rs.76,85,829/- under the head 'long term capital gains', vide order dated 24.12.2009 (Annexure A-1). The said order of the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals) Rohtak, vide its order dated 20.9.2010 (Annexure A-II). However, in further Appeal, the Tribunal vide its order dated 30.06.2011 (Annexure A-III) set aside the order of the Commissioner of Income Tax (Appeals) Rohtak, on the ground that the assessee has purchased the residential house within the period prescribed under Section 139 of the Act and thus, the addition is not sustainable.

Feeling aggrieved against the order of the Tribunal, the Revenue preferred the present appeal.

Learned counsel for the appellant has vehemently contended that the assessee was required to deposit the sale proceeds of capital asset in the capital gain account in terms of Sections 54F(4)

of the Act, within the period of one year of the sale or was required to acquire a new asset within one year i.e. in terms of Section 139(1) of the Act. Since, the assessee has not exercised any of the two options, the order of the Tribunal is not sustainable whereas the orders of the Assessing Officer as well as Commissioner of Income Tax (Appeals) Rohtak are legal.

Before we proceed further, the relevant provisions of the Act i.e. sub-section (4) of Section 54F and Section 139(1) & (4) of the Act, are required to be reproduced. The same are as under:-

“54F. xx xx xx

(4) The amount of the net consideration 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 utilized 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 utilized 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 purpose of sub-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset.

xx xx xx

139. (1) Every person -

- (a) being a company (or a firm); or
- (b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to the income tax, shall on or before the due date, furnish a return of his income or the income of such other person during

the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

xx xx xx

(4) Any person who has not furnished a return within the time allowed to him under sub-section(1), or within the time allowed under a notice issued under sub section (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year, whichever is earlier.”

The provisions of Section 54F(4) of the Act are pari-materia with Section 54(2) of the Act. Section 54 deals with the profit on sale of a residential house, whereas Section 54F deals with the transfer of any long term capital assets not being a residential house.

A Division Bench of the Gauhati High Court in a case reported as Commissioner of Income Tax v. Rajesh Kumar Jalan (2006) 286 ITR 274, held that only Section 139 of the Act is mentioned in Section 54(2) of the Act in the context that the unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income Tax under Section 139 of the Act and that it would include extended period to file return in terms of Sub Section 4 of Section 139 of the Act. It was held as under:-

“From a plain reading of sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only section 139 of the Income-tax Act, 1961, is mentioned in section 54(2) in the context that the unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only section 139(1), but it means all sub-sections of section 139 of the Income-tax Act, 1961. Under sub-section (4) of section 139 of the Income-tax Act any person who has not furnished a return within the time allowed to him under sub-section (1) of Section 142 may

furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier.”

The said judgment was relied upon by a Division Bench of the Karnataka High Court in Fathima Bai v. ITO, ITA No.435 of 2004 Decided on 17th October 2008, wherein it was held to the following effect:-

“11. The extended due date under section 139(4) would be 31.3.1990. The assessee did not file the return within the extended due date, but filed the return on 27.2.2000. However, the assessee had utilized the entire capital gains by purchase of a house property within the stipulated period of section 54(2) i.e., before the extended due date for return under section 139. the assessee technically may have defaulted in not filing the return under section 139(4). But, however, utilized the capital gains for purchase of property before the extended due date under section 139(4). The contention of the revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention.”

A Division Bench of this Court in which one of us (Hemant Gupta, J.) was a member, had an occasion to consider the provisions of Section 54(2) of the Act, wherein it has been held that sub-section(4) of Section 139 of the Act is in fact a proviso to Section 139(1) of the Act. Therefore, since the assessee has invested the sale proceeds in a residential house within the extended period of limitation, the capital gain is not payable. The judgments in Rajesh Kumar Jalan's case and Fathima Bai's case (supra) were referred to. It has been held as under:-

“Having heard learned counsel for the parties, we are of the opinion that sub-section (4) of Section 139 of the Act is, in act, a proviso to sub-section (1) of Section 139 of the Act. Section

139 of the Act fixes the different dates for filing the returns for different assesses. In the case of assessee as the respondent, it is 31st day of July, of the Assessment Year in terms of clause (c) of the Explanation 2 to sub-section 1 of Section 139 of the Act, whereas sub-section (4) of Section 139 provides for extension in period of due date in certain circumstances. It reads as under:-

“(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier;

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.”

A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-section (1) i.e. before 31st day of July of the Assessment Year, the assessee can file return before the expiry of one year from the end of every relevant Assessment Year.”

In the present case, the assessee has proved the payment of substantial amount of sale consideration for purchase of a residential property on or before 31.3.2008, that is within extended period of limitation of filing of return. Only a sum of Rs.24 lacs was paid out of total sale consideration of Rs. Two Crores on 23.4.2008, though possession was delivered to the assessee on execution of the power of attorney on 30.3.2008. Since the assessee, has acquired a residential house before the end of the next Financial Year in which sale has

taken place, therefore, the assessee is not liable to pay any capital gain. Such is the view taken by the Income Tax Appellate Tribunal.

In view of the above, we do not find any merit in the present appeal. Hence, the same is dismissed.

(HEMANT GUPTA)
JUDGE

(RITU BAHRI)
JUDGE

20.3.2013

G.Arora/Vimal/ds