

Assessee can claim exemption u/s. 54 in revised return for amount invested in property after due date U/s. 139(1).

*Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Miss Jagriti (supra) has held that sub-section (4) of section 139 provides the extension period of limitation as an exception to sub-sec. (1) of sec. 139 of the Act. Sub-sec. (4) was in relation to the time allowed to an assessee under sub-sec. (1) to file the return. Therefore, such provision was not an independent provision, but relates to the time contemplated under sub-sec.(1) of sec. 139. Therefore, subsec.(4) has to be read along with sub-sec.(1). Therefore, the due date for furnishing the return of income u/s 139 (1) of the Act was subject to extended period provided u/s 139 (4) of the Act. Similar view was taken by Hon'ble Guwahati High Court in the case of Rajesh Kumar Jalan (supra). During the course of hearing the learned Sr. DR could not cite a contrary decision to what has been held by the Hon'ble Guwahati High Court and Hon'ble Punjab & Haryana High Court. Respectfully following the decision of Hon'ble Punjab & Haryana High Court, it is held that **since the assessee had invested in the new property within the time allowed u/s 139 (4) of the Act, the assessee will be entitled for exemption u/s 54 of the Act to the extent the amount invested in the new property.***

INCOME TAX APPELLATE TRIBUNAL, DELHI

ITA No.151/D/2012 – Assessment Year: 2008-09

ACIT V/s. Smt . Sapna Dimri

Date of pronouncement: 15-03-2012

ORDER

A.N.Pahuja:-

This appeal filed on 10.01.2012 by the Revenue against an order dated 31.10.2011 of the Id. CIT(A)-XXX, New Delhi, raises the following grounds:-

“On the facts and in the circumstances of the case, the Id CIT(A) has erred in deleting the following additions:

1. Whether on the facts and circumstances of the case, the learned CIT(A) is justified in directing the AO to take the fair market value of immovable property as on 01.04.1981 by placing reliance on the provisions of section 2(47)(vi) of the Income-tax Act which were introduced w.e.f. 01.04.1988 and available to the assessee as on 06.02.1984 when the actual conveyance deed was registered.

2. Whether on the facts and circumstances of the case, the learned CIT(A) is justified in allowing exemption of Rs.64,36,667/- u/s 54 of the Act whereas the assessee had neither purchased the house nor deposited the amount in the capital gain scheme before the due date of filing of return of income u/s 139(1).

3. Whether on the facts and circumstances of the case, the learned CIT(A) is justified in ignoring the specific provisions of section 45(2) of Income-tax Act wherein it is mentioned that “sum 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” and by holding that assessee had purchased the new asset before filing of return u/s 139 i.e. u/s 139(4) of the Income-tax Act.

4. Whether on the facts and circumstances of the case, the learned CIT(A) is justified in not deciding the ground No.4 of appeal of the assessee before him. Whether the assessee can revise the income through arevised computation of income only and the requirement of filing revised return is not mandatory.

5. The appellant craves the right to alter, amend, add or substitute the grounds of appeal. “

2. Facts, in brief, as per relevant orders are that return declaring income of Rs.7,08,754/-filed on 04.03.2009 by the assessee, after being processed u/s 143(1) of the Income-tax Act, 1961 (hereafter referred to as the Act), was selected for scrutiny with the service of a notice issued u/s 143(2) of the Act. During the course of assessment proceedings, the Assessing Officer (A.O. in short) noticed that one Shri Prem Lal became a member of Burma Shell Co-operative Society Ltd. in the year 1951 by acquiring one share of Rs.25/- of the said society. On his death on 19.01.1980, the membership of the society was transferred to his wife Smt. Kamla Devi on 31.08.1980. Later, the conveyance deed of plot no.25, Aradhana Colony, R.K. Puram, Sector-13, New Delhi, admeasuring 370 sq. yards was executed by the society in favour of Smt. Kamla Devi on 06.02.1984. On her death on 08.03.1986, the said plot was transferred in the name of her two daughters Smt. Rama Rani Mathur and Smt. Prabha Chandra. These two ladies entred into a colloboration agreement on 10.04.1990 with M/s Ahluwalia Contracts (I) Pvt. Ltd. for the construction of a house on the said plot. The ground floor and basement was to be given to the builder whereas 1st floor and 50% of the roof above 2nd floor to Smt. Rama Rani Mathur and the 2nd Floor and 50% of the roof over second floor was given to Smt. Prabha Chandra. Besides, 50% share in the land was given to the builder and 50% to Smt. Rama Rani Mathur and Smt. Prabha Chandra. Smt. Prabha Chandra died on 28.11.1994, leaving behind Sh. Bipin chandra (husband) and Smt. Sapna Dimri (daughter) as her class one legal heirs. Subsequently, on sale of the share inherited by Shri Bipin Chandra and Smt. Sapna Dimri, the assessee reflected 50% of her share in capital gain on sale of

second floor in the aforesaid property at Rs.3,04,094/- . The working of the capital gain as extracted in the assessment order is as under:-

[In Rs.]

“Sale of 50% shares in above property Rs.75,00,000

Less: 50% share in cost price of above Property=Rs.4,22,250/- (As per Valuation report as on 1.4.1981).

Indexed cost of above property $422250 \times 551/100$ = Rs.23,26,598

Less: b) Cost of improvement of Rs.62,000/- incurred during F.Y 1989-90

50% share in cost of improvement=31,000/-

Indexed cost of improvement

$31000 \times 551/172$ Rs.99,308 Rs.24,25,906

Rs.50,74,094

Less: Exemption u/s 54 of the Act Rs.47,70,000

Long term capital gains Rs. 3,04,094

2.1 To a query by the AO, regarding cost of acquisition adopted by the assessee as on 01.04.1981, the assessee submitted revised computation of income, computing long term capital gains of Rs.6,83,781/- as under:-

[In Rs.]

“Income from Capital Gains (Long term)

a) Sale of 50% shares Rs.75,00,000

Less: 50% share of Rs.4,83,839/- in cost of Acquisition of plot=2,41,920/- .

(As per Revised valuation report dt.25.11.2010 13,32,980

Less: b) Cost of construction of 2nd floor-471177
during financial year 1990-91

50% share in cost of construction= 235589

Indexed cost of above is $\text{Rs.}235589 \times 551/182$

7,13,239 20,46,219

4,53,781

Less: Exemption u/s 54 of the I.T. Act 47,70,000

Long Term Capital Gains 6,83,781"

2.2 However, the AO did not accept the aforesaid computation, the assessee having not submitted either copy of purchase deed dated 06.02.1984 of the land by Smt. Kamla Devi from the society nor copy of collaboration agreement entered into with the builder on 10.04.1990. Accordingly, the AO recomputed the capital gain by adopting cost of acquisition of the land in financial year 1983-84 at Rs.16,204/- and assessee's share therein at Rs.2,026/- and cost of construction in financial year 1992-93 at Rs.1,71,177/- and the assessee's share therein at Rs.85,588/- while denying exemption u/s 54 of the Act, resulting in addition of Rs.69,74,808/-.

3. On appeal, the Id. CIT(A) while referring to his findings in the case of co-owner late shri Bipin Chandra, accepted the claim of the assessee in the following terms:-

"I have considered the written submissions, assessment order, grounds of appeals, and arguments of the AR very carefully. The property was acquired by the material grandfather of appellant being a society member of Burmah Shell Cooperative Housing Society Ltd in 1951. Though there was dispute between Govt. of Delhi and society, and finally wife of late Bipin Chandra got the land registered by the society in her name in 1984 (06.02.1984). The portion of land had come to appellant's share due to inheritance. Hence the appellant on 1.4.1981 for cost indexation purpose. The Assessing Officer should have referred the matter to DVO or obtained a circle rate as on 1.4.1981 from concerned Subregistrar's office on that date. Since, these two figures are not with us, we have to accept RV's report for FMV as on 1.4.1981. The AR had given arevised computation enclosed to this order for ready reference. The Assessing Officer may verify these figures after giving appellant an opportunity of being heard, before giving appeal effect to this order.

That the learned Assessing Officer has erred in rejecting the valuation report of Govt. Approved valuer and thereby assessing the indexed cost of construction at Rs.85,558/- against Rs.7,13,239/- claimed by the appellant, which is the indexed FMV of the cost of construction. This rejection is against facts and bad in law and the Assessing Officer may kindly be directed to allow the indexed cost of construction as claimed by the appellant and capital gains computed accordingly.

Submissions:

Not pressed. No decision required in this ground of appeal.

3.1 As regards exemption u/s 54 of the Act, the Id. CIT (A) concluded as under:

"I have considered the assessment order, written submissions and case laws cited by AR. The assessee had claimed exemption u/s 54 of the Income-tax Act on purchase of 1/3rd share in residential Apartment No.802, 8th floor, Block F-1, village Silokhera, Tehsil and District Gurgaon (Haryana) in his revised computation of capital gain enclosed as annexure to this order before the completion of assessment proceedings before Assessing Officer. The section 54(2) says that the amount of long term capital gain should be utilized by assessee for the purchase or construction of new asset before the date of furnishing the return of income u/s 139 shall or be deposited by him before furnishing such return (such deposits being made in any case not later than due date applicable in the case of the assessee for furnishing of return of income u/s (1) of section 139. In the assessee's case, the claim was made after the due date of filing return u/s 139(1) and in a revised computation, before completion of assessment.

The appellant had sold her share of property on 24.7.2007 by GPA to Mrs. Hashmi chhabra w/o Shri Vijay chhabra on a sale consideration of Rs.1.50 crore. She purchased another property of Gurgaon on 11.10.2008 for a consideration of Rs.1.35 crores from Mr. Animesh Narang vide sale deed stamp certificate No. and date =1515/13-10-2008. Thus the due date of filing return for assessment year 2008-09 was 31.07.2008, before which the appellant should have deposited money in her capital gain accounts scheme, 1988 in Bank, which she had not done. The AR had also given a recent judgment of Punjab & Haryana HC. decided in I.T.A. No.176 of 2011 dated 3.10.2011 in the case of Ms. Jagrati Agrati Agrawal, which is decided in favour of assessee. The P&H case above is squarely covered in assessee's own case. As the assessee had purchased the new asset before filing of return u/s 139, i.e. u/s 139(4), the interpretation by Punjab & Haryana High Court prevails. Therefore, the deduction u/s 54(2) is allowed to the assessee."

4. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). At the outset, both the parties agreed that the issue is squarely covered by the decision dated 20th January, 2012 of the ITAT in the case of Co-owner late shri Bipin Chandra i.e. father of the assessee in ITA no.4958/D/2011.

5. We have heard both the parties and gone through the facts of the case as also the aforesaid decision of the ITAT. We find that while adjudicating similar issues in the case of Late Shri Bipin Chandra in I.T.A. No.4958/D/2011, a co-ordinate Bench referred to decisions in DCIT vs. Manjula J Shah,318 ITR(AT)417(Mumbai)(SB);CIT vs. Rajesh Kumar Jalan,286 ITR 274(Gauhati) & CIT vs. Jagriti Aggarwal,339 ITR 610(P&H) and concluded in their decision dated 20.1.12 as under:-

“8. We have heard both the parties and gone through the material available on record. There is no dispute about the facts that the assessee became owner of the property on the death of his wife who acquired property from her mother. The said property was acquired by her mother before 1.4.1981. U/s 49(1) where the capital asset becomes the property of the assessee under the modes specified therein, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it as increased by the cost of any improvement of the asset incurred or borne by the previous owner or the assessee, as the case may be. In the case before us, the previous owner of the property was his wife, who acquired the property by way of inheritance. The said property was purchased by her mother before 1.4.1981. In the case of his wife cost of acquisition will be taken as on 1.4.1981. Therefore, the cost of previous owner in the hands of the assessee will be the cost in the hands of his wife. In view of these facts, it is clear that the cost of acquisition has to be taken as on 1.4.1981.

9. Now, coming to the cost of indexation, in the case of previous owner, the cost of acquisition is to be as on 1.4.1981, it will be illogical to apply the cost indexation with reference to the date on which the assessee became the owner of the property. Therefore, **cost of indexation has to be with effect from 1.4.1981, the date on which the cost of acquisition was taken in the hands of the previous owner.** In view of these facts, we do not find any infirmity in the decision of learned CIT(A). Our view is supported by the decision of Special Bench of ITAT in the case of **DCIT Vs. Manjula J. Shah** (supra).

10. Now, coming to second issue, the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Miss Jagriti (supra) has held that sub-section (4) of section 139 provides the extension period of limitation as an exception to sub-sec. (1) of sec. 139 of the Act. Sub-sec. (4) was in relation to the time allowed to an assessee under sub-sec. (1) to file the return. Therefore, such provision was not an independent provision, but relates to the time contemplated under sub-sec.(1) of sec. 139. Therefore, sub sec.(4) has to be read along with sub-sec.(1). Therefore, the due date for furnishing the return of income u/s 139 (1) of the Act was subject to extended period provided u/s 139 (4) of the Act. Similar view was taken by Hon'ble Guwahati High Court in the case of Rajesh Kumar Jalan (supra). During the course of hearing the learned Sr. DR could not cite a contrary decision to what has been held by the Hon'ble Guwahati High Court and Hon'ble Punjab & Haryana High Court. Respectfully following the decision of Hon'ble Punjab & Haryana High Court, it is held that since the assessee had invested in the new property within the time allowed u/s 139 (4) of the Act, the assessee will be entitled for exemption u/s 54 of the Act to the extent the amount invested in the new property.

Accordingly, we do not find any infirmity in the order of the CIT (A) allowing relief in respect of both the issues.”

6. In the light of aforesaid view taken by a co-ordinate Bench in the case of co-owner on similar facts and circumstances and the Revenue having not placed before us any contrary decision nor any material so as to enable us to take a different view in the matter, we have no alternative but to reject ground nos. 1 to 3 in the appeal.

7. As a corollary ground no.4 in the appeal does not survive for our adjudication, admittedly there being no findings of the Id. CIT(A) on the said issue nor the assessee being in appeal before us. Accordingly, this ground is dismissed.

8. No other submissions or argument was made before us.

9. In result, appeal is dismissed.

Order pronounced in Open Court