



**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 153 / 2017

Principal Commissioner of Income Tax-I, New Central Revenue
Building, Statue Circle, Jaipur (Raj.)

----Appellant

Versus

Shri Shankar Lal Saini, 480, Hanta Nagar, Near NBC, Hasanpura,
Jaipur

----Respondent



For Appellant(s) : Mr. Anuroop Singhi with Mr. Aditya Vijay

For Respondent(s) : Mr. Gunjan Pathak with Ms. Ishita Rawat

**HON'BLE MR. JUSTICE K.S. JHAVERI
HON'BLE MR. JUSTICE VIJAY KUMAR VYAS**

Judgment

19/12/2017

1. By way of this appeal, the appellant has assailed the judgment and order of the tribunal whereby tribunal has allowed the appeal of the assessee and modifying the order of CIT(A) as well as AO.

2. This court while admitting the appeal on 1.06.2017 framed following substantial question of law:-

“(i) Whether, the tribunal was justified in allowing the deduction of Rs.1,60,00,000/- u/s 54B and Rs.52,00,000 u/s. 54F of the Act, ignoring the specific provisions of Section 54B(2) and 54F(4)



which refers to the due date of Section 139(1) and not Section 139(4) of the Act?"

3. The facts of the case are that the assessee was picked up for scrutiny assessment and the assessment was finalized under section 143(3) of the I.T. Act, 1961 (hereinafter referred to as the Act) vide order dated 20.03.2014. While framing the assessment, the AO declined the claim of deduction under sections 54B and 54F of the Act on the ground that assessee has not deposited the net sale consideration in the capital gain account.

4. Counsel for the appellant Mr. Singhi has taken us to the order of the AO wherein it has been observed as under:-

5.5 I have gone through the submissions made by the assessee but the reply filed by the assessee is not acceptable as assessee has failed to deposit the amount of net sale consideration or capital gain in capital gain account before due date of filing of return i.e. 31.07.2011 in the above case as per provisions of section 139(1) of the I.T. Act, 1961. Assessee claimed that sale consideration was deposited in nationalized bank as well as capital gain account. Perusal of the documents submitted by the assessee it is found that assessee has not filed any documentary evidence in this regard. Further, the assessee had claimed that value of construction of house Rs.52,00,000/- including Rs.5,00,000/- in agriculture land. The contention of the assessee in this regard is also not found acceptable as deduction u/s 54B has already been claimed by the assessee for Rs.1,60,00,000/- and same has been discussed as above. Therefore, assessee is



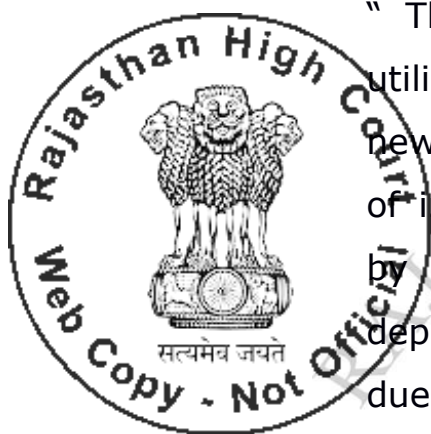
not entitled to claim the deduction of Rs.5,00,000/- u/s 54F.

6. In view of the above position issue of both the deductions claimed by the assessee is decided separately as under:-

The provisions of section 54B(2) reads as under:-

" The amount of the capital gain which is not utilized by the assessee for the purchase 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 section 139] in an 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 utilized by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost off the new asset."

In view of above provisions of I.T. Act it is clear that assessee has to deposit the amount of capital gain which has not been utilized by the assessee before due date of filing of return in capital gain account scheme, 1988. Assessee has admitted the fact that he has failed to deposit the amount of Rs.1,60,00,000/- in capital gain account before due date of filing of return u/s 139(1) of the I.T. Act. Therefore, the deduction claimed by the assessee u/s 54B Rs.1,60,00,000/- is not allowable to the assessee. In view of the above discussion deduction claim by the assessee u/s



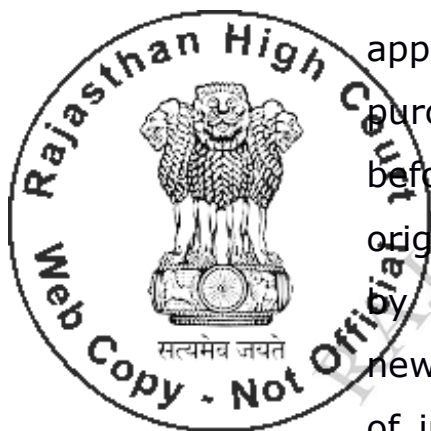


54B Rs.1,60,00,000/- is disallowed and added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) is being issued initiated for furnishing of inaccurate particular of income.

7. The provisions of section 54F(4) reads as under:-

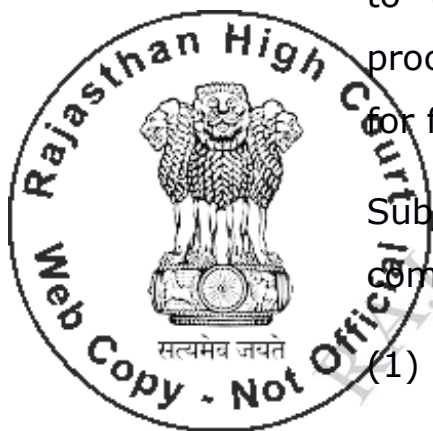
“The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the 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.”

In view of above provisions of I.T. Act it is clear that assessee has to deposit the net sale consideration amount which has not been utilized by the assessee before due date of filing of return in Capital Gain Account Scheme, 1988. Assessee has admitted the fact that he has failed to deposit





the amount of Rs.52,00,000/- in capital gain account before due date of filing of return u/s 139(1) of the I.T. Act. Therefore, the deduction claimed by the assessee u/s 54F Rs.52,00,000/- is not allowable to the assessee. In view of the above discussion deduction claim by the assessee u/s 54F Rs.52,00,000/- is disallowed and added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) is being issued initiated for furnishing of inaccurate particulars of income. Subject to the above disussion, total income is computed as under:-



(1) Income as disclosed

in the return Rs.66,49,570/-

Add: Addition as discussed

in para-4 above Rs.59,04,000/-

Addition as discussed in

para-6 above Rs.1,60,00,000/-

Addition as discussed in

para-7 above Rs.52,00,000/-

Net taxable Income Rs.3,37,53,570/-

Assessed u/s 143(3) of the Income Tax Act, 1961 at Rs.3,37,53,570/-. Calculation of Tax and interest charged u/s 234A, 234B and 234C of the I.T. Act, 1961 has been shown in the enclosed ITNS-150 which is also a part of the assessment order, accordingly demand notice and challan is issued. Penalty notice u/s 271(1)(c) is being issued for furnishing of inaccurate particulars income.

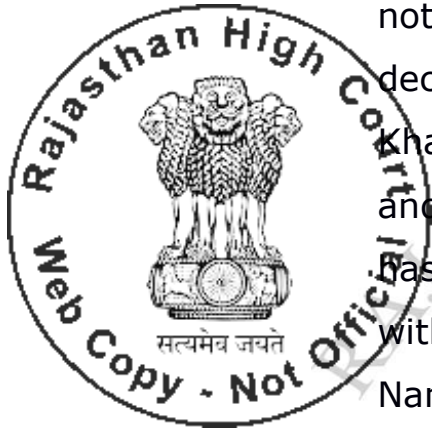


5. Taking into consideration, he contended that the AO has assessed the income and capital gain benefit was not rightly granted to the assessee. He further contended that CIT(A) has dismissed the appeal observing as under:-

(vii) It may be mentioned that in the case of Nandlal Sharma vs. ITO (Supra), the above referred decision of Hon'ble Supreme Court was not placed before the Hon'ble ITAT. In view of the decision of the Apex Court in the case of PN Khanna V/s CIT 2004 266 ITR 1/135 Taxman 327 and the decision of the Hon'ble Tribunal which has relied on this decision, I respectfully differ with the decision of Hon'ble ITAT in the case of Nandlal Sharma vs. ITO as it is held that the due date as specified in the section 139 of the IT Act, 1961 has to be as per section 139(1) and not section 139(4) of the IT Act, 1961.

(viii) In view of the above discussion, it is held that the appellant is not entitled for deduction u/s 54B and 54F of the Act and thus the action of the AO in not allowing deduction u/s 54B and 54F is justified and hence the additions made by the AO are sustained.

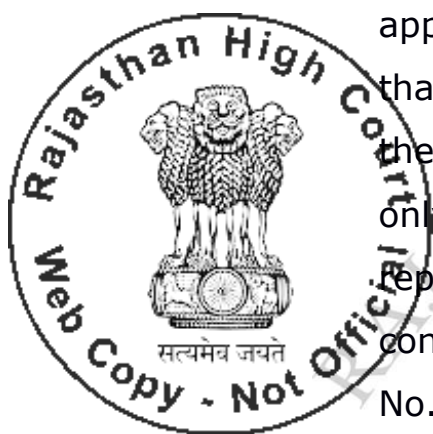
(ix) In its submission, it was the contention of the appellant that the AO disallowed the claim to the extent of Rs.5,00,000/- by wrongly mentioning that this is in respect of agricultural land for which assessee has already claimed deduction of Rs.1.60 Crore. It was stated that the amount of Rs.5 Lac was incurred on wire fencing of the agriculture land acquired by the assessee and small room thereon and this is part of the agriculture land itself. Even otherwise if part of the amount of Rs.5,00,000/- is treated as incurred on house than in various cases it has





been held that wording used in sec. 54F is "a residential house" which also permits the use of plural by virtue of sec. 13(2) of General Clauses Act and therefore where the assessee purchases more than one house than also deduction is available.

(x) I have considered the above contention of the appellant very carefully. It has been held above that the deduction u/s 54F could no be allowed to the appellant and thus this contention became only academic. It is observed from the valuation report filed by the appellant that the total cost of construction in the house property at Plot No.480, New Dhani, Shanti Nagar, Near Karni Mata Mandir, was estimated at Rs.47 Lac only and not Rs.52 Lac as claimed by the appellant for claiming deduction u/s 54F of the Act. The contention that Rs.5 Lac was spent on wire fencing and construction of room on the agricultural land acquired by appellant does not hold good in the absence of any documentary evidence in this regard. The appellant relied upon a number of case laws for claiming deduction u/s 54F of the Act, if the appellant acquires more than one residential house. In this regard, it may be mentioned here that if it is presumed that the appellant has constructed a room on the agricultural land even then it is not eligible for deduction u/s 54F of the Act on Rs.5 Lac as claimed by it as construction of a room does not tantamount to a residential house. In order to be a residential house, the room must be accompanied at least with kitchen and bathroom. In view of the above, the contentions of the appellant are hereby rejected. Therefore, this ground of appeal is hereby rejected.





6. However, while considering the matter, he contended that the tribunal has committed serious error in ignoring the observations made by the Supreme Court in the case of P.N. Khanna vs. CIT, 266 ITR 1(SC) wherein it has been held as under:-



12. As a result of the amendment of Section 139(3) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 the power of the Income Tax Officer to extend time for furnishing return was taken away w.e.f. 1st April, 1987.

17. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou 1966 (1) QB 876, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC {1963 AC 557} where at AC p.577 he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges".)

20. Another plea which was urged with some amount of vehemence was that the provisions of Section 276CC are applicable only when there is discovery of the failure regarding evasion of tax.



It was submitted that since the return under Sub-section (4) of Section 139 was filed before the discovery of any evasion, the provision has no application. The case at hand cannot be covered by the expression "in any other case". This argument though attractive has no substance.

7. He relied upon the judgment in the **Sh. Nand Lal Sharma vs. The ITO, Bundi, ITA No. 413/JP/2012**, wherein it has been held as under :-



7. We have heard the rival contentions and perused the materials available on record. Appropos Ground No. 1 i.e. deposit of net consideration into capital gain account scheme on 31-03-2009, we find merit in the arguments of the Id. AR that Section 54 refers to Section 139 for the time limit to acquire eligible new asset, which includes return u/s 139(4) also i.e. time limit of one year from the end of assessment year. Various judicial precedents cited above have taken this view; respectfully following them we hold that assessee purchase of new residential house is eligible for claim of exemption u/s 54. Thus ground no. 1 of the assessee is allowed.

8. He also relied upon the judgment of Kerala Judgment in **Xavier J. Pulikkal vs. Dy. CIT, [2016] 242 Taxman 206 (KERHC)**, which has been confirmed by the Supreme Court wherein it has been held as under:

7. So far as the facts of the present case, we have already stated above, it is possible that facts of the other appeal considered by the Tribunal along with appeal of the Revenue may be different. The scheme for depositing capital gain is contemplated under section 54F(4) and it depends upon when the property of the assessee is sold and when exactly the amounts were invested, whether it was invested in a residential house or otherwise. All these facts have to be considered with reference to provisions of section 54F(4) along with section 139(1) of the Act, as the due time would be under section 139(1) only and not under section 139(4) of the Act.

3. Looking at the facts, we modify the impugned by directing that the Assessing Officer shall



consider the matter de novo without being influenced by any observation made by the High Court, in accordance with law.

9. He also relied upon the decision of Supreme Court in Shrinivas Cable Components Vs. State of Madhya Pradesh and others (2012) 10 SCC 421 wherein it has been held as under:

"14. In **G.P. Ceramics Private Limited** v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90, this Court has observed thus:

"29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries (SCC para 26);"



10. He has taken us to the provisions of Section 54(2) of the Income Tax Act which reads as under:

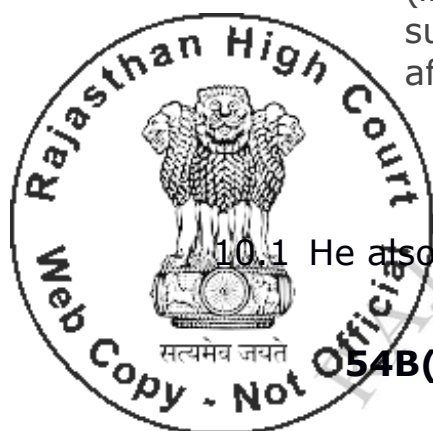
(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the 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 be deemed to be the cost of the new asset :



Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under [section 45](#) as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.



10.1 He also invited our attention to the following provisions:

54B(2)

(2) The amount of the capital gain which is not utilised by the assessee for the purchase 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 of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

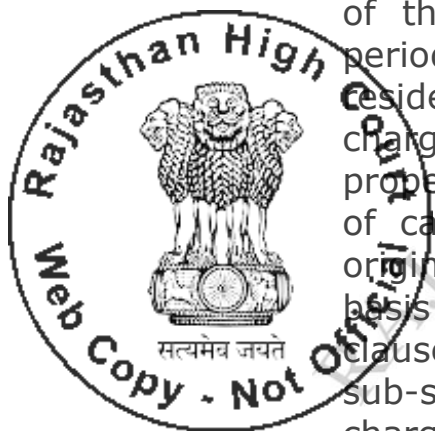
(i) the amount not so utilised shall be charged under [section 45](#) as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and



(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

54F(2)

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under [section 45](#) on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.



10.2 He contended that from a bare perusal of Section s 54B(2), it is clear that investment or the benefit which he is seeking the investment is to be made before return u/s 139(1) is filed. The language used by the legislature in 54B(2) is very clear "shall be deposited by him before furnishing such return not later than due date as applicable in the case of assessee for furnishing of Income Tax under sub-section (1) of Section 139 in an account in which such bank or institution as may be specified.

11. In that view of the matter, he contended that every word which has been used in sub section (2) is to be constructed very strictly otherwise provision will be rendered nugatory and interpretation which has been given by the tribunal will frustrate the object of the Section.



12. He also taken us to Section 54F(4) and contended that it is the identical language which has been used in 54B(2) in that view of the matter, the judgment of Kerala High Court (supra) is required to be accepted and the view taken by the tribunal is required to be reversed.

13. He also contended that judgment of Gauhati High Court is required to be viewed very seriously inasmuch as reproduction of sub Section (2) of Section 54B is not causing breach of Section 139(1) which has been ignored by the Gauhati High Court.

14. However, counsel for the respondent has contended that the first judgment which sought to be relied upon is prosecution case and while considering the prosecution and the exemption, the court approach should be in a different direction than in case of prosecution which is to be strictly construed whereas in the case of exemption it is to be construed liberally. He has taken us to the following findings recorded by the Tribunal:

3.4 We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. The undisputed facts as recorded by the AO are that the assessee had sold two properties i.e. land situated at Ramsinghpura, Tehsil Sanganer, Khasra Nos. 165 & 166, admeasuring 0.82 Hectare on 28.12.2010 to M/s. Krishna Balaram Residency Pvt. Ltd. Jaipur jointly both his brother Shri Sedhu Ram at the consideration of Rs.3,00,00,000/- and land situated at Ramsinghpura (Dholai), Tehsil Sanganer, Khasra No. 163, admeasuring 0.70 Hectare on



09.02.2011 to M/s. Krishna Balram Residency Pvt. Ltd., Jaipur jointly with his brother Shri Sedhu Ram and shown total consideration of Rs.2,56,78,800/-. The assessee shown long term capital gain of Rs.64,61,650/- after claiming deduction u/s 54B at Rs. 1,60,00,000/- and u/s 54F Rs.52,00,000/-. The AO observed that the assessee has failed to deposit the amount of net sale consideration or capital gain in capital gain account before the due date of filing of return i.e. 31.07.2011. It was observed that the assessee claimed that the entire sale consideration was deposited in the Nationalized Bank as well as in capital gain account. However, no documentary evidence was submitted to the AO. Therefore, the AO declined the claim of deduction under section 54F and similarly the claim u/s 54F of the Act.

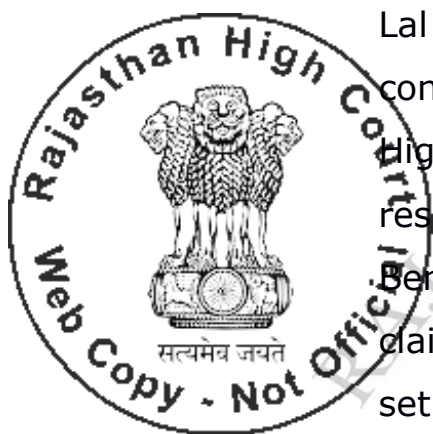
3.5 It is contended by the assessee that since the investment is made before the due date of filing of return under section 139(4) of the Act and also before the date of filing of return on 21.02.2013, the assessee is eligible for deduction u/s 54B & 54F even if he has not deposited the amount in capital gain account. In support of his contention, Id. Counsel for the assessee has placed reliance on the decision of Coordinate Bench rendered in the case of Nandlal Sharma Vs. ITO (2015) 122 DTR 404 (JPR) (Trib.), Ashok Kapasiwala vs. ITO (2015) 45 CCH 407 (Ah.) (Trib.) and the judgments of Hon'ble Punjab & haryana High Court rendered in the case of CIT vs. Jagtar Singh Chawla (2013) 87 DTR 217 (P&H)(HC), CIT vs. Ms. Jagriti Aggarwal (2011) 64 DTR 333 (P&H)(HC) and on the judgments of Hon'ble Karnataka High Court in the case of Fathima Bai vs. ITO (2009) 32 DTR 243 (Kar.)





(HC) and in the case of CIT vs. Smt. Vrinda P. Issac (2011) 64 DTR 376 (Kar.)(HC) and also decision of Coordinate Bench rendered in the case of Nipun Mehrotra vs. ACIT (2008) 110 ITD 520 (Bang.)(Trib.)

3.6 The Coordinate Bench of the Tribunal while deciding the identical issue in the case of Nand Lal Sharma vs. ITO (supra) has taken into consideration the various judgments of Hon'ble High Courts referred above. Therefore, respectfully following the decision of Coordinate Benches of the Tribunal (supra), we allow the claim of the assessee. The order of Id. CIT (A) is set aside.



15. He has relied upon the following decisions:

The Commissioner of Income Tax, Rohtak vs. Shri Jagtar Singh Chawla, (2013) 259 CTR 0388 (PHHC) :

8. 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:-

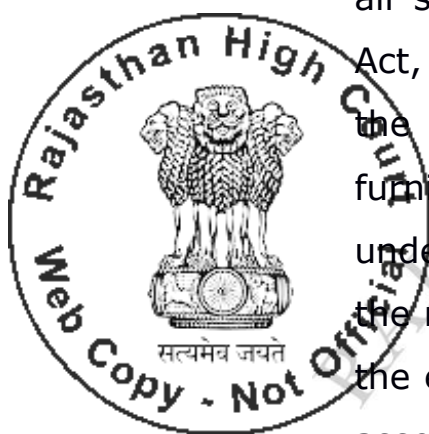
From a plain reading of sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only section 139 of the Income-tax Act, 1961, is



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.

9. 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:-

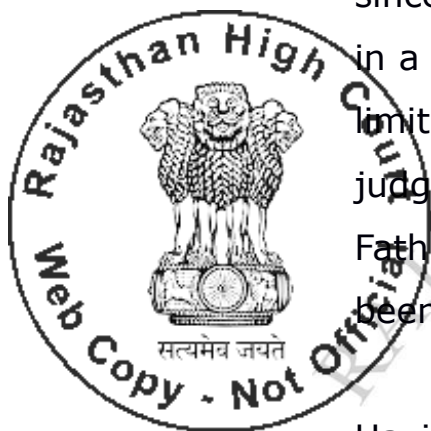
11. The extended due date under section 139(4) would be 31.3.1990. The assessee did not file the return within the extended due date, but filed the return on 27.2.2000. However, the assessee had utilized the entire capital gains by purchase of a house property within the stipulated period of section 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.

10. 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:-

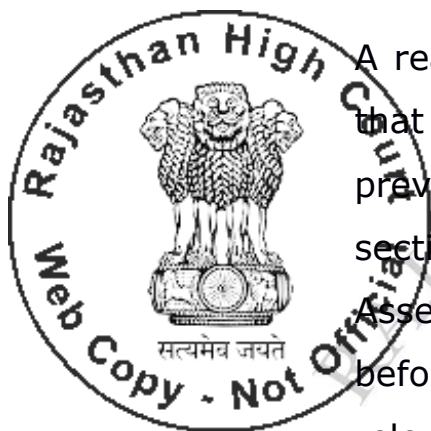


Having heard learned counsel for the parties, we are of the opinion that sub-section (4) of Section 139 of the Act is, in act, a proviso to sub-section (1) of Section 139 of the Act. Section 139 of the Act fixes the different dates for filing the returns for different assesses. In the case of assessee 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 subsection (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.

3. Fathima Bai vs. ITO, (2009) 32 DTR 0243 (KARHC), it has been held as under :-

8. The section 54(2) declares that within one year from the date of transfer if the capital gain is not invested in purchase of building, he should deposit the amount in the Capital Gain Account Scheme or else the assessee should invest the capital gains before filing of return within the permitted period under section 139. In which event, the assessee will not be liable to pay capital gain tax.

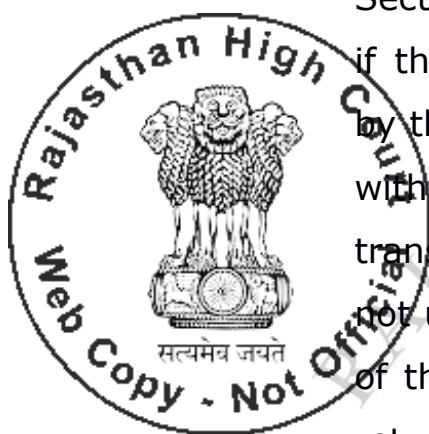
9. The section 139(4) declares that the assessee should file returns within the time prescribed, if he fails to file returns, he may file returns for any previous year at any time before expiry of one year from the end of relevant assessment year.

4. Commissioner of Income Tax-II, Chandigarh vs. Ms. Jagriti Aggarwal, (2011) 339 ITR 0610 (PHHC), it has been held as under :



6. Section 54 of the Act contemplates that the capital gain arises from the transfer of a long term capital asset, but if the assessee within a period of one year before or two years after the date on which the transfer took place purchases residential house, then instead of the capital gain, the income would be charged in terms of provisions of Sub Section (1) of Section 54. As per Sub-Section (2), if the amount of capital gains is not appropriated by the assessee towards the purchase of new asset 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, the amount shall be deposited by him before furnishing such return not later than due date applicable in the case of 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. Relevant Sub-Section (2) of Section 54 of the Act reads as under:

(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 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





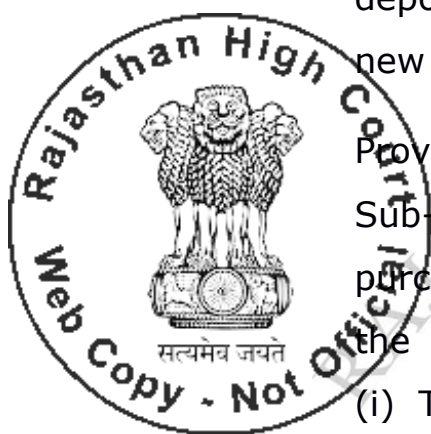
scheme which the Central Government may, by notification in the Official Gazettee, frame in this behalf and such return shall be accompanied by proof of such deposit, and for the purposes of Sub-Section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this Sub-Section is not utilized wholly or partly for the purchase or construction of the new asset within the period specified in Sub-Section (1), then,-

- (i) The amount not so utilized shall be charged under Section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
- (ii) The assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

11. 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 the relevant Assessment Year.

13. In view of the above, we find that due date for furnishing the return of income as per Section 139(1) of the Act is subject to the extended period provided under Sub-Section (4) of Section 139 of the Act. Consequently, the question of law is answered against the Revenue and in favour of the assessee. Thus, the present appeal is dismissed.



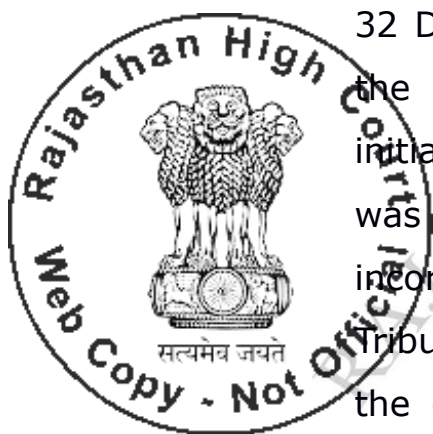


5. In CIT vs. Vrinda P. Issac, (2011) 64 DTR 0376 (KARHC), it has been held as under :-

3. The Tribunal in coming to the said conclusion that the investment made by the assessee being within the time specified under sub-section 4 of section 139 of the Act relied on the judgment of this court in the case of Fathima Bai v. ITO : (2009) 32 DTR (Kar) 243. Even if two views are possible, the revisional authority had no jurisdiction to initiate proceedings under section 263 of the Act. It was held that the order passed by the High Court is incorrect, which decision cannot be accepted. The Tribunal has followed the judgment of this Court as the decision of the High Court is binding on the subordinate Courts. If the judgment passed by this Court is erroneous, the revenue should have challenged the said order. At any rate that cannot be a ground for invoking section 263 of the Act in the facts of this case. In that view of the matter, we do not see any merit in this appeal. Accordingly, no substantial question of law arises for consideration. Hence, the appeal is dismissed.

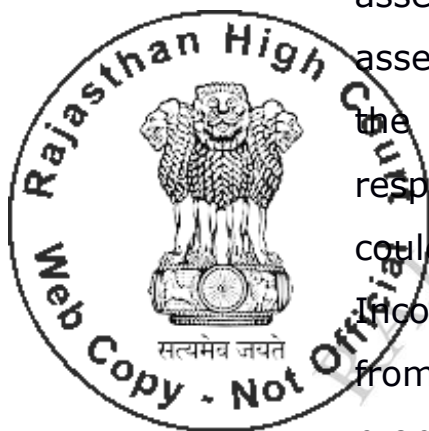
6. Commissioner of Income Tax vs. Rajesh Kumar Jalan, (2006) 286 ITR 0274 (GUHC), it has been held as under :-

6. 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 unutilised 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. Such being the situation, it is the case of the respondent/assessee that the respondent/assessee could fulfil the requirement under Section 54 of the Income Tax Act for exemption of the capital gain from being charged to Income Tax on the sale of property used for residence up to March 30, 1998, inasmuch as the return of Income Tax for the assessment year 1997-98 could be furnished before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier under Sub-section (4) of Section 139 of the Income Tax Act, 1961.

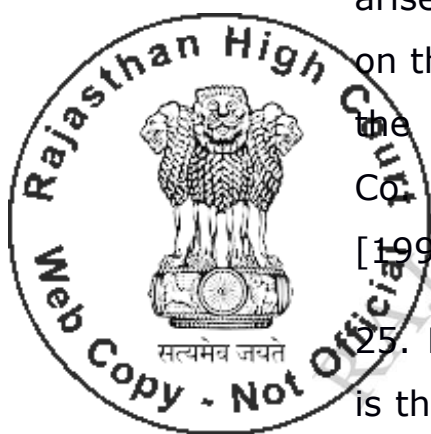


7. I.T.C. Ltd. vs. Commissioner of Central Excise, New Delhi and Anr. (2004) 7 SCC 591 (SC), it has been held as under :-

23. Presumably the phrase "badly drafted" was used to mean that the language of the Entry was ambiguous. In case of such ambiguity 'close reasoning' will be employed - but without stretching the language to arrive at the only reasonable construction. These decisions exemplify the general rule of statutory construction that words have to be construed strictly according to their ordinary and natural meaning, particularly when the statute is a fiscal one irrespective of the



object with which the provision was introduced. Of course if there is ambiguity in the statutory language, reference may be made to the legislative intent to resolve the ambiguity. But if the statutory language is unambiguous then that must be given effect to. The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on their own terms ambivalent and do not manifest the intention of the legislature. *Keshavji Ravji and Co. and Ors. V. Commissioner of Income Tax : [1990]183ITR1(SC) .*



25. But there are exceptions to this rule. The first is that the rule of strict construction does not apply to a provision which merely lays down the machinery for the calculation or procedure for the collection of tax.

27. The second exception is: If two constructions are possible and a strict construction would lead to an absurd result then the construction which is in keeping with the object of the statutory provision or in keeping with equity could be accepted. This was the view expressed in *Commissioner of Income Tax. v. J.H. Gotla, Yadagiri* while interpreting section 24(2) of the Income Tax Act, 1922:

"...if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not mean always so and if a construction results in equity rather than in injustice; then such



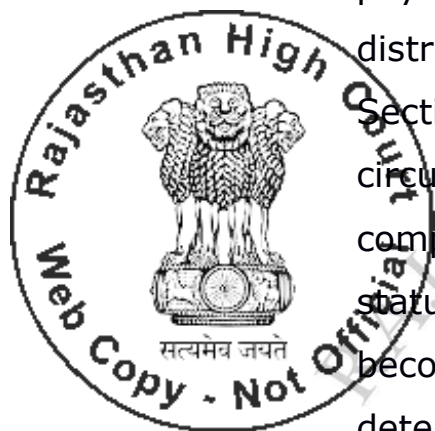
construction should be preferred to the literal construction."

8. The Commissioner of Income Tax, Madras vs. T.V. Sundram Iyengar (P) Ltd. (1976) 1 SCC 77 (SC), it has been held as under :-

21. In considering whether the company is liable to pay additional super-tax on the entire balance of distributable profits, it has to be borne in mind that Section 23A is clearly penal in nature; for, in the circumstances mentioned therein, if a private company fails to distribute by way of dividends the statutory percentage of its distributable profits, it becomes liable to pay, apart from the sum determined as payable by it on the basis of the assessment under Section 23, super-tax at 50 per cent or 37 per cent as the case may be, on the undistributed balance of its distributable profits. In the first place, this provision being penal, the burden would lie on the revenue to prove that the conditions laid down by the section are satisfied. Commissioner of Income-tax, West-Bengal v. Gangadhar Banerjee & Co. (p) Ltd., 57 I.T.R. 176, 184 Secondly, penal statutes have to be construed strictly in the sense that if there is a reasonable interpretation which will avoid the penalty, that interpretation ought to be adopted: "When the legislature imposes a penalty, the words imposing it must be clear and "distinct".

16. He contended that interpretation which has been given by the tribunal is just and proper and decision of co-owner has not been challenged by the department and judgment of Nand Lal (supra) is also not challenged.

17. We have heard counsel for the parties.





18. The first contention of Mr. Pathak regarding interpretation of prosecution and the exemption benefit is required to be accepted. Admittedly, while considering the prosecution, the provisions are to be very strictly construed whereas in the case of exemption and other benefits, it is to be construed from the statute very liberally.

19. The contention of Mr. Singhi that under Section 139, investment is to be made before the return is filed otherwise it will render the provision nugatory is to be considered in the light that while considering the case, Karnataka High Court in para no.6 & 7 (supra) has considered the provisions and interpreted the same. Even the same is accepted by the Punjab and Haryana High Court and Gauhati High Court which has taken the view contrary to Kerala High Court decision.

20. In that view of the matter, three High Courts have taken the view and the tribunal has followed the Karnataka High Court which has followed the earlier Gauhati judgment which has been independently supported by the Punjab Hararyana High Court.

21. In that view of the matter, the issue is required to be answered in favour of the assessee and against the department.

22. The appeal stands dismissed.

(VIJAY KUMAR VYAS), J.

(K.S. JHAVERI), J.

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