

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

ITA No. 176 of 2011
Date of decision: 3.10.2011

Commissioner of Income Tax-II, Chandigarh ...Appellant

vs.

Ms. Jagriti AggarwalRespondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: - Ms. Urvashi Dhugga, Advocate
for the appellant-revenue.

Ms. Radhika Suri, Advocate
for respondent-assessee.

HEMANT GUPTA, J.

Revenue is in appeal aggrieved against an order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short the 'the Tribunal') on 13.8.2010 in respect of Assessment Year 2006-2007.

The Revenue has claimed the following substantial question of law, as arisen from the order of the Tribunal:

“Whether in the facts and circumstances of the case and in law the ITAT was justified in allowing the benefit of exemption under Section 44 of the Income tax Act by wrongly interpreting Section 54 of the I.T. Act in which the due date for furnishing the return of income is mentioned as per Section 139(1) and not as per Section 139(4) of the Act?”

The assessee sold her house property for Rs. 45 lacs and claimed deduction under Section 54 of the Income Tax Act, 1961 (for short 'the Act'). The assessee was served with a notice under Section 142(1) of the Act, as to why the amount deducted be not added to her income as long term capital gain, as the assessee failed to deposit the amount in Capital Gain Account Scheme and also failed to purchase house property before the due

ITA No. 176 of 2011

date of filing the return of income. The assessee contested the claim of the Revenue and asserted that she is not liable to deposit the amount in Capital Gain Deposit Scheme and that the due date of filing the return of income tax is not as specified in Section 139(1) but as specified in Section 139(4) of the Act. The Assessing Officer declined the claim of the assessee and returned finding that the assessee has concealed her particulars of income and initiated proceedings for penalty as well.

The appeal against the said order was accepted by the Commissioner of Income Tax (Appeals). It was found that the appellant has purchased new residential property on 2.1.2007 and the due date as per Section 139(4) is 31.3.2007 and thus, the assessee has complied with the provisions of Section 54 of the Act. It was held that Section 139 includes Sub Section (4) as well. The said order of the Commissioner of Income Tax has been affirmed in appeal as well.

It may be noticed that the assessee sold her residential house on 13.1.2006 for a sum of Rs. 45 lacs and purchased another property jointly with Mr. D. P. Azad, her father-in-law on 2.1.2007 for a consideration of Rs. 95 lacs. The due date of filing of return as per Section 139(1) of the Act was 31.7.2006, but the assessee filed her return on 28.3.2007 and that extended due date of filing of return as per Section 139(4) is 31.3.2007.

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

ITA No. 176 of 2011

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.”

ITA No. 176 of 2011

The question which arises is; whether the return filed by the assessee before the expiry of the year ending with the Assessment Year is valid under Section 139(4) of the Act.

Learned counsel for the revenue has argued that the assessee was required to file return under Sub section (1) of Section 139 of the Act in terms of Sub section (2) of Section 54 of the Act. It is contended that Sub section (4) is not applicable in respect of the assessee so as to avoid payment of long terms capital gain.

On the other hand, learned counsel for the respondent relies upon a Division Bench judgment of Karnataka High Court reported as ***Fathima Bai vs. Income Tax Officer (2009) 32 DTR 243***, where in somewhat similar circumstances, it has been held that time limit for deposit under Scheme or utilization can be made before the due date for filing of return under Section 139(4) of the Act. Learned counsel for the respondent also relies upon a Division Bench judgment of Gauhati High Court reported as ***Commissioner of Income Tax vs Rajesh Kumar Jalan (2006) 286 ITR 274***.

Having heard learned counsel for the parties, we are of the opinion that Sub-Section (4) of Section 139 of the Act is, in fact, 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:

ITA No. 176 of 2011

“(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 the relevant Assessment Year.

The sale of the asset having been taken place on 13.1.2006, falling in the previous year 2006-2007, the return could be filed before the end of relevant assessment year 2007-2008 i.e. 31.3.2007. Thus, Sub-Section (4) of Section 139 provides extended period of limitation as an exception to Sub-Section (1) of Section 139 of the Act. Sub-Section (4) is in relation to the time allowed to an assessee under Sub-Section (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under Sub-Section (1) of Section 139. Therefore, such Sub-Section (4) has to be read along with Sub-Section (1). Similar is the view taken by the Division Bench of Karnataka and Gauhati High Courts in *Fatima Bai* and *Rajesh Kumar Jalan* cases (supra) respectively.

