

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 118/JP/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Gaytri Sharma, D-214, Kardhani Yojana, Govindpura, Kalwar Road, Jaipur.	बनाम Vs.	The ITO, Ward 4(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANPPS 8233 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vishal Singh (C.A.)
राजस्व की ओर से / Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 26/02/2019
उदघोषणा की तारीख / Date of Pronouncement: 28/02/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 24.11.2017 of Id. CIT (A), Jaipur arising from penalty order passed U/s 271(1)(c) of the I. T. Act for A.Y. 2014-15. The assessee has raised the following grounds:-

"1. Whether in the facts and circumstances of the case and in law, is it justified to levy penalty of Rs. 1,38,770/-, whereby all the primary facts necessary for claiming deduction of capital gain tax

have been disclosed before the Learned authority and no fact had been concealed by the assessee.

2. Whether in the facts and circumstances of the case and in law, is it justified by the learned authority to levy penalty, whereby the property being used for residential purpose only.

3. Whether in the facts and circumstances of the case and in law, is it justified by the learned authority to levy penalty, even if assessee is not required to maintained books of accounts as per u/s 44AA read with rule 6F of Income Tax Act, 1961.

4. Whether in the facts and circumstances of the case and in law, is it justified by the learned authority to levy penalty, whereby mistake in claiming of deduction under wrong provision of law was bona-fide mistake.”

2. The assessee is an individual and filed its return of income on 29.7.2014 declaring total income at nil. During the course of scrutiny assessment proceedings, the AO noted that the assessee has shown income from long term capital gain at nil after claiming deduction U/s 54 of the Act of Rs. 26,30,950/-. On examination of the sale deed the AO noted that the assessee has sold a shop no. A-66, Subhash Nagar Shopping Center, Jaipur vide sale deed dated 21.05.2013 for a consideration of Rs. 44,62,330/-. Thus, the AO was of the view that the assessee is not entitled for the deduction U/s 54 of the Act and

accordingly, issued a show cause notice to the assessee. In response, the assessee admitted that the property sold by the assessee is a shop and consequently the deduction U/s 54F of the Act has to be allowed instead of section 54 of the Act. The AO has allowed the deduction U/s 54F of the Act in respect of the investment made in the new house property and consequently an addition of Rs. 8,73,642/- in the long term capital gain was made. The AO then initiated the penalty proceedings U/s 271(1)(c) of the Act and levied the penalty of Rs. 1,38,770/- being 100% of the tax sought to be evaded. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3. Before us, the Id. AR of the assessee has submitted that the assessee purchased a property from Jaipur Development Authority (JDA) in auction in the year 1981 and thereafter the assessee started living in the said house till the said same was transferred during the year under consideration. Since, the assessee was using property as her residential house therefore, the assessee while filing its return of income through her tax consultant has claimed deduction U/s 54 instead of section 54F of the Act. The Id. AR has referred to the copy of the family ration card, Voter ID Card, Electricity Bill, gas connection

receipts and saving bank account in support of the claim that the assessee was using the property as a residential house prior to transfer during the year under consideration. Thus, the Id. AR has submitted that merely because the assessee has made a claim under wrong provisions instead of under correct provisions it will not amount to furnishing of inaccurate particulars of income or concealment of particulars of income attracting penalty provisions U/s 271(1)(c) of the Act. He has further submitted that once the AO has pointed out that the assessee is not eligible for deduction U/s 54 of the Act the assessee has filed a revised computation and made the claim deduction U/s 54F of the Act. Therefore, this is a case of bona-fide mistake on the part of the assessee and his tax consultant. The Ld. AR further submitted that the assessee is an illiterate lady and was fully independent on the tax consultant while filing the return of income. The assessee has duly disclosed the transaction of sale of property in question in the return of income and therefore, it would not amount to furnishing inaccurate particulars of income or concealment of particulars of income merely because the deduction claimed by the assessee is under wrong provisions of Section 54 instead of section 54F of the Act. In support his contention, he has relied upon the decision of Hon'ble Supreme Court in

case of CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 as well as decision of Hon'ble jurisdictional High Court in case of Chandrapal Bagga vs. ITAT & Another 261 ITR 67. Hence, the Id. AR has submitted that once the assessee has brought the relevant facts on record and explained the omission and mistake in the claim of deduction of u/s 54 instead of Section 54F of the Act then, the assessee is covered by the provisions of Section 273B of the Act.

4. On the other hand, the Id. DR has relied upon the orders of the authorities below and submitted that the assessee has claimed the deduction U/s 54 despite the fact that the property sold by the assessee is a shop and not a residential house and consequently the assessee has deliberately furnished inaccurate particulars of income or concealment of particulars of income. Only when the Assessing Officer has issued a show cause notice the assessee has accepted the wrong claim and consequently the AO has made an addition after allowing the deduction U/s 54F of the Act.

5. We have considered the rival submissions as well as relevant material on record. The assessee has disclosed the sale transaction in the return of income and shown as sale of building and then claimed the deduction U/s 54F of the Act as the assessee also purchased a new

residential house. The AO noted that the capital asset sold by the assessee was a shop allotted by JDA and therefore, the deduction U/s 54 is not available to the assessee. The assessee revised its mistake of claiming deduction U/s 54 instead of section 54F of the Act. Accordingly, the assessee revised its computation and made a claim of deduction U/s 54F of the Act. The Assessing Officer has allowed the claim of deduction U/s 54F of the Act. It is pertinent to note that the AO has not disputed the primary facts disclosed by the assessee in the return of income being sale consideration, the cost of acquisition and computation of capital gain. The addition was made by the AO due to the reasons that the deduction of U/s 54 of the Act is available to the extent of the investment of the capital gain whereas the deduction U/s 54F of the Act is available in the proportion of investment of the net sale consideration in the purchase of new residential house. Therefore, due to the difference of computation of the deduction under two provisions i.e. 54 & 54F of the Act a lesser amount of claim of deduction which was allowed U/s 54F instead of Section 54 of the Act and consequently, the AO made an addition of Rs. 8,73,642. We find that the assessee has also disclosed the property as a building though it was not claimed as residential house. The assessee also produced

before the Assessing Officer the sale deed from which the AO found that the property sold by the assessee is a shop and therefore, the deduction U/s 54 of the Act is not available but the deduction U/s 54F was finally allowed by the AO. Therefore, this is a clear case of the claim made under wrong provisions of Section 54 instead of U/s 54F of the Act. Further, the assessee has also produced the copy of the family ration card, Voter ID Card, Electricity Bill, gas connection receipts and saving bank account to establish the fact that the assessee was using the property in question for their residential purpose. These facts clearly make out a case that it was a bona-fide and inadvertent mistake and omission on the part of the assessee to claim deduction U/s 54 instead of section 54F of the Act. Therefore, we find that once, the assessee has explained the reasons for making a wrong claim and the facts explained by the assessee are duly established from the record and found to be true then even if the addition was made by the AO due to the claim made under wrong provisions of the Act. It will not amount to furnishing inaccurate particulars of income or concealment of particulars of income. Accordingly, in view of the provisions of Section 237B of the Act once the assessee has proved that there was a reasonable cause for making the claim of section 54 instead of section 54F of the Act then

the penalty U/s 271(1)(c) of the Act cannot be imposed. Accordingly we delete the penalty levied by the AO U/s 271(1)(c) of the I. T. Act.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28/02/2019.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 28/02/2019.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Gaytri Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 4(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 118/JP/2018}

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar