[2022] 142 taxmann.com 14 (Mumbai - Trib.)[30-08-2022]

INCOME TAX : Filing of revised return is not required to correct the error of quoting wrong section in ITR in respect of deduction claim

• Where a claim for exemption was rightly made, but only a wrong section was quoted (section 54 instead of section 54F) while making a claim, it is sufficient that assessee brings it to AO's notice during scrutiny assessment proceedings and requests AO to allow under the correct section. This does not amount to making a fresh claim and AO cannot refuse deduction/exemption on the ground that no revised return was filed by assessee. Therefore, the Assessing Officer was indeed in error in adopting such a hyper-pedantic approach and in holding that there was a fresh claim for exemption under section 54F. The grievance raised by the Assessing Officer, in this appeal, is, therefore, devoid of any legally sustainable merits. It proceeds on the fallacious assumption that a change of section, on account of an inadvertent and bonafide error, under which the claim is made, by itself, amounts to a fresh claim.

[2022] 142 taxmann.com 14 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'I'

Income Tax Officer, International Taxation Ward 3(1)(1)

v.

Armine Hamied Khan

PRAMOD KUMAR, VICE-PRESIDENT
AND ANIKESH BANERJEE, JUDICIAL MEMBER
IT APPEAL NO.: 834 (MUM.) OF 2022

CO. NO. 94 (MUM.) OF 2022
[ASSESSMENT YEAR 2017-18]
AUGUST 30, 2022

Soumendu K Dash *for the Appellant.* **Yogendra N Thakkar** and **Deepak S Sukhija** *for the Respondent.*

ORDER

Pramod Kumar, Vice-President— This appeal, filed by the Assessing Officer, calls into question the correctness of the order dated 17th February 2022 passed by the learned Commissioner (Appeals), in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2017-18, on the following grounds:

1. Whether, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing the claim of the assessee of deduction under section 54F of the Income Tax Act, which was not claimed in the return of income filed for the assessment year 2017-18.

2. Whether, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not following the decision of the Hon'ble Supreme Court in the case of *Goetz India Ltd*. v. *CIT* [(2006) 204 CTR 182 (SC)]?

2. The issue in appeal lies in a very narrow compass of material facts. The assessee before us is a non-resident lady, and it appears that she had tenancy rights in a residential apartment in the posh South Mumbai locality of Warden Road. She surrendered these tenancy rights for a consideration of Rs 4,76,80,552. The funds so received by her, along with an additional amount of Rs 56,80,230, were invested in the purchase of a new residential flat in the upcoming Lower Parel area nearby. There is no dispute about these foundational aspects.

3. Let us, at this stage itself, take note of certain basic provisions of the capital gain taxation in India. There is also no dispute about the fact that for the purpose of exemption of such capital gains from income tax, subject to certain conditions- which are not material in the present context anyway, the amount of capital gains can be invested in a residential house within a period of

one year before or two years after the capital gains of the capital gains. There is, however, a small classification between the nature of capital gains. In the first category is the capital gain on sale of a building or land appurtenant thereto, and being a residential house, income of which is chargeable under the head 'income from house property'. As far as this category of capital gains is concerned, the qualifying investment is of the net capital gains-partly or wholly, and once these net capital gains, or part thereof, are invested in the purchase or construction of a new house, within the prescribed time frame and subject to certain conditions, to that extent, the capital gains are exempted from tax. These provisions are contained in Section 54 of the Act. The second category of capital gains, which is a residual clause, consists of the capital gain on the sale of any long-term asset, other than a residential house. As far as this residual category is concerned, the qualifying investment is the net consideration on the sale of the asset, in respect of which capital gains are earned. When the sale consideration in question, or part thereof, is invested in the purchase or construction of a new house, within the prescribed time frame and subject to certain conditions, to that extent, the capital gains are exempted from tax. These provisions are contained in Section 54F of the Act. The difference between these two provisions is only with respect to qualifying investment which is restricted to net capital gains, so far as the sale of long-term capital gains in the nature of a house is concerned, but which must pertain to the entire sale consideration, so far as other long term capital assets, other than a house, are concerned. In a situation, however, when an assessee invests an amount which is in excess of the entire sale consideration on the sale of a long-term capital asset, whatever be the nature of the capital asset, the entire capital gains in question, dehors the nature of the long-term capital asset and subject to certain conditions- which are not material in the present context anyway, is entitled to tax exemption. That is precisely the situation here. The investment that the assessee has made in the new flat is much more than the entire sale consideration of the tenancy right, and, therefore, whatever be said to be the nature of the long-term capital asset, the investment of sale proceeds in the house entitles the assessee to the exemption of the long-term capital asset.

4. While filling up the income tax return, however, instead of mentioning 54F as the section in which the tax exemption of

capital gain is claimed, the assessee mentioned the section as 54- a mistake which he attempted to correct when the scrutiny assessment proceedings were in progress, but without success. What has followed this trivial and seemingly inadvertent mistake is a taxpayer's nightmare which refuses to come to an end. The claim of the assessee on account of technicalities has been rejected, even though accepted to be correct on merits, by the Assessing Officer, and, while the assessee got the necessary relief from the Commissioner (Appeals), the decision of the Commissioner (Appeals) is now in challenge before us.

5. The Assessing Officer rejected the claim made by the assessee under section 54F on the ground that it amounts to a fresh claim made in the course of scrutiny assessment proceedings, and, as the claim is not made by way of revising the income tax return and in the light of Hon'ble Supreme Court's judgment in the case of *Goetz India Limited* v. *CIT* [(2006) 204 CTR 182 (SC)], the claim so made is inadmissible in law. The claim for exemption under section 54F was held to be vitiated in law. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) who upheld the claim of the assessee, and observed as follows:

5.1.2 I have gone through the submissions of the appellant and the assessment order. On the facts of the case, I am of the opinion that the decision of the Supreme Court in the case of *Goetz India Limited* v. *CIT* [(2006) 204 CTR 182 (SC)] does not apply. This is not a case where there is a mistake in the return of income which could be corrected only by filing a revising return, this is a case where there is a bonafide claim made by the appellant. However, same was made under wrong section. Therefore, this mistake can be corrected while deciding the assessment itself.

5.1.3 The appellant has earned LTCG of Rs 4,76 crores and invested this money in a residential property. Therefore, the appellant was entitled to exemption under section 54F. However, the appellant had claimed the exemption under section 54.

5.1.4 Considering the facts of the case, the AO is directed to allow appellant's claim under section 54F

6. The Assessing Officer is aggrieved of the relief so granted by the learned CIT(A) and is in appeal before us.

7. We have heard the rival contentions, perused the material on

record and duly considered the facts of the case in the light of the applicable legal position.

8. So far as the Hon'ble Supreme Court's judgment in the case of Goetz India Ltd (supra) is concerned, that dealt with a fresh claim made in the income tax return, and this claim was made by way of filing a letter, rather than by revising the income tax return. Taking note of this position, Their Lordships had observed that "The return was filed on 30-11-1995 by the appellant for the assessment year in question. On 12-1-1998, the appellant sought to claim a deduction by way of a letter before the Assessing Officer" (emphasis, by underlining, supplied by us). It was in this context that Their Lordships held that such a course of action was impermissible. That is not the case, as learned CIT(A) has rightly appreciated, before us. Here is a case in which a claim for exemption was rightly made, but only a wrong section was quoted while making a claim, which is qualitatively different from was no fresh claim was such. In our considered view, therefore, the Assessing Officer was indeed in error in adopting such a hyper-pedantic approach and in holding that there was a fresh claim for exemption under section 54F. The grievance raised by the Assessing Officer, in this appeal, is, therefore, devoid of any legally sustainable merits. It proceeds on the fallacious assumption that a change of section, on account of an inadvertent and bonafide error, under which the claim is made, by itself, amounts to a fresh claim. We reject the same. We approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

9. In the result, the appeal is dismissed.

10. The cross-objections filed by the assessee only support the conclusions arrived at by the learned CIT(A). As we already upheld the conclusions arrived at by the learned CIT(A), we see no need to adjudicate on the cross-objections at this stage. Grievances raised in the cross objection are, as of now, academic and infructuous. The CO is, therefore, dismissed as infructuous.

11. In the result, the appeal as also cross-objections are dismissed. Pronounced in the open court today on the 30th day of August 2022

■■