



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI DR. A.L. SAINI, ACCOUNTANT MEMBER**

ITA no.176/Mum/2017  
(Assessment Year : 2011-12)

Shri Mahesh H. Hinduja  
501, Mahir, 15<sup>th</sup> Road  
Main Avenue Junction  
Santacruz (W), Mumbai 400 054  
PAN – AAAPH3488B

..... Appellant

v/s

Income Tax Officer  
Ward-21(3)(3), Mumbai

..... Respondent

Assessee by : Shri Subhash Shetty  
Revenue by : Shri Saurabh Kumar Rai

Date of Hearing – 18.06.2018

Date of Order – 20.06.2018

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal by the assessee is against order dated 28<sup>th</sup> September 2016, passed by the learned Commissioner (Appeals)-38, Mumbai, for the assessment year 2011-12.

2. The dispute in the present appeal is confined to denial of assessee's claim of deduction under section 54 of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee an individual filed his return of income for the impugned assessment year on 28<sup>th</sup> July 2011, declaring total income of ₹ 4,91,750. Subsequently, the assessee filed a revised return of income under section 139(5) of the Act on 20<sup>th</sup> October 2012, declaring total income of ₹ 6,24,050. In the said revised return of income the assessee while offering long term capital gain of ₹ 49,96,681, claimed deduction of the said amount under section 54 of the Act towards investment of an amount of ₹ 1,15,00,000 in a new residential house. Thus, in effect, no capital gain was offered to tax. Alleging that the assessee filed the revised return of income after issuance of notice under section 143(2) of the Act, the Assessing Officer held that the said revised return of income filed by the assessee claiming deduction under section 54 of the Act being invalid is not acceptable and accordingly, completed the assessment rejecting assessee's claim of deduction under section 54 of the Act. Being aggrieved with the disallowance of deduction claimed under section 54 of the Act, assessee preferred appeal before the first appellate authority.

4. Before the learned Commissioner (Appeals) the assessee also urged an additional ground in respect of his claim of deduction under section 54 of the Act. The learned Commissioner (Appeals), however, upheld the disallowance of deduction claimed under section 54 of the

Act by accepting the reasoning of the Assessing Officer that the revised return of income filed under section 139(5) of the Act is invalid.

5. The learned Authorised Representative submitted that the assessee having filed the revised return of income within the time limit prescribed under section 139(5) of the Act, the Departmental Authorities were not justified in treating the revised return of income as invalid and thereby rejecting assessee's claim of deduction under section 54 of the Act. He submitted, there is no bar under the provisions of section 139(5) of the Act that the assessee cannot file revised return of income after issuance of notice under section 143(2) of the Act. He submitted, once the assessee has filed the revised return of income fulfilling the conditions of section 139(5) of the Act, such revised return of income has to be taken into consideration. He submitted, while the Assessing Officer has rejected the revised return of income as invalid, at the same time he has accepted the income offered in the revised return of income including the long term capital gain and has only rejected assessee's claim of deduction under section 54 of the Act. Without prejudice to the aforesaid contention, the learned Authorised Representative submitted, even if the assessee had not claimed deduction under section 54 of the Act before the Assessing Officer, he can claim such deduction before the Appellate Authorities.

He submitted, though by way of an additional ground the assessee has claimed deduction under section 54 of the Act before the first appellate authority, he has not considered the same in accordance with law. The learned Authorised Representative submitted, if the assessee is otherwise eligible for a deduction under section 54 of the Act, the Departmental Authorities cannot deny such claim by raising technical objections.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, in the original return of income the assessee had neither declared the long term capital gain nor has claimed deduction under section 54 of the Act. Further, the rental income offered in the original return of income was lesser than the amount actually received by the assessee. Therefore, on 20<sup>th</sup> October 2012, the assessee filed a revised return of income within the time prescribed under section 139(5) of the Act offering rental income of ₹ 6,24,050. Further, the assessee also declared net long term capital gain of ₹ 49,96,681, though, it was claimed as deduction under section 54 of the Act towards investment in a new residential house. As could be seen from the assessment order itself, though, the Assessing Officer has accepted the rental income as well

as long term capital gain offered in the revised return of income, however, he has denied assessee's claim of deduction under section 54 of the Act by stating that the revised return of income filed by the assessee is invalid since it was filed after issuance of notice under section 143(2) of the Act. Thus, as could be seen, the Assessing Officer has not entirely rejected the revised return of income filed by the assessee. When it comes to the income offered in the revised return of income, he has accepted it, whereas, when it comes to deduction claimed under section 54 of the Act, the Assessing Officer conveniently rejects the revised return of income filed by the assessee. Thus, the Assessing Officer has adopted a very selective approach in respect of the revised return of income filed by the assessee. A careful reading of the provisions contained under section 139(5) of the Act will make it clear that if an assessee discovers any omission or wrong statement in the original return of income he can file a revised return of income at any time before the expiry of one year from the end of the relevant assessment year or before completion of the assessment whichever is earlier. There is no dispute to the fact that both the conditions imposed under section 139(5) of the Act stood complied in case of revised return of income filed by the assessee. There is no bar / restriction in the provisions of section 139(5) of the Act that the assessee cannot file a revised return of income after issuance of notice under section 143(2) of the Act. It is trite law, the assessee can file a

revised return of income even in course of the assessment proceedings, provided, the time limit prescribed under section 139(5) of the Act is available. That being the case, the revised return of income filed by the assessee under section 139(5) of the Act cannot be held as invalid.

8. Even otherwise also, we cannot appreciate the decision of the learned Commissioner (Appeals) in refusing to examine assessee's claim of deduction under section 54 of the Act. It is apparent on record, before the first appellate authority, the assessee took an additional ground in respect of deduction claimed under section 54 of the Act irrespective of the fact that it has filed a revised return of income before the Assessing Officer claiming such deduction. However, the learned Commissioner (Appeals) has completely ignored assessee's claim by mechanically accepting the reasoning of the Assessing Officer. In the process, he has failed to act in accordance with the ratio laid down by the Hon'ble Supreme Court in *Goetz India Ltd. v/s CIT*, [2006] 157 Taxman 001 (SC). When the assessee has made a claim of deduction under section 54 of the Act, it is incumbent on the part of the Departmental Authorities to examine whether assessee is eligible to avail the deduction claimed under the said provision. The Departmental Authorities are not expected to deny assessee's legitimate claim by raising technical objection. In view of the aforesaid, we set-aside the impugned order of the learned

Commissioner (Appeals) and restore the issue to the file of the Assessing Officer for examining and allowing assessee's claim of deduction under section 54 of the Act subject to fulfillment of conditions of section 54 of the Act. Grounds raised are allowed for statistical purposes.

9. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 20.06.2018

**Sd/-**  
**DR. A.L. SAINI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 20.06.2018**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai