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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 4111/2014, CM APPL.8240/2014

RAJESH KUMAR AGGARWAL

..... Petitioner

Through: Dr. Rakesh Gupta with Mr. Somil
Agarwal, Mr. Rohit Kumar Gupta and Ms. Monika
Ghai, Advocates.

versus

COMMISSIONER OF INCOME TAX DELHI-VIII & ANR.

..... Respondents

Through: Mr. Rahul Chaudhary, Sr. Standing
Counsel with Ms. Lakshmi Gurung, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

03.01.2017

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The short controversy in this petition under Article 226 of the Constitution of India is whether any claim by the assessee in revisional proceedings under Section 264 of the Income Tax Act, 1961 for the benefit of Section 54F of the Income Tax Act, 1961 could be granted when it was originally not claimed during the assessment proceedings.

The assessee for assessment year 2009-10 had claimed a set off of capital gains from sale towards house property as against capital losses and the loss in respect of shares. The set off was not

permitted. In the meanwhile, the assessee had purchased new property, apparently with the intention of seeking the benefit under Section 54F. The original property was sold on 20.06.2008; the new property was purchased in July, 2008. However, the benefit of Section 54F was not claimed when the return was filed on 30.09.2009. The assessment order disallowed the set off. This resulted in a capital gain. By then, the time to file the revised return had elapsed and the assessment was completed. After initially filing an appeal which was withdrawn, the assessee filed the revision petition under Section 264 of the Act. The Commissioner rejected the assessee's revision petition observing as follows: -

“As regards the contention of the assessee with regard to share trading loss, the order of AO is quite speaking and no interference is required by this office. Further, after going through the record, it is found that no documentary evidences whatsoever were filed by the assessee during the course of assessment proceedings with regard to cost of improvement made by him in AY 1997-98 in Ramesh Park Property. The assessee has also failed to bring on record reasons that prevented him from filing the copies of so called valuation report before the AO. Thus, the valuation report now filed by the assessee is a self serving document without any corroboratory evidences. It is not clear whether the amount claimed as cost of improvement was for property at R-67 Ramesh Park. Hence no interference with the order of AO is called for.

As regards the claim of deduction u/s 54F, the assessee has not claimed the same in his return. Further, it has also never been raised by him during the course of assessment proceedings. However, deduction u/s 54F can be claimed if the long term asset sold is other than

residential house property. The property sold is residential with commercial license and in my view not eligible for deduction u/s 54F. Moreover, the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT (2006), 284 ITR 323 (SC), also goes against the assessee.”

Dr. Rakesh Gupta, learned counsel for the assessee urges that the impugned order of the CIT (A) under Section 264 of the Act is erroneous. It is submitted that revisional power is sufficiently wide as to permit the correction of an order so as to permit the assessee the benefit of the provisions of the Income Tax Act, 1961. In support of his position, learned counsel relied upon the judgment of the Jammu & Kashmir High Court in *Sneh Lata Jain v. CIT*, (2004) 192 CTR JK 50 and *S.R. Koshti vs Commissioner of Income Tax* (2005) 276 ITR 165 Guj. It was highlighted that the Jammu & Kashmir High Court's decision was in the specific context of omission by the assessee to claim the Section 54F benefit at the time the original return was filed. It was also argued that the reasoning of the CIT (A) that the judgment in *Goetze (India) Ltd.* (2006), 284 ITR 323 (SC) applied is erroneous.

Mr. Rahul Chaudhary, learned counsel for the Revenue submitted that the revisional power is narrower than the appellate power as is evident from the phraseology of Section 264. Learned counsel contested the assessee's contention that it had no occasion to make a claim under Section 54F and submitted that when the return was filed, this eventuality was within its contemplation and could well have been sought. It was submitted that even the remand report sought by the Commissioner in the present case is clear that the

assessee had not claimed the benefit even in the revised computation.

Section 264 of the Income Tax Act, 1961 in its operative part states that the Commissioner “*the [Principal Commissioner or] Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.*”

The phraseology adopted by the provision is of the widest amplitude. The term “*any such order..... as he thinks fit*” is only qualified by subject to provisions of this Act. Therefore, unless there is a direct impediment to the power under Section 264 (exercisable by the Commissioner) which inhibits the grant of relief, it is *per se* admissible. The impediment may be in the form of a substantive provision which might place a time limit, to the grant of such relief or it may be otherwise. In the present case, the concerned provision Section 54F, does not *per se* contain any such impediment. Therefore, as far as the text of the provision goes, this Court is of the opinion that there is no bar in the grant of the relief despite the assessee apparently having missed the bus and having committed the mistake. The interpretation of this Court is clarified by the ruling of the Jammu & Kashmir High Court in *Snehlata (supra)* where too the question was whether in the absence of the assessee’s claiming relief under Section 54F either in the original return or even in the revised return, it could be granted in revision. The Court unequivocally held

that it could be granted. The Court also cited other rulings of the Gujarat High Court and Allahabad High Court. The ruling of the Allahabad High Court in *Pandit Shiv Nath Sharma v. CIT* TC 57R 712 and *OCM Lts. (London) v. ITO* TC 57R 637 generally state that the assessee's mistake can also be corrected or rectified in revisional proceedings.

As far as *Goetze (India) Ltd. (supra)* goes, the Supreme Court had occasion to deal with a slightly different set of circumstances where the assessee sought to claim deduction after the time for completion of the revised return had elapsed. The Supreme Court had then distinguished the judgment in *NTPC v. CIT, 1998 229 ITR 383 SC* and had no occasion to deal with the power of the Commissioner under Section 264 of the Act.

In view of the above discussion, we are of the opinion that the petition has to succeed. The matter is remitted to the AO for consideration who shall take into account the petitioner's claim preferred by it in its revision petition and having regard to the provisions of the law.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 03, 2017

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