Item No.3
16.07.2025
Court. No. 5
GB

W.P.A. 15425 of 2024

Shambhawee Raghabendra Bais
Vs.
The Chief Commissioner of Income Tax & Ors.

Mr. Avra Mazumder,
Mr. Giridhari Dhelia,
Ms. Alisha Das,
Mr. Suman Bhowmik,
Mr. Samrat Das,
Ms. Elina Dey
... for the Petitioner.
Mr. Soumen Bhattacharjee,
Mr. Ankan Das,
Ms. Shradhya Ghosh
... for the Income Tax Authority.

1. The subject matter of challenge in the present writ petition is the order dated March 28, 2024 issued by the Chief Commissioner of Income Tax, Kolkata rejecting the petitioner's application under Section 119(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act') for the petitioner having failed to file the return under Section 139(1) of the said Act in connection with utilization of the amount realized by the petitioner arising out of a sale giving rise to capital gain under Section 54 of the said Act.
2. Having heard the learned advocates appearing for the respective parties it would transpire that the short point involved in this writ petition is whether the petitioner was entitled to seek the benefit of Section 119(2)(b) of the said Act for filing a belated return under Section 139(1) of the said Act despite having not complied with the procedure for deposit of the

amount of capital gain not appropriated by the petitioner towards purchase of a new asset made within one year from the date on which the transfer of the original asset took place in any scheme of the Central Government so notified.

3. Bereft of unnecessary details the facts are that the petitioner had received 25% share of an undivided ancestral property at Varanasi, Uttar Pradesh and had sold the same in the month of March, 2022, thereby, generating capital gains for the assessment year 2022-23. The petitioner had thereafter purchased a residential property in Ahmedabad, Gujarat on March 31, 2023 and consequentially claimed an exemption of Rs.92,94,300/- under Section 54 of the said Act out of the Long Term Capital Gain amounting to Rs.1,15,23,810/- resulting in a refund claim of Rs.22,23,600/- for the assessment year 2022-23.

4. Admittedly, the return under Section 139(1) was not filed by the petitioner in time. It is also admitted that the petitioner did not deposit the sale proceeds in the scheme framed by the Central Government, though the petitioner would contend that the said amount remained deposited in the savings bank account of the petitioner.

5. Records reveal that consequent upon utilization of 92,94,300/- by way of purchase of a property in Gujarat, the petitioner had applied before the Principal Commissioner of Income Tax with a prayer

for condoning the delay in filing the return belatedly beyond the prescribed period as provided for in the said Act, by invoking the provisions of Section 119(2)(b) of the said Act. Such application has come to be rejected on the ground that the petitioner did not comply with the provisions of Section 54 (2) of the said Act in not depositing the sale proceeds in the scheme notified by the Central Government.

6. I find that Mr. Bhattacharjee, learned advocate appearing for the income tax authority has strenuously argued that unless, the petitioner complies with the provisions of Section 54 (2) of the said Act, the petitioner cannot be entitled to be benefit of Section 54(1) of the said Act and as such no refund under Section 45 can be allowed.

7. To appropriately appreciate the above and the order passed by the Chief Commissioner, I have considered Section 54 in detail. I find that although non-compliance of Section 54(1) of the said Act provides for a consequence in the form of the non-utilization of whole or part of the amount being added back as income of the previous year, no such consequence has been provided for, for non-compliance of the provisions of Section 54(2) of the said Act. As such, it can be safely said that the provisions of Section 54(2) are directory and are not mandatory.

8. I find that Mr. Mazumder, learned advocate for the petitioner by placing reliance on a judgment delivered

by the Hon'ble High Court of Madras in the case of ***Venkata Dilip Kumar versus Commissioner of Income-tax, Chennai*** reported in ***(2019) 11 taxman.com 180 (Madras)*** has stressed on the aforesaid issue and has contended that an appropriate authority under Section 119(2)(b) of the said Act is competent to condone the delay in filing the return. In this context, it would be relevant to note the observation made by the Hon'ble Madras High Court. The relevant paragraphs are extracted hereinbelow:-

> ***"12.*** *No doubt, section 54(2) contemplates that if the amount of the capital gain is not appropriated by the assessee towards purchase of new assets within one year before the date on which the transfer of original asset took place or which is not utilised by him for the purchase of new asset before the date of furnishing the return of income under section 139, he has to deposit the said sum in an account in any such bank and utilised in accordance with any scheme which the Central Government may, by notification frame in that behalf. In other words, if the assessee has not utilised the amount of the capital gains either in full or part, such unutilised amount should be deposited in a capital gains account to get the benefit of deduction in the succeeding assessment years.*
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> ***13.*** *In this case, the only objection raised by the Revenue is that the disputed sum has not been deposited in the capital gain account. At the same time, it is not in dispute that the petitioner/assessee has deposited Rs. 1.50 crores in the capital gains deposit account and*

the deduction was granted to the said sum under section 54. The dispute is only with regard to the balance sum spent on additional construction cost, which according to the Revenue, is not entitled for deduction under section 54, since it was not deposited in capital gains account as required under section 54(2).

14. *In my considered view, the contention of the Revenue to deny the benefit of deduction to the petitioner/assessee cannot be justified for the following reasons:*

Section 54(2) cannot be read in isolation and on the other hand, application of section 54(2) should take place only when the assessee failed to satisfy the requirement under section 54(1). While the compliance of requirement under section 54(1) is mandatory and if complied, has to be construed as substantial compliance to grant the benefit of deduction, the compliance of requirement under section 54(2) could be treated only as directory in nature. If the assessee with the material details and particulars satisfies that the amount for which deduction is sought for under section 54 is utilised either for purchasing or constructing the residential house in India within the time prescribed under section 54(1), the deduction is bound to be granted without reference to section 54(2), which compliance in my considered view, would come into operation only in the event of failure on the part of the assessee to comply with the requirement under section 54(1). Mere non-compliance of a procedural requirement under section 54(2) itself cannot stand in the way of the assessee in getting the benefit under section 54, if he is, otherwise, in a position to satisfy that the *mandatory requirement under section 54(1) is fully complied with within the time limit prescribed therein.”*

9. Having regard thereto and noting that the petitioner has already complied with the provisions of Section 54(1) of the said Act and has already appropriated Rs.92,94,3000/-, towards purchase of the property at Gujarat, I am of the view that the order passed by the Chief Commissioner of Income Tax though discretionary, the same does not appear to be a judicious exercise of discretion by him. It is well-settled that although a discretionary order ought not to be interfered with, however, the same cannot provide for immunity to an order which has not been rendered judiciously.
10. In view thereof, I set aside the order passed by the Chief Commissioner of Income Tax, Kolkata dated March 28, 2024. Further considering the fact that no useful purpose will be served by remanding the matter to the Chief Commissioner, and noting the genuine hardship of the petitioner, I condone the delay on the part of the petitioner in filing the return under Section 139(1) of the said Act. All other consequences shall follow in accordance with law.
11. Accordingly, the instant writ petition being WPA 15425 of 2024 is disposed of.

(Raja Basu Chowdhury, J.)