

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.717/Chd/2017
(Assessment Year : 2013-14)

Mrs.Paramjit Kaur,
Plot No.25/7, Industrial Area,
Phase 2, Chandigarh.

Vs.

The Income Tax Officer,
Ward 1(2),
Chandigarh.

PAN: ADOPK0571B
(Appellant)

(Respondent)

Appellant by : Shri Parikshit Aggarwal, CA
Respondent by : Smt.Meenakshi Vohra, DR
Date of hearing : 04.09.2017
Date of Pronouncement : 28.09.2017

ORDER

PER ANNAPURNA GUPTA, A.M. :

This appeal has been filed by the assessee against the order of Ld.CIT(Appeals)-1, Chandigarh dated 6.2.2017 relating to assessment year 2013-14.

2. The assessee has raised following grounds of appeal:

- “1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) in Appeal No. 265/15-16 dated 06.02.2017 has erred in passing that order in contravention of the provisions of Section 250(6) of the Income Tax Act, 1961.
2. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) was unjustified in not allowing complete deduction claimed u/s 54 out of long term capital gain arising from sale of a residential house and thereby partly confirming the action of Ld. AO in respect of not allowing deduction u/s 54 on following items :

- 2.1 *Aggregate payments of Rs. 18,52,650/- made to builder for a residential flat during the period of more than 1 year but less than 2 years prior to the date of sale of residential house from which taxable long capital gain arose.*
- 2.2 *Aggregate payments of Rs. 25,40,389/- made to builder for a residential flat during the period of 1 year prior to the date of sale of residential house.*
- 2.3 *Amount of Rs. 2,00,000/- deposited in capital gain scheme account on 27.09.2013 and subsequently utilized for payment of Rs.2,06,000/- to builder for a residential flat, by erroneously interpreting that the amount in capital gain scheme account should have been deposited before the due date of filing of ITR u/s 139(1) and not u/s 139(4)."*

3. The only issue in the present appeal pertains to denial of exemption claimed under section 54 of the Income Tax Act, 1961 (in short 'the Act') to the extent of investment made in construction of new house prior to the date of sale of original asset and on account of deposit made in Capital Gain Account scheme after the due date of filing of return of income as per section 139(1) of the Act.

4. Brief facts leading to the case are that the assessee sold her house No. 779, Sector-22, Chandigarh on 07.11.2012 for Rs.57,50,000/- and earned long term capital gains of Rs.53,68,084/-. On this the assessee claimed exemption u/s 54 of the Income Tax Act,1961, as he had entered into an agreement with M/s Windshield Developers Pvt. Ltd, Pune on 12.05.2011, i.e. prior to the date of sale of original asset, to acquire a residential flat No. 905, measuring 86.45 sq.mts. carpet area in "Marvel Cerise", Pune, for a total consideration of Rs. 57,40,250/-. The flats were yet to be constructed, but the builder would have constructed these flats and had agreed to hand it over to

the assessee on or before 31.12.2013. The assessee made payment of Rs.53,94,520/- to the builder between 01.06.2011 to 4.12.2013 as per the following breakup.

Period	Amount (in Rs.)	Duration from sale of Original asset
Prior to 07.11.2011	18,52,650/-	Beyond 1 year
07.11.2011 to 07.11.2012	25,40,389/-	1 year before
07.11.2012 to 30.10.2014	10,01,481/-	After date of sale
Total	53,94,520/-	

5. The Assessing Officer however denied the exemption u/s 54 of the Act stating that the assessee had failed to fulfill the conditions of section 54 and rejected her claim and taxed Rs.53,68,084/- as long term capital gain. As per the Assessing Officer, since the date of sale of house was 7th November, 2012, the exemption u/s 54 of the Act would only be claimed by the assessee if she purchased another house between 7.11.2011 to 6.11.2014 (1 year before or 2 years after the sale). But since the assessee purchased flat on 12.05.2012 but did not take possession by 23.11.2015, the Assessing Officer disallowed the entire amount of Rs.53,68,084/- claimed by the assessee. Moreover the AO held that the assessee had also failed to fulfill the condition of constructing a new house within three years from the date of sale of the original asset since the flat was not handed over to the assessee till 23-11-2015. The Assessing Officer denied the exemption on various grounds including;

- i) treating the acquisition of flat to be case of purchase.

- ii) assessee having entered into agreement on 12.05.2011 to acquire the flat, that is prior to one year before the date of sale of original asset on 7.11.2012; and
- iii) not getting the possession of flat within three years from date of sale.

6. The matter was carried in appeal before the Ld.CIT(Appeals) where the assessee contested the disallowance on various grounds i.e.:

- a) merely not handing over of possession within three years was not sufficient reason to make disallowance even while the assessee had made substantial payment within two years;
- b) the acquisition of flat tantamounted to construction of flat and not purchase;
- c) that there was no time limit for commencement of construction though the section prescribed time limit for completing the same.

7. The Ld.CIT(Appeals) after considering the assessee's submissions narrowed down the points of dispute as under;

- a) whether the new house acquired should be taken as purchase or construction and;
- b) What is the period within which the investment could have been made.

and held that the present was a case of construction of residential house and not purchase and that out of the total

investment of Rs.53,94,520/-, the amount invested before the date of sale i.e. Rs.43,93,039/- could not be allowed as deduction as per the provisions of section 54 of the Act and out of the balance amount of Rs.10,01,481/- invested after the date of sale, the amount of Rs.7,95,482/- which was invested in construction of the house till due date of filing of return of income was to be allowed, While the remaining amount which was invested in capital gains scheme could not be allowed since the investment was made after the due date of filing of return. The relevant finding of the Ld.CIT(Appeals) at para 6.6 of his order is as under:

“6.6 On examination of the agreement with the builder, it can be concluded that it was a case of construction of residential house and not a purchase. This conclusion has drawn from the fact that when the appellant entered into an agreement with Windshield Developers Pvt. Ltd, Pune, the building had not yet started, therefore, the appellant could not have purchased a residential house. Moreover, the payment schedule given to the appellant by the builder was linked to the stages of completion of the building as is apparent from the agreement Since, it is a case of construction of residential house, the appellant was entitled to exemption with respect to investment made in construction of house 3 years after the date of sale. The appellant had sold the residential property on 07.11.2012 and should have either invested the capital gain amount before 31.07.2013 [due date of filing the return u/s 139(1)] or deposited in any Bank/institution or in any scheme specified/notified by the Government and furnish proof of deposit but the appellant failed to comply with the provisions of section 54 of the Act. Out of investment of Rs.53,94,520/-, only Rs.10,01,481 was invested after the date of sale as shown in table above and Rs.43,93,039/- was made

before date of sale and therefore, sum of Rs.43,93,039/- cannot be allowed as deduction. Out of the remaining Rs.10,01,481 /- only Rs.7,95,482/- was invested in construction between 07.11.2012 to 31.07.2013 (as per the details filed by the appellant) and the remaining amount was invested after the due date of filing the return without investing them in specified Capital Gains Scheme. Therefore, only deduction u/s 54 of Rs.7,95,482/- is admissible to the appellant and the remaining amount of Rs.45,99,038/- is confirmed. The appellant gets relief of Rs.7,95,482/-. Ground of appeal No. 2 is partly allowed.”

8. Aggrieved by the same, the assessee has now come up in appeal before us. The Ld. counsel for the assessee during the course of arguments before us first drew our attention to the facts of the case and pointed out first the payments made towards construction of the residential house, which are reproduced at page 73 of the Paper Book as under:

Date Paid	Amount Paid in Rs.	Remarks
12.01.2011	304,600.00	Paid to Builder
12.01.2011	500,000.00	Paid to Builder
29.06.2011	500,000.00	Paid to Builder
03.08.2011	500,000.00	Paid to Builder
03.08.2011	48,050.00	Paid to Builder
30.11.2011	57,402.50	Paid to Builder
30.11.2011	39,862.00	Paid to Builder
28.12.2011	262,012.00	Paid to Builder
18.02.2012	262,013.00	Paid to Builder
22.02.2012	6,746.82	Paid to Builder
07.06.2012	262,012.50	Paid to Builder
07.06.2012	8,096.00	Paid to Builder
11.08.2012	1,048,050.00	Paid to Builder
13.08.2012	32,385.00	Paid to Builder
15.09.2012	262,012.50	Paid to Builder
17.09.2012	14,843.14	Paid to Builder
11.10.2012	262,012.50	Paid to Builder
11.10.2012	22,939.33	Paid to Builder
29.11.2012	262,012.50	Paid to Builder
29.11.2012	6,746.95	Paid to Builder

12.04.2013	524,025.00	Paid to Builder
12.04.2013	2,698.48	Paid to Builder
27.09.2013	200,000.00	Deposited in Capital Gain Deposit A/c
30.10.2014	6,000.00	Out of Capital Gain A/c wherein Rs.2 lacs were deposited on 27.09.2013 (Total to Builder Rs.206000.00)
G Total Paid	<u>5,394,520.22</u>	

9. Drawing our attention to the same, the Ld. counsel for assessee pointed out that the capital gains having accrued in November, 2012, the payments made prior to that date amounted to Rs.43,93,039/- and post that date upto the date of filing of return of income amounted to Rs.7,95,482/- Thereafter the payments made to the builders amounted to Rs.6,000/- and Rs.2 lacs was deposited in capital gain account scheme up to 27.9.2013. Ld.Counsel thereafter pointed out that the due date for filing of return of income u/s 139(1) of the Act for the impugned year was 31.7.2013 while the return could be filed delayed u/s 139(4) of the Act up to 31.3.2015. Ld. counsel for the assessee further pointed out that the fact that the amount paid by the assessee to the builder tantamounted to construction of house is not disputed by the Revenue and, therefore, stands settled and accepted. Thereafter the Ld. counsel for assessee pointed out that as per section 54 of the Act a time period of three years was given for completion of construction of the house but at the same time, the Ld. counsel for assessee pointed out, section 54 did not place any bar on the commencement of construction. The Ld.

counsel for assessee pointed out that, therefore, the fact that the assessee commenced construction of house prior to the sale of the original asset would not affect its claim of deduction u/s 54 of the Act. The Ld. counsel for assessee drew our attention to the following judgments of the various High Courts laying down this proposition :

- i) CIT s. Bharti Mishra (2014) 98 DTR 1 (Del)
- ii) CIT Vs. H.K. Kapoor (Dcd.) through LR (1998) 234 ITR 753 (All)
- iii) CIT Vs. J.R. Subramanya Bhat (1987) 165 ITR 571(Karnataka)

10. The Ld. counsel for assessee also drew our attention to the decision of the Coordinate Bench of the I.T.A.T. in this regard as under:

- i) Smt. Usha Vs. ACIT (2017) 49 CCH 370 (ChenTrib.)
- ii) ACIT Vs. Shri Subhash Sevaram Bhavnani ITA No.928/Ahd/2012 dated 29.6.2012

11. The Ld. counsel for assessee further pointed out that vis-à-vis denial of claim of exemption u/s 54 of the Act on account of deposits made in the capital gain account scheme after the due date of filing return of income u/s 139(1) of the Act, the Hon'ble jurisdictional High Court in the case of CIT vs Jagrati Aggarwal reported in 339 ITR 610 (P&H) had held the date of filing of delayed return u/s 139(4) of the Act as the due date and deposits made in capital gain account scheme up to that date were allowed deduction. The Ld. counsel for assessee, therefore, stated that the denial of deduction by the Ld.CIT(Appeals) was not

in accordance with law.

12. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(Appeals).

13. We have heard the contentions of both the parties, perused the orders of the authorities below and gone through the documents referred to before us.

14. The only issue in the present appeal, we find, can be narrowed down as under;

i) whether the amounts invested in construction of residential flat prior to the date of sale of residential house would qualify for deduction u/s 54 of the Act;

ii) whether investment made in capital gain account scheme after due date of filing of return of income u/s 139(1) of the Act but before the due date of filing delayed return as per provisions of section 139(4), would qualify as deemed utilization of amount in the construction of a new residential house as per provisions of section 54 of the Act.

15. The undisputed facts in the present case are that the Long Term Capital Gains arose to the assessee during the impugned year amounting to Rs.53,68,044/- on account of sale of house owned by her for a consideration of Rs.57,50,000/- on 7.11.2012. The fact that the assessee had entered into an agreement with developer M/s Wind Sheild Developers Pvt. Ltd., Pune on 12.5.2011 and had

acquired residential flat for a total consideration of Rs.57,40,250/- is not disputed. Ld. CIT(Appeals) has held the said acquisition to tantamount to construction of house by the assessee, which has not been disputed by the Revenue. The fact that the assessee made payments on account of the said flat prior to and post the sale of original asset as under is also not disputed:

Period	Amount (in Rs.)	Duration
Prior to 07.11.2011	18,52,650/-	Beyond 1 year
07.11.2011 to 07.11.2012	25,40,389/-	1 year before
07.11.2012 to 30.10.2014	10,01,481/-	After date of sale
Total	53,94,520/-	

16. Further the break-up of the amount of Rs.10,01,481/- made after the date of sale is as under:

Rs.262,012.50	Paid to Builder
Rs. 6,746.95	Paid to Builder
Rs. 524,025.00	Paid to Builder
Rs. 2,698.48	Paid to Builder
Rs. 200,000.00	Deposited in Capital Gain Deposit A/c
Rs. 6,000.00	Out of Capital Gain A/c wherein Rs.2 lacs were deposited on 27.09.2013 (Total Paid to Builder Rs.206000.00)

17. Out of the above amount, the assessee has been denied deduction on account of the amounts paid prior to the date of sale of the original asset being Rs.18,52,650/- and Rs.25,40,389/- for the reason that the construction should have been undertaken only after the sale of the original asset and any amount invested prior to that date was not allowable as per the provisions of section 54 of the Act.

Further the amount deposited in capital gain account scheme of Rs.2 lacs has also been disallowed for the reason that the same was deposited beyond the date prescribed u/s 54 of the Act which was by due date of filing of return of income u/s 139(1) of the Act.

18. The main argument of the Ld. counsel for assessee has been that having accepted the fact that the amount invested in new flat by virtue of agreement entered into with the builder tantamounted to construction of the residential house, the only limitation prescribed by section 54 of the Act was that the construction ought to have been completed within a period of three years and the said section did not prescribe any condition vis-à-vis the commencement of construction. The Ld. counsel for assessee has relied upon several case laws in this regard.

19. We have gone through the decisions relied upon by the Ld. counsel for assessee and find merit in the contention of the Ld.Counsel for the assessee. The Hon'ble Delhi High Court in the case of Bharati Mishra ((supra) has categorically held that the condition stipulated by section 54F which is identical to that in section 54 of constructing a residential house within three years for the purpose of claiming deduction does not stipulate that the construction must have taken place after the date of sale of original or old asset. The relevant findings of the Hon'ble High Court are as under:

“12. Section 54F(1) if read carefully states that the assessee being an individual or Hindu Undivided Family, who had earned capital gains from transfer of any long-term capital not

being a residential house could claim benefit under the said Section provided, any one of the following three conditions were satisfied; (i) the assessee had within a period of one year before the sale, purchased a residential house; (ii) within two years after the date of transfer of the original capital asset, purchased a residential house and (iii) within a period of three years after the date of sale of the original asset, constructed a residential house.

13. For the satisfaction of the third condition, it is not stipulated or indicated in the Section that the construction must begin after the date of sale of the original/old asset. There is no condition or reason for ambiguity and confusion which requires moderation or reading the words of the said sub-section in a different manner. The apprehension of the Revenue that the entire money collected or received on transfer of the original/capital asset would not be utilised in the construction of the new capital asset, i.e., residential house, is ill-founded and misconceived. The requirement of sub-section (4) is that if consideration was not appropriated towards the purchase of the new asset one year before date of transfer of the original asset or it was not utilised for purchase or construction of the new asset before the date of filing of return under Section 139 of the Act, the balance amount shall be deposited in an authorized bank account under a scheme notified by the Central Government. Further, only the amount which was utilised in construction or purchase of the new asset within the specified time frame stand exempt and not the entire consideration received.

14. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted. The Supreme Court in **CCE versus Favourite Industries**, (2012) 7 SCC 153 has succinctly observed:-

“21. Furthermore, this Court in *Associated Cement Companies Ltd. v. State of Bihar* [(2004) 7 SCC 642] , while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held: (SCC p. 648, para 12)

“12. Literally ‘exemption’ is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is

whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See Union of India v. Wood Papers Ltd. [(1990) 4 SCC 256 : 1990 SCC (Tax) 422] and Mangalore Chemicals and Fertilisers Ltd. v. CCT [1992 Supp (1) SCC 21] to which reference has been made earlier.)”

22. *In G.P. Ceramics (P) Ltd. v. CTT [(2009) 2 SCC 90] , this Court has held: (SCC pp. 101-02, para 29)*

“29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries[(2005) 1 SCC 657] (SCC para 26); Tisco Ltd. v. State of Jharkhand [(2005) 4 SCC 272] (SCC paras 42-45); State Level Committee v. Morgardshammar India Ltd. [(1996) 1 SCC 108] ; Novopan India Ltd. v. CCE & Customs [1994 Supp (3) SCC 606] ; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala[(2007) 2 SCC 725] and Reiz Electrocontrols (P) Ltd. v. CCE. [(2006) 6 SCC 213]”

15. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed.”

20. Similarly, the Hon'ble Allahabad High Court in the case of H.K. Kapoor (supra) has also reiterated the said proposition stating that the exemption of capital gain u/s 54 of the Act can be allowed notwithstanding the fact that the construction of the new house had begun before the sale of the old house agreeing with the proposition laid down by the Hon'ble Karnataka High Court in the case of J.R. Subramanya Bhatt (supra) as under:

“5. There is no dispute that the building has been constructed within two years from the date of sale of the old building. The old building was sold in February, 1977. The new building was completed in March, 1977, the construction of which had commenced in 1976. Sec. 54 of the IT Act so far as it is relevant provides:

“Where a capital gain arises from the transfer of a capital asset to which the provisions of s. 53 are not applicable, being

buildings or lands appurtenant thereto the income of which is chargeable under the head 'Income from house property', which in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased, or has within a period of two years after that date constructed, a house property for the purposes of his own residence, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,.."

Under this section, if the assessee has within a period of one year after the date on which the transfer took place purchased or has within a period of two years after that date constructed a residential house, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the other provisions set out in the said section. The Tribunal on an appreciation of the evidence has firstly found that the building was used by the assessee mainly for his residential purpose. Taking into consideration the area of the building under the occupation of the assessee, it has stated that the ground floor occupied by the assessee including the garage was 1,330 sq. ft. The land appurtenant to the ground floor excluding the land occupied by the house was 4,795 sq. ft. That was also held to be under the occupation of the assessee. This building with the land has been sold. It was only the first floor that was let out. The Tribunal took into consideration the extent of the building used mainly for the residential purpose of the assessee and found that the major portion of the building was under the occupation of the assessee. The Tribunal, therefore, concluded that the first condition prescribed under s. 54 was satisfied. This finding, it may be seen, has been arrived at by the Tribunal upon appreciation of the evidence and the factual aspects of the case.

6. So too was the next conclusion reached by the Tribunal. The date of the sale of the old building was 9th Feb., 1977. The completion of the construction of the new building was in March, 1977, although the commencement of the construction started in 1976. It is immaterial, as the Tribunal, in our opinion, has rightly observed, about the date of commencement of the construction of the new building. Since the assessee has constructed the building within two years from the date of sale of the old building, he was entitled to relief under s. 54 of the Act."

21. The Ld. DR has not brought any contrary decision to our notice in this regard, nor brought to our notice any

distinguishing facts in the present case so as to distinguish the case laws relied upon by the Ld. counsel for assessee. In view of the same, we hold that the investments made by the assessee in the construction of the house prior to the sale of the original asset is also eligible for deduction u/s 54 of the Act. Thus we hold that the assessee is entitled to claim deduction u/s 54 of the Act of Rs.18,52,650/- and Rs.25,40,389/- invested in the construction of new asset prior to the sale of original asset. Ground Nos. 2.1 and 2.2 raised by the assessee, therefore, stand allowed.

22. As far the amount invested in the capital gain account scheme, it is not disputed that the said amount was deposited after the due date of filing of the return of income u/s 139(1) of the Act. The assessment year in the impugned case being assessment year 2013-14 the date by which the delayed return could be filed u/s 139(4) is 31.5.2015 i.e. one year after the end of the relevant assessment year. The deposit in the capital gain account scheme has been made on 27.9.2013 which is well before the due date for filing the return of income u/s 139(4). The Hon'ble jurisdictional High Court in the case of Jagriti Aggarwal (supra), while dealing with an identical issue held that though section 54 stipulates deposit of amount in the capital gain account scheme before the due date specified u/s 139(1), section 139(4) which extends the date of filing of return of income was held to be a proviso to sub-section (1) of section 139 of the Act and not an independent

provision and thus the Hon'ble Court held that the due date of furnishing of return of income as per section 139(1) was to be subjected to the extended period provided under sub-section (4) of section 139 of the Act. The relevant findings of the Hon'ble Court are as under:

"10. Having heard learned counsel for the parties, we are of the opinion that sub-s. (4) of s. 139 of the Act is, in fact, a proviso to sub-s. (1) of s. 139 of the Act. Sec. 139 of the Act fixes the different dates for filing the returns for different assessees. In the case of assessee as the respondent, it is 31st day of July of the assessment year in terms of cl. (c) of the Expln. 2 to sub-s. (1) of s. 139 of the Act, whereas sub-s. (4) of s. 139 provides for extension in period of due date in certain circumstances. It reads as under :

"(4) Any person who has not furnished a return within the time allowed to him under sub-s. (1), or within the time allowed under a notice issued under sub-s. (1) of s. 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier :

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

11. *A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-s. (1) i.e., before 31st day of July of the assessment year, the assessee can file return before the expiry of one year from the end of the relevant assessment year.*

12. *The sale of the asset having taken place on 13th Jan., 2006, falling in the previous (sic—assessment) year 2006-07, the return could be filed before the end of relevant asst. yr. 2007-08 (sic—2006-07) i.e. 31st March, 2007. Thus, sub-s. (4) of s. 139 provides extended period of limitation as an exception to sub-s. (1) of s. 139 of the Act. Sub-s. (4) is in relation to the time allowed to an assessee under sub-s. (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under sub-s. (1) of s. 139. Therefore, such sub-s. (4) has to be read along with sub-s. (1). Similar is the view taken by the Division Bench of Karnataka and Gauhati High Courts in Fatima Bai and Rajesh Kumar Jalan cases (supra) respectively.*

13. *In view of the above, we find that due date for furnishing the return of income as per s. 139(1) of the Act is subject to the extended period provided under sub-s. (4) of s. 139 of the Act.”*

23. In view of the proposition laid down by the Hon'ble jurisdictional High Court in this regard we hold that the assessee in the present case having deposited the amount in the capital gain scheme before the due date specified u/s 139(4), was entitled to claim deduction of the same u/s 54 of the Act. Thus the disallowance of deduction made by the Ld.CIT(Appeals) to the extent of Rs.2 lacs on this account is deleted. Ground No.2.3 raised by the assessee is, therefore, allowed.

24. In view of the above, the appeal of the assessee stands allowed.

Order pronounced in the open court.

Sd/-

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 28th September, 2017

Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh