

AO is supposed to be mentor of assessee

Summary – The Indore ITAT in a recent case of Paramjeet Singh Chhabra., (the Assessee) held that where due to ignorance wrong section had been mentioned by assessee in return, Assessing Officer was required to advise assessee about correct claim and also to assess tax legitimately.

Facts

- The assessee sold a shop for Rs. 18 lakhs and worked out the capital gain. He invested the sale consideration in construction of residential house and claimed exemption of capital gains by mentioning section 54B/54D/54G.
- The Assessing Officer did not consider the claim of the assessee on ground that the assessee had mentioned wrong sections while claiming the exemption.
- The Assessing Officer further found that market value of the property considered by the Sub-Registrar was more than the value declared by the assessee. He, therefore, took the fair market value of the property as adopted by the stamp valuation authority for computation of capital gain.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On second appeal.

Held

- The assessee claimed exemption of capital gains by mentioning section 54B/54D/54G. The main plea of the revenue is that correct section for claiming exemption for capital gains was not mentioned in the return. However, the plea of the assessee is that since it was a fixed format, the assessee was not wise enough to amend the same and also for the wrong doing of the counsel, the assessee should not be penalized.
- It was also pleaded that since this issue was brought to the notice of Assessing Officer, it was incumbent upon the Assessing Officer to consider the exemption claimed under section 54 under the correct section.
- This claim of the assessee is fortified by the assessment order itself wherein it has been mentioned that the assessee furnished a letter that it was claimed by mentioning a wrong section. Even the Commissioner (Appeals) has acknowledged this fact that while claiming the deduction under section 54/54F, wrong sections were mentioned by the assessee, therefore, the Assessing Officer did not consider the claim of the assessee.
- Under these facts, the ITAT held that even if a wrong section was mentioned by the assessee in the return, it was the duty of the Assessing Officer to assist the tax payer in a reasonable way and to provide the relief if due to the assessee. This attitude rather will help the revenue in assessing the income correctly.

- A correct advice by the department would inspire the confidence of public at large. Even identical guidelines/instructions have been issued from time to time by the CBDT to its Officers (Circular No. 14(XL-35), dated 11-4-1955 and letter No. F.81/27/65-IT(B), dated 18-5-1965).
- Interpreting the above instruction, the ITAT held that if due to ignorance a wrong section has been mentioned by the assessee, it is the duty of the Assessing Officer to advise the assessee about the correct claim and also to assess the tax legitimately. This is the clear intention of the Legislature.
- The ITAT held that, it is appropriate to remand this file to the file of the Assessing Officer to examine the claim of the assessee afresh under provisions of section 54F, after providing due opportunity of being heard to the assessee. The assessee is also at liberty to furnish evidence, if any, to substantiate his claim.