

AO doesn't have power to deny sec. 54F exemption while processing return under sec. 143(1)

Summary – The Chennai ITAT in a recent case of Ms. Susiela Natarajan, (the Assessee) held that where Assessing Officer processed under section 143(1)(a) return of income filed by assessee and denied her claim for exemption under section 54F, Assessing Officer had overstepped his authority to deny claim of assessee beyond jurisdiction of section 143(1)(a).

Facts

- The assessee had sold a property in Chennai and made investment in a residential property in United States of America. In the return of income filed for the assessment year 2009-10, she claimed exemption under section 54F. She also claimed refund for a certain amount comprising of excess advance tax payments and TDS.
- The Assessing Officer processed under section 143(1)(a) the return of income filed by the assessee and issued the intimation with certain demand. He denied the assessee's claim for exemption under section 54F.
- Thereupon the assessee filed an application for rectification under section 154 claiming that the credit must be given for the excess advance tax payments and TDS.
- The Assessing Officer in the order passed under section 154 held that the assessee was not entitled for the claim of exemption made under section 54F. The investment made outside India could not be considered for the purpose of exemption and, as such, no exemption could be given under section 54F. Therefore, the addition was made while processing of return of income in accordance with law. He, therefore, dismissed the application for rectification under section 154.
- On appeal, the Commissioner (Appeals) held that the capital gain arose in the hands of the assessee was taxable in India and, therefore, the computation made by the Assessing Officer was correct and no rectification was called for in the intimation issued under section 143(1)(a). He also held that the impugned order did not enhance the assessment or reduce the refund or otherwise increase the liability of assessee and, therefore, section 154(3) was also not applicable.
- On second appeal:

Held

- The provision of law contained in section 143(1)(a) provides that the return filed shall be processed to compute the total income or loss of the assessee after making adjustments for any arithmetical error in the return or incorrect claim, if such incorrect claim is so apparent from any information in the return. Any payment of additional tax or payment of refund or any other adjustment shall follow the computation of income in the above manner. Therefore, it is clear that what is possible to adjust is only any arithmetical mistake or any incorrect claim patent on the face of the return. In the instant case, there was no question of any arithmetical error. The Assessing Officer held that the capital gain was not exempt from levy of tax. Whether the capital gain arose in the hands of the

assessee is exempted or not in the light of the residential house purchased in United States of America is not a question in the nature of mistake apparent from any information in the return. It is not possible to say *prima facie* that the claim made by the assessee is incorrect. It is a highly debatable issue. The relevance of law has to be deeply studied. Therefore, the Assessing Officer has overstepped his authority to deny the claim of the assessee made under section 54F beyond the jurisdiction of section 143(1)(a).

- Therefore, the orders of the lower authorities were liable to be set aside. The Assessing Officer was to be directed to pass a fresh order on the application filed by the assessee under section 154. If any refund is due, based on the said order, the same shall be paid over to the assessee.
- Whether the exemption is available against property acquired in a foreign country is a serious question of law to be considered in the light of section 54F, especially in the light of sub-section (4) of that section. Sub-section (4) of section 54F provides an impression that the consideration received on sale of the property must be utilized for acquiring a new asset. Therefore, the question is whether the assessee has purchased the property in USA by transferring the consideration received in India in foreign exchange or the American property was acquired by her by independent funds available in USA. All these matters have to be discussed and sorted out.
- Therefore, the Assessing Officer may, if he thinks it proper, initiate proceedings permissible under law to bring the question of exemption under section 54F for scrutiny. If the Assessing Officer initiates such proceedings, he can consider the issue and come to a decision in accordance with law.