

## In case assessee purchases new house after the due date prescribed u/s 139(1) Sec. 54 exemption will not be available

**Summary – The Mumbai ITAT in a recent case of Rajan Gumba Telang, (the Assessee) held that in case the assessee purchases a new house after the due date prescribed u/s 139(1) Sec. 54 exemption will not be available**

### Facts

- The assessee sold a residential flat and derived long-term capital gain claimed deduction under section 54 which was accepted by AO in the scrutiny assessment.
- The Principal Commissioner observed that the assessee was not eligible for deduction under section 54(1) and issued a show cause notice under section 263 to the assessee since the assessee invested the LTCG beyond the date for filing the ITR u/s 139(1).
- In response the assessee submitted that he invested the LTCG within the due date under section 139(4) and not u/s 139(1) since he was not aware of this requirement.
- Holding that ignorance of law could not be an excuse the assessment order passed under section 143(3) was held as erroneous and prejudicial to revenue's interest by the Principal Commissioner and order under section 263 was passed accordingly.
- On the assessee's appeal to the Tribunal:

### Held

- The ITAT observed that though, the assessee had filed his return of income within the due date provided under section 139(1), however, by that time he has not utilized the capital gain in purchase of new property. Therefore, as per the provision of section 54(2), the unutilized capital gain should have been deposited in capital gain account scheme. Thus, *prima facie*, the conditions of section 54(2) have not been complied.
- The Assessing Officer has not properly applied the statutory provision as contained under section 54 and allowing assessee's claim of deduction under section 54(1), is legally unsustainable. Hence, the assessment order is erroneous and prejudicial to the interests of revenue to that extent.
- Held that Principal Commissioner has correctly exercised his power under section 263 to revise the impugned assessment order. Accordingly, the order passed under section 263 is to be upheld by dismissing the grounds raised by the assessee.