IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

Before Shri Joginder Singh(JUDICIAL MEMBER)

AND
Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.1787/Mum/2016
(Assessment year: 2010-11)

Mrs. Lalita P Modi 404K, Sumer Nagar SV Road, Borivali (W) Mumbai-51 AANPM5906A	vs	ITO 32-(2)(1), Mumbai
APPELLANT		**RESPONDENT**

Appellant by	Shri Nishit Gandhi
Respondent by	Smt. M Hemalatha

Date of hearing	03-05-2018
Date of pronouncement	31-05-2018

O R D E R

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against the order of the CIT(A)-44, Mumbai dated 22-02-2016 and it pertains to AY 2010-11.

The assessee has raised the following grounds of appeal:-

> "On the facts and in the circumstances of the case and in law the learned C1T (A)-44, Mumbai erred in confirming the denial of deduction claimed u/s. 54/54F of the Act amounting to Rs.29,19,862/- of the IT. Act, by upholding the learned assessing officer's contention that the appellant does not fulfill the specified conditions.
> On the facts and in the circumstances of the case and in law the learned CIT (Appeals) erred in assuming that a claim for deduction, which had not been made in the original return of income cannot be entertained by the appellate authority."

2. The brief facts of the case are that the assessee is an individual

engaged in the business of trading and dealing in listed securities, filed her return of income for AY 2010-11 on 28-10-2010 declaring total income of Rs.8,29,389. The case has been selected for scrutiny and the assessment has been completed u/s 143(3) of the Act on 18-03-2013 determining the total income at Rs.38,27,020 by making disallowance of exemption claimed u/s 54 / 54F of the Income-tax Act, 1961 towards long term capital gain derived from sale of property.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has filed written submission to argue that by virtue of allotment letter issued, she acquired a right to obtain conveyance of immovable property which constitute capital asset within the meaning of section 2(14) of the I.T. Act, 1961. Since she has transferred long term capital asset, being right in an immovable property, the gain arising out of such transfer is eligible for exemption u/s 54 / 54F of the Act if the consideration received from the property has been re-invested in purchase of another house property. Since she had invested sale consideration of residential property, has rightly claimed deduction u/s 54 / 54F and hence, the AO was incorrect in rejecting claim only on the ground that the assessee has not made any claim of deduction u/s 54F by filing revised return in view

of the decision of Hon'ble Supreme Court in the case of CIT vs Goetze India Ltd (2006) 284 ITR 223 (SC).

4. The Ld.CIT(A), after considering relevant submissions of the assessee and also relying upon the decision of Hon'ble Supreme Court in the case of CIT vs Goetze India Ltd (supra) dismissed the appeal filed by the assessee by observing as under:-

> 3.3 I have carefully gone through the assessment order as well as the written submission of the AR. I have also perused the details filed by the AR. the facts of the case it appears there is no dispute regarding the incidence of capital gain. Both the AO and the appellant are in agreement appellant is liable for long term capital gain. The only dispute thereafter is regarding allowability of deduction u/s 54 or u/s 54F. As far as the eligibility for deduction u/s 54 is concerned the same is not applicable to the appellant because capital gain has not arisen in this case from transfer of a long term capital asset being buildings or land appurtenant there to, and being a residential house, the income of which is chargeable under the head income from house property. In other words, the appellant has not sold a residential house which is a primary requirement for deduction u/s 54.
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> 3.4 The second issue to be decided here is whether the AO should have allowed deduction u/s 54F as requested by the appellant during the assessment proceedings. In the grounds of appeal as well as in the written submissions the appellant has tried to claim that both section 54 and section 54F are on the same footing. However, these two sections are different in their scope, applications and eligibility conditions. First of all, in section 54, the computation of deductions is with reference to the amount of capital gain while in section 54F computation of deduction is with reference to the cost of new asset. Further one of the basic condition for claiming deduction u/s 54F is that the assesse should not own more than one residential house, other than the new asset, on the date of transfer of the original asset. For claiming deduction u/s 54 there is no such restriction. Thus it is not correct to say that merely because an assessee has sold some capital asset and has invested the proceed towards a residential house he will be automatically entitled for deduction u/s 54F. The assessee has to fulfill certain conditions in order to be eligible for deduction u/s54F,
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> .5 As stated above the AO has relied on the decision given by Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT 284 ITR 223 (2006). is case it has been held by the Hon'ble Supreme Court that an assessee not amend a return filed by him for making a claim for deduction other than by filing a revised return. The appellant has not rebutted the ratio of decision quoted by the AO. Thus after considering the facts of the case and the legal positions, grounds of appeal no 1 is dismissed."

5. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in confirming rejection of deduction claimed u/s 54 / 54F of the Act merely on the technical ground that such claim has not been made by filing revised return. Otherwise, nowhere the Ld.CIT(A) has pointed out that the claim made u/s 54 / 54F is not eligible. The Ld.AR further submitted that the law laid down by the Hon'ble Supreme Court in the case of CIT vs Goetze India Ltd (supra) in any way does not impinge the rights of the appellate authorities to decide the issue, although it has restricted the powers of AO to admit new claim without filing revised return. Therefore, the Ld.CIT(A) was incorrect in rejecting deduction claimed u/s 54F of the Act.

6. On the other hand, the Ld.DR strongly supported the order of the CIT(A). The Ld.DR further submitted that the assessee failed to make a new claim by filing revised return and hence, the AO has rightly rejected the claim of the assessee in the light of the decision of Hon'ble Supreme Court in the case of CIT vs Goetze India Ltd (supra) which categorically restricts the power of AO to admit any new claim without filing revised return of income.

7. We have heard both the parties and perused the material available on record. There is no dispute with regard to the incidence of capital gain as both the AO and the assessee are in agreement that the

assessee is eligible for long term capital gain in pursuance of relinquishment of her right in property. The only dispute is with regard to the allowability of deduction u/s 54 / 54F of the Act. The assessee initially made claim u/s 54 of the Act. However, during assessment proceedings, assessee made claim u/s 54F of the Act. The AO rejected assessee's claims on the ground that the assessee has made a new claim of exemption u/s 54F without filing revised return. Therefore, in view of the law laid down by the Hon'ble Supreme Court in the case of CIT vs Goetze India Ltd (supra), there is no provision to admit new claim without filing revised return of income. The AO has technically accepted that the assessee is eligible for deduction u/s 54 of the Income-tax Act, 1961; however, denied such claim only for the reason that such claim is not made by filing revised return of income by relying upon the decision of CIT vs Goetze India Ltd (supra). Admittedly, the Hon'ble Supreme Court in the said case clearly stated that the power of AO is restricted to admit a new claim only if such claim is made by filing revised return of income. However, in the same decision, the Court further reiterated that the findings of the Court in any way does not impinge the powers of the appellate authorities to admit new claim if necessary facts regarding such claim is already available before the AO. In this case, admittedly, all necessary facts required for deduction u/s 54F are already available

before the AO as the assessee has made a claim u/s 54 of the Income-tax Act, 1961. We further observe that since the provisions of section 54 / 54F are beneficial provisions, which need to be construed liberally so as to allow the benefit, if other conditions specified in the said sections are fulfilled. Hence, we are of the considered view that the AO was erred in not allowing assessee's claim of deduction u/s 54F. Hence, we set aside the issue to the file of the AO and direct him to admit assessee's alternate claim of deduction u/s 54F and allow such claim if assessee has fulfilled all conditions specified therein.

8. In the result, the appeal filed by the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 31st May, 2018.

Sd/-	sd/-
(Joginder Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 31st May, 2018
Pk/-
Copy to :

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

/True copy/ By order

Sr.PS, ITAT, Mumbai