

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5157/Del/2016
Assessment Year: 2013-14**

Santokh Singh, C/o M/s RRA Taxindia, D-28, South Extension Part I, New Delhi-110049 (PAN: APNPS9211F) (Appellant)	vs	Income Tax Officer, Ward 35(5), New Delhi. (Respondent)
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Appellant by : Shri Ashwani Taneja, Adv.
Respondent by : Shri K. Tewari, Sr. DR

**Date of Hearing: 16.07.2018
Date of Pronouncement: 18.07.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been filed by the assessee against the order of the Ld. CIT(A)-12, New Delhi for assessment year 2013-14 wherein, vide the impugned order, the Ld. CIT(A) has upheld the denial of assessee's claim of deduction u/s 54F of the Income Tax Act, 1961 (hereinafter referred to as "the Act") amounting to Rs. 92,37,000/-.

2. Brief facts of the case are that the return was filed declaring taxable income of Rs. 1,37,080/- on 26.03.2014. The case was

selected for scrutiny through CASS. It was noticed that during the year under consideration, the assessee had sold a plot for a total consideration of Rs. 1,30,00,000/- and had claimed exemption of long term capital gain u/s 54 of the Act to the tune of Rs. 92,37,000/-. The Assessing Officer required the assessee to show cause as to how the exemption u/s 54 of the Act was allowable as the property sold was not a property used for residence but was only a plot. In response, the assessee submitted that the assessee's claim should be considered u/s 54F of the Act which had inadvertently been mentioned as being claimed under section 54 in the computation of income and the return of income. However, the Assessing Officer noted that the original return was filed on 26.03.2014 and was, therefore, beyond the prescribed date for filing of the return as per section 139(1) of the Act and, therefore, revising the claim of deduction from section 54 to 54F could not be considered. The Assessing Officer also noted that the revised claim of the assessee along with the reply dated 17.02.2016 was also beyond the prescribed period u/s 139(5) of the Act and, therefore, the claim was not allowable. The assessee's plea for inadvertent mistake was also rejected.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority who, although, noted that the assessee's claim for deduction u/s 54F needed to be examined but all the same rejected the assessee's claim and dismissed the assessee's appeal. Now, the assessee is before the ITAT and is challenging the dismissal of his appeal.

3. The Ld. AR submitted that only ground for denial of deduction was that the Assessing Officer did not accept that it was a case of inadvertent mistake while claiming the deduction. On a query from the Bench, the Ld. AR had no objection to the issue being restored to the file of the Assessing Officer for re-examination of the assessee's claim u/s 54F of the Act.

4. The Ld. Sr. DR vehemently supported the orders of both the lower authorities. However, on a query from the Bench, the Ld. Sr. DR also stated that the matter could be restored to the file of the Assessing Officer for re-examination.

5. Accordingly, in view of the facts of the case and also considering the fact that the only mistake on the part of the assessee was to incorrectly mention the section under which the deduction was being claimed and also keeping in mind the fact that the Assessing Officer has rejected the assessee's claim at the

threshold itself on the ground that the assessee had claimed the deduction under the incorrect section of the Act and has not examined the merits of the claim of deduction, we are of the considered opinion that it is a fit and proper case for being restored to the file of the Assessing Officer. Accordingly, we restore the issue to the file of the Assessing Officer for re-examining the claim of the assessee u/s 54F of the Act after affording due opportunity of hearing to the assessee and also direct the Assessing Officer to decide the issue as per provisions of law, notwithstanding the fact that the assessee had incorrectly mentioned the section under which the assessee was eligible for claim of deduction.

6. In the result, the assessee's appeal stands allowed for statistical purposes.

Order pronounced in the Open Court on 18th July, 2018.

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 18th JULY, 2018

'GS'

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

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	1