

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 96/JP/2020
निर्धारण वर्ष / Assessment Year : 2011-12

Renu Jain G-13/5, IInd Floor, Malviya Nagar, New Delhi 110017.	बनाम Vs.	The ITO, Ward-5(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABFPJ 7560 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Akshay Shah (C.A.)
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 03/03/2020
उदघोषणा की तारीख / Date of Pronouncement : 06/03/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-II, Jaipur dated 29.11.2019 for the assessment year 2011-12 wherein the assessee has taken the following ground of appeal:-

"1. The Id. CIT(A) erred in law as well as on the facts of the case in upholding the addition of INR 17,09,798/- without considering and appreciating the intent and purpose of the provisions of Section 54F of the Act. The addition so confirmed by the CIT(A), being totally contrary to the provisions of law and facts of the case, therefore the same may be deleted."

2. Briefly the facts of the case are that the assessment in this case was completed U/s 143(3) r.w.s. 147 of the Act dated 08.10.2016. On the basis of information received during the course of assessment proceedings for the assessment year 2013-14, the notice U/s 148 of the Act was issued on 27.01.2016 stating that the assessee has wrongly claimed deduction U/s 54F of the Act as the assessee has deposited a sum of Rs. 22,50,000/- under capital gain account scheme on 03.12.2011 after due date of filing of return of income i.e, 31.07.2011, therefore, the income of the assessee has escaped assessment within the meaning of section 147 of the Act. In response, the assessee submitted his return of income on 24.03.2016 and thereafter, after considering the submissions of the assessee, the assessment was completed wherein the Assessing Officer has denied the claim of the assessee U/s 54F of the Act amounting to Rs. 17,09,798/-. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has sustained the addition and against the said findings, the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that the assessee has earned Long Term capital gain of Rs. 17,09,798 from sale of plots at a consideration of INR 22,50,000/- on 10 February 2011. The sale consideration of the plots sold was received by the assessee on 18 & 19 January 2011. In order to avail benefit of deduction u/s 54F of the Act, the assessee has set aside the entire funds for purchase of residential property by opening an FDR with Bank of Rajasthan (Now ICICI Bank) on 20 January 2011 i.e. well before the due date of filing the return under section 139

of the Act for AY 2011-12. Later on, the Appellant came to know that as per the provisions of section 54F, the FDR is required to be made under Capital Gain Account Scheme ('CGAS'). Therefore, in order to rectify the procedural mistake, the Appellant on 03 December 2011 en-cashed the FDR with ICICI bank and deposited such amount on very same day into Capital Gains Scheme FDR with Canara Bank without utilizing the same for any other purpose.

4. It was submitted that the AO disallowed the deduction claimed under section 54F of the Act stating that the Appellant have deposited the amount under Capital Gains Scheme after the due date of filing return of income and the same was upheld by the Ld. CIT(A). It was submitted that while making such addition, the Ld. AO and Ld. CIT(A) have not appreciated the following facts and legal interpretation of various judicial pronouncements:

- The Ld. CIT(A) have failed in not considering the essence of the judgment pronounced by the Jurisdictional tribunal in one of the similar issue in case of *Goverdhan Singh Shekhawat Vs. ITO ward 6(1), Jaipur (2019) 102 taxmann.com* 50 thereby violating the *doctrine of Precedent*;
- Both the authorities have failed in considering and appreciating the fact that the entire funds have been utilized only for purchase of residential house and have not been utilized for any other purpose;
- Both the authorities have failed in considering and appreciating the intent and purpose of the provisions of section 54F of the Act;

- There was no mala fide intention on the part of Appellant to have deposits the amount under a FDR a/c and not under CGAS a/c. It was just a bona fide mistake which was corrected as soon as it came to the knowledge of the assessee;
- The whole idea of opening a capital gains account scheme is to delineate the funds from other funds regularly maintained by the assessee and has to ensure that the benefit which has been availed by an assessee by depositing the amount in the said account is ultimately utilized for the purposes for which the exemption has been claimed, i.e., for purchase of the residential house. The Appellant have solely utilized such funds for purchase of residential property and the same has not been rebutted by the Ld. AO;
- The Appellant have duly disclosed such information in the return of income filed;
- It is a well settled law that an incentive provision has to be construed liberally with the intent of law.

5. It was further submitted that the Jaipur Bench of the Tribunal in the case of *Goverdhan Singh Shekhawat Vs. ITO ward 6(1), Jaipur reported in 102 taxmann.com 50* has held as under:

"Thus, it is viewed that the assessee's claim will qualify for exemption under section 54F as he has, in substance, complied with the requirements of sub-section (4) for the

impugned assessment year as the whole of the compensation has been deposited in the said bank account and the withdrawals are limited to purchase of plot of land and construction thereof and are monitored closely by the assessee himself.....

In the instant case, even though the saving bank account technically speaking is not a capital gain account, the essence and spirit of opening and maintaining a separate capital gain account has been achieved as well as demonstrated by the assessee. Therefore, merely because the saving bank account is technically not a capital gains account, it cannot be said that there is violation of the provisions of sub-section (4) in terms of not opening a capital gains account scheme. The revenue has not disputed that the deposits in the said account are from the compensation received by the assessee from compulsory acquisition of his land by RIICO and the revenue has equally not disputed that there are any withdrawals other than for the purposes of purchase of plot of land and construction thereon."

Moreover, the Hon'ble Tribunal Members discussed the Scheme that has been framed by the Central Government referred to as Capital Gains Accounts Scheme, 1988 which has been notified for the purposes of availing exemption under section 54F(4) and at para 40 discussed about the intent of the sub-section 4 of Section 54F as under:-

"The whole purpose and scheme of deposit so envisaged is thus to closely monitor the utilisation of the amount for the purposes of purchase or construction of the residential house. The whole idea is to delineate the funds from other funds regularly maintained by the assessee and has to ensure that the benefit which has been availed by the assessee by depositing the amount in the said account is ultimately utilized for the purposes for which the exemption has been claimed, i.e., for purchase or construction of a residential house"

6. It was accordingly submitted that the assessee has followed the provisions in its true spirit and have kept the intent of section 54F for availing the deduction as:
 - a. The sale proceeds was kept separately by opening an FDR;
 - b. Later on, when it came to the notice of the Appellant that the FDR is required to be made under Capital Gain Account Scheme, the Appellant in order to rectify the procedural mistake en-cashed the FDR deposited with ICICI bank and deposited such amount into Capital Gains Scheme FDR with Canara Bank on the same date;
 - c. Ultimately the Appellant utilized the funds kept under the CGA.S account for purchase of property.

The similar judgment was pronounced by the different Benches of ITAT in the following cases:

- *ITAT Jodhpur in case of Jagan Nath Singh Lodha v. ITO (148 Taxman 1)*
- *ITAT Mumbai in case of Satish P. Malhotra vs. ITO 16(1)(2) (ITA No.6877/Mum/2014)*
- *ITAT Mumbai in case of Ms. Satyavati Arvind Kotian vs. ITO — 26(2)(2) (ITA No.5036/Mum/2017)*

7. It was further submitted that the intention or bona fide is neither under doubt nor it is doubted. Moreover, it is a settled law that an incentive provision has to be construed liberally as held the Hon'ble Supreme Court in case of *Sanjeev Lal 365 ITR 389* as under:-

"The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income-tax Act and it is also said that equity and tax are strangers to each other, still this Court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of Oxford University Press v. CIT [2001] 247 ITR 658/115 Taxman 69 this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from

payment of tax. Considering the above stated observations and the principles with regard to the interpretation of statute pertaining to the tax laws, one can very well interpret the provisions of section 54 read with section 2(47), i.e. definition of "transfer", which would enable the assessee to get the benefit under section 54 of the Act"

As per the above judgment of the Hon'ble Supreme Court, purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. Basis the same, section 54F of the Act was inserted by the Finance Act 1982, with a view to encourage house construction and later sub-section 4 was inserted by the Finance Act 1987 to ensure that unutilized amount should be kept deposited in the bank or institution and should be utilized in accordance with the scheme. This legislative intent was duly met by the Appellant.

8. It was submitted that the Jurisdictional High Court in the case of Shankar Lal Saini [2018] 89 [taxmann.com](#) 235(Raj) has held that even amount deposited in CGAS before filing of return u/s 139(4) shall also be allowed for deduction as per provisions of sub-section 4 of section 54F of the Act. In this case also, FDR made with Canara Bank under CGAS on 03 December, 2011 is also well before the filing of return of income i.e. on 14th December, 2011. Accordingly investment made of Rs. 22,50,000.00 made in FDR under CGAS is an allowable deduction u/s 54F of the Act. The similar judgment was pronounced by Punjab & Haryana High Court in the case of Ms. Jagriti Aggarwal [2011] 15 [taxmann.com](#) 146

9. Per contra, the Id. DR submitted that firstly the amount has been deposited in the capital gain accounts scheme after the due date of filing the return of income U/s 139(1) of the Act. It was further submitted that even the subsequent purchase of residential property has not been made within the prescribed period of 2 years from the date of transfer of the original asset and therefore, there is no infirmity in the order of Assessing officer in denying the claim of exemption U/s 54F of the Act.

10. We have considered the rival submissions and perused the material available on record. From perusal of the reasons recorded by the Assessing Officer before issuance of notice U/s 148 of the Act, the undisputed facts which are emerging that the assessee sold a plot of land on 10.01.2011 for a consideration of Rs. 22,50,000/- and the said amount was deposited in FDRs maintained with ICICI Bank on 21.1.2011. The FDRs were encashed and the maturity proceeds of Rs. 23,66,223/- so received were deposited in Canara Bank on 03.12.2011. On the same day, out of the maturity proceeds of FDRs, the assessee has made fresh deposits of FDRs of Rs. 22,50,000/- and this time, these FDRs were maintained with Canara Bank under the capital gain account scheme. These facts are also corroborated by the bank statement of the assessee appearing at APB page 66 and certificate issued by the Canara Bank dated 27.10.2015 available at APB page 89. Thereafter on 21.05.2012, three FDRs matured/encashed and amount credited in assessee's bank with maturity value Rs. 15,32,232/- and on the very next date i.e, 22.05.2012, the said maturity proceeds were utilized for making payment of Rs 18,00,000 to Shir Arvind Kumar

Khurana, the person from whom the assessee has purchased a property. Thereafter the remaining FDRs matured on 25.07.2012 with matured value of Rs. 8,95,788/- which was utilized for making further payment of Rs. 9,00,000/- to the seller of the property on 31.07.2012. These facts are also corroborated by the sale deed wherein out of the total consideration of Rs. 1,13,00,000, an amount of Rs 27,00,000/- has been paid through cheques drawn on the Canara Bank out of maturity proceeds of FDRs maintained under the capital gains account scheme. We, therefore, find that the whole of the sale consideration has been deposited in the capital gains account scheme and has been utilized in purchase of another property and has not been used for any other purposes. In terms of time frame of depositing in capital gains account scheme, as we have noted above, the deposits were made on 3.12.2011 and thereafter, the assessee has filed her return of income on 14.12.2011 within time limit prescribed under section 139(4) of the Act wherein she has made the claim u/s 54F of the Act and therefore, the question arises as to whether the same is in compliance with the provisions of section 54F(4) of the Act. We find that the said issue has arisen for consideration before the Hon'ble Jurisdictional High Court in case of Sankar Lal Saini (supra) wherein the substantial question of law framed for consideration was as under:

"Whether, the tribunal was justified in allowing the deduction of Rs.1,60,00,000/- u/s 54B and Rs.52,00,000 u/s. 54F of the Act, ignoring the specific provisions of Section 54B(2) and 54F(4) which refers to the due date of Section 139(1) and not Section 139(4) of the Act?"

And the Hon'ble High Court referred to the decisions of other High Courts as under:

"15. *He has relied upon the following decisions:*

CIT v. Shri Jagtar Singh Chawla, [2013] 33 taxmann.com 38/215 Taxman 154 (Punj. & Har.) :

8. A Division Bench of the Gauhati High Court in a case reported as CIT v. Rajesh Kumar Jalan : [2006] 286 ITR 274, held that only Section 139 of the Act is mentioned in Section 54(2) of the Act in the context that the unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income Tax under Section 139 of the Act and that it would include extended period to file return in terms of Sub-Section 4 of Section 139 of the Act. It was held as under:—

From a plain reading of sub-section (2) of Section 54 of the Income-tax Act, 1961, it is clear that only section 139 of the Income-tax Act, 1961, is mentioned in section 54(2) in the context that the unutilized portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income-tax under section 139 of the Income-tax Act. Section 139 of the Income-tax Act, 1961, cannot be meant only section 139(1), but it means all sub-sections of section 139 of the Income-tax Act, 1961. Under sub-section (4) of section 139 of the Income-tax Act any person who has not furnished a return within the time allowed to him under sub-section (1) of Section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier.

9. The said judgment was relied upon by a Division Bench of the Karnataka High Court in Fathima Bai v. ITO, ITA No. 435 of 2004

Decided on 17th October 2008, wherein it was held to the following effect:-

11. The extended due date under section 139(4) would be 31.3.1990. The assessee did not file the return within the extended due date, but filed the return on 27.2.2000. However, the assessee had utilized the entire capital gains by purchase of a house property within the stipulated period of section 54(2) i.e., before the extended due date for return under section 139. the assessee technically may have defaulted in not filing the return under section 139(4). But, however, utilized the capital gains for purchase of property before the extended due date under section 139(4). The contention of the revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention.

10. A Division Bench of this Court in which one of us (Hemant Gupta, J.) was a member, had an occasion to consider the provisions of Section 54(2) of the Act, wherein it has been held that sub-section(4) of Section 139 of the Act is in fact a proviso to Section 139(1) of the Act. Therefore, since the assessee has invested the sale proceeds in a residential house within the extended period of limitation, the capital gain is not payable. The judgments in Rajesh Kumar Jalan's case and Fathima Bai's case (supra) were referred to. It has been held as under:—

Having heard learned counsel for the parties, we are of the opinion that sub-section (4) of Section 139 of the Act is, in act, a proviso to sub-section (1) of Section 139 of the Act. Section 139 of the Act fixes the different dates for filing the returns for different assesses. In the case of assessee as the respondent, it is 31st day of July, of the Assessment Year in terms of clause (c) of the Explanation 2 to sub-section 1 of Section 139 of the Act, whereas sub-section (4) of Section 139 provides for extension in period of due date in certain circumstances. It reads as under:—

(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under subsection (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier;

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.

A reading of the aforesaid sub-section would show that if a person has not furnished the return of the previous year within the time allowed under sub-section (1) i.e. before 31st day of July of the Assessment Year, the assessee can file return before the expiry of one year from the end of ever relevant Assessment Year.

3. Fathima Bai v. ITO, [2010] 32 DTR 0243 (Kar.), it has been held as under :—

8. The section 54(2) declares that within one year from the date of transfer if the capital gain is not invested in purchase of building, he should deposit the amount in the Capital Gain Account Scheme or else the assessee should invest the capital gains before filing of return within the permitted period under section 139. In which event, the assessee will not be liable to pay capital gain tax.

9. The section 139(4) declares that the assessee should file returns within the time prescribed, if he fails to file returns, he may file returns for any previous year at any time before expiry of one year from the end of relevant assessment year.

4. CIT v. Ms. Jagriti Aggarwal, [2011] 15 taxmann.com 146/203 Taxman 203/339 ITR 610 (Punj. & Har.), it has been held as under :

6. Section 54 of the Act contemplates that the capital gain arises from the transfer of a long term capital asset, but if the assessee within a period of one year before or two years after the date on which the transfer took place purchases residential house, then instead of the capital gain, the income would be charged in terms of provisions of Sub-Section (1) of Section 54. As per Sub-Section (2), if the amount of capital gains is not appropriated by the assessee towards the purchase of new asset within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under Section 139, the amount shall be deposited by him before furnishing such return not later than due date applicable in the case of assessee for furnishing the return of income under Sub-Section (1) of Section 139 in an account in any such Bank or institution as may be specified. Relevant Sub-Section (2) of Section 54 of the Act reads as under:

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under Section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under Sub-Section (1) of Section 139 in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazettee, frame in this behalf and such return shall be accompanied by proof of such deposit, and for the purposes of Sub-Section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this Sub-Section is not utilized wholly or partly for the purchase or construction of the new asset within the period specified in Sub-Section (1), then,-

- (i) The amount not so utilized shall be charged under Section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
- (ii) The assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

11. A reading of the aforesaid Sub-Section would show that if a person has not furnished the return of the previous year within the time allowed under Sub-Section (1) i.e. before 31st day of July of the Assessment Year, the assessee can file return before the expiry of one year from the end of the relevant Assessment Year.

13. In view of the above, we find that due date for furnishing the return of income as per Section 139(1) of the Act is subject to the extended period provided under Sub-Section (4) of Section 139 of the Act. Consequently, the question of law is answered against the Revenue and in favour of the assessee. Thus, the present appeal is dismissed.

5. In CIT v. Smt. Vrinda P. Issac, [\[2012\] 24 taxmann.com 131/\[2013\] 212 Taxman 101 \(Mag.\) \(KARHC\)](#), it has been held as under :—

3. The Tribunal in coming to the said conclusion that the investment made by the assessee being within the time specified under sub-section 4 of section 139 of the Act relied on the judgment of this court in the case of *Fathima Bai v. ITO* : [2009] 32 DTR (Kar) 243. Even if two views are possible, the revisional authority had no jurisdiction to initiate proceedings under section 263 of the Act. It was held that the order passed by the High Court is incorrect, which decision cannot be accepted. The Tribunal has followed the judgment of this Court as the decision of the High Court is binding

on the subordinate Courts. If the judgment passed by this Court is erroneous, the revenue should have challenged the said order. At any rate that cannot be a ground for invoking section 263 of the Act in the facts of this case. In that view of the matter, we do not see any merit in this appeal. Accordingly, no substantial question of law arises for consideration. Hence, the appeal is dismissed.

6. CIT v. Rajesh Kumar Jalan, [2006] 157 Taxman 398/286 ITR 0274 (GUHC), it has been held as under :-

6. From a plain reading of Sub-section (2) of Section 54 of the Income Tax Act, 1961, it is clear that only Section 139 of the Income Tax Act, 1961, is mentioned in Section 54(2) in the context that the unutilised portion of the capital gain on the sale of property used for residence should be deposited before the date of furnishing the return of the Income Tax under Section 139 of the Income Tax Act. Section 139 of the Income Tax Act, 1961, cannot be meant only Section 139(1) but it means all sub-sections of Section 139 of the Income Tax Act, 1961. Under Sub-section (4) of Section 139 of the Income Tax Act any person who has not furnished a return within the time allowed to him under Sub-section (1) of Section 142 may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment year whichever is earlier. Such being the situation, it is the case of the respondent/assessee that the respondent/assessee could fulfil the requirement under Section 54 of the Income Tax Act for exemption of the capital gain from being charged to Income Tax on the sale of property used for residence up to March 30, 1998, inasmuch as the return of Income Tax for the assessment year 1997-98 could be furnished before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier under Sub-section (4) of Section 139 of the Income Tax Act, 1961.

7. I.T.C. Ltd. v. CCE [2004] 7 SCC 591 (SC), it has been held as under :—

23. Presumably the phrase "badly drafted" was used to mean that the language of the Entry was ambiguous. In case of such ambiguity 'close reasoning' will be employed - but without stretching the language to arrive at the only reasonable construction. These decisions exemplify the general rule of statutory construction that words have to be construed strictly according to their ordinary and natural meaning, particularly when the statute is a fiscal one irrespective of the object with which the provision was introduced. Of course if there is ambiguity in the statutory language, reference may be made to the legislative intent to resolve the ambiguity. But if the statutory language is unambiguous then that must be given effect to. The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on their own terms ambivalent and do not manifest the intention of the legislature. *Keshavji Ravji and Co. and Ors. v. Commissioner of Income Tax* : [\[1990\] 183 ITR 1 \(SC\)](#) .

25. But there are exceptions to this rule. The first is that the rule of strict construction does not apply to a provision which merely lays down the machinery for the calculation or procedure for the collection of tax.

27. The second exception is: If two constructions are possible and a strict construction would lead to an absurd result then the construction which is in keeping with the object of the statutory provision or in keeping with equity could be accepted. This was the view expressed in *Commissioner of Income Tax. v. J.H. Gotla, Yadagiri* while interpreting section 24(2) of the Income Tax Act, 1922:

"...if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible

apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not mean always so and if a construction results in equity rather than in injustice; then such construction should be preferred to the literal construction."

8. CIT v. T.V. Sundram Iyengar (P) Ltd. [1976] 1 SCC 77 (SC), it has been held as under :—

21. In considering whether the company is liable to pay additional super-tax on the entire balance of distributable profits, it has to be borne in mind that Section 23A is clearly penal in nature; for, in the circumstances mentioned therein, if a private company fails to distribute by way of dividends the statutory percentage of its distributable profits, it becomes liable to pay, apart from the sum determined as payable by it on the basis of the assessment under Section 23, super-tax at 50 per cent or 37 per cent as the case may be, on the undistributed balance of its distributable profits. In the first place, this provision being penal, the burden would lie on the revenue to prove that the conditions laid down by the section are satisfied. Commissioner of Income-tax, West-Bengal v. Gangadhar Banerjee & Co. (p) Ltd., [57 I.T.R. 176](#), 184 Secondly, penal statutes have to be construed strictly in the sense that if there is a reasonable interpretation which will avoid the penalty, that interpretation ought to be adopted: "When the legislature imposes a penalty, the words imposing it must be clear and "distinct".

16. *He contended that interpretation which has been given by the tribunal is just and proper and decision of co-owner has not been challenged by the department and judgment of Nand Lal (supra) is also not challenged."*

And the relevant findings of Hon'ble High Court read as under:

"17. *We have heard counsel for the parties.*

18. *The first contention of Mr. Pathak regarding interpretation of prosecution and the exemption benefit is required to be accepted. Admittedly, while considering the prosecution, the provisions are to be very strictly construed whereas in the case of exemption and other benefits, it is to be construed from the statute very liberally.*

19. *The contention of Mr. Singhi that under Section 139, investment is to be made before the return is filed otherwise it will render the provision nugatory is to be considered in the light that while considering the case, Karnataka High Court in para no.6 & 7 (supra) has considered the provisions and interpreted the same. Even the same is accepted by the Punjab and Haryana High Court and Gauhati High Court which has taken the view contrary to Kerala High Court decision.*

20. *In that view of the matter, three High Courts have taken the view and the tribunal has followed the Karnataka High Court which has followed the earlier Gauhati judgment which has been independently supported by the Punjab Hararyana High Court.*

21. *In that view of the matter, the issue is required to be answered in favour of the assessee and against the department.*

22. *The appeal stands dismissed."*

In the instant case, where the amount was deposited in capital gain accounts scheme before filing of return U/s 139(4) of the Act, respectfully following the decision of Hon'ble Rajasthan High (supra), the same be eligible for deduction U/s 54F of the Act. In the result, the matter is decided in favour of the assessee and against the Revenue and the sole ground of appeal is allowed.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on /03/2020.

(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- /03/2020.

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Renu Jain, New Delhi.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 96/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar.