

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and  
Shri Manomohan Das, Judicial Member

**ITA No. 1009/Coch/2022**  
(Assessment Year:2014-15)

Sunita Prem Victor TC 25/2813 Mathrubhumi Road Vanchiyoor, Trivandrum 695035 [PAN:AKOPV8566C]	vs.	The Income Tax Officer Ward – 2(3) Trivandrum
(Appellant)		(Respondent)

Assessee by:	Ms. Divya Ravindran, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	11.10.2023
Date of Pronouncement:	30.10.2023

**ORDER**

Per Sanjay Arora, AM

This is an Appeal by the Assessee against the Order dated 26.10.2022 by the Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)], partly allowing her appeal contesting her assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’) dated 27.12.2016 for Assessment Year (AY) 2014-15.

2. The brief facts of the case are that the assessee returned her income for the relevant year on 18.12.2014 at Rs.5,67,250, claiming deduction under section 54 of the Act at Rs.91,05,096 in respect of construction of a residential house during the relevant year against the capital gain arising to her on sale of 3 pieces of land sold during March, 2013 to November, 2013. The claim was, admitting her mistake inasmuch as the capital asset/s sold was not a residential house, requested by the assessee vide letter dated 29.11.2016 for being considered u/s. 54F of the Act; she not owning any other residential house on the date of transfer/s. Earlier, on 25.11.2016, a revised statement of income was filed claiming exemption with reference to the total

investment on the residential house, claimed at Rs.1,63,69,500, as against at 50% earlier. The name of her mother, Smt. Esther Jayanthi, being included as the joint purchaser of the land appurtenant to the constructed property, which was the reason for restricting the claim u/s.54/54F to 50%, was that court proceedings in relation to her divorce were in progress and she apprehended an adverse claim from her husband. This did not find favour with the Revenue authorities inasmuch as Smt. Esther Jayanthi was a joint owner of the property, having in fact invested therein. The assessee's enhanced claim unaccepted, was restricted to 50%, i.e., as claimed earlier, adopting the investment in the capital asset as per the revised statement, i.e., at Rs.152.10 lakhs, as against Rs.163.70 lakhs. Hence, this further appeal.

3. Before us, the assessee's contention was that the monies invested by her mother (Rs.50 lakhs) were by way of a loan to her, and not in her own right as the purchaser of the property, *which was only for name-sake*. In any case of the matter, the deduction should be, as held by the Tribunal in other cases, allowed on proportionate basis, i.e., on the basis of the investment by the individual co-owners, rather than by regarding them as having equal shares. She could not, however, satisfactorily answer the Bench as to how a revised statement of income could be regarded as a revised return u/s. 139(5) of the Act, which is to be in proper form, signed and verified and, further, could only be where a return had been filed u/s. 139(1) of the Act and not, as obtains in the instant case, u/s. 139(4), which enhancement in scope, extending the right of revision to belated returns, is only w.e.f. 01.04.2017, i.e., AY 2017-18 onwards.

4. We have heard the parties, and perused the material on record.

4.1 The assessee's case is both legal and factually infirm. The assessee did not revise her return u/s. 139(5) of the Act as she could not in law do so. A revised computation of income is not in law a revised return. As apparent, the assessee had returned her income after considerable thought and delay, and the revision is not in

the least on account of a mistake, an amalgam of ‘mis’ and ‘take’. The revised statement seeks to make a fresh claim, albeit *qua* the same transaction, materially changing her status vis-à-vis the new asset, i.e., from a joint owner to the sole owner. The law in the matter is well-settled, and admits of only *bona fide* errors and omissions discovered later to be revised. There is accordingly no valid claim for the enhanced amount, i.e., in excess of Rs.91,05,096, which only could, where so, be regarded on merits. (also see para 4.2)

4.2 Without prejudice to the foregoing, the assessee has no case even on facts. This is as there is nothing on record to show that the contribution made by her mother for the investment in property was, as stated, by way of loans to her, i.e., as stated in the assessment proceedings, *indicating a changed stand in making the revised claim*; the earlier stand being of the said contribution being by way of her own investment. Disregarding the loan component (Rs.55 lakhs), which, in the absence of any material on record to the contrary, would fall to the share of the two co-owners equally or, as the case may be, in the ratio of their investments, the assessee’s investment is at 54% of the total investment of Rs.108.7 lakhs by the co-owners (refer assessee’s reply at para 8, pg. 4 of the assessment order). The said investment stands reduced subsequently by Rs.11.60 lakhs per the revised statement. The investment by mother is on purchase of land, which being thus paid to a third party, cannot be reduced, so that the entire reduction (of rs. 11.60 lacs) would be on the construction account, funded by the assessee, reducing her share in the total investment to below 50%. Further, information furnished or brought on record per such revised statement or invalid revised return could though be used for the purpose of assessment, including reassessment (*Niranjan & Co. (P.) Ltd. v. CIT* [1986] 159 ITR 153 (SC)). The inference of equal share in house property is, under the circumstances, valid.

4.3 We, however, find that the capital gain on which deduction has been claimed is in respect of sale of three plots, of which first is in March, 2013. *How,*

*we wonder, the capital gain thereon be assessed for the current year?* This issue, though not raised before us, stares one on the face of it and, therefore, needs to be addressed; we discerning the issue arising as the capital gain assessable for the current year on sale of land. As explained in *CIT v. Walchand & Co. (P.) Ltd.* [1967] 65 ITR 381 (SC), the Tribunal, final fact finding authority under the Act, is to deal with and determine questions which arise out of the subject matter of appeal in light of the evidence, and consistently with the justice of the case.

The matter accordingly shall travel back to the file of the AO for considering the validity of the assessment of capital gain on the plot of land 'sold' in March, 2013 for the current year; it being trite that each year is a separate unit of assessment, and income for each year is to be assessed only for that year. Further, whether therefore the assessee has returned the gain thereon for AY 2013-14, the year in which the transfer and, thus, capital gain thereon ostensibly arises, and is accordingly assessable, is irrelevant. This is also for the reason that the capital gain under the Act (i.e., u/s. 2(24)(vi) r/w s. 45) is chargeable on accrual and not on its receipt. As such section 5(1)(a) of the Act, which is even otherwise subject to the provisions of the Act, shall not operate to bring the said income to tax for the current year even if it is received or applied during the current year. The capital gain for the current year is to be accordingly reworked by excluding the same. The application of income, which entails deduction u/s. 54F of the Act, shall stand adjusted accordingly, i.e., excluding the amount regarded as applied in respect of the capital gain for AY 2013-14. Needless to add, where not returned for that year, or in the absence of a clear movement of funds for investment, the utilization be appropriated against the income for the current year, which could be up to the date of filing the return for the current year and, thus, by a year. The assessee shall be heard in the matter, incorporating her objections, if any, which shall be considered and dealt with by the AO in his order. We decide accordingly.

5. In the result, the assessee's appeal is partly allowed for statistical purposes.

*Order pronounced in the open court on October 30, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: October 30, 2023

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar  
ITAT, Cochin