

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 599/KOL/2024
Assessment Year: 2021-22**

**Smita Sachin Mehta.....Appellant
[PAN: AFAPM5506L]**

Vs.

ADIT, CPC, Bengaluru.....Respondent

Appearances:

Assessee represented by: Amit Agarwal, AR.

Department represented by: Chandan Das, Addl. CIT, DR.

Date of concluding the hearing : November 6th, 2024

Date of pronouncing the order : November 29th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2021-22 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-2, Surat [in short Id. 'CIT(A)'] dated 08.02.2024 arising out of the assessment order framed u/s 143(1) of the Act dated 24.12.2022.

1.1. The brief facts of the case of the appellant are that the assessee filed its return of income which has been assessed by the CPC and an order u/s 143(1) of the Act was passed thereby denying the deduction of the assessee claimed

u/s 54F of the Act for an amount of Rs. 61,40,307/-. The said order has been challenged by the assessee before the Ld. CIT(A) wherein appeal of the assessee has been dismissed on the ground that appellant is deliberately avoiding the persuasion of this appeal.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. Ld. Counsel for the assessee challenges the impugned order passed u/s 143(1) of the Act confirmed by the Ld. CIT(A) on various grounds but in course of argument he took legal grounds by filing copy of the income tax return and submitted that claim of deduction of Rs. 61,40,307/- made u/s 54F of the Act was denied without citing any reason. the ld. Counsel for the assessee submits that he filed income tax return that goes to show the claim of deduction u/s 54F of the Act had properly been made in the said income tax return. The ld. Counsel for the assessee submits that claim of deduction made u/s 54F of the Act can at best is said to be debatable issue and it is a settled proposition of law that a debatable claim cannot be disallowed by way of intimation passed u/s 143(1)(a) of the Act as proceedings 143(1) is a limited proceeding with respect to the arithmetical error and/or incorrect claim on the basis of any information in the return. He has cited the following decisions:

- i) Modern Fibotex India Ltd. vs. DCIT reported in [1995] 212 ITR 496 (Calcutta)*
- ii) Bajaj Auto Finance Ltd. vs. CIT reported in [2018] 93 taxmann.com 63 (Bombay)*

On the contrary, ld. DR supports the impugned order.

2. We have perused the case of the assessee and find that an order u/s 143(1) of the Act was passed by the CPC in which claim of deduction u/s 54F of the Act has been denied. We find that assessee filed copy of the ITR and on perusal of the same we find that claim of deduction u/s 54F of the Act was properly made in the said income tax return. The relevant portion of the said income tax return is reproduced herein below:

	a	LTTCG u/s 112A (Column 14 of 115AD(1)(iii) proviso)	8a	0						
	b	Deduction under sections 54F (Specify details in item D below)	8b	0						
	c	Long-term Capital Gains on assets at B7 above (8a-8b)	8c	0						
From sale of foreign exchange asset by NON-RESIDENT INDIAN (If opted under chapter XII-A)										
	a	LTTCG on sale of specified asset (computed without indexation)	9a	0						
	b	Less deduction under section 115F (Specify details in item D below)	9b	0						
9	c	Balance LTTCG on sale of specified asset (9a – 9b)	B9c	0						
	d	LTTCG on sale of asset, other than specified asset (computed without indexation)	9d	0						
	e	Less deduction under section 115F (Specify details in item D below)	9e	0						
	f	Balance LTTCG on sale of asset, other than specified asset (8d – 8e)	B9f	0						
From sale of assets where B1 to B8 above are not applicable										
	a	(i) In case assets sold include shares of a company other than quoted shares, enter the following details								
	a	Full value of consideration received/receivable in respect of unquoted shares	10aia	0						
	b	Fair market value of unquoted shares determined in the prescribed manner	10aib	0						
	c	Full value of consideration in respect of unquoted shares adopted as per section 50CA for the purpose of Capital Gains (higher of a or b)	10aic	0						
10	ii	Full value of consideration in respect of assets other than unquoted shares	10aia	87,84,423						
	iii	Total (ic + ii)	10aiii	87,84,423						
	b	Deductions under section 48								
	i	Cost of acquisition with indexation	bi	26,44,116						
	ii	Cost of improvement with indexation	bii	0						
	iii	Expenditure wholly and exclusively in connection with transfer	biii	0						
	iv	Total (bi + bii + biii)	biv	26,44,116						
	c	Balance (10aiii - biv)	10c	61,40,307						
	d	Deduction under sections 54F (Specify details in item D below)								
	S. No.	Section	Amount							
	Total		10d	61,40,307						
E	Long-term Capital Gains on assets at B9 above (10c - 10d)			B10e						
	Amount deemed to be long-term capital gains			0						
	Whether any amount of unutilized capital gain on asset transferred during the previous year shown below was deposited in the Capital Gains Accounts Scheme within due date for that year?									
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not Applicable. If yes, then provide the details below									
11	Sl.No.	Previous year in which asset transferred	Section under which deduction claimed in that year	New asset acquired/constructed Year in which asset acquired/constructed	Amount utilised out of Capital Gains account	Amount not used for new asset or remained unutilized in Capital gains account (X)				
	b	Amount deemed to be short term capital gains, other than at 'a'			B11	0				
	Total amount deemed to be long-term capital gains (aXi + aXii + b)					0				
12	Pass Through Income/Loss in the nature of Long Term Capital Gain,(Fill up schedule PTI)(B11a1+ B11a2 + B11b)					B12				
	a1	Pass Through Income/loss in the nature of Long Term Capital Gain, chargeable @ 10% u/s. 112A			B12a1	0				
	a2	Pass Through Income/loss in the nature of Long Term Capital Gain, chargeable @ 10% - under sections other than u/s. 112A			B12a2	0				
	b	Pass Through Income/Loss in the nature of Long Term Capital Gain, chargeable @ 20%			B12b	0				
13	Amount of LTTCG included in B1- B11 but not chargeable to tax or chargeable at special rates in India as per DTAA									
Sl.No.	Amount of income	Item No. B1 to B11 above in which included	Country Name,Code	Article of DTAA	Rate as per Treaty (enter NIL, if not chargeable)	Whether TRC obtained (Y/N)	Section of I.T. Act	Rate as per I.T. Act	Applicable rate [lower of (6) or (9)]	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
	a	Total amount of LTTCG not chargeable to tax as per DTAA							B13a	0
	b	Total amount of LTTCG chargeable to tax at special rates as per DTAA							B13b	0
14	Total long term capital gain chargeable under I.T. Act (B1e+B2e+B3e+B4c+B5c+B6e+B7c+B8c+B8f +B9e+B10 + B11 - B12a)							B14	0	
C	Income chargeable under the head "CAPITAL GAINS" (A9 + B13) (take B13 as nil, if loss)							C	6,16,153	
D	Information about deduction claimed against Capital gains									
	1 In case of deduction u/s 54/54B/54D/54EC/54F/54G/54GA/115F give following details									
	a Deduction claimed u/s 54									
	Sl. No.	Date of transfer of original asset	Cost of new residential house	Date of purchase/ construction of new residential house	Amount deposited in Capital Gains Accounts Scheme before due date	Amount of deduction claimed				

2.1. We have gone through the cited decision and find that Hon'ble Calcutta High Court has held as thus:

“The jurisdiction of the Assessing Officer under Section 143(1)(a) to make an adjustment and to issue an intimation is, in my view, limited not only to the obvious but also to that which is deducible from the return as filed, without

doubt or debate. This is clear from the language of the section and is supported by the authority as well as the circulars issued by the Central Board of Direct Taxes in this connection.

In the case of *Khatau Junkar Ltd. v. K.S. Pathania* [1992] 196 ITR 55, a Division Bench of the Bombay High Court held that (at page 71):

"This is because the scope of the powers to make prima facie adjustments under Section 143(1)(a) is somewhat coterminous with the power to rectify a mistake apparent from the record under Section 154...., In its literal sense, 'prima facie' means on the face of it, Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then can it be disallowed under the proviso to Section 143(1)(a). If any further enquiry is necessary, or if the Income-tax Officer feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under Subsection (2) of Section 143."

See also *S.R.F. Charitable Trust v. Union of India* [1992] 193 ITR 95 (Delhi).

In Circular No. 581 (see [1990] 186 ITR (St.) 2) dated September 28, 1990, issued by the Central Board of Direct Taxes, it has been said that the scope of the powers to make prima facie adjustments under Section 143(1)(a) is "somewhat coterminous with the power to rectify a mistake apparent from the record under Section 154". The nature of the remedy, therefore, circumscribes the power under Section 143(1)(a),

In fact the nature of the power under Section 143(1)(a) has been conceded by the respondent to be limited to those adjustments in respect of which Section 154 would provide an adequate remedy.

However, the similarity between the power under Section 143(1)(a) and Section 154 is to the extent stated, viz., the determination of liability as ascertainable from the return as filed. The likeness ends there. The differences are many.

The power under Section 143(1) may be exercised only in the circumstances mentioned in the proviso. Section 154 is not so limited.

Then again under Section 154 an opportunity is given to the assessee of being heard, there is no such opportunity provided under Section 143(1)(a) (See *Kamal Textiles v. ITO* [1991] 189 ITR 339 (MP)).

Thirdly, the consequences of a rectification under Section 154 do not result in the payment of additional tax whereas an adjustment under Section 143(1)(a) does.

The power under Section 143(1)(a) though described as a prima facie determination is not a temporary one in the sense that an interlocutory order is passed which is subject to a final order on further scrutiny. The intimation as far as the Assessing Officer is concerned is final and it entails immediate

and drastic consequences unless corrected or revised by a higher authority under Section 154 or Section 264, as the case may be.

The exercise of power under Section 143(1)(a) is, therefore, required to be scrutinised carefully and kept strictly within the bounds of the statute, any dispute being resolved in favour of the assessee.”

(Emphasis Supplied)”

2.2. Further, in the case of *Bajaj Auto Finance Ltd. (supra)* Hon'ble Bombay High Court has also held as thus:

“9. Further, our Court in Khatau Junkar Ltd. (supra) had while dealing with the word "prima facie inadmissible" in clause (U) of Section 143(l)(a) of the Act has held that the word "prima facie" means on the face of it the claim is not admissible. It means the claim does not require any further inquiry before disallowing the claim. The Court observed that where a claim has been made which requires further inquiry, it cannot be disallowed without hearing the parties and / or giving the party an opportunity to submit proof in support of its claim. In the absence of Section 143(l)(a) of the Act being read in the above manner i.e. debatable issues cannot be adjusted by way of intimation under Section 143(l)(a) of the Act, would lead to arbitrary and unreasonable intimations being issued leading to chaos.”

3. Keeping in view the facts of the case as well as the settled law in this context we find substance in the arguments of the Id. Counsel for the assessee that denial of deduction claimed u/s 54F of the Act in the intimation dated 24.11.2022 confirmed by the Ld. CIT(A) is against law. Accordingly, the order passed by the Ld. AO confirmed by the Ld. CIT(A) is hereby set aside, the appeal of the assessee is hereby allowed, deduction claimed by the assessee u/s 54F of the Act is hereby affirmed.

4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 29th November, 2024.

Sd/-

[Rajesh Kumar]
Accountant Member

Sd/-

[Pradip Kumar Choubey]
Judicial Member

Dated: 29.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Smita Sachin Mehta, 97 B, Shyam Kunj, Lake Town, Kolkata, West Bengal, 700089.**
2. **ADIT, CPC, Bengaluru.**
3. CIT(A)-2, Surat.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata