

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH(SMC),
RANCHI**

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 233/Ran/2023 (Assessment Year 2014-15)

Dilip Kumar, 4B, Dr. K.D. Choudhury Apartment, South Office Para, Doranda, Ranchi-834002 (Jharkhand) PAN No. ADLPK 4085 H	Vs.	D.C.I.T., Circle-1, Ranchi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Hari Patel, Advocate with Shri Deepak Patel, Advocate.
Department represented by	Shri Ashok Gautam, Sr.DR
Date of hearing	17/02/2025
Date of pronouncement	17/02/2025

ORDER

PER: PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER:

1. This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 31/08/2023 for the Assessment Year (AY) 2014-15 as per the grounds of appeal on record.
2. At the outset of hearing the learned counsel for the assessee submitted that the limited issue involved in this matter is that it is second round of litigation and in the first round, the ITAT, Ranchi Bench vide its order dated 09/04/2019 passed in ITA No.318/Ran/2018 have remanded the matter to the file of Assessing Officer directing him to examine the claim of assessee with regard to Section 54 of the Income Tax Act, 1961 (in short, the Act) as per the judgment of the Hon'ble Supreme Court in the case of Goetz (India) Ltd. Vs CIT (2006) 284 ITR 323 (SC). The relevant para of the ITAT order is extracted as under:

- "3. *It emerges from a perusal of the CIT(A)'s finding that the lower authorities have not made any reference to DVO u/s 50(C)(2) of the Act. Mr. Das vehemently contends that the assessee nowhere raised such a plea in the lower proceedings. I find no merit in Revenue's instant argument. Hon'ble Calcutta High Court decision in Sunil Kr. Agarwal Vs CIT reported in (2015) 372 ITR 83 (Cal) wherein it was held that the Assessing Officer has to make the impugned reference, even if, there is no such plea raised at the assessee's behest. I therefore restore the instant former issue back to the Assessing Officer for further appropriate proceedings. He shall also examine the assessee's claim Section 54 deduction as Hon'ble Apex Court's decision in Goetz (India) Ltd. (supra) makes it clear that the same nowhere impinges upon the appellate authorities' jurisdiction under the Act to entertain a new plea in absence of revised return.*
4. *Same order to follow in latter assessee's appeal I.T.A. No. 278/Ran/2018 since the lower authorities have not made any reference to the DVO u/s 50C(2) whilst adding the impugned capital gains.*
5. *These assessee's appeals are allowed for statistical purposes in above terms."*
3. It is the contention of learned counsel for the assessee that in the consequent assessment order passed by the Assessing Officer dated 18/12/2019, the Assessing Officer has not followed the direction of the Tribunal and has not examined the claim of assessee in terms with Section 54 of the Act. Therefore, the assessment order has to be held bad in law and void ab-initio.
4. Per contra, the learned Senior Departmental Representative (Id. Sr.DR) for the revenue submitted that though it is not specifically written in the assessment order, however, the claim of the assessee as per Section 54 of the Act has been considered by the Assessing Officer in the remarks made during the proceedings under Section 154 of the Act. However, he conceded that so far as the consequential assessment order is concerned, there is no specific mention as to the examination of the claim of assessee under Section 54 of the Act.

5. I have carefully considered the rival submissions of both the parties, documents on record and the facts and circumstances of this case. That on perusal of order of Tribunal (supra) specifically para 3 onwards, the Tribunal had directed the Assessing Officer to examine the assessee's claim as per Section 54 of the Act in terms with Hon'ble Supreme Court decision in Goetz India Ltd. (supra). However, during the consequent assessment order, such examination was not done by the Assessing Officer. There is no discussion in the entire assessment order with regard to examination as per the deduction claimed by the assessee under Section 54 of the Act. Therefore, assessment order suffers from direct violation of the Tribunal's order and hence it has to be held that such consequent assessment order giving appeal effect is void ab initio and all the proceedings consequent to such void assessment order becomes nonest as per law. I hold accordingly. As per the above terms, appeal of the assessee stands allowed.
6. In the result, this appeal of assessee is allowed.

Order announced in open court on 17th February, 2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Ranchi, Dated: 17/02/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi