

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "B" Bench, Mumbai.

Before Shri Narendra Kumar Choudhry (JM) &  
Shri Omkareshwar Chidara (AM)

ITA No. 2198/MUM/2025 (Assessment Year : 2020-21)

Nemkumar H 3302, 25 South, Tower A Yadav Patil Marg, Prabhadevi Mumbai-400 025. PAN : AAAPH8104L Appellant	Vs.	PCIT, Circle-42(2)(1) Kautilya Bhavan BKC, Bandra East Mumbai-400 051. Respondent
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Assessee by	:	Shri Sukhsagar Syal & Shri Atul Saraiya, CA
Revenue by	:	Shri Satyaprakash R. Singh
Date of Hearing	:	30/06/2025
Date of pronouncement	:	26/09/2025

ORDER

Per Omkareshwar Chidara (AM) :-

The issue to be decided in this case is, whether the appellant is eligible for the exemption under section 54F of the Income Tax Act, in the facts and circumstances of the case. The appellant's claim is that his shares were sold and the sale proceeds were invested in the house property. The Ld. AO accepted the claim of appellant and passed the order under section 143(3) of the Income Act. The Ld. AR of the appellant submits that in the body of assessment order, the Ld. AO accepted the claim of appellant, but in the computation sheet, the benefit under section 54F was not given. Hence, the appellant filed a rectification petition under section 154 of the Act requesting the Ld. AO to rectify this mistake which is apparent from record and give benefit under section 54F of the Act. But the Ld. AO denied the benefit while passing the order under section 154 of the Act by stating that appellant is not entitled to the benefit under section 54F of the Act. Aggrieved by the denial of benefit under section 54F of the Act, the appellant

filed an appeal before Ld. CIT(A) on this order under section 154 of the Act which is pending.

2. At this juncture, the Ld. AR has submitted that Ld. PCIT issued a notice under section 263 of the Act to the appellant that the Ld. AO committed a mistake in allowing the deduction to him while passing the order under section 143(3) of the Act. The Ld. PCIT says in this notice under section 263 of the Act that the amount of sale proceeds of shares should be invested before the time allowed under section 139(1) of the Act and the appellant has not invested the same within the due date mentioned under section 139(1) of the Act. Moreover, the amount was not invested in capital gains scheme as per the procedure. Since the Ld. AO has not applied his mind to the aspects of filing of Return of Income under section 139(1) and depositing the unutilised amount within the time allowed under section 139(1), the Ld. PCIT concluded in his order under section 263 of the Act that the order passed by Ld. AO under section 143(3) dated 23.9.2022 is incorrect as both the conditions of “erroneous order” and “prejudicial to the interest of Revenue” are fulfilled.

3. The facts being as above, Ld. AR of the appellant initiated the case before ITAT and submitted that there is no error in the order of Ld. AO who passed it under section 143(3) of ITAT because that order was already rectified by the Ld. AO under section 154 of the Act. The Ld. AR has submitted that the order under section 143(3) was passed by Ld. AO on 23.9.2022 and this order was rectified by Ld. AO under section 154 of the Act on 27.11.2024, withdrawing the deduction allowed u/s. 54F of the Act to appellant. The Ld. PCIT has initiated the proceedings on 10.2.2025 under section 263 of the Act to set aside the order passed by Ld. AO under section 143(3) of the Act. The Ld. AR vehemently argued that there is no valid order under section 143(3) of the Act of Ld. AO as on 10.2.2025 because this order was already rectified by Ld. AO under section 54F was denied. This rectification order under section 154 is appealed against by appellant before Ld. CIT(A) and the same is pending, it was submitted. The main argument of

Ld. AR of appellant is that once the mistake was rectified by Ld. AO (which was appealed against and pending), then the original order loses its identify to that effect and the original assessment order cannot be revised under section 263 of the Act. The mistake was already rectified under section 154 of the Act by the Ld. AO and the Ld. PCIT cannot again revise the order for the purpose of rectifying the same mistake. Once the mistake committed under section 143(3) was rectified by Ld. AO, it cannot be said that there is a mistake in the assessment order. In other words, for the same mistake, the Revenue cannot issue two orders, once by AO and by PCIT, even though under different sections. Even though, on merits very detailed submissions were filed by both Ld. AR and Ld. DR, what is to be adjudicated in this appeal is whether the order under section 263 of the Act passed by PCIT is valid in view of the above facts and circumstances which were not disputed.

4. After hearing both sides and perusing the written submissions filed by the parties, the Bench decided that there is no mistake in the order which is sought to be revised on the day Ld. PCIT issued notices/passed order under section 263 of the Act. The Ld. PCIT passed the order on 5.3.2025 revising the 143(3) order of the Ld. AO. But, this 143(3) order was already rectified by AO on 27.11.2024, denying the section 54F benefit to the appellant. Hence, there is no mistake in the order of Ld. AO dated 23.9.2022 which was revised by Ld. PCIT vide his order dated 5.3.2025. In this regard reliance is placed on the decision of Hon'ble Madhya Pradesh High Court of CIT Vs. Kalyan Solvent Extraction Ltd. (2005) 276 ITR 154, wherein the Hon'ble Court held that "in view of the matter, the Commissioner had no jurisdiction to set aside that order which stood already rectified. In other words, the Commissioner could at best have invoked his suo motu powers under section 263 of the Act as against the order dated March 14, 1989 passed by the assessing officer and not the one already passed and rectified, i.e., the original assessment order dated March 13, 1987. Once the original order stands rectified, then it loses its identity at least to the extent it stood

rectified." To the same effect is the decision of the Hon'ble Tribunal in the case of Suman Bansal v. ITO (2014) 66 SOT 182.

5. It is a settled law that, unless there is "error", the order of Ld. AO cannot be taken up for Revision under section 263 of ITAT by PCIT. As there is no mistake in the order under section 143(3) which was rectified under section 154 of the Act, the initiation of jurisdiction under section 263 is incorrect. In view of the same, the order of Ld. PCIT under section 263 is held as invalid.

6. The appeal of appellant is allowed.

Order pronounced in the open Court on 26/09/2025.

Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

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BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai