
Usha Gupta Vs Commissioner of Income Tax

IT Appeal No. 200 of 2005

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: Oct. 25, 2005

Acts Referred:

Income Tax Act, 1961 – Section 143(1), 143(2), 54F

Citation: (2006) 204 CTR 399 : (2008) 296 ITR 287

Hon'ble Judges: S.N. Jha, C.J; Y.R. Meena, J

Bench: Division Bench

Advocate: Sanjay Jhanwar, for the Appellant;

Final Decision: Dismissed

Judgement

1. Following questions have been raised in this appeal:

(i) Whether, under the facts and circumstances of the case, the order passed by the learned Tribunal is not perverse, contrary to the facts and

material available on record and ex facie illegal ?

(ii) Whether prima facie adjustment u/s 143(1)(a) of the Act can be made to deny exemption u/s 54F of the Act, for want of enclosure of the proof

to the return of income ?

(iii) Whether an exemption can be considered to be prima facie inadmissible for want of proof u/s 143(1)(a) on the basis of return of income

enclosed to the return where there is no statutory requirement of enclosure of proof to the return of income ?

(iv) Whether, learned Tribunal was justified in setting aside the matter by giving a direction to AO to pass afresh order after allowing an opportunity

of being heard to the assessee when the statutory provision do not permit calling of the assessee u/s 143(1)(a) of the Act ?

(v) Should the provisions of Section 143(2) not be invoked for seeking information from the assessee when this specific provision exists for

seeking the information from the assessee?

2. The short controversy involved is whether the Tribunal was justified in remanding the matter back to the AO to place on record the material

evidence for claiming benefit provided u/s 54F of the IT Act, 1961. The AO denied the benefit of deduction u/s 54F to the assessee on the ground

that no evidence had been annexed along with the returns. Against that order appeal was filed by the assessee before the CIT (A). CIT (A) after

considering the documents placed before him regarding benefit u/s 54F of the Act found that the assessee is not full owner of the property in

question and she had not attached those documents along with returns and as such no benefit can be granted. In appeal before the Tribunal, the

Tribunal though agreed that in absence of the evidence, benefit of deduction u/s 54F of the Act cannot be allowed, but remitted the matter back to

the AO to give an opportunity of hearing to the assessee and pass a fresh order.

3. Clause (b) of Sub-section (1) of Section 143 of the Act of 1961 provides that AO can rectify any arithmetical mistakes in the returns, accounts

and documents, referred to in Clause (a) Clause (a) of Sub-section (1) of Section 143 provides that the AO may, without requiring the presence of

the assessee or the production by him of any evidence in support of the return, make an assessment of the total income or loss of the assessee after

making such adjustments to the income or loss declared in the return,

4. Admittedly the assessee has claimed deduction u/s 54F of the Act without annexing any documents in support of the claim. When no document

is annexed in support of the claim for deduction, mere claim of deduction u/s 54F cannot be allowed. It cannot be the intention of the legislature to

accept whatever assessee says without proper evidence in support of that claim. If there is mere claim without support by the documents in favour

of that claim, the AO has no power to adjust that income or deduction, as provided under the Act. If the view is taken that even without any

evidence or document annexed with the return the claim of assessee for any deduction is to be allowed, there is no purpose of even filing the

returns or sending the intimation to the assessee u/s 143(1) of the Act.

5. In our view the Tribunal was too liberal in remitting the matter back to the AO for giving opportunity to the assessee. However, the Department

is not in appeal, therefore, we cannot interfere with the order of Tribunal to the extent it is in favour of the assessee.

6. No case is made out for admission of the appeal. The appeal is dismissed at the admission stage.