

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

(through web-based video conferencing platform)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 657/Ahd/2019
Assessment Years : 2012-13

Shri Bhadresh Suryakant Patel, A-73, Mathura Nagari, Behind Nand Society, Old Padra Road, Vadodara Pan : AKLPP 1848 G	Vs	Income Tax Officer, Ward-1(2)(3), Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	None	
Revenue by :	Shri Kamlesh Makwana, Sr DR	

सुनवाई की तारीख/Date of Hearing : 10/11/2021
घोषणा की तारीख /Date of Pronouncement: 01/12/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE PRESIDENT :

The assessee is in appeal before the Tribunal against the order of learned Commissioner of Income-tax (Appeals-5), Vadodara ["CIT(A) in short] dated 25.02.2019 passed for Assessment Year 2012-13.

2. The solitary grievance of the assessee is that learned CIT(A) has erred in confirming the disallowance of deduction of Rs.11,41,430/- claimed under Section 54B of the Income-Tax Act, 1961 ("the Act" in short).

3. In response to the notice of hearing, no one has come present on behalf of the assessee. Therefore, with the assistance of learned Departmental Representative, we have gone through the record carefully and proceed to dispose of the appeal *ex-parte* qua the assessee.

4. Before the learned First Appellate Authority, the assessee has filed written submissions and those submissions have been reproduced by the learned First Appellate Authority in paragraph No.3 of the impugned order. These submissions would make the issue clear on factual aspects; therefore, we deem it appropriate to take note of these submissions of the assessee alongwith the findings of learned CIT(A) which read as under:-

"3. During the appellate proceeding before me, the appellant filed written submissions on 12/02/2019 and the most relevant part material to decide the issue is reproduced as under:

"During the year under consideration I with other four co-owners sold Agricultural Land for the consideration of Rs. 1,45,00,000/-. My share is 1/5th in said land. Jantri value of said Agricultural Land is Rs. 2,77,91,850/-. I have shown sale value as per Jantri value and my share is Rs. 55,58,370/- (1/5th of Jantri Value)

*Sale Value as per Jantri value Rs. 55,58,370/-
Less:- Index cost Market value as on 01-04-1981 is Rs.5,28,723 (1/5th of Rs. 26,43,157)*

*i.e 5,28.723X785 Rs. 41,50,476/-
100*

Long Term Capital Gain Rs. 14,07,894/-

I have purchased Agricultural Land for Rs. 11,41,430/- and claimed exemption u/s 54B of the Act. But Income Tax Officer disallowed my claim of exemption U/s 54B of Rs. 1141430/- and hence I am in appeal before your honor for the same.

Grounds of Appeal is "The Learned Income Tax Officer erred in disallowing exemption U/s 54B of the Act, of Rs. 1141430/-. He further erred in holding that assessee did not comply with the provisions of section 54B of the Act and hence claim of exemption U/s 54B is not allowable."

I have sold agricultural land for sale consideration of Rs. 14500000/- alongwith four other Co-owner and my share is 1/5th in said agricultural land. Jantri value of the said agricultural land is Rs.27791850/-. So, calculation of long term capital gain is Rs. 14,07,894/- as calculated above.

Details of Agricultural Land Purchased is given as under -

Purchased agricultural land and investment is made as under -

(i) Block/R.S.No. 592, Village Anstu, Tal. Karjan, Dist. Vadodara	
Purchase Price	Rs. 5,24,500
Stamp Duty	Rs. 26,000
Registration Charges	Rs. 5,370
Total	Rs.5,55,870

(ii) Block/R.S.No.591, Village Anstu, Tal. Karjan, Dist. Vadodara	
Purchase Price	Rs. 13,30,500
Stamp Duty	Rs. 65,200
Registration Charges	Rs. 13,450
Total	Rs. 14,09,150

(i)+(ii)=19,65,020/-. My Share is 50% of Rs. 19,65,020 - 9,82,510

(iii) Block/R.S.No.463, R.S.No. 445 and 448/2 Village Samsabad, Tal. & Dist. Vadodara	
Purchase Price	Rs. 6,00,000
Stamp Duty	Rs. 29,500
Registration Charges	Rs. 6,180
Total	Rs. 6,35,680

My share is 1/4 th of Rs. 6,35,680 = Rs. 1,58,920

Rs. 9,82,510 + Rs. 1,58,920 = 11,41,430/-

I have claimed exemption u/s 54B of the Act of Rs. 11,41,430/- as calculation shown above.

Details of payment received against Sale of Agricultural Land and investment made for purchase of Agricultural Land is given as under-

(i) Payment received against Sale of Agricultural Land Village Kalali, R.S.No. 44, Block no. 47 sale consideration Rs, 1,45,00,000/-. My share 1/5th

Date	Amount (Rs.)
24-04-2010	Rs. 5,00,000
05-09-2010	Rs. 5,00,000
10-10-2010	Rs. 9,50,000
07-01-2013	Rs. 9,50,000
Total	Rs. 29,00,000

Investment is made for purchase of Agricultural Land as under:-

<i>Date</i>	<i>Amount (Rs.)</i>
24-04-2010	Rs. 1,00,000
26-07-2010	Rs. 5,00,000
22-10-2010	Rs. 1,24,500
22-10-2010	Rs. 3,30,500
16-02-2013	Rs. 1,50,000
<i>Total</i>	<i>Rs. 12,05,000</i>

So I have invested in Purchase of Agricultural Land the money received from sale of Agricultural Land. It can be seen from above details given.

Hence requirement of section 54B are satisfied. Whatever amount received against sale is invested for Purchase of Land.

Appellant has relied on following rulings:-

- (i) Ramesh Narhari Jakhadi v. ITO [1992] 41 ITD 368 (Pune-Trib.)*
- (ii) Parveen P. Bharucha v/s CIT212 Taxman 166(Bom.)*
- (iii) CIT v/s Ms Jagriti Aggarwal reported in 339 ITR 610 (P&H)*
- (iv) CIT Rohtak v/s Shri Jagtar Singh Chawla reported in LD/61/82*

Held, Where assessee has proved payment of substantial amount of sale consideration for purchase of a residential property within extended period of limitation of filing of return and acquired a residential house before end of next Financial Year in which sale has taken place, assessee would not be liable to pay any capital gain.

The facts of the my case is similar to facts of the above said cases and hence exemption U/s 54F is applicable in my case.

Therefore, I request your honor kindly appeal may be allowed. "

4. I have considered the order of the AO and the written submissions of the appellant. A.R. is also heard in the matter.

4.1 One of the reason for which the claim of the appellant for relief u/s 54B was rejected by the AO was that unutilized Capital Gain was not deposited in Capital Gain Account Scheme held with bank before the due date of filing of return u/s 139(1) of the Act. Another argument of the AO is that two parcel of land were purchased before the date of sale deed of his agricultural land. Ld.AR controverted these findings of the AO stating that various judicial pronouncement have allowed assessee's claim u/s 54B when agriculture land was purchased from advance money received out of sale

consideration and so it was not necessary to buy agricultural land only after sale deed.

4.2 Ld.AR has referred order of the tribunal and also the order of the P&H High Court in its favour. However, in none of the orders, I find, issue of depositing Capital Gain in bank was discussed. In those cases, issues came up for consideration was only purchase of agricultural land prior to execution of sale deed. However, the case in hand, appellant has purchased two plots of agricultural land prior to execution of sale deed of his agricultural land and one plot after the execution of sale deed. Further, appellant has not filed his return u/s 139(1) nor he deposited the sale consideration / capital gain in CGA Scheme, Appellant filed his return on 30.07.2015 only when AO issued notice u/s 148 on 20.05.2015 Ld.AR's reliance placed on various orders wherein facts of filing ITR against notice u/s 148 were never discussed. Thus, facts are different in those case laws relied upon hence ratio decidendi cannot be adopted in this case.

4.3 In a landmark judgment dated 31.07.2018, while over-ruling a 1971 judgment in the Sun Export case that held that had held a contrary view, a five-judge constitution bench said that "exemption notification should be interpreted strictly, the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause of exemption notification ".

" When there is ambiguity in exemption notification, which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the suspect / assessee , it must be interpreted in favour of the revenue, the court held in case of Commissioner of Customs Vs Dilipkumar (Supra) holding that the ratio in Sun Export case " is not correct and all decisions which took similar view stand over ruled". Justice Ramana, writing for the bench, said the earlier view "created confusion and resulted in unsatisfactory state of law ".

4.4 Considering those facts, AO's findings at para 4.2 & 4.3 of the assessment order remains absolute and Ld.AR has not succeeded in controverting those findings. Law on doctrine of substantial compliance and intended use has been explained in by the Hon'ble SC. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used, there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering taxing statute. Admittedly, appellant purchased three plots of land, two of them prior to sale deed and one after the sale deed and within time allowed u/s 139(4) of the Act but

without depositing Capital Gain in bank. Clearly, there were conspicuous gaps in filing ITR, claiming exemption u/s 54B.

4.5 Considering all these facts, I don't find any cogent reason for non-compliance of statutory provision u/s 54B(2) of the Act. I am of the firm opinion that AO's findings need not be interfered with. Therefore, withdrawal of exemption u/s 54B amounting to Rs. 11,41,430/- is hereby upheld."

5. Perusal of the findings of learned First Appellate Authority would indicate that deduction under Section 54B of the Act has been disallowed by the Assessing Officer by holding that the assessee did not file return under Section 139(1) of the Act and he has not deposited the sale proceeds in the capital account. The major emphasis of the learned First Appellate Authority is that the assessee should have deposited capital gain in a bank account meant for this purpose; only then he can claim deduction under Section 54B of the Act. In these submissions it would reveal that the assessee has specifically shown the receipt as well as investment for purchase of agricultural land. Both these things have been made almost simultaneously. Section 54B of the Act authorizes an assessee to claim deduction under this section on an investment made for purchase of agricultural land two years prior to sale of an agricultural land. Similarly, it also authorizes to make investment two years after the sale of agricultural land. The investments of the assessee duly fall in this period. Hence, even if he has not deposited in the capital account, but he has already made investment; therefore, he is entitled for the deduction. We, respectfully following the decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs Ms Jagriti Aggarwal, reported in (2011) 339 ITR 610 (P&H), allow this appeal of the assessee and delete the disallowance, because the objection of the learned CIT(A) is without any basis. The correlation between the investment and receipt of sale proceeds within the time stipulated in Section 54B of the Act has duly been demonstrated by the

assessee. In view of the above, the appeal of the assessee is allowed and the Assessing Officer is directed to grant deduction under Section 54B of the Act amounting to Rs.11,41,430/-.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 1st December 2021 at Ahmedabad.

Sd/-

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad, Dated 01/12/2021

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad