

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव,लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.704/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

The Assistant Commissioner of Income Tax,
Circle-9,
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Ramakant Rajaram Bodke,
Flat No. 7, Mohit Apartment,
Barlota Nagar, Mamurdi,
Dehuroad,
Pune-412 101

PAN : ABCPB7263P

.....प्रत्यर्थी / Respondent

Revenue by : Shri Mukesh Jha

Assessee by : None (Written submission)

सुनवाई की तारीख / Date of Hearing : 10.11.2017

घोषणा की तारीख / Date of Pronouncement : 07.02.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal has been filed by the Revenue assailing the order of Commissioner of Income Tax (Appeals), Pune-6 dated 25.02.2015 for assessment year 2010-11.

2. The brief facts of the case as emanating from records are: The assessee is an employee of M/s. Force Motors Ltd., Pune and is also running a life insurance agency of Reliance Life Insurance Company Ltd. (Insurance Agent). The assessee filed return of income for the impugned assessment year on 14.03.2011 declaring total income of Rs.58,17,230/-. The assessee in the return of income had declared Long Term Capital Gain of Rs.51,79,319/- after claiming deduction of Rs.38,11,000/- u/s. 54B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee was co-sharer of land admeasuring 1H 13R comprising in Gut No.239, Village: Gahunje, Taluka- Maval, Dist.- Pune. After sale of said land, the assessee invested part of his share of sale consideration towards purchase of another piece of agricultural land and thus, claimed deduction u/s. 54B of the Act.

2.1 During the course of scrutiny assessment proceedings, the assessee filed revised computation of income *inter alia* claiming deduction of Rs.36,15,000/- u/s. 54F of the Act and expenditure of Rs.27,646/- on account of housing loan interest. In the revised computation of income, the assessee also disclosed agricultural income of Rs.14,262/-. The Assessing Officer rejected assessee's claim of deduction u/s. 54B on the ground that the assessee has not been able to show from cogent evidences that assessee or his parents used the land for agricultural purpose in the immediately two preceding years before the sale. In so far as, other claims of the assessee viz. claim of deduction u/s. 54F, interest on housing loan and agricultural income, the Assessing Officer out rightly rejected the claim of assessee on the ground that for claiming such deductions, the assessee should have claimed by filing revised return of income, as per the provisions of the Act.

By merely filing revised computation of income during assessment proceedings, the assessee is not eligible to claim such deduction.

3. Aggrieved by the assessment order dated 13.03.2013, the assessee filed appeal before Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after taking into consideration 7/12 extracts filed by assessee, allowed assessee's claim of deduction u/s. 54B of the Act. As regards, other claims made by way of revised computation during assessment proceedings, the Commissioner of Income Tax (Appeals) by placing reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Pruthvi Brokers & Shareholders Pvt. Ltd. reported as 349 ITR 336 accepted the same. Now, the Revenue is in appeal against the findings of Commissioner of Income Tax (Appeals) and has raised following grounds of appeal:

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in allowing the claim of deduction u/s.54B of Rs.38,11,000/-- by accepting 7/12 extract to be proof for agricultural land while there are no other evidence for agricultural operation carried out by the assessee including the fact that the assessee had not disclosed agricultural income in the return of income filed by him for the year under consideration as well as for previous A.Y.?"

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in allowing the claim of deduction u/s. 54F despite the fact that the claim has not been made in the original or revised return and that the newly acquired property is not in the name of assessee?"

3. Whether on the facts and circumstances of the case, the Ld.CIT(A)" was justified in deleting the addition of Rs.27,646/- on account of interest on housing loan when the claim was not made by filing revised return and that no computation under the head 'income from house property' was shown in the computation of total income?"

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.14,262/- by treating it as agricultural income when the assessee could not substantiate his claim with supporting evidences of having carried out agricultural activities?"

5. The appellant craves leave to add, amend or alter any of the above grounds of appeal."

4. Shri Mukesh Jha representing the Department vehemently supporting the findings of Assessing Officer submitted that during the course of scrutiny assessment proceedings, the assessee had furnished copy of 7/12 extracts in respect of land sold and on which the assessee has claimed benefit of deduction u/s. 54B of the Act. The Commissioner of Income Tax (Appeals) merely on the basis of 7/12 extract has granted benefit of deduction u/s. 54B of the Act. The 7/12 extract is not sufficient evidence to prove that the land was under cultivation by assessee or his parents. The assessee has not filed any supporting evidence viz. purchase of seed, manure and invoice for sale of crop, etc to show that agricultural activities were in fact carried out and agricultural produce was sold in the market. A perusal of 7/12 extracts reveal that the land in question was joint land owned by HUF registered in the name of "Karta". A further perusal of Sale Deed dated 07.10.2009 reveal that assessee had become owner of the land on the basis of division effected in the family as per agreement dated 28.04.2008. Thus, there is no question of agricultural activities being carried out on the land or land being used for agricultural purpose prior to that date.

4.1 In respect of claiming deduction u/s. 54F of the Act, the ld. DR submitted that Commissioner of Income Tax (Appeals) has erred in granting benefit of deduction u/s. 54F to the assessee as in the first instance assessee had never claimed such deduction in the return of income. Such claim can be made only by way of filing return of income or revised return of income. Thus, benefit of deduction u/s.54F cannot be allowed. The ld. DR further submitted that Hon'ble Supreme Court of India in the case of Goetze (India) Ltd. Vs. CIT reported as 284 ITR 323 has held that Assessing Officer cannot entertain a claim of deduction otherwise than by filing a revised

return of income. A fresh claim of the assessee can only be entertained by the Tribunal in exercise of power u/s. 254 of the Act.

4.2 In respect of interest on house loan Rs. 27,646/-, the ld. DR submitted that the assessee in the return of income had not declared income from house property, therefore, there is no question of allowing any interest on house loan.

4.3 In respect of ground No. 4 relating to claim of agricultural income of Rs.14,262/-, the ld. DR submitted that assessee had not filed any evidence before the Authorities below in support of agricultural income. Moreover, the assessee had not declared agricultural income either in the return of income or in the revised return of income. It is for the first time that the assessee declared agricultural income in the revised computation of income filed at the time of assessment proceedings. The ld. DR prayed for reversing the findings of Commissioner of Income Tax (Appeals) and upholding the assessment order.

5. None appeared on behalf of the assessee. The assessee vide letter dated 28.10.2017 waived his right of appearance. However, written submissions have been filed by the assessee. The relevant extract of the same are reproduced herein below:

“It is true that at the time of initial hearing, the assessee had not with him a 7/12 extract for the year 2006-07, for which, upon requisition by the Ld. A.O., the assessee had applied to the Revenue deptt., for issuing the said extract, vide the assessee's letter acknowledged by the revenue department on 21/12/2012 [paper book page 98 and T 9]. A 7/12 extract. The same was issued by the Tahsildar on 1/02/2013 (Paper book page 99 and T 10 to 12),

It may kindly be seen that the details of crops taken right from the years 2000-01 to 2009-10 are described therein by the Tahsildar,

Maval, which shows that the sold land was continuously under agricultural operations as back as years 2000-01 to the date of sale.

It may be stated that the Ld. Assessing Officer had asked the assessee to produce 7/ 12 extracts in support of the proof that the lands were agricultural lands and were put to use for agricultural purposes. This requirement was duly sufficed by the assessee. Yet, one more evidence in the form bank statement of the Pune Distt. Central Bank [Paper book pages 248 to 251] was adduced before him which showed that on –

<i>18/07/2008 Rs. 4178/- being sugar bill</i>	}	<i>PB page 249</i>
<i>21/10/2008 Rs.6864/- being sugar bill</i>		
<i>30/01/2009 Rs. 24,438/- being sugar cane bill</i>		
<i>05/09/2009 Rs.5045/- being sugar cane bill</i>	}	<i>PB page 250</i>
<i>29/10/2009 Rs.2018/- being sugar cane bill</i>		
<i>07/01/2010 Rs. 2018/- being sugar cane bill and</i>		
<i>05/02/2010 Rs. 807/- being sugar cane bill</i>		

were credited to the assessee's bank account. The above entries are pertaining the previous years relevant to the assessment years 2009-10 and 2010-11. These statements were produced in view of the specific query of the Ld. Assessing Officer to produce bank statements relevant to the assessment year 2010-11.

The assessee therefore prays to consider the facts of the case and to appreciate that sufficient evidences of user of agricultural lands were produced before the Ld. Assessing Officer.

The assessee further wishes to invite your kind attention to the Sale Deed [from the side of the assessee but mentioned as purchase deed from the side of the purchaser] dated 7-10-2009 [paper book pages 161 to 190 and also T 58 to T 75] of the Gahunje land bearing Gat No. 239 admeasuring 1 H 13 R area. At clause 14 [paper book page 168 and T 65], it is described that the vendors [i.e. the assessee in our case] are agriculturists and that the purchaser has received the necessary permission u/s 63 - 1A of the Mumbai Tenancy Act from the Revenue and Forest Department of the Maharashtra Government. This special permission was necessary because the purchaser being a non-agriculturist company could not buy the agricultural land under normal circumstances. A copy of the special permission Resolution is appearing at pages 183 - 184 of the Paper book and T 72 - 73]. In the introductory part on page T 72, the State Govt. clarifies that any- body [any person] who is not agriculturist can purchase agricultural lands without the prior approval of the District Collector, as per Clause (1) of the Section 63 - 1A and that special permission was granted to the purchaser u/s 63 - 1A by the State Government. This fact, it is submitted, clearly establishes that the land was agricultural land at and up to the time of its sale and therefore the capital gains arising from its transfer were

eligible to enjoy the deduction u/s 54B in respect of the agricultural land bought by the assessee within the time limit prescribed in the Act.

The relief granted by the kind Ld. Commissioner (Appeals) may therefore kindly be upheld.

Regarding deduction u/s 54F claimed in revised computation.

A query was raised as to why the amount of capital gains shown in the name of the assessee's wife was clubbed in the assessee's hand, u/s 64.

It may be submitted that the pages 219 to 221 of the paper book, contain an opinion given by one Kishor B. Phadke & Co., Chartered Accountants. After considering the history of the land holdings and of the partition of the family of the late GajabaBodke, grandfather of the assessee, it is concluded that the land subject to capital gains became the individual property of the assessee. Therefore, the money of sale proceeds although appropriated to the assessee's wife by the purchaser was considered to be proceeds belonging to the assessee and the same was clubbed u/s 64 in the assessee's hand while filing the Return of Income.

However, at the time of compilation of a revised computation of total income, due to some arithmetical errors in the original computation of capital gains, a claim for deduction u/s. 54F for the investment made by the wife out of the proceeds received in her name was sought.

Now at the instance of a specific query raised by the Hon'ble Bench as to why the wife's share was clubbed u/s. 64, in the assessee's computation, it transpired to the assessee that there was a mistake on his part to put forth a claim for deduction u/s. 54F. The assessee, therefore, does not push his claim any more, before your Honour.

As regards the remaining issues, the assessee states that the relief allowed by the Ld. Commissioner (Appeals) may kindly be confirmed on the basis of the merits of the case."

6. We have heard the submission made by the Id. DR and have perused the orders of Authorities below, written submissions filed by the assessee and relevant documents placed on record. The first ground raised by the Revenue in appeal is with respect to assessee's claim u/s.54B amounting to Rs.38,11,000/-. The primary objection raised by the Department is that Commissioner of Income Tax (Appeals) has allowed the claim of deduction u/s.54B merely on the basis of 7/12 extract. It is an undisputed fact that assessee had furnished copy of 7/12 extracts with respect to Gut No.239 for financial year 2000-01 to

2009-10. A perusal of translated copy of the same at page T-10 to T-12 of the paper book reveal that assessee is one of the co-owner of the land comprising in Gut No. 239 which is subject matter of dispute. The land under reference is under cultivation and sugarcane is grown on the said land from 2000-01 towards till 2009-10. The assessee along with other co-sharers sold the said land vide registered Sale Deed dated 07.10.2009 to M/s. Parasnath Hitech Construction Pvt. Ltd. As per provision of Section 54B as they were in force for assessment year 2010-11, following conditions should have been satisfied for claiming benefit of deduction u/s. 54B:

- i. The agricultural land is transferred by any individual.
- ii. The agricultural land has been used by the individual or his parents for agricultural purpose during two years immediately preceding the date of transfer.
- iii. The assessee had purchased another agricultural land (rural or urban) within a period of two years after the date of transfer of the original agricultural land to be used for agricultural purpose.
- iv. If the amount of Capital Gain is not utilized by the assessee for the purchase of another agricultural land before the date of furnishing return of income u/s.139 of the Act, the same should have been deposited before furnishing such return in a notified Capital Scheme account with bank.

In so far as conditions in clause (i), (iii) and (iv) are concerned, there is no dispute in the present case. The only dispute is whether agricultural activities were carried out by the assessee on his share of land. The Assessing Officer has raised doubt that the land was not used for agricultural purpose either by assessee or his parents. The revenue record in the form of 7/12 extracts clearly indicate that Sugarcane was grown in Gut No. 239, Village – Gahunje wherein, the assessee is one of the owner. A close

reading of 7/12 extracts at page 216 to 218 of the paper book for financial year 2007-08, 2008-09 and 2009-10 in respect of Survey No. 239 show that land was under self cultivation. During the course of scrutiny assessment proceedings, the Assessing Officer has not raised any doubt over the authenticity of 7/12 extracts furnished by assessee. The 7/12 extracts is revenue record maintained by Land Revenue Department of State Govt. Therefore, it carries some sanctity with respect of its contents.

The assessee has also furnished a copy of bank statement at page 248 to 251 of the paper book indicating that Sugarcane cultivated by assessee was sold to sugar factories. The assessee received payment from sugar factories in his bank account bearing No.4016 with Pune District Central Co Operative Bank Ltd, Dehuroad Branch, Pune. A perusal of bank statement shows that the assessee has received payment in respect of Sugarcane bill on various dates starting from 18.07.2008 to 05.02.2010. The entries in the passbook further supports the claim of assessee that sugarcane was cultivated during the financial year 2008-09 and 2009-10. The land revenue entries in 7/12 extract indicating the crop grown coincides with the payments received by assessee in his Bank account for sale of sugarcane.

Thus, we do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in accepting assessee's claim of deduction u/s. 54B on the basis of 7/12 extracts, the genuineness of which was never in question. Accordingly, **Ground No. 1 raised in the appeal by the Department is dismissed.**

7. The Ground No. 2 raised in appeal by Department is with respect to assessee's claim of deduction u/s.54F. It is an admitted fact that the

assessee in the original return of income or in the revised return of income had never claimed deduction u/s.54F of the Act. Further, it is the case of the assessee that benefit of deduction u/s.54F is with respect to capital gains arising in the hands of wife of assessee which was suo-moto clubbed in the hands of assessee u/s. 64 of the Act. One of the conditions for claiming deduction u/s. 54F is that claim should have been made in the return of income. Since no such claim was made by assessee in the return of income u/s.139(1) or 139(5) of the Act, therefore, the claim of the assessee cannot be entertained.

Further, we find that the claim made by assessee u/s. 54F was in respect of capital gain arising in the hands of wife of the assessee, Smt. Sangita Ramakant Bodke, therefore, the same should have been claimed in the return of income filed by the wife of assessee. The claim of assessee u/s. 54F is liable to be rejected on this ground, as well. We observe that in the written submissions, the assessee has admitted that the claim was made mistakenly. Thus, in view of our above observations and the admission by assessee, the **Ground No. 2 raised in the appeal by Department is allowed.**

8. In Ground No. 3 of the appeal, the Revenue has assailed the deletion of Rs. 27,646/- on account of interest on housing loan. The Revenue has rejected the claim of assessee on two grounds:

- i) The claim is not made in the return of income or revised return of income.

ii) Since the assessee has not shown any income under the head 'Income from House Property'. Therefore, claim of deduction of interest on house loan cannot be allowed.

The Commissioner of Income Tax (Appeals) has accepted the claim of assessee by observing as under:

"15. I have carefully considered the facts of the case and I find that the claim of the appellant can be allowed even if it is made by way of filing revised computation by appellate authorities as held in the case of Pruthvi Brokers and Shareholders Pvt. Ltd. (supra). As regards, appellant not showing any house property income, it must be appreciated that in case of self occupied property there will not be any income to be shown under 'House Property' except claim of interest upto stipulated limit. Therefore, I do not find merit in the findings of the Assessing Officer and he is directed to allow the claim of Rs. 27,646/- on account of interest on House Property as per revised computation of income. Thus, the ground is allowed."

We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in accepting the claim of assessee made during assessment proceedings by following revised computation of income. No material has been placed on record by Revenue to show that the house in respect of which claim is made, is not self occupied. The provisions of section 24 permit such deduction in respect of self occupied house up to Rs.30,000/-. Thus, **Ground No. 3 raised in appeal by Revenue is dismissed.**

9. In Ground No. 4 of the appeal, the Revenue has assailed allowing of Rs.14,262/- as agricultural income of the assessee. We observe that apart from Gut No. 239 at Village – Gahunje, the assessee is also having share in land comprising in Gut No. 73 at Village –Dwarkawadi, Taluka –Khed admeasuring 4 Acre 7 Gunta and the same is under cultivation. A perusal of 7/12 extracts at page T-5 to T-8 reveal that the land is continuously under cultivation since financial year 1992-93. Various crops including groundnut,

sesame, potato, onion, and beet are grown at different point of time on the said land. The assessee must have been earning some agricultural income from sale of produce from the said land. The Commissioner of Income Tax (Appeals) granted relief to the assessee by observing as under:

“18. I have carefully considered the facts of the case as well as reply of the appellant. In this case as per 7/12 extract the appellant is undisputedly owner of agricultural land depicting cultivation of various crops. Ideally, the appellant should have substantiated the income with further details like sales bill of agricultural produce but considering the smallness of amount, the contention of the appellant can be accepted. Accordingly, the Assessing Officer is directed to delete the addition of Rs.14,262/- under the head ‘Other Sources’ and treat the same as agricultural income. Thus, ground no. 4 & 5 are allowed.”

Since the amount involved is miniscule, without going into further details, we are of considered view that findings of Commissioner of Income Tax (Appeals) on the issue are just and reasonable. Accordingly, **Ground No. 4 raised in appeal by the Revenue is dismissed.**

10. The Ground No. 5 raised in appeal is general in nature and hence, requires no adjudication.

11. In view of our above findings, appeal of the Revenue is partly allowed in the terms aforesaid.

Order pronounced on Wednesday, the 07th day of February, 2018.

Sd/-
(**डी. करुणाकरा राव**/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(**विकास अवस्थी** /Vikas Awasthy)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07th February, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-6.
4. The Pr.CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// सत्यापित प्रति // True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.