

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM
आयकरअपीलसं./ITA No.971/AHD/2016
(निर्धारणवर्ष / Assessment Years: (2012-13))
(Physical Court Hearing)

Sejalbhai G. Patel, 225, Khodiyar Nagar Soceity, Gandhi Road, Bardoli, Surat.	Vs.	The ITO, Ward-1, Bardoli.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: APDPP9316C		
(Assessee)		(Respondent)

Assessee by: Shri Sapneth Sheth, CA

Revenue by: Shri J. K. Chandnani, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 12/05/2022

घोषणाकीतारीख/Date of Pronouncement: 20/07/2022

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-1, [in short 'ld. CIT(A)'] Surat, in Appeal No. CAS-I/424/2014-15 dated 18.02.2016, which in turn arises out of an order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The Grounds of appeal raised by the assessee are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.68,03,622/- as long term capital gain.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in not allowing deduction u/s 54B and 54F of the I.T. Act, 1961.

3. It is therefore prayed that above addition made by assessing officer and confirmed by commissioner of Income-tax (Appeals) may please be deleted.

4. Assessee craves leave to add, alter or deleted any ground(s) either before or in the course of hearing of the appeal."

3. The facts necessary for disposal of the appeals are stated in brief. The assessee before us is an Individual. During the assessment year under consideration, the assessee with other co-owner sold property being agricultural land (S.N. 25/3 at Bardoli, Surat] for declared consideration of Rs.1,39,50,000/- on 12.10.2011. Assessee was having 50% share in the said property. The Stamp Valuation Authority has valued the property at Rs.1,50,09,950/-, therefore assessing officer observed that provisions of section 50C of the Act were attracted, in the assessee's case under consideration. The assessee has never challenged this valuation before assessing officer, hence the amount of Rs.75,49,750/- (50% of Rs.1,50,09,950/-) was acceptable to the assessee. The assessee has not even challenged the value adopted u/s 50C of the Act. Likewise, there was no dispute about the cost of construction of Rs.4,93,300/- allowed by the assessing officer while computing the Long Term Capital Gain. The assessing officer therefore took sale consideration at Rs.75,49,750/- and after deducting indexed cost of acquisition of Rs.7,46,128/-, the assessing officer computed long term capital gain to the tune of Rs.68,03,622/- (Rs. 75,49,750- Rs.7,46,128) and made addition in assessee's total income.

4. Thereafter, the assessing officer denied the exemption claimed by the assessee u/s 54B of the Act and u/s 54F of the Act. Therefore, aggrieved by the order of the Assessing Officer (being denial of exemption u/s 54B of the Act and u/s 54F of the Act), the assessee carried the mater in appeal before the Id. CIT(A), who has confirmed the action of the Assessing Officer. Aggrieved, the assessee is in further appeal before us.

5. Learned Counsel for the assessee, submitted before the Bench the documents and evidences for claim of exemption u/s 54B and 54F of the Act and contended that Assessing Officer has not examined the agreement and the issue for investment in another agricultural land to claim the deduction under section 54B of the Act. The assessing officer also not examined the evidences relating to exemption u/s 54F of the Act, therefore Ld. Counsel requested the Bench that matter should be remitted back to the file of the Assessing Officer for fresh examination. Apart from this, Id Counsel submitted written submission, which is reproduced below:

“5. In the course of appellate proceedings, it is submitted that capital gain is not chargeable to tax because assessee has made investment in new agricultural lands. Assessee is entitled to claim exemption under section 54B of the Income Tax Act, 1961 of Rs.45,26,000/- on account of purchase of agricultural land at survey no.27/2, Moje-Bardoli, Surat. The purchase consideration of the said land was paid out of advance money received on sale of piece of agricultural land bearing survey no.25/3 at Bardoli, Surat. It is clearly evident on perusal of sale deed that assessee started receiving consideration towards sale of land at survey no.25/3 at Bardoli, Surat since May, 2010 and further complete consideration was received by March, 2011. Thus, complete consideration towards sale of land was received before execution of purchase deed i.e. before 26.04.2011. Merely because deed relating to purchase of above land was executed prior to the execution of deed relating to sale of land, assessing officer cannot reject assessee’s claim for deduction under section 54F of the Act as consideration received on sale of land was only utilized for purchase of new agricultural land at survey no.27/2, Moje Bardoli, Surat.

6. Further, the reason given by assessing officer is not valid because intention of legislature is that assessee should purchase another agricultural land if he wants to claim exemption on sale of agricultural land. In the instant case, assessee has purchased another agricultural land and merely on the basis of date of execution of document, adverse inference cannot be drawn. Hence, assessee is eligible for exemption under section 54f of the Act, 1961.

7. Further with regard to contention of assessing officer that assessee has not claimed anything in his return of income it is submitted that during the course of assessment proceedings, assessing officer is supposed to determine the true income of assessee and should give deductions which are allowable under the Income Tax Act. Reliance is placed on the decision of Punjab and Haryana High Court in case of CIT vs Metalman Auto Pvt. Ltd. 336 ITR 434 wherein it was held that merely omission to claim the exemption under section 10(35) in the return could not debar the assessee from claiming the same. It was also observed that dividend income was statutorily exempt and the decision of Honourable Supreme Court in case of Goetze (India) Ltd. vs. CIT -204 CTR 182 (SC) was duly considered. Ratio of above decision is directly applicable to the facts of instant case.

Exemption u/s 54F on account of construction of new residential house property:-

8. In the course of appellate proceedings, it is submitted that capital gain is not chargeable to tax because assessee has also constructed new residential house property. Assessee has purchased plot from Khodiyar developers for Rs.3,35,000/- and also entered into agreement of construction of house property amounting to Rs. 13,51,000/- on said plot. Disallowance has been made only on the ground that satakhat i.e. agreement is not registered. It is a fact that assessee has constructed residential house and the same could have been independently verified by assessing officer.

9. In view of above, assessing officer erred in determining capital gain at Rs.68,03,622/- without giving deduction under section 54B and 54F of the Act. Thus, addition made by assessing officer is prayed to be deleted.”

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that solitary grievance of the assessee is that assessing officer has not examined the documents and evidences submitted by the assessee. We note that Ld. Counsel for the assessee submitted before us the satakhat (agreement) and contended that the land was purchased on 02.10.2006 and date of sale of land was 12.10.2011. In order to claim exemption under section 54B of the Act, the assessee has purchased another agricultural land and the evidences relating to another agricultural land, has not been examined by the Assessing Officer. The Ld. Counsel submitted satakhat (agreement) dated 26.04.2011 for purchase of another agricultural land which is placed at paper book page no. 43 to 45. In order to claim deduction under section 54F of the Act, the Ld. Counsel submitted purchase deed of plot of land dated 25.11.2012 for construction of residential house, which is placed at paper book page no.46 to 58. The Ld. Counsel contended that Assessing Officer has not examined the said agreement also. Therefore, we note that issue relating to exemptions under section 54B and under section 54F of the Act have not been examined by the assessing officer, in right perspective. On the other hand, Learned Departmental Representative (Id. DR) for the Revenue submitted that in order to claim the exemption under section 54B of the Act, the agricultural land should be purchased within two years from the date of sale of the original agricultural land. That is, the agricultural land must have been purchased by the assessee after the sale of the agricultural land (original asset), within two years. These basic conditions are missing in the assessee's case under consideration, therefore, assessee's appeal may be dismissed.

8. As pointed out by Learned Departmental Representative (Id. DR) that assessee has failed to satisfy the basic conditions to claim exemption under section 54B of the Act. However, considering the above facts, we note that these basic conditions have

not been examined by the assessing officer in right perspective. Hon`ble Supreme Court in the case of Parimiseti Seetharamamma [1965] 57 ITR 532 at page 536, held as follows:

"It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee."

We note that assessee has furnished the relevant documents and evidences to claim exemption under section 54B and 54F of the Act, however, the same have not been examined by the assessing officer, in right perspective, therefore we are of the view that assessee should be given one more opportunity to plead its case before the assessing officer. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the assessing officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 20/07/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूत /Surat / दिनांक/ Date: 20/07/2022

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat