आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.704/PUN/2022
निर्धारण वर्ष / Assessment Year : 2014-15

Sunil Kisanrao Bagul, 4610, Bagul Niwas, Ramwadi, Panchavati, Nashik – 422003. PAN: AEXPB 9208 E	V s	The ACIT, Circle-1, Nashik.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	02/02/2023
Date of pronouncement	08/02/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee i.e.Sunil Kisanrao Bagul is directed against the order of ld.Commissioner of Income Tax(Appeal)[NFAC],Delhi dated 06.08.2022 for A.Y. 2014-15emanating from the order of Assessing Officer dated 09.12.2016 passed under section143(3) of the Act, 1961. The grounds of appeal raised by the assessee are as under :

"1. On the basis of the facts and in the circumstances of the case the ex-parte order passed by CIT(A) may please be vacated and the appeal be restored to the file of CIT(A).

2. On the basis of the facts and in the circumstances of the case and as per law, the Commissioner of Income-tax (Appeals) is not

justified in confirming the denial of deduction u/s. 54B of Rs.1,71,50,280/- made by Assessing Officer.

3. On the basis of the facts and in the circumstances of the case and as per law, the assessment order passed by the Assessing Officer u/s. 143(3) and confirmed by the Commissioner of Income-tax (Appeals) be cancelled as subsequently the Assessing officer has accepted the returned income in an assessment order passed u/s. 147 of the Act.

4. The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal."

Brief Factsof the case :

2. In this case, the Return of Income was filed electronically by assessee on 30.11.2014 declaring total income of Rs.16,89,120/-. The case was selected for scrutiny. The ld.Authorised Representative (ld.AR) of the assessee attended before the Assessing Officer(AO). The assessee claimed deduction under section 54B of the Income Tax Act. The AO has denied the said deduction under section 54B of the Act. The relevant part of the assessment order is reproduced here as under:

"During the course of assessment proceedings,, it was observed from the computation of total Income, assessee has sale of land admeasuring to 2.2 Hectare of Survey no. 60/3 of village fv1hasn.il, Nashik for a consideration of Rs. 1,71,00,000/-. The assessee has shown as a capital gain after reducing cost of acquisition of Rs. 1,60,59,236/-. Thereafter, claimed deduction u/s 54B of the I.T. Act. to the tune of Rs.1,71,50,280/- against purchasing three agricultural land. In this regard, to verify the above said land at survey no.60/3, letter was written to the Talathi, Mhasrul for verification of the land is agricultural land or padit. The Taiathi, Mhasrui submitted ***7/12*** *extract. On verification of 7/12 extract it appears that from F.Y. 2011-12 to 2013-14 land is shows 'Padit'. Also from Mahabhulekh website of Govt, of Maharashtra it is found that 7/12 extract of the said land shows 'Padit'/Gavit padit from started. Hence, it was proved that the land sold by the assessee is*

not a agricultural land. Thus, the assessee cannot be claimed as deduction u/s ***54B*** *of the* ***I.T.*** *Act.*

For a claim u/s 54 B, the assessee has to fulfill two requirements. Firstly, the land sold should have been used for agricultural purposes before the sale. Secondly, the land purchased for claim of exemption should also be used for agricultural purposes. In the present case, the assessee has failed to fulfill the first condition. As the assessee's land was not cultivated till F.Y. 2013-14, It was proved as per 7/12 extract which was submitted by the TalathrMhasrul, Nashik that the land was not agricultural land and also not used for agricultural activities 2 years before date of transfer by assessee or any member of his family. The claim of deduction u/s 54B is clearly not allowable and is hereby disallowed to the tune of Rs1,60,59,236/- under the head Long Term Capital Gain."

3. Aggrieved by the order of the AO, the assessee filed appeal before the ld.Commissioner of Income Tax (Appeal). The ld.Commissioner of Income Tax (Appeal) upheld the order of the AO. Aggrieved by the order of the ld.Commissioner of Income Tax (Appeal), assessee filed appeal before this Tribunal.

Submission of the ld.Authorised Representative :

4. The ld.AR filed paper book and explained that assessee sold land vide registered sale deed dated 26.12.2013 for Rs.1,71,00,000/-. The ld.AR submitted that in the preceding two years of sale, assessee had grown Tomato and other vegetables on the impugned land which was sold. For the said claim the ld.AR relied on receipts issued by Nashik Agricultural Marketing Committee which were on page no. 18 to 27 of the paper book. The ld.AR, therefore, said that assessee had cultivated the land and hence, the assessee is eligible for

deduction under section 54B of the Act. The Ld.AR also relied on a letter issued by the purchaser of the land.

Departmental Representative'sSubmissions :

5. The ld.Departmental Representative(ld.DR) for the Revenue heavily relied on the order of the AO and ld.CIT(A). The ld.DR submitted that the receipts of the Nashik Agricultural Marketing Committee does not establish that the goods i.e. Tomato and other vegetables were grown in the impugned land by the assessee. The ld.DR submitted that as per section 54B, the land should have been used for agricultural purposes either by the assessee or his family in preceding two years of sale. The ld.DR further submitted that in this case it can be seen from 7/12 extract which is part of the paper book that land is marked as पडत, it means it was not used for agricultural purposes in the F.Y. 2011-12, 2012-13 and 2013-14. The ld.DR also submitted that the AO has got the details from the Government of Maharashtra Website to establish that the impugned land was not used for agricultural purposes.

Discussion & Findings :

6. It is observed that assessee had sold land at Survey No.60/3, Village Masrool, Distirct Nashik, Maharashtra on 26.12.2013. The

assessee claimed deduction under section 54B of the Act. The relevant section 54B is reproduced as under:

> ***54B.*** *(1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*
>
> *(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or*
>
> *(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.*

7. We have studied the paper book filed by the assessee. At page no. 51 of the paper book there is copy of 7/12 extract issued by Talati of Village Masrool, District Nashik, for land at Survey No 60/3. As per 7/12 extract name of the Owner is Sunil Kisan Basul. In the said 7/12 extract for year 2011-12 the land is shown as पडत, for year 2012-13 the land is shown as पडत and for year 2013-14 the land is

shown as पडत. Thus, land is shown as पडत for 3 years. पडत means there were no agricultural activity on the impugned land. Assessee sold the land on 26/12/2013. To be eligible for deduction under section 54B, the land should have been used for agricultural purpose in the preceding two years, means in the years 2011-12, 2012-13. As seen from the 7/12 extract, no agricultural activities were carried out on the impugned land in the preceding two years. It means the assessee had not used the impugned land for Agricultural Purposes. The assessee has not filed any evidence to prove that the land was used for Agricultural Purposes in preceding two years. Therefore, assessee has violated condition mentioned in section 54B of the Act. Therefore, assessee is not eligible for deduction under section 54B of the Act. The assessee has relied on certain receipts issued by Nashik Agricultural Marketing Committee to claim that he carried out agricultural activity. However, mere sale of Tomato, vegetables to Nashik Agricultural Marketing Committee does not establish that assessee had carried agricultural activity in the land at Survey No.60/3, Village Mashrool, district Nashik. To claim deduction, the onus is on assessee to prove that assessee fulfills the conditions mentioned in the relevant section. In this case, land revenue record i.e. 7/12 extract is the clinching evidence that assessee had not carried out any agricultural activity in the land at

Survey No.60/3, Village Mashrool, District Nashik in preceding two years from the date of sale of the impugned land. The said land was not used for agricultural purposes. Therefore, assessee is not eligible for deduction under section 54B of the Act.

7.1 As per the The Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971, the Talathi visits the field and then enters the details of Crops in the Records. Relevant part of the Rule is reproduced here as under :

> Quote, *"**30. Procedure of making entries in register of crops.** –*
>
> *(2) Subject to the provisions of sub-rule (1), the Talathi shall fix a date of his visit to the village for the purpose of that sub-rule at least seven days in advance and arrange to inform the villagers by beat of drum or by any other suitable method, about the date of his visit and its purpose and to call upon the villagers to be present in their fields [along with their khate-pustika] and witness the entries being made in the register of crops. He shall likewise give an intimation of his visit to the Sarpanch of the Village Panchayat, if any, and through him request the members of the Village Panchayat to accompany him during the crops inspection.*
>
> *(3) On the date fixed for his visit to the village, the Talathi shall visit every field in the village in the presence of the villagers, the members of the Village Panchayat and the Sarpanch, if any, as may be present there and make entries in the register of crops respect of each survey number or sub-division of a survey number after actual inspection. He shall allow the persons interested in the land to see the entries made by him in respect of each land. [He shall simultaneously copy out the relevant entries in KhatePustika also].*
>
> *(4) As soon as may be practicable after the Talathi has made entries in the register of crops, any revenue or survey officer not below the rank of a Circle Inspector shall, for purpose of verification of the said entries, visit the village of which advance intimation as aforesaid shall be given to the villagers, and after due enquiry correct the entries which may be found to be incorrect. [He*

shall cause the Talathi to make resultant changes in the entries in the respective KhatePustika also]". Unquote.

8. Thus, as per The Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971, the Talathi Visits the field and then makes entries of the crops grown. In the case under consideration, the talathi has entered the land as "पडत". The records maintained by talathi are authentic. The assessee has also filed copy of letter issued by the purchaser of the land, however, it is a letter issued by the person who have transactions with the assessee. The said self- professing letter does not have any evidentiary value in the presence of Land Revenue Record maintained by talathi. However, the said letter does not establish that the impugned land was used for agricultural purpose by the assessee or his family members..

9. The Hon'ble Supreme Court in the case of **Commissioner of Customs (Import), Mumbai *Vs.* Dilip Kumar & Company 69 GST 239 (SC)** has held as under :

"1. 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 or exemption notification.

2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

> *3. The ratio in* ***Sun Export case*** *(supra) is not correct and all the decisions which took similar view as in* ***Sun Export Case*** *(supra) stands over-ruled."*

10. Thus, the Hon'ble Supreme Court has held that the exemption provisions shall be interpreted strictly. The section 54B gives deduction to the assessee which is a kind of exemption provision and therefore such provisions has to be interpreted strictly.

11. The Hon'ble Supreme Court in the case of Pr.CIT Vs. Wipro Ltd has observed as under:

> *".....in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee."*

12. Since the land at Survey No.60/3, Village Mashrool, District Nashik was not used for agricultural purposes in the preceding two years from the date of sale, the assessee is not eligible for claim of deduction under section 54B of the Act. Accordingly, the Ground No.2 and 3 raised by assessee are dismissed.

13. In Ground No.1, the assessee has claimed that ld.CIT(A) had passed ex-parte order. However, on perusal of ld.CIT(A)'s order, it is observed that the Ld.CIT(A) had given opportunity on 21/01/2021, 25/05/2022, 07/07/2022, 22/07/2022, 04/08/2022. Then, the ld.CIT(A) passed order taking into consideration statement of facts filed by the assessee. Thus, the CIT(A) had given sufficient opportunity. Hence, the Ground No.1 of the assessee is dismissed.

14. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 8th February, 2023.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 8th Feb, 2023/ *SGR**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.