

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “C” BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 561/Ahd/2020  
Assessment Year 2017-18**

Dharmendra J. Patel, Prop. Rama Associates Gujarat Chambers, Bhalej Road, Opp: Vaibhav Commn. Centre Anand-388001 PAN: AETPP5565Q (Appellant)	Vs	DCIT, Anand Circle, Anand (Respondent)
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**Assessee by: None**  
**Revenue by: Smt. Trupti Patel, Sr. D.R.**

Date of hearing : 22-02-2023  
Date of pronouncement : 22-03-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals-4), Vadodara, in proceeding u/s. 143(3) vide order dated 22/09/2020 passed for the assessment year 2017-18.

2. The assessee has filed the following grounds of appeal:-

*“1. The Ld. CIT (Appeals) erred in ignoring the submission and the decision relied upon by the appellant during the course of appellate proceedings.*

*2. The Ld. CIT (Appeals) erred in disregarding the decision of the Hon'ble IT AT Amritsar in the case of DCIT & ANR Vs. ASSA Singh & ANR and also disregarding the Circular No.359 dated 10.05.1983 which was quoted by the appellant during the course of appellate proceedings.*

*3. The Ld. CIT (Appeals) erred in confirming the addition based on the decision of the Hon'ble IT AT, Ahmedabad in the case of Paras Chinubhai Jani Vs. Pr.CIT and in the case of Jaipur Tribunal in the case of Mathurlal Vs. ITO 174ITD 44 by holding that the issue of disallowance u/s 54B for investment made prior to the date of sale was covered against the appellant in view of the Tribunal's decisions cited above.*

*4. The Ld. CIT (Appeals) erred in confirming the disallowance of deduction u/s 54B of Rs. 88,17,491/-.*

*5. The appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”*

3. The brief facts of the case are that the course of assessment, the AO observed that the assessee had sold two agricultural lands, one on 20-03-2017 for a sum of ₹ 1,90,14,000/- and another on 10-08-2016 for 1,04,10,000/-. The assessee claimed long-term capital gains of ₹ 2,79,37,474/- on the aforesaid two agricultural lands after taking benefit of indexation, the assessee claimed deduction under section 54B of the Act amounting to ₹ 1,87,45,250/- on purchase of agricultural land situated at Mogri on 21-10-2016. During the course of assessment, the AO observed that as per section 54B of the Act the deduction on long-term capital gains from sale of agricultural land is allowable if the long-term capital gains are invested by the assessee in any of the land for being used for agricultural

purposes within 2 years **after** the date of transfer of original land. Therefore, while the AO allowed deduction under section 54B in respect of land sold by the assessee at survey number 45 on 10-08-2016 since the assessee had purchased the new agricultural land on 21-10-2016 i.e. within 2 years from sale of agricultural land. However, the AO disallowed the claim of deduction under section 54B in respect of the agricultural land sold by the assessee at survey number 17 for a consideration of ₹ 1,90,14,000/- on 20-03-2017 on the ground that the new agricultural land was purchased by the assessee on 21-10-2016 i.e. prior to the date of sale of agricultural land on 20-03-2017. According to the AO, the language of section 54B of the Act is plain and unambiguous and does not give benefit to the assessee in case the assessee makes purchase of new agricultural property at a date prior to the date of sale.

4. The assessee filed appeal before the Ld. CIT(Appeals), and it was submitted before him that the assessee had received advance in respect of sale of aforesaid properties since 2011 and it was this advance so received by the assessee, which was utilised for the purchase of new agricultural property, which was finally registered on 21-10-2016. Further, the assessee submitted a table before Ld. CIT(Appeals) to the effect that advances so received by the assessee toward sale of properties were utilised by the assessee for giving advance towards purchase of new agricultural land. As per the table submitted before Ld. CIT(Appeals), the contention of the assessee was that the assessee had received a total amount of ₹ 2.20 crores as advance towards sale of aforesaid properties two (though sale deeds were registered on 10-08-2016 for ₹ 1.04 crores and 20-03-2017 for ₹ 1.90

crores respectively) from 14-07-2011 to 24-09-2015 through account payee cheques and this advance was utilised towards giving advance towards purchase of new agricultural land in various instalments amounting to ₹ 1.77 crores between the period 14-10-2015 to 11-11-2016, again through account payee cheques. Therefore, the contention of the assessee is that the advance of ₹ 2.20 crores received toward sale of properties (from 14-07-2011 to 24-09-2015) was invested in new property from 14-10-2015 to 11-11-2016 i.e. effectively, within two years from receipt of advance for sale of such properties. Notwithstanding the dates of new purchase deeds for purchase of agricultural property, the advance received toward sale consideration in respect of the aforesaid agricultural properties was invested in new agricultural property **after** the date when the advance was received by the assessee and **within a period of two years from the date of receipt of advance**. The counsel for the assessee relied on the decision of ITAT Amritsar Bench in the case of DCIT v Assa Singh in ITA No. 26(Asr)/2015 dated 11.3.2016 in support of the contention that if advances toward sale of property have been utilised towards purchase of new agricultural land, benefit of section 54B should be not be denied to the assessee. The Ld. CIT(Appeals) however denied benefit of section 54B of the Act to the assessee with respect to property sold on 20-03-2017 for a consideration of ₹ 1,90,14,000 on the ground that the language of section 54B of the Act is plain and categorical and does not allow benefit to the assessee in case he has purchased the agricultural land prior to the date of sale of agricultural land. Ld. CIT(Appeals) held that since the agricultural land was sold by the assessee on 20-03-2017 for a consideration of ₹ 1,90,14,000/- and the new agricultural land was purchased by the assessee on 21-10-2016 i.e. prior to

the date of sale of agricultural land, benefit of section 54B cannot be given to the assessee. The Ld. CIT(Appeals) made the following observations while dismissing the appeal of the assessee:

*“6. I have considered the facts and its many of the case, the observations of the AO submissions of the appellant material available on record and relevant judicial pronouncements on the above matter.*

*6.1 The appellant Civil Contractor and derives income from business and other sources. Regarding ground appeal number 1, during the course of proceedings, it was noticed by the AO that the assessee sold two agricultural pieces of land located at Survey No 17 Valasan on 20.03.2017 for Rs 1,90,14,000 and Survey No 4 Valasan 10.08 2019 for Rs. 1,04, 10,000. Out of the total sale proceeds of Rs.2,, 94,24,000 the assessee had claimed deduction of Rs 1,87,41,250/- u/s. 54B on account of investment in agriculture land situation at survey No. 701, at Mogri on 21.10.2016. From the above, it is clear that the assessee had purchased new agricultural land before the sale of original agricultural land. The A.O. ha further mentioned that as per section 54B of the I.T. Act, 1961, the deduction on long term capital gains from sale of old agricultural land is allowable if he long term capital gains is invested by the assessee in another land (being used for agricultural purposes) within 2 years after the date of transfer of original and (sold land). From the above, it is clear that in order to claim deduction us 54 the new set has to be required within sears from the date of sale of agricultural land. Therefore AO has restricted the claim of deduction us 543 to Rx 99,21,759 On this issue. Hon’ble ITAIT Ahmedabad has delivered its judgment which is squarely applicable to the facts of the present case ITAT Ahmedabad in case of Par Chinubhai Jani Vs Principal Commissioner of Incomes Vs. Ahmedabad reported in 177 ITD 91 held that the eligibility of deduction us S4B of the Act in respect of land acquired prior to transfer of capital asset is clearly opposed to the plain provision of the Act and thus apparently not sustainable having regard to express the provision of the statute. The legislature in its own wisdom has used the expression before the transfer of long term asset as well as after the transfer ol capital asset at appropriate places viz. Section 54 of the Act. The intention of the legislature is thus quite clear In the case of Mathur Lal V ITO. reported in 174 TD 44 Hon'ble ITAT Jaipur has held that the purchase prior to the sale of the existing land would not be allowable for deduction us 541 of the Act*

*6.2 Since issue stands covered by the decision of jurisdictional ITAT cited supra, I have no option but to uphold the addition made by the AO Disallowance of deduction us 54B to the extent of Rs 88,17, 491/- is sustained. Ground of appeal number 1 is dismissed.”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) dismissing the appeal of the assessee. The assessee primarily reiterated the submissions made before Ld. CIT(Appeals) during the course of appellate proceedings. In response, DR relied upon the observations made by Ld. CIT(Appeals) and AO in their respective orders and submitted that relief cannot be afforded to the assessee in the instant set of facts in view of the plain and express language of section 54B of the Act.

6. We have heard the rival contentions and perused the material on record. We are of the considered view that the Ld. CIT(Appeals) has erred in not looking at the facts of the instant case in the correct perspective. In our considered view, one must not lose sight of the fact that section 54B of the Act is a beneficial provision and aimed at investment of proceeds from sale of agricultural property into new agricultural property. In a recent judgment of **Mother Superior Adoration Convent [2021] 126 taxmann.com 68 (SC)**, the Supreme Court held that beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. In reference to Dilip Kumar's case (Supreme Court), it held that the Constitution bench has not made any distinction between exemption granted generally and exemption provisions that have a beneficial purpose, therefore, it cannot be said that for beneficial exemption liberal rule of construction has been done away with. In other words, for construction of beneficial exemption strict rule of interpretation may not be required to be applied. The Supreme Court in this case observed as under:

*“This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench.”*

6.1 The Gujarat High Court in the case of **Kishorbhai Harjibhai Patel v. ITO [2019] 107 taxmann.com 295 (Gujarat)** held that section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in the form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted. In the case of **State of Gujarat v. S.A. Himnani Distributors (P.) Ltd. [2014] 43 taxmann.com 358 (Gujarat)**, the Gujarat High Court held that when State is inclined to give some tax benefit to tax payers, terms or provisions of policy should be interpreted in a liberal manner and with an intention to see that purpose for which policy is framed is fulfilled and beneficiaries is helped and the interpretation must not be such which would frustrate objective of policy.

6.2 In the facts before us, we observe that the new property was primarily purchased out of advances received from sale of two agricultural properties. Evidently, the advances so received by the assessee were invested in the new agricultural property after the same were received and within a period of 2 years from the date of receipt of advance. In the case of **DCIT v. Shri Indranil Sanjaybhai Rajyaguru, Sanjayraj Estate, Race Course, Rajkot in ITA number 358/Rjt/2015**, the ITAT held that advance payment by the appellant to purchase agricultural land from the sale proceed of the land sold by him has been rightly found eligible for benefit under Section 54B of the Act. Again, in the case of **Sh. Inderjit Singh Mann v. ACIT in ITA number ITA No. 1136/CHD/2014**, the Assessing officer noted that the assessee has sold his land on 19th February 2009 but the registration deed of purchase of the other land was dated 9.6.2008. In this connection the assessee has submitted that though the land was sold on 19.2.2009, yet actual possession of the land was handed over earlier in April 2008 and this land was purchased for Rs. 51,80,000/- by way of withdrawals from his saving bank account dated 9.6.2008 and 10.6.2008. However, the Assessing officer noted that in the sale deed dated 19.2.2009, it has been mentioned that possession of the above land was given to the company on the spot. Therefore, the contention of the assessee that possession was given earlier was not found tenable. In view of this, the Assessing officer withdrew the exemption claimed u/s 54B of the I.T. Act and computed the capital gain at Rs. 55,59,363/-. The ITAT while allowing relief to the assessee made the following observations:



14. We have considered the rival submissions. The assessee has filed copy of the sale deed dated 19.2.2009 in the paper book in which it is specifically mentioned that assessee received various advances from the purchasers on different dates in the year 2007 before execution of sale deed. According to the chart prepared by the Ld. Counsel for the assessee, upto November 2007, the assessee has received advance money of Rs. 4,63,35,060/-. It would, therefore, prove that purchaser has paid substantial amount to the assessee as advance money as against total sale consideration of Rs. 5.64 crores. No purchaser would make such a huge advance without taking the possession of the land. The contention of the assessee, is therefore, correct that assessee has handed over the possession of land to the purchaser sometime in April 2008 otherwise the purchaser would not make the huge advances to the assessee. It is also proved that when substantial amount was received against the sale of land, it is available to the assessee for making investment in purchases of land. The assessee claimed that he has made investment of Rs. 51,80,000/- in the purchase of another land vide purchased deed dated 9.6.2008. Therefore, authorities below cannot deny deduction claimed u/s 54B of the I.T. Act. Since the assessee has invested the advance money in purchase of land before the date of transfer of the land, the amount invested will qualify for exemption u/s 54B of the I.T. Act. The evidence and material on record clearly prove that payment for purchase of land was made out of advance received by the assessee against sale of land, in the year under consideration. The claim of the assessee for deduction u/s 54B is thus supported by the Board

*Circular No. 359 (supra) and the decisions relied upon by the assessee. The authorities below were, therefore, not justified in denying the deduction claimed u/s 54B of the Act for a sum of Rs. 51,80,000/-. In view of the above discussion and in the light of the Board's Circular and the decisions cited above, we direct the Assessing officer to grant deduction claimed u/s 54B of the I.T. Act in a sum of Rs. 51,80,000/-. Since the Assessing officer computed the capital gain of Rs. 55,59,363/-, therefore, the Assessing officer is directed to re-compute the capital gains by giving deduction to the assessee of Rs. 51,80,000/-. This ground of the appeal of the assessee is allowed.*

6.3 In the case of **Ramesh Narhari Jakhadi v. ITO 41 ITD 368 (Pune)**, the ITAT held that investment made prior to date of transfer out of earnest money or advanced would also be eligible and should be considered as investment made out of sale proceeds for purposes of section 54B.

6.4 Similarly, the Chennai ITAT in the case of ITAT Chennai Bench in the case of **ACIT Vs. Dr. S. Balasundarm in (2013) 36 CCH 107**, held as under:-

*"According to the AO, the purchase consideration paid by the assessee was not eligible for deduction u/s 54B of the Act. It was not the case of the AO that the sale consideration received by the assessee under use for the purpose of purchase of the property. The only dispute was the assessee has purchased the property before transfer of*

*the property. Therefore, the AO had denied the claim of the assessee. From the record, it was found that the assessee had entered into an agreement to sell the property. As it was a fact that though the sale deed was executed on 30.12.2008, but the assessee purchased three properties with the sale consideration received. The intention of the Legislature was that the assessee had to use the sale consideration received for the purpose of buying agricultural land. In the present case, the assessee sold agricultural land was not disputed by the AO and also purchased agricultural land. The CIT (A) in his order had given a finding that though the sale deed was executed on 30.12.2008, but the possession was given on 10.09.2008. He had also observed that the sale deed had to be executed on or before four months from the date of agreement. There were certain dispute between the assessee and the purchaser. Therefore, the execution of sale deed was delayed and the sale deed was executed in December, 2008. So far as the objection raised by the revenue was that the property was only transferred in December, 2008, therefore, the property purchased before that date was not eligible for claiming deduction u/s 54B. It was opined, this was only a hyper technical objection raised by the revenue, because, the assessee had received substantial amount from the purchaser before executing sale deed. It was held that so far as registration of the sale agreement was concerned, if both the parties proceeded to carry the execution of the sale as per the agreement whether it was registered agreement or not, there was no effect so far as transfer was concerned. In view of the above, no infirmity was*

*found in the order passed by the CIT (A) & the ground raised by the Revenue dismissed."*

6.5 Accordingly, in view of the facts of the above case and judicial precedents on the subject as discussed above, we are of the considered view that the assessee should be allowed the benefit of deduction under section 54B of the Act since the purchase in the new property has been made out of advances received towards sale of agricultural properties held by the assessee.

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

Order pronounced in the open court on 22-03-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 22/03/2023** TRUE COPY

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,  
उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद