

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'A' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

I.T.A. No.1479/Ahd/2012
Assessment Year : 2009-10

Matrabhai Revabhai Bharwad

408, Arth Complex,
Opp. Kanak Kala, Satellite
Ahmedabad - 380015
[PAN : AEEPB 7842 M]

.....**Appellant**

Vs.

Income Tax Officer

Ward-7(2), Ahmedabad

.....**Respondent**

Appearances by:

MK Patel for the appellant

Anupama Singla for the respondent

Date of concluding the hearing: 07.12.2017

Date of pronouncing the order: 08.12.2017

ORDER

Per Pramod Kumar, AM:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 13th April 2012 passed by the CIT(A)-XIV, Ahmedabad in the matter of assessment under section 143(3) of the Income-tax Act, 1961, for the assessment year 2009-10.

2. Grievances raised by the assessee are as follows:

"1. That on facts, and in law, the learned CIT(A) has grievously erred in confirming the action of learned AO in disallowing the claim of deduction u/s 54B of the Act of 12,82,955/-

2. That, on facts and in law, and on evidence on record, the claim of deduction u/s 54B of the Act out to have been allowed, as prayed for."

3. The issue in appeal lies in a narrow compass of material facts. The assessee was owner of certain agricultural lands, which, during the relevant previous year, were converted into stock in trade. The assessee also purchased some agricultural land, after the date of aforesaid conversion. It was in this backdrop that the assessee

claimed deduction under section 54B, in the computation of capital gain, in respect of investment in purchase of agricultural land. The claim was declined by the Assessing Officer on the ground that, "*the deduction under section 54B is allowable for property purchased for agricultural purposes and not for business*" and "*as assessee has purchased the agricultural land as stock in trade of business, deduction u/s 54B on stock in trade property is not admissible*". Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) confirmed the stand of the Assessing Officer and observed as follows:-

"I have carefully perused the assessment order and the submissions given by the appellant. The appellant is deriving income from trading of plots of land. During the year, the appellant has converted his investment in land to stock in trade on which the capital gain has arisen. The appellant agreed for computation of capital gain but he claimed the deduction u/s. 54B stating that he has purchased agriculture land out of the capital gain which is arising from conversion of land in stock in trade. The A.O. disallowed the claim and held that the agriculture land purchased was for the purpose of business. The appellant has submitted that the land sold was used for agriculture purpose and agriculture crop was taken from the land for more than two years as required in the provisions of section 54B. It has further been submitted that out of the sale proceeds, agriculture land has been purchased. After factual examination of the issue, the claim of the appellant is not acceptable. The appellant has initially held the land as investment and on conversion of the same as stock in trade, the liability of capital gain has arisen which has correctly been taxed by the A.O. However, the claim of the appellant that he has purchased agriculture land against that sale is not acceptable as the land that has been claimed to have been purchased by the appellant is for the purpose of business. Once the appellant has converted his investment in the stock in trade, the applicability of provisions of capital gain will cease. The land that has been purchased by the appellant for business is not a capital asset and accordingly the deduction u/s. 54B cannot be allowed. Had the land that has been purchased by the appellant as personal investment, the claim would have been allowable. However, the facts do not support the claim of the appellant. The A.O. has rightly disallowed the claim of the appellant u/s. 54B of the Act. The action of the A.O. is accordingly upheld and the grounds of appeal are accordingly dismissed."

4. The assessee is not satisfied and is in further appeal before us.
5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.
6. We find that section 54B of the Income-tax Act provides as follows:-

"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.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.”

7. Clearly, the deduction under section 54B comes into play when, *inter alia*, within two years from the date of transfer of agricultural land, an assessee purchases “any other land being used for agricultural purposes”.

8. As evident from the orders of the authorities below, section 54B benefit has been declined to the assessee on the ground that the land purchased was for the purposes of business and for being held as stock in trade of business, which is a use other than agricultural purposes.

9. We are, however, not persuaded by the line of reasoning adopted by the authorities below. The true test for qualifying purchase of land, being covered by section 54B, is what operations are carried out on the land. If the land is indeed used for agricultural purposes, even if land is held as stock in trade or in the course of business, that satisfies the eligibility requirement under section 54B. In other words, land being used for agricultural purposes cannot be declined 54B benefit merely because the land is held as stock in trade or as business asset. There is no conflict in the land being used for agricultural purposes and the land being held in the course of business as stock in trade. Learned Departmental Representative, however, points out that there is no evidence about the fact that the land was being used for agricultural purposes. Learned counsel fairly accepts that this aspect of the matter has not been examined by the authorities below, and prays for the matter being restored to the file of the Assessing Officer for this limited purpose.

10. In view of the above discussions, as also entirety of the case, we remit the matter to the file of the Assessing Officer for fresh adjudication, in the light of our above observations, and for the limited purposes of examining the nature of land in which investment, in respect of which 54B claim is made, and giving relief accordingly, if admissible.

11. In the result, appeal is allowed for statistical purposes. Order pronounced in the open Court on this 8th day of December, 2017.

Sd/-

Mahavir Prasad
(Judicial Member)

Ahmedabad, the 8th day of December, 2017

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

TRUE COPY

Sd/-

Pramod Kumar
(Accountant Member)

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad