

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
BEFORE: SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

ITA No.349/RPR/2014
(Assessment Year :2011-2012)

DCIT-1, Raipur, (CG)	vs	Madanlal Lodha C/o Prakash Trading Co. Shop No.109110, Textile Market, Raipur (CG)
PAN No. : AAWPL 1921 F		
(Appellant)	..	Respondent

Revenue by : Shri P.K.Mishra, CITDR
Assessee by : Shri R.B.Doshi, AR

Date of Hearing : 15/01/2018
Date of Pronouncement 18/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Raipur, dated 27.08.2014 for the assessment year 2011-2012.

2. The Revenue has taken the following grounds of appeal :-

1. *"Whether on the facts & Circumstances of the case, the CIT(A) has erred in admitting additional evidence under Rule 46A without there being any reasonable cause for the assessee not to have produced them before the Assessing Officer?"*

2. *Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the disallowance of claim of deduction u/s. 54B of the IT Act, 1961 of Rs. 3,39,49,274/- as the assessee has failed to establish that agricultural operations were carried on, on the said land?"*

3. *"The Order of the Ld. CIT(A) is erroneous both in law and on facts."*

4. *"Any other ground that may be adduced at the time of hearing."*

3. Brief facts of the case are that the AO observed that the assessee had sold the land at Sejbahar, Raipur at Rs.3,94,20,000/- on different dates. The assessee had claimed exemption of capital gain u/s.54B of the Act for Rs.3,39,49,27/- as under :-

Full value of consideration of sale property	Rs.4,19,90,001/-
Deduction u/s.48	Rs.62,24,618/-
Balance	Rs.3,57,65,383/-
Exemption under section 54B	Rs.3,39,49,274/-
Income chargeable under the head "capital gains"	Rs.18,16,110/-

The assessee was asked to prove whether any agriculture activity was done on these plots in the last two years to check whether the assessee fulfils all the conditions for claiming exemption u/s.54B of the Act.

4. After making enquiry and considering the submissions of the assessee, the AO arrived at the conclusion that there was no agricultural activity on these plots of land since F.Y.2008-2009. Therefore, the AO disallowed the exemption u/s.54B of the Act to the assessee and made addition of Rs.3,39,49,274/-.

5. On appeal, the CIT(A) allowed the appeal of the assessee. While doing so, the CIT(A) held as under :-

"6. I have carefully gone through the assessment order, written submissions of the appellant, Remand Report of the AO and the counter comments of the appellant. The appellant submitted certain additional evidences which were forwarded to the AO for her comments. Having regard to the facts of the case and the reasons given by the appellant for admission of additional evidences and for the reasons stated above, the additional evidences submitted by the appellant are admitted u/r 46A.

6.2 During the year under consideration, the appellant had sold agricultural lands and claimed deduction u/s 54B. The AO has denied the deduction observing that the appellant did not carry out any agricultural activities on the land sold by him in the past two years. The appellant has claimed that he carried out agricultural operations on the land sold for the past more than two years. The question, therefore, to be decided is, whether it can be accepted that the appellant carried out agricultural activities on the land sold

by him in the two years prior to the date of sale as required by provisions of section 54B. In support of the claim of having carried out agricultural activities, the appellant has filed copy of bills in respect of purchases of seeds, fertilizers etc. Copy of bills of sale of agricultural produce have also been filed. The claim of appellant of having carried out agricultural activities is also supported by the observations made in the panchnama dated 24.03.2014, which was prepared on spot verification of the land by the Revenue Inspector, Patwari, Sarpanch, Kotwar and villagers. Copy of letter dated 25.03.2014 submitted by Revenue Inspector & Patwari to the Additional Tahsildar also supports contention of the appellant. The appellant has, thus, substantiated his claim of having carried out agricultural operations.

6.3 The AO has disputed the claim of appellant on the strength of letter dated 18.06.2014 of Additional Tahsildar, received by her at the Remand stage. At the assessment stage, the records of Patwari did not contain any reference of agricultural activities on the land sold. It is the claim of appellant that he came to know the mistake in Revenue records through the query letter of the AO and therefore, he submitted application to Tahsildar requesting for rectification of Revenue records by entering details of agricultural activities. The rectification application of the appellant has not been acceded to by Tahsildar for the reason that as per Section 116 of Bhu Rajaswa Sanhita, 1959, since the rectification application was submitted beyond the prescribed period of one year, Tahsildar was not competent to carry out rectification. In other words, rectification application of appellant has not been rejected on merits but has been turned down on account of limitation period prescribed in relevant law. None of the Government Authorities like Tahsildar, Additional Tahsildar, Revenue Inspector, Patwari, Sarpanch, Kotwar ever stated that the claim of appellant is false/incorrect. On the contrary, the reports submitted by Revenue Inspector/Patwari clearly establishes that agricultural activities were carried out by the appellant for more than two years prior to the sale of land. I am of the considered opinion that the A.O has glossed over the

circumstantial and direct evidences brought on record by the A.O. It is seen that the AO has misinterpreted the reason behind rejection of rectification application of the appellant and therefore, the inference drawn by the A.O is also vitiated. Since the rectification was requested beyond the statutory period of one year, as per section 116 of Bhu-Rajaswa Sanhita 1959, the Tahsildar was not competent to order rectification of record.

6.4 In my considered opinion, the AO has drawn wrong inference from the letter dated 18.06.2014 of Additional Tahsildar. In fact, the appellant himself submitted as additional evidence, the copy of order sheet entry dated 27.03.2014 in the files of Additional Tahsildar wherein it was mentioned that because of the time limit of one year having elapsed, rectification cannot be carried out by Tahsildar. The fact of rejection of rectification application and the reasons thereof have been brought on record by the appellant himself. The aforesaid letter of Additional Tahsildar is required to be seen in continuation of the note sheet entry dated 27.03.2014 referred to above and other evidences brought on record by the appellant and cannot be looked in isolation. None of these legal and cogent evidences have been rebutted by the AO. There is nothing on record to show that the claim of the appellant is incorrect. In my considered view, view, the evidences submitted clearly establish that agricultural activities were carried out by the There is nothing on record to show that the claim of appellant is incorrect. In my considered appellant for a period of more than two years prior to the sale of land. Even at the Remand stage, the AO has failed to disprove the contention and evidences of the appellant. The inference drawn by the A.O that no agricultural activity was carried out by the appellant for two years prior to the date of transfer emanated from the Revenue Records. The appellant has brought on record sufficient evidences to dispel the doubt of the A.O that the agricultural operation was carried out even in the two years preceding the date of transfer. I am of the considered opinion that the A.O has attached undue significance to the Revenue Records which, in fact, suffered from apparent

mistake as is clear from the results of spot enquiry referred above. Looking to the facts and circumstances of the case and evidences on record, I hold that the appellant has established the fact of agricultural activities having been carried out on the lands sold by him as required u/s 54B. Not only this, the appellant has also submitted evidence showing that he has purchased new agricultural land within the prescribed time and agricultural income is being disclosed by him in subsequent years. All the conditions of section 54B are fulfilled by appellant and therefore, I am of the considered opinion that the appellant is entitled for deduction u/s 54B.

6.5 The whole case of the AO is based on the entries in Patwari records (khasra panchsala) which shows that during the years as claimed by appellant, no agricultural activities were carried out. The appellant has placed evidences on record to show that for one reason or the other, details of agricultural operations could not be entered in khasra panchsala. There are evidences in the form of purchase and sale bills produced by appellant, panchnama signed by Revenue Inspector, Patwari, Sarpanch, Kotwar and villagers. The evidences brought on record by the appellant establish his claim. It is not the case that the Tahsildar/ Additional Tahsildar rejected the application of appellant on account of finding it to be false. Apart from khasra panchsala, there are other evidences which are on record and correct view can be taken only on the basis of judicious consideration of all the evidences together.

6.6 It is seen that the appellant did furnish the Purchase and Sales Invoices, the A.O disbelieved the veracity of the purchase and sales invoices, however, I find that the belief of the A.O is not based on the results of any independent enquiry conducted by the A.O from the supplier/vendor or the buyers of agricultural produce of the appellant. I am convinced that the AO was not justified in rejecting the claim of appellant. Accordingly, the exemption claimed by the appellant u/s 54B of Rs. 3,39,49,274/- is upheld as claimed

in the return. The addition of Rs. 3,39,49,274/- is, therefore, deleted.”

6. The DR supported the order of Assessing Officer and submitted that there was violation of Rule 46A of the Income Tax Rules by not allowing the AO to examine the additional evidences admitted by the CIT(A).

7. When the Bench pointed out that the CIT(A) in his order has stated that he has obtained remand report from the AO on the additional evidence accepted by him from the assessee, which evident from para 6 of the order of CIT(A) quoted above, the DR could not give any reply to the same. Further, we find that the CIT(A) after appreciating the entire facts of the case and after considering the remand report of the AO has come to a conscious decision that the assessee was carrying on agricultural activities on the impugned land before its sale for which he has verified the purchase and sales invoices produced by the assessee. Therefore, he deleted the addition. No specific error in the above quoted order of CIT(A) could be pointed out by the DR. Hence, we find no good reason to interfere with the order of CIT(A), which is confirmed and the ground of appeal of Revenue is dismissed.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Court on Thursday, the 18th Day of January, 2018 at Raipur.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Raipur; दिनांक Dated 18/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur