

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI RAM LAL NEGI, JUDICIAL MEMBER)**

**ITA. No: 03 & 05/BLPR/2013
(Assessment Year: 2008-09)**

Manish Shukla Vill: Chhote Attarmuda Raigarh (C.G.)	V/S	Asstt. Commissioner of Income Tax-1(1), Bilaspur
Asstt. Commissioner of Income Tax-1(1), Bilaspur	V/S	Manish Shukla Vill: Chhote Attarmuda Raigarh (C.G)
(Appellant)		(Respondent)

PAN: AAPPT0319Q

Appellant by : Shri S. R. Rao, AR
Respondent by : Shri Sanjay Kumar, D.R.

(आदेश)/ORDER

Date of hearing : 09 -03-2018
Date of Pronouncement : 16 -04-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER

1. ITA No. 03/BLPR/2013 & 05/BLPR/2013 are cross appeals by the assessee and the revenue preferred against the order of the Ld. CIT(A), Bilaspur dated 30.10.2012 pertaining to A.Y. 2008-09.

2. Both these appeals were heard together and are disposed of by this common order for the sake of convenience.
3. We will first take up in ITA No. 03/BLPR/2013 Assessee's appeal
4. The first grievance of the assessee is that the ld. CIT(A) erred in denying the exemption u/s. 54B of the Act on the long term capital gain earned by the assessee.
5. Briefly stated the facts of the case are that the assessee in his individual capacity, purchased 8.22 acres of land for a total consideration of Rs. 17,000/-. The assessee claimed that he has thrown the property into HUF hotchpotch. The A.O. declined the claim of the assessee that the said land belongs to his HUF.
6. The assessee further claimed that he converted the said agricultural land into stock in trade and accordingly drawing support from the provisions of Section 45(2) of the Act, the long term capital gain was computed at Rs. 16.65 lacs. The assessee claimed exemption u/s. 54B of the Act on the ground that he has purchased another agricultural land of Rs. 29.51 lacs. The A.O. was of the opinion that no agricultural income was offered by the assessee, therefore, the assessee failed to prove that he has purchased agricultural land and accordingly the claim of exemption u/s. 54B of the Act was denied.
7. Assessee carried the matter before the ld. CIT(A) and reiterated its claim of exemption u/s. 54B of the Act. The ld. CIT(A) after considering the facts and the submissions observed that the computation of capital gain is not in dispute

but the dispute is related to the admissibility of exemption u/s. 54B of the Act on investment made in purchase of agricultural land. The ld. CIT(A) was of the opinion that as per the provisions of Section 54B of the Act, the assessee has not shown any agricultural income and therefore the exemption is rightly denied.

8. Before us, the ld. counsel for the assessee vehemently stated that the only requirement of the provisions of Section 54B of the Act is that the land must be used for agricultural purposes in the immediately preceding two years and on the transfer of such land, the assessee have to purchase another agricultural land within a period of two years and the said land must also be used for agricultural purposes. It is the say of the ld. counsel that there is no dispute that the transferred land and the new land purchased were agricultural land and therefore the claim of deduction u/s. 54B of the Act has to be allowed. Per contra, the ld. D.R. strongly supported the findings of the A.O.
9. We have given a thoughtful consideration to the orders of the authorities below. There is not dispute that during the year, the assessee has transferred agricultural land. There is also no dispute that the new land purchased by the assessee is also an agricultural land. This means that the transferred land and the new land were both used for agricultural purposes. Nowhere in the provision of Section 54B, it is mentioned that the assessee must derive agricultural income from the impugned land. Therefore, in our considered opinion, the action taken by the lower authorities is erroneous and deserve to be vacated. We accordingly direct the A.O. to allow the claim of exemption u/s. 54F of the Act. This grievance is accordingly allowed.

10. The next grievance relates to the addition of Rs. 7,50,564/- on account of Opening Capital.
11. During the course of the scrutiny assessment proceedings, the A.O. noticed that the opening balance in the capital account of the assessee as on 01.04.2007 was Rs. 57,35,662/-. The A.O. asked the assessee to furnish the source of opening capital. Assessee explained that Rs. 20,21,514 was on account of conversion of asset into stock in trade, Rs. 22,50,964/- was the sale consideration of land sold between 1998 to 2003 and Rs. 14,63,184/- was sale of agricultural produce. The A.O. was not convinced with the claim of the agricultural income of Rs. 14,63,184/-. The A.O. was of the opinion that the assessee must have incurred some expenditure and therefore the balance available with the assessee could be only Rs. 4,48,920/-. The A.O. gave credit of this amount and made addition of Rs. 10,14,264/- as unexplained cash credit u/s. 68 of the Act.
12. Assessee carried the matter before the Id. CIT(A) but without much success.
13. Before us, the Id. counsel for the assessee reiterated what has been stated before the lower authorities and the Id. D.R. supported the findings of the A.O. There is no dispute that the capital balance as on 01.04.2007 was shown at Rs. 57,35,662/- This means that it was opening credit balance in the books of accounts of the assessee. In our considered opinion, provisions of Section 68 are not at all applicable on the opening credit balance of the year. In our considered opinion, the addition made u/s. 68 of the Act is contrary to the provisions of the law and deserve to be deleted. We direct accordingly. This ground is also allowed.

14. The last grievance of the assessee relates to the addition of Rs. 13,32,625/-.
15. During the course of the scrutiny assessment proceedings, the A.O. found that the assessee has shown Gross Receipts of Rs. 81.01 lacs on which gross profit was shown at Rs. 36.67 lacs and net profit at Rs. 6.27 lacs. The closing stock was shown at Rs. 90.62 lacs. The A.O. also noticed that the assessee has made various provisions in the balance sheet with regard to development of land. The assessee was asked to recast his trading account on the basis of actual payments made excluding the provisions. In its re-casted trading account, the value of closing stock was shown at Rs. 59,60,751/-. The A.O. found that after re-casting the trading account the gross profit increased by Rs. 13.32 lacs. The A.O. accordingly made the addition of Rs. 13.32 lacs to the income of the assessee.
16. Assessee carried the matter before the Id. CIT(A) but without much success.
17. Before us, the Id. counsel for the assessee stated that since the assessee is following mercantile system of accounting all ascertained liabilities were debited to the trading account and therefore there is no merit in the addition of Rs. 13.32 lacs. Per contra, the Id. D.R. strongly supported the findings of the A.O.
18. We have carefully considered the orders of the authorities below. It is not in dispute that as per the audit report, the closing stock is shown at Rs. 90.62 lacs and the gross profit at Rs. 36.67 lacs. At the instance of the A.O., the assessee re-castd its trading account excluding the provision for expenditure and the value of closing stock was Rs. 59.60 lacs and the gross profit became 49.99 lacs. Without examining the nature of the provisions of expenditure made by the

assessee, the A.O. has simply made the addition of Rs. 13.32 lacs. Finding that the re-casted trading account, the gross profit increases. Without realizing that the direct expenses claimed at Rs. 1.14 crores were reduced to Rs. 68.09 lacs when the provisions for the ascertained liability were excluded. In our considered opinion, the action of the A.O. is without any basis and therefore the addition of Rs. 13.32 lacs deserve to be deleted. We direct accordingly. This ground is allowed.

19. In the result, the appeal filed by the Assessee is allowed.

ITA No. 05/BLPR/2013 Revenue's appeal.

20. In revenue's appeal, the grievance related to the relief of Rs. 20.09 lacs given by the CIT(A). The tax effect is at Rs. 6.02 lacs and therefore this appeal by the Revenue has to be dismissed in the light of the CBDT Circular No. 21 of 2015 dated 10.12.2015.

21. In the light of the said Circular, this appeal by the Revenue is dismissed.

Order pronounced in Open Court on 16 - 04- 2018

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER True Copy
RAIPUR: Dated 16/04/2018

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –