

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1380/PUN/2011

निर्धारण वर्ष / Assessment Year : 2006-07

Shri Amit Ashok Mutha,
83, Maniknagar,
Nagar Pune Road,
Ahmednagar

PAN : AFVPM3566P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Dy. Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar

.....प्रत्यर्थी / Respondent

Assessee by : Shri Harikrishan
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 18-07-2018
घोषणा की तारीख / Date of Pronouncement : 20-07-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-I, Pune dated 17-02-2011 for the assessment year 2006-07.

2. The brief facts of the case as emanating from records are : The assessee is real estate agent/dealer. The assessee in its return of income

for the impugned assessment year declared Long Term Capital Gains of Rs.25,22,427/- on account of sale of agricultural land and claimed exemption u/s. 54B of the Act on entire Capital Gains. The Assessing Officer rejected assessee's claim of exemption u/s. 54B as the assessee failed to show agricultural activities were being carried out by the assessee or his parents in the two years immediately preceding the date on which land was transferred. The Assessing Officer in the assessment order inter alia made addition of Rs.25,22,427/- after disallowing assessee's claim u/s. 54B of the Act.

Aggrieved by the assessment order dated 23-12-2008, the assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order upheld the findings of Assessing Officer in respect of disallowance of assessee's claim u/s. 54B of the Act. Now, the assessee is in second appeal before the Tribunal assailing the findings of Commissioner of Income Tax (Appeals) in rejecting assessee's eligibility for claiming exemption u/s. 54B and against confirming the addition of Rs.39,067/- u/s. 69A of the Act.

3. Shri Harikrishan appearing on behalf of the assessee submitted at the outset that he is not pressing ground No. 3 raised in the appeal with respect to addition of Rs.39,067/- u/s. 69A of the Act.

3.1 In respect of ground Nos. 1 and 2 relating to disallowance of exemption u/s. 54B, the ld. AR submitted that the assessee had sold three parcels of agricultural land and had earned Long Term Capital Gains of Rs.25,22,427/-. Admittedly, the assessee or his parents did not perform any agricultural activities on the land as there was no source of irrigation.

The authorities below failed to appreciate the fact that scarcity of water was the prime reason for not carrying out agricultural activities.

4. On the other hand Shri Mukesh Jha representing the Department vehemently defended the findings of Commissioner of Income Tax (Appeals) in rejecting assessee's claim of exemption u/s. 54B of the Act.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. To claim the benefit of exemption u/s. 54B one of the mandatory condition is that the assessee or his parents must have performed agricultural activities on the land in the two years immediately preceding the date on which such land is transferred. In the instant case, it is an admitted fact that no agricultural activities were performed by the assessee or his parents on the land in the period of two years immediately before the date of sale. The solitary reason given by the assessee for not performing agricultural activities on the land is scarcity of water. We do not find merit in the submissions of the assessee. Even if there was no irrigation facility available through well, canal etc., the assessee could have at least made an effort to carry out agricultural activities during monsoon season. The assessee has not brought on record any document to indicate that the land in question was hit by drought in the relevant two years period.

6. The Commissioner of Income Tax (Appeals) rejected assessee's claim by observing as under :

“However, so far as the requirement of agricultural activity for allowing the deduction u/s 54B is concerned, it is seen that the same is a valid objection mandated by law. Section 54B requires that the capital gains arising out of the sale of land has to have been used by the assessee or his parents for agricultural purposes in at least immediate two preceding years and the investment in land required to be made for claiming this deduction has to be

used for agricultural purposes. The Assessing Officer has found with evidences that no agricultural activity has been carried out by the appellant in respect of the land sold as well as the land purchased and therefore, he has correctly applied the law in raising this objection. The appellant during appeal has submitted that it is not possible to carry out agricultural activity on the lands in question as there is no facility of power and water available there. However, in my considered opinion this argument is not of any relevance because what is to be examined and insured is that the agricultural activity has been carried out or not. Even if a land is capable of agricultural activity and no such activity has been carried out, the law does not allow the said land to be eligible for deduction u/s 54B. On the above issue therefore, I find that the Assessing Officer was correct and in view of the above, deduction denied by the Assessing Officer is held to be correct. Ground No. 2 therefore, is dismissed.”

We do not find any infirmity in the order of Commissioner of Income Tax (Appeals). Accordingly, ground Nos. 1 and 2 raised in the appeal by the assessee are dismissed.

7. In ground No. 3 of the appeal the assessee has assailed addition of Rs.39,067/- made u/s. 69A of the Act. The ld. AR of the assessee stated at the Bar that he is not pressing ground Nos. 3. Accordingly, the same is dismissed as not pressed.

8. The ground No. 4 is general in nature, hence, requires no adjudication.

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

Order pronounced on Friday, the 20th day of July, 2018.

Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(विकास अवस्थी / Vikas Awasthy)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th July, 2018

RK

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)-I, Pune
4. आयकर आयुक्त / The CIT-I, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune