

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 557/JP/2018
निर्धारण वर्ष / Assessment Year :2013-14

Smt. Rukmani Devi Agarwal, 2/230, Vidhyadhar Nagar, Jaipur.	बनाम Vs.	Income Tax Officer, Ward-4(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADKPA 5661 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 29/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 18/09/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 27/03/2018 of Id. CIT(A)-2, Jaipur for the A.Y. 2013-14. The assessee has raised following grounds of appeal:

- "1. The Id. CIT(A) has erred on facts and in law in confirming the action of the A.O. is not allowing the claim of deduction U/s 54B of Rs. 2,47,60,900/- by holding that the purchase of agriculture land on 29/11/2012 by the assessee is before the date of execution of sale deed dated 28/01/2013 rectified by correction deed dated 15/2/2013 by ignoring that the sale deed dated 28/01/2013-15/02/2013 is in continuation of agreement to sale dated 22/11/2012 and reference of this agreement is made in the correction deed dated 15/02/2013.*

- 1.1 *The Id. CIT(A) has erred on facts and in law in making various incorrect observations and not drawing correct inferences from the various documents available before her.*
2. *The assessee craves to amend, alter and modify any of the grounds of appeal.*
3. *The appropriate cost be awarded to the assessee.”*

2. The assessee is individual and filed her return of income on 16/01/2014 through e-filing declaring total income of Rs. 1,79,240/- after claiming deduction U/s 54B of the Income Tax Act, 1961 (in short the Act). During the year under consideration, the assessee sold an agricultural land at village Tatiawas, Tehsil-Ajmer. The assessee claimed that the agricultural land in question was sold vide agreement to sell dated 22/11/2012 for a consideration of Rs. 3,14,77,440/- and subsequently a sale deed was executed on 28/01/2013. Thereafter a correction deed was also executed on 15/2/2013. The assessee purchased new agricultural lands vide sale deed dated 29/11/2012 for a consideration of Rs. 2,47,60,900/-, sale deed dated 29/3/2013 for a consideration of Rs. 9,30,550/-, sale deed dated 13/3/2013 for a consideration of Rs. 13,89,450/- and sale deed dated 10/04/2013 for a consideration of Rs. 15,80,000/-. Thus, the assessee purchased four pieces of agricultural lands vide separate sale deeds. The Assessing Officer while framing the assessment U/s 143(3) of the Act denied the claim of deduction U/s 54B of the Act in respect of the agricultural land purchased vide sale deed dated 29/11/2012 for a

consideration of Rs. 2,47,60,900/-. The claim of deduction in respect of other three agricultural lands purchased by the assessee was allowed by the Assessing Officer. The Assessing Officer denied the claim of deduction U/s 54B on the ground that the agricultural land was sold after purchase of new agricultural land and therefore, the agricultural land purchased prior to the sale is not eligible for deduction U/s 54B of the Act.

3. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) and reiterated its contention that the sale transaction of the original agricultural land affected vide agreement to sell dated 22/11/2012. The assessee has also referred the sale consideration received by the assessee prior to the sale deed dated 28/01/2013 and thus claimed that the assessee received the consideration as per the agreement to sell. The assessee also relied upon the correction deed dated 15/02/2013 in support of the claim that the said correction deed clearly mentioned the prior agreement between the parties and consideration received by the assessee as per the terms of the agreement. The Id. CIT(A) did not accept the contention of the assessee and upheld the order of the Assessing Officer on the ground that the transaction of sale of existing land took place only on 28/01/2013 when the sale deed was executed and registered with the Sub-Registrar.

4. Before us, the Id AR of the assessee has submitted that the transfer of agricultural land took place when the assessee entered into an agreement to sell dated 22/11/2012 and handed over the possession of land against the receipt of consideration in the shape of post dated cheques which were encashed by the assessee even prior to the execution of sale deed dated 28/01/2013. Thus, the Id AR has submitted that as per the provisions of Section 2(47) (v)&(vi) of the Act, a transfer of immovable property includes any transaction involving the allowing of possession of the property to be taken or retained in part performance of contract in the nature referred to in Section 53A of the Transfer of Property Act or any transaction which has effect of transferring or enabling the enjoyment of any immovable property. The assessee has handed over the possession of agricultural land to the purchaser at the time of entering into the agreement to sell dated 22/11/2012. The sale consideration was agreed upon between the parties at the time of agreement which was received by the assessee by way of post dated cheques. Accordingly, the sale deed was executed on 28/1/2013 but certain factual mistakes occurred in the sale deed, therefore, a correction deed was executed on 15/2/2013 in which the fact of handing over the possession of land as per the agreement dated 22/11/2012 is also mentioned. The Id AR has submitted that in the first sale deed dated 28/01/2013 and correction deed dated 15/02/2013, the cheque

details are mentioned, which are same as mentioned in the sale agreement dated 22/11/2012. The assessee filed an affidavit of Smt. Amita Kedia, the purchaser of the land, who has stated that she received the possession of land on the date of sale agreement dated 22/01/2012. The evidence produced by the assessee has not been controverted by the Assessing Officer, therefore when the purchaser of the land has accepted the fact of receiving the possession and payment of consideration as on the date of sale agreement then merely because the sale deed was executed subsequently would not change the actual transaction of transfer of the agricultural land. The Id AR has relied upon the decision dated 25/01/2018 of Coordinate Bench of this Tribunal in the case of M/s Rajasthan Agencies Pvt. Ltd. Vs ITO in ITA No. 680 & 681/JP/2017 and submitted that the Tribunal after considering the agreement to sell and subsequent sale deed in respect of sale of land, held that the transaction of transfer was completed when the parties have executed the agreement to sell and in performance of the said agreement, sale deed was executed subsequently, therefore, when there was an agreement to sell and assessee received the consideration and handed over the possession of the land then the transaction of transfer in relation to the land was completed on the date of execution of agreement to sell and the subsequent sale deed is only in pursuant to the agreement to sell and not created any fresh right in favour

of the purchaser. He has referred to the details of the consideration received by the assessee as well as paid in respect of the sale of existing agricultural land and purchase of the new agricultural land and submitted that the major purchase consideration was paid by the assessee only after receiving the sale consideration of the existing agricultural land and hence the conditions of Section 54B of the Act have been satisfied. He has also reiterated its contention raised before the Id. CIT(A) and submitted that when the purchaser of the agricultural land has admitted the fact of receiving the possession in the statement made in the affidavit then without confronting and rejecting the affidavit filed by the assessee, the same is a sufficient proof to establish the fact.

5. On the other hand, the Id DR has relied upon the orders of the authorities below and submitted that the alleged agreement to sale is neither registered nor notarized. No payment was received at the time of execution of the said agreement. Rather no payment was received up to date of purchase of new agricultural land vide sale deed dated 29/11/2012, therefore, the assessee has not invested the capital gain arise from the sale of existing agricultural land for purchase of new agricultural land. It is a clear case of purchasing the agricultural land prior to the date of sale of the existing agricultural land. Hence, as per the statutory provision, the assessee is entitled to the deduction U/s 54B of the Act only when

investment is made after transfer of the existing capital asset. The Assessing Officer has already allowed the claim of deduction U/s 54B of the Act to the extent of Rs. 39.00 lacs as the assessee purchased the agricultural land after the sale of the existing land. When no actual consideration has passed on to the assessee on the date of agreement to sell then the transfer of the existing land was not completed on the date of agreement when the subsequent sale deed dated 28/01/2013 clearly states that possession has been handed over to the buyer on the date of registration. The Id DR has thus, submitted that the intent of the legislature for allowing deduction U/s 54B of the Act is to purchase the land after the sale of the existing land.

6. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer denied the deduction U/s 54B of the Act on the ground that the new agricultural land was purchased by the assessee to the extent of Rs. 2,47,60,900/- on 29/11/2012 which is prior to the sale of existing agricultural land vide sale deed dated 28/01/2013. Hence, the Assessing Officer held that the purchase of new agricultural land is prior to the sale of existing agricultural land and not subsequent to the sale of agricultural land. The assessee has relied upon the agreement to sell dated 22/11/2012 and submitted that when the assessee received the consideration through post dated cheques on the date of agreement to sell

and also handed over the possession of the land to the purchaser then the transaction of transfer of existing agricultural land completed on 22/11/2012 which is prior to the purchase of the new asset vide sale deed dated 29/11/2012. The Assessing Officer and the Id. CIT(A) has doubted the existence of the agreement to sell dated 22/11/2012, however, we find that the details of consideration as mentioned in the agreement to sell as well as subsequent sale deed dated 28/01/2013 are same. For sake of completeness, we reproduce the details of cheques through which the assessee received the sale consideration as under:

Sl. No.	Cheque No.	Name of the Bank	Amount	Dated
1.	358891	Vijaya Bank, Vidyadhar Nagar Branch, Jaipur	88,00,000/-	04/01/2013
2.	308537	Syndicate Bank, Seth Colony Branch, Jaipur	9,00,000/-	27/01/2013
3.	349005	Vijaya Bank, Vidyadhar Nagar Branch, Jaipur	80,00,000/-	25/02/2013
4.	349006	Vijaya Bank, Vidyadhar Nagar Branch, Jaipur	80,00,000/-	25/02/2013
5.	349008	Vijaya Bank, Vidyadhar Nagar Branch, Jaipur	57,77,440/-	28/01/2013
		Total	3,14,77,440/-	

Thus, it is clear that some of these cheques were dated prior to the sale deed dated 28/01/2013 and some of the cheques are post dated i.e. 25/02/2013. The only one cheque of Rs. 57,77,440/- is dated 28/01/2013. These facts are not in dispute. The cheque dated 01/4/2013 was presented and encashed in the bank account of the assessee on 07/01/2013, therefore, it is established from the bank statement of the assessee that

the assessee received the part sale consideration to the extent of Rs. 88.00 lacs on 07/01/2013 when the said cheque was encashed and credited to the bank account of the assessee. This fact shows that prior to the sale deed dated 28/01/2013, the assessee and the purchaser had agreed for the purchase and sale consideration and the cheques were also handed over to the assessee by the purchaser much prior to the date of sale deed dated 28/01/2013. Once the parties have the prior agreement regarding the sale consideration of the existing agricultural land then the agreement to sell dated 22/11/2012 cannot be an afterthought self serving document. It is apparent from the record that the assessee received the consideration through the post dated cheques on the date of agreement and since the assessee was simultaneously purchasing the new agricultural land, therefore, the assessee has also paid the purchase consideration of the new agricultural land through post dated cheques. We note that the entire purchase consideration was paid by the assessee through the cheques which were encashed after the sale deed dated 29/11/2012. We find from the bank statement that the first part of the purchase consideration was paid on 12/12/2012, the second part of the consideration was paid on 21/12/2012 and the third part of the consideration was paid on 16/01/2013. Thus, the encashment of the cheques of sale consideration as well as purchase consideration clearly shows that the assessee received the

sale consideration through post dated cheques and also paid the purchase consideration through post dated cheques. The part payment of the purchase consideration was made after receipt of the part purchase consideration of Rs. 88.00 lacs on 07/01/2013 whereas the purchaser consideration was paid on 16/01/2013. All these transactions were completed even prior to the sale deed dated 28/01/2013. Hence this explanation of the assessee that the purchase consideration as well as sale consideration were paid and received respectively through post dated cheques, are found to be correct from the record which can be verified independently being the statement of the assessee's bank account. Though in the first sale deed dated 28/01/2013 the entire facts were not narrated, however, subsequently on 15/2/2013 a correction deed was executed and registered wherein all these details and facts were clearly mentioned regarding the handing over the possession of the land in question at the time of the execution of agreement dated 22/11/2012. Hence, so far as the facts explained by the assessee are concerned, these are established from the documentary evidence which were neither questioned nor found to be bogus. The documents which are registered as sale deeds for purchase and sale of agricultural lands are also otherwise not in dispute and further the details of the receipt and payment of consideration as per the bank account statement of the assessee are also not in dispute. Thus, in these facts as

established by the assessee that the sale consideration as well as purchase consideration was paid through post dated cheques are relevant for the purpose of deciding the issue of eligibility of deduction U/s 54B of the Act.

6.1 Section 54B of the Act was brought into statute by the Finance Act, 1970 as a consequential amendment of Section 2(14) and Section 47 whereby the capital gain arising from transfer of agricultural land situated in the municipal or other urban area was brought to tax even where such land was held for bonafide agricultural purposes. Therefore, with a view to relieving the burden of taxation on the capital gain in such cases, a provision has been made U/s 54B for exempting from the tax, the capital gain arising from the transfer of agricultural land in certain circumstances. Thus, the provisions of Section 54B are beneficial provision and relieving the genuine assessee from the tax burden on transfer of agricultural land subject to the condition that such agricultural land was being used by the assessee or parents for agricultural purposes and the assessee has, within a period of two years after the date of sale, has acquired new agricultural land. Thus the amount of capital gain which is not exceeding the cost of acquisition of new land shall not be chargeable to tax. The concession/benefit given in Section 54B will be forfeited if the assessee transfers the fresh land acquired by him within a period of three years from the date of its purchase. Thus the objection and scheme of granting the

benefit U/s 54B is to relieve the genuine assessee from the burden of capital gain tax on transfer of agricultural land if the assessee has purchased new agricultural asset by investing the capital gain and as such the purpose was to substitute the existing agricultural land by new agricultural land. Therefore, in order to determine the eligibility of benefit of Section 54B of the Act, the predominant and substantial condition of substituting the agricultural land has to be satisfied. The date of actual transfer of existing land or even the purchase of new agricultural land may not be always relevant for the purpose of Section 54B of the Act. For instance, in case of acquisition of land by the government, the transfer of the land took place when the government takes over the possession but that does not mean that the assessee has received the compensation and even in some cases enhanced compensation is received after lapse of so many years, therefore, the date of transfer and the actual receipt of compensation are not contemporaneous. Until and unless, the assessee received compensation/consideration, the acquisition of new agricultural land is not possible, hence the relevant date is the receipt of compensation or consideration and not the date of execution of document as held by the Hon'ble Allahabad High Court in the case of CIT Vs. Janardhan Dass 299 ITR 210.

6.2 The requirement for availing the benefit of Section 54B is to use the capital gain for purchase of new agricultural land and if the assessee does not receive the sale consideration then the question of purchasing new agricultural land does not arise and the very object of Section 54B of the Act would be defeated. Hence the receipt of compensation and payment of consideration for purchase of new asset are the relevant dates for determining the conditions of Section 54B of the Act are satisfied. In the case in hand, when the assessee has received the compensation prior to the payment of the purchase consideration for acquisition of new agricultural land then the transaction has to be looked into in the overall facts and surrounding circumstances in which the assessee sold existing agricultural land and purchased new agricultural land. If the intent of the assessee is manifest from the facts and circumstances that the assessee purchased the fresh agricultural land in lieu of the existing agricultural land then the conditions as envisaged in Section 54B of the Act are satisfied. We have already discussed the facts that the assessee received the purchase consideration through post dated cheques which were encashed in part prior to the payment of the purchase consideration through post dated cheques. As discussed above, both the receipts of sale consideration and purchase consideration are through post dated cheques as evident from the record and none of the cheques was encashed on the date of execution of

the sale deed but the receipt of sale consideration is after the agreement to sell dated 22/11/2012 and much prior to the sale deed dated 28/01/2013 whereas the entire purchase consideration was paid out from the bank account of the assessee only after the sale deed dated 29/11/2012. These facts clearly established that the receipt as well as payment are through post dated cheques and therefore, the assessee has established the existence of the agreement to sell dated 22/11/2012 under which the purchase consideration was received by the assessee. The subsequent documents consist of correction deed as well as the affidavit of the purchaser has supported the fact that the consideration for sale of the existing land was received at the time of the agreement to sell dated 22/11/2012 and possession was also handed over on the said date of agreement. Hence when the agreement was subsequently acted upon and in performance of the said agreement, the parties have finally executed the sale deed then the transaction will be considered as transferred as on the date of the agreement. An identical issue was considered by the Coordinate Bench of this Tribunal in the case of M/s Rajasthan Agencies Pvt. Ltd. Vs ITO (supra) in para 6 and 7 as under:

“6. Even otherwise the term transfer as per section 2(47) r.w.s. 48 of the of the Income Tax Act is wider than the term sale and it includes all rights and privileges in the property either in praesenti or accruing in future as vested in vendor. Once these rights vested in the vendor were subject matter of

the transfer, the vendor retains no right in the property to be re-conveyed in the subsequent sale deed except the obligation to get the property converted for non agricultural use and execution of the sale deed. The intentions of the parties are relevant and must be ascertained from a document as a whole. Where the deed of transfer has been executed though in violation of law prescribing for a previous sanction or subsequent validation by a competent authority and though not registered would still attract the application of doctrine of part performance. In the case in hand since, the agricultural land could not be sold in view of section 42 of the Rajasthan Tenancy Act, therefore, the parties entered into an agreement to sale dated 11.04.2007 and thereafter the lands were converted into non agricultural land and more specific Farm House Land on 03.02.2010 and 05.02.2010 and thereafter the sale deed was executed by the vendors on 13.04.2010. As it is clear from these act and events that it is continuous process of transfer which begins with the agreement to sale dated 11.04.2007, conversion of the land use on 03/05.02.2010 and ultimately execution on sale deed on 13.04.2010. The sale deed dated 13.04.2010 is a performance of obligation under the agreement to sale dated 11.04.2007, therefore, the conversion of the land after the execution of agreement to sale is a post facto conversion and the transfer would effects from the date of agreement to sale specifying all the conditions as stipulated u/s 2(47) (v) of the Act r.w.s. 53A of the Transfer of Property Act. Once, the sale deed is executed in pursuant to agreement to sale and all the conditions stipulated u/s 2(47) of the Act are satisfied it would constitute transfer and would be effective from the date of agreement to sale itself.

7. *Though as per the amendment brought to the registration Act 1908 vide amendment Act 2001 an agreement for sale of any immovable property without registration shall have no effect of transfer however, the*

agreement in question has to be seen along with the sale deed executed subsequently. It is not a case of transfer based only on unregistered documents but in this case the parties to the agreement have executed sale deed in performance of the agreement. Therefore, the transfer of immovable property would be considered as a combined act of agreement to sale and sale deed as a single transaction of transfer with effect from the date on which such transaction was intended and conceived by the parties to the transaction. Hence, agreement to sale dated 11/04/2007 conversion of land use by JDA on 03.02.2010 and 05.02.2010 and execution sale deed dated 13.04.2010 are interlinked and inseparable chain of events necessary for transaction of transfer. The contents of the sale deed dated 13.04.2010 clearly show that it is in furtherance of agreement dated 11.04.2007. The sale deed clearly states that made of payment of consideration as per the details given in the agreement dated 11.04.2007. Therefore, the possession was handed over and consideration was received prior to the date of sale deed. The sale deed in fact ratify the transaction of transfer vide agreement dated 11.04.2007. The parties were very much aware about the need of conversion of land use and accordingly applied to JDA for conversion which was granted in the month of February, 2010 and thereafter the sale deed was executed. Hence, the transfer as per provisions of section 2(47) of the Act is to be considered at the time of agreement dated 11.04.2007. The intention of the parties can be gathered from the terms of the agreement, subsequent performance by the parties in terms of agreement getting the land converted to non agricultural use and execution on sale which has reaffirmed the status of the parties to the agreement and the transfer under the agreement instead of altering the same. The Hon'ble Supreme Court in case of Sanjay Lal vs. CIT 365 ITR 389 while considering the question as to whether the date on which agreement for sale was executed could be considered the date on which the property was transfer has held in para 20 to 25 as under:-

“20. The question to be considered by this Court is whether the agreement to sell which had been executed on 27th December, 2002 can be considered as a date on which the property i.e. the residential house had been transferred. In normal circumstances by executing an agreement to sell in respect of an immovable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforesaid question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under: '2(47) "transfer", in relation to a capital asset, includes,- (i)** ** ** (ii) the extinguishment of any rights therein; or.....'

21 Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset. In the light of the aforesaid definition, let us look at the facts of the present case where an agreement to sell in respect of a capital asset had been executed on 27th December, 2002 for transferring the residential house/original asset in question and a sum of Rs. 15 lakhs had been received by way of earnest money. It is also not in dispute that the sale deed could not be executed because of pendency of the litigation between Shri Ranjeet Lal on one hand and the appellants on the other as Shri Ranjeet Lal had challenged the validity of the Will under which the property had devolved upon the appellants. By virtue of an order passed in the suit filed by Shri Ranjeet Lal, the appellants were restrained from dealing with the said residential house and a law-abiding citizen cannot be expected to violate the direction of a court by executing a sale deed in favour of a third party while being restrained from doing so. In the circumstances, for a justifiable reason, which was not within the control of the appellants, they could not execute the sale deed and the sale deed had been registered only on 24th September, 2004, after the suit filed by Shri Ranjeet Lal, challenging the validity of the Will, had been dismissed. In the

light of the aforestated facts and in view of the definition of the term "transfer", one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in personam had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs. 15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the parties through subsequent contract or conduct leading to no transfer of the property to the proposed vendee but that is not the case at hand.

22. *In addition to the fact that the term "transfer" has been defined under Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income Tax Act and it is also said that equity and tax are strangers to each other, still this Court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of Oxford University Press v. CIT [2001] 247 ITR 658/115 Taxman 69 this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. Considering the aforestated observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e. definition of "transfer",*

which would enable the appellants to get the benefit under Section 54 of the Act.

- 23 *Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.*
- 24 *Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated.*
- 25 *In view of the aforestated peculiar facts of the case and looking at the definition of the term 'transfer' as defined under Section 2(47) of the Act, we are of the view that the appellants were entitled to relief under Section 54 of the Act in respect of the long term capital gain which they had earned in pursuance of transfer of their residential property being House No. 267, Sector 9-C, situated in Chandigarh and used for purchase of a new asset/residential house. "*

Thus, it was held by the Hon'ble Supreme Court that when agreement to sale in respect of immoveable property is executed a right in personae is created in favour of the vendee and thereby the vendor is restrain from selling the property to someone else because the vendee gets the legitimate right to enforce specific performance of the agreement. In view of the above facts and circumstances of the case as well as the decision of Hon'ble Supreme Court we hold that the transfer of the land in question would be regarded as on the date of agreement to sale dated 11.04.2007. The order of the authorities below qua this issue are set aside. "

Accordingly, in view of the above discussions as well as the facts and circumstances of the case and following the earlier order of this Tribunal, we hold that the assessee has satisfied the conditions of acquiring new agricultural land against the sale of existing agricultural land and therefore, it is a case of substitution of existing agricultural land by new agricultural land and consequently the assessee is eligible for deduction U/s 54B of the Act in respect of the agricultural land purchased for total cost of Rs. 2,47,60,900/-. Accordingly, the orders of the authorities below are set aside qua this issue.

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

Order pronounced in the open court on 18/09/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 18th September, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Rukmani Devi Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-4(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 557/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar