

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH “SMC”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं./ ITA No. 80/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Neeta Dattatraya Takle,  
1810, Sarthak,  
Old Tambat Lane,  
Bhadrakali Area,  
Nashik-422 001  
PAN : AEAPT6629L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-2(4), Nashik.

.....प्रत्यर्थी / Respondent

Appellant by : None

Respondent by : Shri M.K. Verma

सुनवाई की तारीख / <b>Date of Hearing : 09.10.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement : 22.10.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM**

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeal)-2, Nashik dated 15.06.2016 relating to assessment year 2009-10 passed under section 143(3) r.w.s.147 of the Income Tax Act, 1961( in short ‘the Act’).

2. The appeal was fixed for hearing on 22.03.2018. On that date, a letter was received by mail. However, none appeared on behalf of the assessee and the matter was adjourned to 16.05.2018. On the next hearing dates for which notice was sent i.e. 16.05.2018 and 21.08.2018, none was present on behalf of the assessee. Again, notice was sent through RPAD to the assessee and acknowledgement of service of notice is available on record. However, none appeared on behalf of the assessee on the appointed date i.e. 09.10.2018. Hence, the appeal is heard ex-parte the assessee.

3. The Ld. DR for the Revenue pointed out that the appeal was filed after a delay of 123 days for which though an affidavit has been filed but there is no explanation of the delay. He further pointed out that the assessee has claimed deduction u/s.54B of the Act and referred to Para 6.5 of the appellate order wherein the assessee had withdrawn the claim of deduction u/s.54B of the Act as mentioned by the Assessing Officer in Para 10, sub para 3 of the assessment order, vide assessee's letter dated 29.01.2013. The same was adjudicated by the CIT(A). Further there was findings of CIT(A) that the land sold by the assessee was not being utilized for agricultural purpose and hence, the assessee is not eligible for deduction u/s.54B of the Act.

4. Briefly in the facts of the case, the case of the assessee was picked up for scrutiny u/s.147 of the Act. The assessee filed revised return of income declaring total income of Rs.15,50,211/- in response to the notice u/s.148 of the Act which was not filed within the period of 30 days from the date of service of notice. During the year under consideration, the assessee had shown income from retail trade, tuition classes, short term capital gain, long term capital gain and income from other sources. During the course of assessment proceedings, in the case of Sunil D. Takle, Nashik, it was seen that Shri Sunil D. Takle, Shri Shrikant D. Takle & Neeta D. Takle, all are residents of Nashik and had sold the asset at Survey No.501/1, Nashik within 8 kms. of municipal limits for Rs.75 Lakhs of which Government valuation was at Rs.1,60,00,000/- as per the sale deed dated 05.07.2008. The assessee had disclosed

the long term capital gain at Rs.39,55,110/- on the basis of approved valuer's report. The assessee had also claimed exemption u/s.54B(1) of the Act. The Assessing Officer further noted from sale deed, 7/12 extracts for the aforesaid asset that the assessee had not utilized the said land for agricultural purpose since last two years. The remarks on the 7/12 extracts was that the land was "fallow/uncultivated". Also from copies of return of income and computation of income filed by assessee for the A.Y. 2007-08 and 2008-09, it appeared that the assessee has not disclosed any agricultural income in the said return or computation. Thus, Assessing Officer was of the view that the assessee had claimed incorrect exemption of Rs.48,98,079/- u/s.54B(1) of the Act. Other issue raised by assessee is with regard to applicability of section 50C of the Act and cost of acquisition of the property.

5. However, limited issue which arose before me is only claim of deduction u/s.54B of the Act. The assessee has not summarized the grounds of appeal but has raised the only issue of claim of deduction u/s.54B of the Act. Hence, grounds of appeal as such are not being reproduced. In the assessment order, Assessing Officer computed the income from long term capital gain in the hands of assessee at Rs.31,33,489/-. The assessee had not offered the same for taxation and not paid taxes thereon. The said amount was added in the hands of assessee. Since the land was falling within 8 Kms. radius from urban conglomeration, the said land was held as not an agricultural land. The Assessing Officer did not allow the claim of deduction u/s.54B of the Act and the said claim was also withdrawn vide letter dated 29.01.2013. In the present case, investment in agricultural land of Rs.39,29,537/- was made on 03.04.2010.

6. Aggrieved by the assessment order, assessee filed appeal before the CIT(A) and made various submissions against the deduction under section 54B of the Act and the same were dismissed by the CIT(A). The assessee claimed before CIT(A) that she had shown agricultural income in her return of income. The submissions of the

assessee were forwarded to the Assessing Officer for remand report which is reproduced in Para 6.3 at page 6 to 7 of the appellate order and the same is being referred but not being reproduced. The assessee, in turn, filed her final submissions which are also reproduced by the CIT(A). The CIT(A) concluded his findings by observing as under :

*“6.5 I have carefully considered the facts of the case and rival contentions. On perusal of the same it has been noticed that during the course of assessment proceedings the appellant had withdrawn the claim of deduction u/s. 54B as mentioned by the A'O, in para 10, sub para 3 of the assessment order, vide assessee's letter dated 29/01/2013. In the appellate proceedings the appellant has claimed in the earlier letter filed, that she had not disclosed agricultural income in the returns of income filed for A.Yrs. 2007-08 & 2008-09, as her agricultural income was below Rs.5,000/-. Further on later date, the appellant had claimed that her agricultural income for A.Yrs. 2007-08 and 2008-09 was Rs.15,850/- and Rs.24,700/- respectively. Thereafter during remand proceedings, the A.O. has made enquiry with the Revenue department of Govt. of Maharashtra and obtained 7/12 extracts of the impugned land as per which the land was barren for the years 2005-06 to 2009-10. Thereafter the appellant had again changed her stand and had claimed that the deduction u/s.54B is allowable, even if, the agricultural land was not cultivated in 2 years prior to the date of sale, in view of the decision in the case of CIT Vs. N. Raghu Varma (2013) (Hyd), The appellant had further stated that in the above judgment it is clearly mentioned that if an assessee is unable to cultivate agricultural land due to vagaries of nature and non availability of resources, exemption u/s.54B cannot be denied on its sale. In the case under appeal, the appellant had not brought on record the vagaries of nature due to which she could not cultivate the agricultural land. In view of the facts of the case, it is evident that the appellant had not cultivated agricultural land sold during the year 2005-06 to 2009-10 and hence in view of provisions of section 54B, the appellant is not eligible for deduction u/s.54B of the Act. Ground No.2 is therefore dismissed.”*

7. Now the assessee is in appeal before the Tribunal against the findings of CIT(A) in respect of claim of deduction under section 54B of the Act.

8. Before me, the assessee has raised the same submissions as made before the CIT(A). As per 7/12 extracts, the agricultural land was barren for the years 2005-06 to 2009-10. The assessee claimed that agricultural income was disclosed in her returns of income for assessment years 2007-08 & 2008-09. The issue which arises is that in case agricultural income had been shown in assessment years 2007-08 and 2008-09, can it be that the assessee had not cultivated agricultural land, especially where the

agricultural income was shown by assessee had not been disturbed by the Revenue Authorities. The assessee had shown agricultural income for A.Ys. 2007-08 and 2008-09 of Rs.15,850/- and Rs. 24,700/- respectively. Hence, the assessee claims that the agricultural income for the assessment years 2007-08 & 2008-09 had been disclosed in her return of income. The assessee, during First Appellate proceedings, had filed confirmation letter of various persons staying/ cultivating land at Wadala stating that the assessee had cultivated the land in the impugned year and during earlier years prior to sale. The CIT(A) vide Para 6.2 of his order noted the contention of the assessee regarding declaration of income for assessment years 2007-08 and 2008-09 and the same has not been disputed. The Assessing Officer in the remand proceedings noted certain information from assessee on this ground. Merely because, income was assessed in the hands of other co-owners as long term capital gain since the land was not cultivated, would not imply that the land of the assessee was also not cultivated. The Agricultural income had been shown by the assessee and having not been disturbed by the Assessing Officer, the plea of the assessee in this regard cannot be disregarded. As the land sold by the assessee was agricultural land on which agricultural operations were being carried on in the preceding two years, the assessee is entitled to claim benefit of deduction u/s.54B of the Act. Accordingly, I direct the Assessing Officer to allow the same. Thus, ground of appeal raised by the assessee is allowed.

9. The assessee had moved a petition for condonation of delay of 123 days wherein she has pleaded because of suddenly severe knee problem was aggravated to her and also her blood pressure and sugar level was increased. She took the medical treatment at Nashik. Therefore, she was not able to submit the appeal in time. In the facts and circumstances, there is merit in the plea of the assessee in this regard and hence, delay is condoned.

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

Order pronounced on 22<sup>nd</sup> day of October, 2018.

Sd/-  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> October, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-2, Nashik.
4. The Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,  
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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