

**आयकरअपीलीयअधिकरणसूरतन्यायपीठ,सूरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,SURAT**  
**BENCH,SURAT**

**श्रीसी एमगर्ग, न्यायिक सदस्य एवंश्रीओपीमीना, लेखा सदस्य केसमक्ष**  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND**  
**SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No.290/Ahd/2016/SRT**

**निर्धारणवर्ष/ Assessment Year: 2011-12**

Dy. Commissioner of Income Tax,  
Circle-2(3),  
Surat.

**Vs.** Shri Ajaykumar Dhansukhbhai  
Patel,  
Ishwar Krupa, B/h Anand Park,  
Althan, Althan Bharthana,  
Tal-Choriyasi,  
Dist. Surat – 395 007.

**[PAN:AMAPP 3980A]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थीकीओरसे/ Assessee by

: Shri Mehul R. Shah, C.A

प्रत्यर्थीकीओरसे /Revenue by

: ShriDileep Kumar, Sr. D.R

सुनवाईकीतारीख/Date of Hearing

: 06-07-2018

घोषणाकीतारीख /Date of Pronouncement

: 12-07-2018

**आदेश /ORDER**

**PERC.M.GARG, JUDICIAL MEMBER:**

This appeal has been filed by the Revenue directed against the order of Commissioner of Income Tax (Appeals)-1, Surat ('CIT(A)' for short) dated 27.11.2015 for the Assessment Year (A.Y) 2011-12.

2. The grounds raised by the Revenue read as follows:

1. *On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the additions of Rs. 4,63,237/- on account of cash credit u/s. 68 of the Act, and Rs. 59,77,671/- on account of disallowance of deduction u/s. 54B of the Act.*
2. *On the facts and circumstances of the case and in Law, the Ld.CIT(A) has erred in holding that the AO has not carried out any independent enquiry or collected any evidence to establish that income of Rs. 4,63,237/- was not from agricultural activity but earned by him from some other unexplained sources of undisclosed activity. The onus lies on the assessee to prove that he had in fact sold agricultural produce in cash during the year under consideration to the extent of Rs. 4,63,237/-, which he has not done.*
3. *On the facts and circumstances of the case and in Law, the Ld.CIT(A) has failed to appreciate the fact that the assessee failed to fulfill the condition laid down u/s. 54 of the Act as the assessee neither filed his return of income nor purchased new property before the due date of filing of return of income u/s. 139(1) of the Act. Sub-section (2) of section 54B clearly envisages that "...such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139..." and not due date as stipulated u/s. 139(4) of the Act.*
4. *On the facts and in the circumstances of the as and in Law, the Ld.CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld.CIT(A)-I Surat may be set-aside and that of the Assessing Officer's order may be restored.*

**Ground Nos. 1 & 2:**

3. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id. Departmental Representative (DR) submitted that the Ld. CIT(A) has erred in deleting the additions of Rs. 4,63,237/- on account of cash credit u/s. 68 of the Act, and Rs. 59,77,671/- on account of disallowance of deduction u/s. 54B of the Act. He further submitted that the Ld.CIT(A) has erred in holding that the AO has not carried out any independent enquiry or collected any evidence to establish that income of Rs. 4,63,237/- was not from agricultural activity but earned by him from some other unexplained sources of undisclosed activity. The onus lies on the assessee to prove that he had in fact sold agricultural

produce in cash during the year under consideration to the extent of Rs. 4,63,237/-, which he has not done. The Id. DR submitted that the Id. First appellate authority has granted relief to the assessee without any justified reason and basis therefore, impugned order may kindly be set aside by restoring that of the Assessing Officer (AO).

4. Replying to the above, the Id. Assessee's Representative (AR) drew our attention towards para 7.1 of the first appellate order and submitted that the assessee has shown agricultural income @ Rs. 56,693/- per Vigha which was found to be reasonable looking to the cultivation of crops of sugarcane therefore, claim of net agricultural income of Rs. 11,70,845/- was accepted and both the additions were deleted on sound footings. Therefore, first appellate order may kindly be upheld by dismissing ground of Revenue.

5. On careful consideration of above rival submissions, we are of the view that there was no justifiable basis for the AO to estimate the expenditure on the agricultural activity @ 40% of the net agricultural income. The authorities below should not ignore the fact that when most of the expenses are borne and recorded in the books of accounts of the assessee maintained with the co-operative society and the agricultural income shown by the assessee has been found reasonable by the Id. CIT(A) then, additions on account of unexplained cash credit u/s. 68 of the Act and another addition on account of unaccounted agricultural expenditure u/s. 69C of the Act cannot be held as valid and sustainable and the same was rightly deleted by the Id. first appellate authority after recording details reasons in para 7 & 7.1 of impugned order.

6. The conclusion drawn by the Id. CIT(A) also gets strong support from the decision of Hon'ble Jurisdictional High Court of Gujarat in the case of *ITO vs. Ashwin D. Mehta (Tax Appeal No.386 & 391/2000)*, wherein it was held that since the agricultural income has been accepted by the Revenue in earlier years and the AO has not been able to prove any other source of income out of which the assessee could have earned this income and the income declared by the assessee has to be accepted. Therefore, we are unable to see any valid reason to interfere with the first appellate order and thus, we uphold the same on this issue. Accordingly, ground Nos.1 & 2 of the Revenue are stand dismissed.

**Ground No.3& 4:**

7. Apropos these grounds, we have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id. DR submitted that the Ld.CIT(A) has failed to appreciate the fact that the assessee failed to fulfill the conditions laid down u/s. 54 of the Income Tax Act, 1961 (for short 'the Act') as the assessee neither filed his return of income nor purchased new property before the due date of filing of return of income u/s. 139(1) of the Act. Sub-section (2) of section 54B of the Act clearly envisages that "...such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139..." and not due date as stipulated u/s. 139(4) of the Act. The Id. DR vehemently pointed out that the Ld.CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed

that the order of the Ld.CIT(A) may be set-aside and that of the Assessing Officer's order may kindly be restored.

8. Replying to the above, the Id. AR supporting the first appellate order as per ratio of the decision of Hon'ble Supreme Court in the case of *Bajaj Tempo Ltd. vs. CIT 284 ITR 548 (SC)*, the beneficial & intensive provisions relating to deductions should be interpreted liberally and the Id. CIT(A) was right in interpreting the provision s. 54B of the Act as per decision of Hon'ble Supreme Court. The Id. AR further submitted that as per decision of Hon'ble Karnataka High Court in the case of *CIT vs. Ramachandra Rao [2015] 56 taxmann.com 163 (Kar.)*, which was followed by ITAT, Ahmedabad in the case of *Ashok Kapasiawala vs. ITO [2015] 63 taxmann.com 284 (Ahd.–Trib.)*, where assessee had already started construction of a residential house within one year prior to date of sale of land and utilized entire sale consideration within three years from date of transfer of land, he could not be denied exemption u/s. 54F of the Act. He also placed reliance on the decision of Hon'ble Punjab and Haryana High Court in the case of *CIT v. Shri Jagtar Singh Chawl in ITA No.71 of 2012 (P&H)*.

9. On careful consideration of above rival submissions, first of all, we may point out that the Id. CIT(A) in para 9.1 has recorded detailed findings elaborating the position of relevant provision of s. 54B of the Act and provision of s. 54(2), 54F(4) of the Act which are *para materia*. In the present case, it is the contention of the Id. AR that the due date for filing return of income u/s. 139(4) of the Act was on 31.03.2012 by which date the assessee should have

utilized the money towards purchase of agricultural land i.e., new asset and prior to that date the assessee purchased agricultural land to avail benefit s. 54B of the Act on 20.09.2011 and 17.10.2011 therefore, he is eligible for deduction u/s. 54B of the Act.

10. In the case *or Ashok Kapasiwala* (supra), ITAT, Ahmedabad dealing with the issue of allowability of deduction u/s. 54F of the Act and following the ratio of the decision of the Hon'ble Karnataka High Court in the case of *CIT v. K. Ramachandra Rao* (supra) held that the Revenue has cited or placed on record any concrete judgment by Hon'ble Jurisdictional High Court or Hon'ble Supreme Court to the decision of Hon'ble Karnataka High Court in the case of *K.Ramachandra Rao*(supra), therefore, the period as prescribed u/s. 54F(4) of the Act for deposit in the capital gain account should be reckoned from the due date of filing return u/s 139(4) of the Act.

11. In the present case, the issue is of allowability of deduction u/s. 54B of the Act, wherein the AO disallowed the claim of the assessee by observing that either the assessee should have purchased new assets (agricultural lands) before the "due date" of filing return u/s. 139(1) of the Act which was 31.07.2011 or should have deposited the amount in the specified/designated capital gain account and in para 7.4he concluded that the appellant has failed to comply with both these conditions hence, not eligible for deduction u/s. 54 of the Act. Whereas dealing with the contentions of the assessee in the light of ratio of the decision of Hon'ble Karnataka High Court in the case of *K. Ramachandra Rao* (supra) and Hon'ble Punjab and Haryana High Court in the

case of *CIT v. Shri Jagtar Singh Chawl* (supra). The Id. CIT(A) accepted the contention of the appellant-assessee that in view of decision of Hon'ble Supreme Court in the case of *Bajaj Tempo Ltd.* (supra) the beneficial and intensive provision relating to deduction should be interpreted liberally. The Id. CIT(A) considering the order of ITAT, Ahmedabad in the case of *Ashok Kapasiwala* (supra) held that to avail benefit of s. 54B of the Act it was required from the assessee that the investment in purchase of new agricultural land should have been made before the due date stipulated u/s. 139(4) of the Act. In the present case, the agriculture lands, from which long term capital gain was accrued to the assessee, were sold on 01.07.2010 and 13.09.2010 and for claiming deduction u/s. 54B of the Act, he purchased agriculture land being new asset on 20.09.2011 & 17.10.2011. For AY 2011-12 the date of filing return u/s. 139(1) of the Act was 31.07.2011 and the due date for filing return u/s. 139(4) of the Act was 31.03.2012 and it was the claim of the assessee that he purchased agriculture land within the stipulated period of two years from the date of transfer of agriculture land and prior to the due date for filing return u/s. 139(4) of the Act therefore, he is eligible for deduction u/s. 54B of the Act.

12. In view of above undisputed facts and keeping in view the ratio of the decisions of Hon'ble Karnataka High Court in the case of *CIT vs. K. Ramachandra Rao* (supra) and Hon'ble Punjab & Haryana High Court in the case of *CIT vs. Jagtar Singh Chawl* (supra), the Id. CIT(A) was right in concluding that the assessee is entitled for deduction u/s. 54B of the Act for the amount of investment made in purchase of new agriculture land before the

due date stipulated u/s 139(4) of the Act. We are unable to see any valid reason or any ambiguity or perversity therein hence, we decline to interfere with the same. Accordingly, ground Nos. 3 & 4 of the assessee being devoid of merits are dismissed.

13 In the result, appeal of the Revenue is dismissed.

*Order pronounced in the open court on this day of 12<sup>th</sup> July, 2018.*

**Sd/-**

(ओपीमीना)

(O.P.MEENA)

लेखासदस्य Accountant Member/

सूरत/Surat; दिनांक Dated : 12<sup>th</sup> July, 2018

EDN

**Sd/-**

(सीएमगर्ग)

(C.M.GARG)

न्यायिकसदस्य Judicial Member/

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

1. अपीलार्थी/The Appellant; 2. प्रत्यर्थी/The Respondent; 3. आयकर आयुक्त(अपील) /The CIT(A)-1, Surat; 4. Pr. CIT, Surat; 5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, Surat; 6. गार्डफाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

// true copy //

सहायक पन्जीकर / **Assistant Registrar**

आयकर अपीलीय अधिकरण, सूरत / ITAT, Surat