

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1004/PUN/2018

निर्धारण वर्ष / Assessment Year : 2009-10

Dilip Sadashiv Borate,  
Gat No.284, Nageshwar  
Nagar, Moshi,  
Pune-412 105  
PAN : AMPPB9085K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 8(5), Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 1005/PUN/2018

निर्धारण वर्ष / Assessment Year : 2009-10

Sampat Sadashiv Borate,  
At Post Most, Nageshwar Nagar,  
Pune-Nashik Road, Haveli,  
Pune-412 105  
PAN : AKWPB7826P

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 8(5), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pratik Navlakha

Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 07.02.2019

घोषणा की तारीख / Date of Pronouncement : 08.02.2019

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM :**

These two appeals preferred by the different assessee emanates from the order of Ld. CIT(Appeals)-13, Pune dated 21.03.2018 for the assessment year 2009-10 as per grounds of appeal on record.

2. At the outset, we notice that there is a delay of 04 days for filing the appeal. That with regard to this delay, the Ld. AR of the assessee filed condonation petition along with affidavit stating reasons for such delay in filing the appeal before us. We have perused the condonation petition and the affidavit along with reasons for delay. We are convinced with the justification rendered by the assessee through these documents. We condone the delay and proceed to hear the appeal on merits.

3. The Ld. AR of the assessee at the time of hearing apprised the Bench that the facts and issues in both the cases are similar. Hence, these cases were heard together. Since the facts common, issues similar, they are disposed of vide this consolidated order.

We would take ITA No.1004/PUN/2018 as lead case.

4. The solitary grievance in both these appeals of the respective assessee is that the Assessing Officer disallowed the deduction claimed by assessee u/s.54B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

The Ld. CIT(Appeals) on the other hand, has observed that application u/s. 54B of the Act is not relevant since as per his observation, the new

agricultural land was purchased by the assessee prior to the sale of old land, thereby making the assessee ineligible for claiming deduction u/s.54B of the Act. Therefore, on different footings and reasoning, the findings of the Revenue Authorities were that the assessee was not entitled for claiming deduction u/s.54B of the Act.

5. At the time of hearing, the Ld. AR vehemently argued that they have submitted all the relevant documentary evidences before the Assessing Officer to justify that the assessee is entitled for deduction u/s.54B of the Act. They have submitted the evidence to state that the land which was sold was agricultural land and that two years prior to the sale of such land and the agricultural activities were being carried out and even the land which was purchased subsequently out of the sale proceeds of the first land that was also agricultural land. In spite of these evidences provided to the Assessing Officer, the claim of deduction was summarily dismissed and assessment was completed. The Ld. AR further submitted that the Ld. CIT(Appeals) prima facie observed that the assessee was not entitled for deduction u/s.54B of the Act since the assessee purchased new agricultural land prior to sale of old land meaning thereby the new land was purchased not from sale proceeds/consideration received from old land and therefore, deduction u/s.54B of the Act was not allowable.

6. The Ld. AR further submitted that in absence of any factual verification and specific findings, the Revenue Authorities have rejected all the evidences submitted before them and have cause grave injustice for not allowing deduction u/s.54B of the Act as claimed by the assessee.

7. The Ld. DR , per contra, has placed reliance on the orders of the Sub-ordinate Authorities.

8. We have perused the case record and heard the rival contentions. We have also analyzed the facts and circumstances in this case. The issue before us, is entirely on factual parameters when on one hand, the assessee claims that he is entitled for deduction u/s.54B of the Act and has furnished various documentary evidences like copy of sale deed, purchase deed, bank statement, copy of agreement of land purchased, 7/12 extract showing that the agricultural activities have been carried in the land during two years immediately preceding the date of sale. These facts are not disputed before us. The Assessing Officer on the other hand, as evident in his order, does not agree that the agricultural activities were conducted in the land and that land was agricultural land since no bills/receipts were produced by the assessee. Similarly, the Ld. CIT(Appeals) observed that deduction u/s.54B of the Act is not allowable as per reasons recorded in his order.

That none of the Revenue Authorities have brought out any factual details or analysis of the evidences furnished before them so as to pronounce whether those evidences furnished by the assessee were correct or not and whether the validity and correctness of those evidences could be relied upon. Nothing has been stated either by the Assessing Officer or by the Ld. CIT(Appeals), regarding the examination of these evidences furnished vis-à-vis the claim of deduction u/s.54B of the Act by the assessee.

9. In view of the matter, we set aside the order of Ld. CIT(Appeals) and restore the matter to the file of the Assessing Officer for detailed factual

verification and readjudiation after providing reasonable opportunity of hearing to the assessee.

10. In the result, appeal of the assessee in ITA No.1004/PUN/2018 is allowed for statistical purposes.

11. That with similar facts and common issues in ITA No.1005/PUN/2018, our decision in ITA No.1004/PUN/2018 shall apply herein also as per the aforesaid directions/observations.

12. In the combined result, both the appeals of the assesseees are allowed for statistical purposes.

Order pronounced on 08<sup>th</sup> day of February, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 08<sup>th</sup> February, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	07.02.2019	Sr.PS/PS
2	Draft placed before author	07.02.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		