

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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.1714/PUN/2015

निर्धारण वर्ष / Assessment Year : 2009-10

Karansingh Kachrusingh Kakas (HUF),
Karnapura, Chawani, Aurangabad

PAN : AACCHK3797C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer (Central),
Aurangabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 28-01-2019

घोषणा की तारीख / Date of Pronouncement : 22-04-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Aurangabad dated 03-11-2015 for the assessment year 2009-10. The assessee in appeal has assailed disallowance of exemption claimed u/s. 54B and 54F of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The assessee in ground No. 1 of appeal has also challenged the validity of reopening u/s. 147 of the Act. However, the ld. AR of assessee stated at the Bar that he would not be pressing ground No. 1 of appeal. Thus, the only issue to be adjudicated by the Tribunal is with respect to assessee's eligibility to claim exemption u/s. 54B and 54F of the Act.

3. The brief facts of the case as emanating from records are : During the Financial Year 2008-09, the assessee (HUF) sold agricultural land comprising in Gat No. 15, Village-Golwadi admeasuring 3 Acre 20R vide Sale deed dated 01-12-2008 for a total consideration of Rs.1,01,00,000/-. The land sold was an ancestral property belonging to bigger HUF of Late Kacharusing Santramsing Kakas. After the sale of agricultural land the sale proceeds were invested for purchase of following properties :

Particulars of Assets purchased	Date of Purchase	Consideration as per Deed
Agriculture land Gat No. 41, admeasuring 2 H 02R	13-11-2009	Rs.50,00,000/-
Agriculture land in Gat No. 12, admeasuring 4 Acre	27-01-2010	Rs.20,00,000/-
Residential Plot No. 190, Golwadi admeasuring 375 Sq. Mtr.	30-12-2010	Rs.10,12,000/-
Residential Flat admeasuring 70.14 Sq. Mtr.	11-08-2009	Rs.6,00,000/-
Residential Row House admeasuring 73.03 Sq. Mtr.	30-08-2010	Rs.11,00,000/-

3.1 The assessee claimed exemption u/s. 54F in respect of investment made for purchase of residential house after sale of agricultural land. The assessee also claimed exemption u/s. 54B in respect of investment made in two parcels of agricultural land from sale of agricultural land. The

Assessing Officer in reassessment proceedings disallowed assessee's claim of exemption u/s. 54B and 54F on the ground that the assessee has failed to comply with the mandatory conditions as envisaged under the aforesaid respective sections for claiming exemption.

Aggrieved against the assessment order dated 12-11-2014 passed u/s. 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the findings of Assessing Officer and dismissed the appeal of assessee. Hence, the present appeal.

4. Shri Pramod Shingte appearing on behalf of the assessee submitted that the assessee invested Capital Gains arising from sale of agricultural land for purchase of two parcels of agricultural land and residential properties. The assessee deposited part of Capital Gains in fixed deposits in the bank. In so far as the Capital Gain arising from sale of agricultural land is concerned, there is no dispute. The dispute is only with respect to exemption claimed u/s. 54B and 54F on investment of Capital Gain arising from sale of Capital asset. The ld. AR contended that the Assessing Officer has disallowed assessee's claim of exemption u/s. 54B on the ground that the HUF is not eligible for claiming exemption and the investment for purchase of agricultural land is not made before due date of filing of return of income u/s. 139(1) of the Act. Admittedly, the assessee had not invested capital gains in designated Capital Gain Account Scheme but had deposited the amount in fixed deposit with bank. The assessee had not utilized the amount for any other purpose except for purchase of another capital asset at a later date.

4.1 In respect of denial of exemption u/s. 54F, the ld. AR submitted that the assessee had entered into agreement for purchase of residential house on 30-08-2010. The assessee had sold capital asset on 01-12-2008. The investment was made within the statutory period as specified u/s. 54F. The authorities below have erred in holding that the residential house was purchased after due date. As per the provisions of section 54F to be eligible for claiming exemption the assessee was required to purchase residential house within two years from the date of transfer of capital asset. Since, the assessee made investment in purchase of residential house within the period of 2 years, the assessee is eligible for claiming exemption u/s. 54F of the Act.

5. On the other hand Shri Sanjeev Ghei representing the Department vehemently defended the impugned order. The ld. DR submitted that the assessee has failed to qualify the conditions as set out u/s. 54B and 54F for claiming exemption. Therefore, the exemption claimed by the assessee was rightly denied by the authorities below.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. In ground No. 1 of appeal the assessee has assailed the validity of reopening u/s. 147 of the Act. The ld. AR of assessee has stated at the Bar that he is not pressing ground No. 1. Thus, in view of statement made by ld. AR, the ground No. 1 of appeal is dismissed.

7. In ground No. 2 of appeal, the assessee has assailed disallowance of exemption u/s. 54B in respect of investment of Capital Gains in purchase of agricultural land. The provisions of Section 54B, as applicable to the assessment year 2009-10, the benefit of exemption was available only to

the individuals. HUF was not eligible for claiming exemption in assessment year 2009-10 u/s. 54B of the Act. Thus, in view of the provisions of section 54B as there were applicable to the assessment year under appeal, the assessee being HUF was not eligible for claiming exemption u/s. 54B of the Act. We do not find any infirmity in the findings of Commissioner of Income Tax (Appeals) in denying the benefit of exemption u/s. 54B to the assessee. Accordingly, ground No. 2 raised in the appeal by assessee is dismissed.

8. In ground No. 3 of appeal the assessee is assailed denial of exemption u/s. 54F on investment of Capital Gains in purchase of a residential house. To be eligible for claiming exemption u/s. 54F, the Capital Gains arising from transfer of Long Term Capital Asset (other than residential house), the assessee was required to purchase within a period of one year before or two years after the date of sale of capital asset. In the instant case, as per contentions of assessee, the assessee has entered into an agreement for purchase of residential house on 30-08-2010 and the house was purchased in October, 2010. We observe that the authorities below have rejected assessee's claim of exemption u/s. 54F on the ground that the assessee has failed to make investment in purchase of a residential house within the statutory period. Ostensibly, the assessee had made investment in purchase of more than one residential property. However, the assessee is eligible for claim exemption u/s. 54F in respect of one residential house. We deem it appropriate to restore this issue back to the file of Assessing Officer to re-examine assessee's claim of exemption u/s. 54F on the basis of documentary evidence and allow the benefit of exemption in respect of one house purchased by assessee within the period specified under the provisions of section 54F of the Act. Needless to say that the Assessing Officer while re-adjudicating this issue shall grant

reasonable opportunity of hearing to the assessee, in accordance with law. Consequently, ground No. 3 raised in the appeal is allowed for statistical purpose.

9. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced on Monday, the 22nd day of April, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22nd April, 2019

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)-2, Aurangabad
4. The Pr. Commissioner of Income Tax-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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