

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No. 125/RPR/2016
निर्धारण वर्ष / Assessment Year : 2012-13**

The Assistant Commissioner of Income Tax-3(1),
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Rajkumar Rathi,
Kawardha Bada,
Opp. Surya Apartment, Katora Talab,
Raipur (C.G.)
Pin-492001
PAN: AAPPR0032A

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi, Adv.

Revenue by : Shri A.K. Laskar, JCIT

सुनवाई की तारीख / Date of Hearing : 15.05.2019

घोषणा की तारीख / Date of Pronouncement : 16.05.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of the
Ld. CIT(Appeals)-I, Raipur (C.G.) dated 03.02.2016 for the assessment year
2012-13 as per the following grounds of appeal on record:

“1. Whether in law and on facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.1,47,02,917/- made by the AO u/s.54B of the Income Tax Act, 1961.

2. Whether under the facts and circumstances of the case, the Ld. CIT(A) is justified in holding that the land under question was being utilized for agricultural purposes.

3. The order of the Ld. CIT(A) is erroneous both in law and on facts.

4. Any other ground that may be adduced at the time of hearing.”

2. The facts in this case are that the assessee claimed to have sold agricultural land and have purchased agricultural land and claimed deduction u/s.54B of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’). The Assessing Officer noted that the land is situated in Dumar Tarai which is within the Municipal limit of the Raipur Municipal Corporation. The use of the land is notified for development of housing and residential purpose and the notification of town and country planning. The Assessing Officer further noted that the assessee has not carried out any agricultural operation on the land in the immediate preceding two years from the date of sale of the land and the Patwari records also confirms the same. The Ld. AR of the assessee submitted that Patwari records which the Revenue is referring are of dated June, 2011 and it was during this time that the land was sold. It is natural that agricultural operation is not done in the land at the time the land is sold and therefore, in Parwari records it is stated that the land is barren. The Ld. AR of the assessee demonstrates that in the last three years, the assessee has been showing agricultural

income in his return of income. At page No. 33 of the paper book for the assessment year 2010-11, the assessee has shown agricultural income. Similarly for the assessment year 2011-12 also, the assessee has shown agricultural income in his return of income which is placed at page 37 of the paper book and similarly for the assessment year 2012-13 at page No.44 of the paper book, the assessee has shown agricultural income in the return filed by the assessee. These were also assessed by the Assessing Officer.

3. The Ld. AR of the assessee further referred to page Nos. 46 to 49 of the paper book which are agreement entered into between the assessee and the farmers to whom land was given on lease for agricultural purposes. There are separate agreements entered into every year by the assessee. These agreements clearly demonstrate that the land has been given on lease to the farmers for agricultural purpose. Therefore, it is absolutely crystal clear that the land is an agricultural land where agricultural operations were carried out for last three years before the date of sale of the land.

4. That before the Ld.CIT(Appeals), the assessee had made detailed written submission which are as follows:

“Assessee owns lands within specified area. The assessee given these lands on lease to Shri Rawaram Sagarbansi, Lalpur, on rent, to carry on the agricultural activities on these lands. As per agreements executed the tenant has to pay agricultural income as detailed below :

<i>Financial Year</i>	<i>Agricultural Income earned</i>
2009-10	55,000
2010-11	60,825
2011-12	20,425

Assessee has returned this agricultural income in the computation of total income for above three years. ITR and computations of total income for above years are enclosed herewith for ready reference. Copy of ‘Kirayedari ka anubandh’ for the accounting year 2009-10, 2010-11 and 2011-12 are also enclosed for ready reference. The above documents have already been submitted before the Ld AO during the assessment proceedings. On these facts it is clear that assessee has earned on agricultural activities on these lands since previous two years.

That the land given are vicinity of Raipur and in view of good demand for milk many of the residents of these villages doing a business of supply of milk to Raipur. For these purposes they maintain cattle. Due to which there was good demand for grass. Shri Rewaram takes the crop of grass and also vegetables in rainy seasons, and for this purpose it was not necessary that the land should be agricultural land. However, agricultural activities were carried on these land in last three years.

During the year under consideration assessee sold land situated in specified areas as detailed in the computation of total income and purchased another area as detailed in the computation of total income and purchased another agriculture land to claim deduction u/s 54B of the IT Act. The balance amount of Rs.3574/- has been offered for taxation under the head long term capital gain. Copy of ITR and computation of total income for AY 2012-13 has already been filed on point No. 2 above. That the sec. 54B was inserted by the Finance Act, 1970 w.e.f. 1st April 1970. Consequent on the amendments in the Sec. 2(1 A) and 2(14) rendering capital gains on certain agriculture land liable to tax, an exemption as introduced analogous to that granted in

respect of residential houses u/s 54. Under this section, where the capital gain arises from transfer of land which in the two immediately preceding years from the date of transfer, was being used for agriculture purposes and the assessee has within a period of two years after that purchased any other land, whether in the same area or elsewhere, for being used for agriculture purposes, then the capital gain will not be charged to the tax to the extent it has been utilized for acquitting the fresh land.”

5. The Ld. CIT(Appeals) after considering the assessment order , facts of the case and submissions of the assessee has held as under :

“2.3 From the above facts, it is found that appellant has sold land which was within the specified area but during the last three years it was being given on lease for .being used for agricultural purposes. The appellant then bought another land on which also agricultural income is being taken which has been offered for taxation. The AO has not accepted the appellant’s plea that the old land and the new land are being used for agricultural purposes and, therefore, disallowed the deduction u/s 54B. As per agreement with Shri Rewaram Sagarbansi the land was given to him on an annual rent of Rs.50,000/- during the FY 2009-10. The rent was Rs.55,000/- and Rs. 60,000/- in the next two years. The AO has not denied that lands were used for leasing out for the purpose of agriculture operation. As per the appellant due to various dairies being located in nearby villages the said plot of land was used for growing grass which fetched good price. On similar facts the Hon’ble ITAT Raipur in the case of ITO 1(2) Vs. Smt Nileema Shrivastava in I.T.A. No. 63/BLPR/2012 has ruled in assessee’s favour. Facts in the case as per para no 6 of the said order is as under

“ in this connection the assessee was asked to furnish the proof of used of land for agriculture purpose vide order sheet entry dated 07.10.2011.In this connection she furnished an agreement letter executed between her and one Mr. Bhujal Singh, S/o Shri Badri Narayan Singh, R/o Gora Gaon, Bisankhedi, Bhadbhada Road, Bhopal stating that the assessee has given her land to other party on lease for four years from 2005 to 2009 for cultivation and the other party

would pay her half of the net income of the agricultural produce.”

The ITAT has given following verdict at para no-8 of the order :-

“We have heard both the sides in the light of the compilation filed and orders of the Authorities below. We have also perused the decision of Savita Rani, 270 ITR 40. The Hon’ble High Court has opined that the benefit of exemption is not restricted to agricultural land only but the benefit is to be granted if, the land is used for agricultural purposes. Upholding the view of the Tribunal, relief u/s 54B of the IT Act was allowed. Accordingly, we are of the view that the issue is not having substantial far reaching effect and the AOs observation above is trifle in nature. Therefore, we are not inclined to interfere with the factual finding of the Ld CIT(A), a portion reproduced (supra). As a result we reject the ground no 2 of the revenue appeal”.

Facts being similar, following the above decision, I hereby delete the addition of Rs.1,47,02,917/- and allow the deduction u/s 54B to the appellant.”

6. Per contra, the Ld. DR has placed reliance on the order of the Assessing Officer.

7. We have perused the case records and heard the rival contentions and given considerable thought to the findings of the Ld. CIT(Appeals) vis-à-vis the facts on records. It is clearly demonstrated by the assessee that it is agricultural land and agricultural operations were going on and all throughout, the assessee was showing agricultural income in his tax returns which was also being assessed by the Department. Further, the Ld. AR of the assessee demonstrated that the assessee has given the agricultural land on lease to the farmers for agricultural purpose which are also evident from the copies of the agreements which are entered into by

the assessee and farmers. Further, the Clauses therein in these agreements clearly spells out that the land has been given to the farmers for the purpose of agriculture and farming.

The facts on records further suggest that the assessee sold the land in which during the last three years it was given on lease for agricultural purposes and the assessee then bought another agricultural land on which agricultural operation were undertaken giving rise to agricultural income and which has been offered to tax. The Assessing Officer has not accepted the assessee's plea that the new land was used for agricultural purpose and disallowed the deduction u/s.54B of the Act. The Assessing Officer however, has not denied the fact that the land was being leased to the farmers for agricultural purpose.

8. The Ld. CIT(Appeals) while giving relief to the assessee has referred to the decision of the Income Tax Appellate Tribunal, Raipur in the case of ITO 1(2) Vs. Smt. Nileema Shrivastava in ITA No.63/BLPR/2012 and also the decision of the Punjab & Haryana High Court in the case of CIT Vs. Sabita Rani, 270 ITR 40 (P&H). The basic principle that comes out from these judicial pronouncements is that the benefit of exemption is not restricted to agricultural land only but the benefit is to be granted, if the land is used for agricultural purposes. In the instant case the facts on record clearly demonstrates the use of land for agricultural purposes.

In view of the matter, we do not find any infirmity with the findings of the Ld. CIT(Appeals) and therefore, relief provided to the assessee is sustained.

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

Order pronounced on 16th day of May, 2019.

Sd/-
MITHA LAL MEENA
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 16th May, 2019.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

