

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं / ITA No.268/PUN/2017
निर्धारण वर्ष / Assessment year : 2013-14

Mr. Bhaskar Raghunath Shelke,
Biregaon Ban, Shelke Wasti,
Shridi - 423109.

..... अपीलार्थी /
Appellant

PAN : DDDPS3334G.

बनाम v/s

The Income Tax Officer,
Ward-2, Ahmednagar - 414001.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Abhay Avchat

Revenue by : Shri Rajesh Gawali.

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| सुनवाई की तारीख / Date of Hearing : 19.06.2019 | घोषणा की तारीख / Date of Pronouncement: 01.08.2019 |
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PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) - 2, Pune, dated 13.10.2016 for A.Y. 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and is stated to be in the business of running hotel. Assessee filed his return of income for A.Y. 2013-14 on 31.01.2014 declaring total income of Rs.6,68,190/- and

agricultural income of Rs.4,01,193/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 08.03.2016 and the total income was determined at Rs.51,37,354/- and agricultural income of Rs.4,01,193/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated dt.13.10.2016 (in appeal No.PN/CIT(A)-2/ITO Wd-2/AN/485/2016-17) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. The learned Income Tax Officer, Ward 2, Ahmednagar has erred in assessing total income Returned by the Assessee of Rs. 6,68,190/- at a higher amount of Rs. 51,37,354/- the Commissioner of Income Tax (Appeals)-2 has erred in confirming the same.

2. Without considering facts and circumstances of the case and provisions of law, the learned Income Tax Officer, Ward 2, Ahmednagar has erred in contending that there is transfer of capital asset viz. agricultural land during the previous year and the Commissioner of Income Tax (Appeals)-2 has erred in confirming the same.

3. The learned Income Tax Officer, Ward 2, Ahmednagar has erred in disallowing deduction of Rs. 9,02,000/- towards expenses incurred by assessee for transfer of capital asset and Commissioner of Income Tax (Appeals)-2 has erred in confirming the same.

4. The learned Income Tax Officer, Ward 2, Ahmednagar has erred in calculating amount of exemption under section 54F by considering amount for construction of residential house as Rs. 53,91,397/- instead of correct amount of Rs. 57,50,000/- and the Commissioner of Income Tax (Appeals)-2, Pune has erred in confirming the same.

5. The learned Income Tax Officer, Ward 2, Ahmednagar has wrongly disallowed deduction of Rs. 35,00,000/- under section 54B forwards purchase agricultural land by the assessee and Commissioner of Income Tax (Appeals)-2 has erred in confirming the same.”

3. Ground No.1 is general in nature and requires no adjudication. Hence, **ground No.1 of the assessee is dismissed.**

4. Ground No.2 is with respect to the holding by Ld.CIT(A) that there was transfer of capital asset during the previous year.

4.1. AO noted that assessee had sold agricultural land situated at Shiridi and as per the sale deed, the consideration was Rs.1,46,50,000/-. The sale deed was registered with Sub-Registrar on 27.08.2012 and requisite registration charges and stamp duty were also paid. AO was of the view that the transfer of capital asset was liable for the capital gain. On the other hand, it was the contention of the assessee that assessee had sold agricultural land to six different persons but the cheques given by two buyers towards sale consideration were dishonoured. It was therefore assessee's submission that assessee was still the legal owner of the land as the possession was not transferred to the buyers and therefore assessee was not liable for capital gains. The submissions of the assessee were not found acceptable to the AO in view of the fact that sale deed was duly registered with the Sub-Registrar, the registration charges and stamp duty was paid and as per the sale deed the purchasers were given possession according to their shares. AO accordingly, computed the capital gain on the transfer of the agricultural land at Rs.55,91,694/-. Aggrieved by the order of AO assessee carried the matter before Ld.CIT(A), who upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and submitted that assessee was still the legal owner

and has not transferred the land and therefore assessee was not liable for capital gains tax. Ld. D.R. on the other hand, supported the order of Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the order of Ld.CIT(A) wherein he held that assessee was liable for capital gains on transfer of land. We find that Ld.CIT(A) while upholding the order of AO has noted that the sale deed was registered on 27.08.2012 in favour of six persons and in the sale deed the share of six buyers were clearly mentioned. The registration charges and stamp duty were also paid. He has further noted that no civil suit was filed by the assessee for the alleged dishonour of cheques issued by the purchasers. Before us, no fallacy in the findings of Ld.CIT(A) has been pointed out by the assessee. Further, no evidence of filing of suit by the assessee has also been placed on record by the assessee. Considering the totality of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A). Thus, **the ground No.2 of the assessee is dismissed.**

7. Ground No.3 is with respect to disallowance of Rs.9,02,000/- towards expenses incurred by the assessee for transfer of capital asset.

7.1. Assessee had claimed deduction of Rs.9,02,000/- towards stamp duty and other charges stated to have been paid by him. The claim of the assessee was not found acceptable to the AO as he

noted that the receipts were in the name of the purchaser. Before Ld.CIT(A), it was submitted that the aforesaid expenses have been paid by the assessee and not by the purchaser and therefore, it should be allowed as deduction while computing the capital gain. The submission of the assessee was not found acceptable to the Ld.CIT(A) as he has noted that the stamp duty and other registration charges were always attributable to the purchaser and not to the seller. He accordingly upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now before us.

8. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and pleaded that the assessee be allowed the claim of deduction. Ld. D.R. on the other hand, supported the order of Ld.CIT(A) and further submitted that the issue of stamp duty and other charges paid by the assessee is not emanating from the sale deed. He thus supported the order of Ld.CIT(A).

9. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to claim of deduction of the stamp duty and other charges stated to have been paid by the assessee while computing capital gains. Before us, Ld.A.R. has not controverted the findings of Ld.CIT(A) and further he has not controverted the contention of Ld. D.R. with regard to the payment of stamp duty and other charges being not emanating from the sale deed which has been executed for the sale of property. In such a situation, we do not find any reason to interfere with the

order of Ld.CIT(A). Thus, the **ground No.3 of the assessee is dismissed.**

10. Ground Nos.4 and 5 are with respect to the denial of claim of deduction u/s 54F and 54B of the Act.

10.1. AO noted that assessee had sold agricultural land at Shiridi for Rs.1,46,50,000/- but had not offered to tax the capital gains for the reason that according to assessee, since the assessee was the legal owner of the land and since possession was not given assessee was not liable for capital gains. The submissions of the assessee were not found acceptable to AO. The AO thereafter under Para 8 of the order worked out the capital gains at Rs.88,47,805/-. AO also noted that assessee had made a claim for deduction of Rs.55,00,000/- u/s 54F of the Act on account of construction of residential house. AO noted that since assessee had invested part sale consideration in construction of new house upto 31.07.2013 (being the date for filing the return of income for A.Y. 2013-14), he granted deduction of only Rs.53,91,397/- as against assessee's claim of Rs.55,00,000/-. He also noticed that assessee had claimed deduction u/s 54B of the Act of Rs.35 lakhs on account of purchase of agricultural land at Mauje Jalgaon, Taluk Rahata on 26.11.2013. AO was of the view that the claim of deduction u/s 54B of the Act cannot be granted to assessee as the amount subject to capital gains was not used for acquiring the new asset (i.e., agricultural land) before the due date of furnishing the return of income i.e., before 31.07.2013. He accordingly denied the claim of deduction.

Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

“5.2. I have perused the facts as mentioned in the assessment order as well as arguments taken on behalf of the appellant. As apparent from the fact, the sale deed has been duly registered on 27.08.2012 in favour of six persons. Not only that in the sale deed itself share of six buyers have been clearly mentioned, meaning thereby that share in land of the six buyers are determinate. Registration charges and stamp duty have been duly paid. Just because some cheques given by the buyers was not honoured cannot invalidate the transaction. The appellant is free to initiate separate legal proceeding for dishonour of the cheques and that has nothing to do with the validity of the sale deed. It is further noted that no civil suit has been filed by the appellant for dishonour of the cheque. Considering all these facts, I am inclined to agree with the Assessing Officer that the land has been duly transferred by way of duly registered sale deed dated 27.08.2012 and the same is covered under the definition of transfer u/s 2(47) of the I T Act. The Assessing Officer has therefore rightly computed the capital gain in the transfer of the agricultural land and his order is therefore confirmed.

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7.1. I have gone through the provisions of Sec.54F in this regard. The sub-section (4) of sec.54F reads as under :

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7.1.1 On a perusal of the aforesaid provision, it can be clearly seen that if the amount is not utilized for the purchase or construction of new asset within the due date of furnishing of return, then the assessee is liable to deposit the unutilized portion of the net consideration in an account maintained under capital gain account scheme. Such deposit has to be made not later than the due date applicable for furnishing return of income under sub-section (1) of sec.139 of the IT Act.

7.1.2. Even the Capital Gain Account Scheme, 1988 states that the deposit in the account is to be made before the due date of furnishing of return of income. Para 4(4) of this scheme reads as under :

“(4) Such deposits may be made in one lump sum or in installments at any time on or before the due date of furnishing the return of income under sub-section (1) of sec. 139 of the Act as is applicable in the case of the depositor.”

7.1. 3 Thus, on a plain and harmonious reading of the provision of sec. 54F as well as Capital Gains Accounts Scheme 1988 as reproduced above" it is clear that if the net consideration received on sale of the asset is not utilized within the due date of furnishing of return then it shall be deposited in an account under the Capital Gain Account Scheme. The use of the word 'shall' in sub-section (4), of sec. 54F makes it obligatory for the appellant to deposit unutilized portion in the account under the scheme. In the light of clear provision I am unable to agree' with the appellant that even though the amount was not deposited under the Capital Gain Account Scheme yet he was eligible for deduction u/s 54F of the IT Act. I therefore uphold the order of the Assessing Officer in restricting the deduction u/s. 54F to Rs. 53,91,397/-.

8. In ground No.5, the appellant has objected to the disallowance of Rs. 35,00,000/- u/s 54B of the I T Act. The Assessing Officer in the assessment order has mentioned that the amount of capital gain was not utilized for acquisition of new asset before the due date of furnishing of return of income neither the same was deposited under Capital Gain Account Scheme. The appellant on the other hand, has taken the same argument by stating that due date of filing of return includes sub-section (4) of sec. 139 of the I T Act.

8.1 I have perused the facts in this regard. The due date of furnishing of return in the case of the appellant was 31.07.2013, however, the investment in agricultural land of Rs.35,00,000/- was made on 26.11.2013. While dealing with ground No. 4, I have already held that the unutilized portion of the capital gain has to be deposited in an account maintained under Capital Gain Account Scheme before the due date of furnishing of return u/s 139(1) of the IT Act. Since the appellant has not utilized neither deposited the amount in the capital gains account therefore. no deduction u/s 546 is allowable. The order of the Assessing Officer in this regard is upheld."

Aggrieved by the order of Ld.CIT(A) assessee is now before us.

11. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that though the due date of filing of return of income was 31.07.2013 but assessee had filed the return of income on 31.01.2014 i.e., within the time permitted u/s 139(4) of the Act and the amounts were invested before filing of return of income. He therefore submitted that assessee is eligible for claim of deduction u/s 54F and 54B of the Act and in support of his contentions, he relied on the decision of Pune Bench of the

Tribunal in the case of ITO Vs. Vilas Balram Patil (ITA No.923/PUN/2015 order dated 20.12.2017). He also placed on record the copy of the aforesaid decision. Ld. D.R. on the other hand supported the order of lower authorities and submitted that to claim deduction u/s 54F and 54B of the Act, assessee is required to invest the amounts before the due date of filing the return of income u/s 139(1) of the Act. He thus supported the order of Ld.CIT(A).

12. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the denial of claim of deduction u/s 54F and 54B of the Act. It is an undisputed fact that the due date of filing the return of income for A.Y. 2013-14 in the case of assessee was 31.07.2013 but he has filed the return of income on 31.01.2014 u/s 139(4) of the Act. It is a fact that the assessee had invested Rs.55 lacs in the construction of residential house for which assessee had claimed deduction u/s 54F of the Act and Rs.35 lakhs was invested towards purchase of agricultural land for which he had claimed deduction u/s 54B of the Act. The aforesaid investments for which the deduction has been claimed have been made after the due date for filing of return of income u/s 139(1) of the Act but before the filing of return u/s 139(4) of the Act. Therefore, in a situation, when the entire amount which was subject to capital gains tax has been utilized before the filing of return of income, then the deduction u/s 54F and 54B of the Act cannot be denied to the assessee. Further since the entire amount which was subject to capital gains was utilized for the purpose of construction of new house and purchase of agricultural

land, then there was no question of its deposit in notified Bank account in terms of Sec.54F(4) of the Act. Considering the aforesaid facts, we are of the view that assessee is eligible for deduction u/s 54F and 54B of the amount utilized for purchase of qualifying asset.

We thus allow the grounds of the assessee.

13. In the result, the appeal of assessee is partly allowed.

Order pronounced on 1st day of August, 2019.

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| Sd/- | Sd/- |
| (VIKAS AWASTHY) | (ANIL CHATURVEDI) |
| न्यायिक सदस्य / JUDICIAL MEMBER | लेखा सदस्य / ACCOUNTANT MEMBER |

पुणे Pune; दिनांक Dated : 1st August, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-2, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए"/ DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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