

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 6188/DEL/2019
[Assessment Year: 2011-12]

Braham Prakash, C/o Kunal Aggarwal & Associates, 226, 2 nd Floor, jmD Megapolis, Sohna Road, Sector-48, Gurgaon, Haryana-122001 PAN- BMGPP4895K	<u>Vs</u>	Income-tax Officer, Ward-2(4), Gurgaon
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. Anil Kumar Sharma, Sr. DR	
Date of hearing	14.02.2022	
Date of pronouncement	18.02.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-1, Gurgaon, dated 28.06.2018, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

- “1. That the assessment order passed is illegal, invalid and void.
2. That the reasons recorded u/s 147 of the I.T. Act, 1961 by the Ld. A.O. were merely based on the suspicion and without any tangible material so as to suggest any escapement of income. Hence the reassessment

proceedings are liable to be quashed.

3. *That the assessment order is void and invalid in law as there cloud be no reason of escapement of income merely on basis of cash deposits as held by Bir Bahadur Singh Sijwali v. ITO, (ITAT- Delhi) ITA NO. 3814 (DELHI) OF 2011.*

4. *Whether the Ld. AO justified in disallowing the claim of Deduction of Rs. 12,69,146/- under section 54B of the Income Tax Act, 1961 being the investment made in the name of wife not in the assesses name*

5. *That the appellant reserves the right to amend, delete, add, substitute, modify or alter any one or more of the grounds of appeal at the time of hearing.”*

2. The facts giving rise to the present appeal are that the Assessing Officer initiated proceedings u/s 147 of the Income-tax Act, 1961, hereinafter referred to as the “Act”, after taking the approval of the Principal Commissioner of Income-tax, Gurugram. Accordingly, notice u/s 148 of the Act was issued and duly served upon the assessee through registered post. In response thereto, the assessee filed his return of income for the assessment year under appeal on 16.05.2018, declaring net income at Rs. 14,067/-. In response to the statutory notices, learned authorized representative of the assessee attended the proceedings. The Assessing Officer, during the assessment proceedings observed that the assessee had sold land for Rs. 37,00,000/-. The assessee was asked to explain how capital gain liability was discharged. In response to the query, the assessee filed a computation of capital gain, thereby it was stated that the taxable gain was Rs. 1,02,625/-, after claiming

exemption u/s 54F of Rs. 16,35,964/- and exemption u/s 54B of Rs. 12,69,146/-.

The Assessing Officer disallowed the deduction claimed u/s 54B on the basis that the investment was made in the name of assessee's wife.

3. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals). The learned CIT(Appeals) partly allowed the appeal, thereby he held that interest u/s 234B was wrongly charged up to the date of assessment order i.e. 10.12.2018. However, he affirmed the view of the Assessing Officer of disallowance of deduction u/s 54B. Aggrieved against this, the assessee is in appeal before this Tribunal.

4. At the time of hearing no one appeared. It is seen from the record that despite sufficient opportunities the assessee or any learned authorized representative on his behalf did not appear. It is further seen that the notices issued to the assessee are returned back by the postal authorities. The assessee has not provided any other address to the Registry. Therefore, under these facts, the appeal of the assessee is taken up for hearing in the absence of the assessee and is being disposed of on the basis of the material available on record.

5. Ground nos. 1 to 3 are against legality of the reopening of the assessment. Learned Sr. DR supported the orders of the authorities below and submitted that there is no infirmity in the orders of the authorities below. He submitted that during the year under consideration the assessee had sold land for a consideration of Rs.

37,00,000/- and this transaction was not disclosed by the assessee. Therefore, income escaped for assessment and the assessing authority rightly reopened the assessment. He submitted that the case law as relied upon by the assessee is not applicable on the facts and circumstances of the present case.

6. I have heard learned Sr. D.R. and perused the material on record. The assessee has not rebutted the finding of the Assessing officer by placing any contrary material on record suggesting that the gain arising on the sale of the property was offered for tax. Therefore, I do not find any merit in ground nos. 1 to 3 raised by the assessee. The same are dismissed.

7. Ground no. 4 is against disallowing the claim of deduction of Rs. 12,69,146/- u/s 54B of the Act.

8. Learned Sr. DR supported the orders of the authorities below and submitted that the authorities have passed speaking and well reasoned orders relying on the binding precedents.

9. I have heard learned Sr. DR and perused the orders of the authorities below.

I find that the Assessing Officer has decided the issue by observing as under:

“It is observed that for claim of deduction u/s 54 B the assessee has furnished two registration deeds in the name of assessee's wife totalling to Rs. 12,69,146/- Section 54 B of the Act clearly stipulates that-:

"54. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of any long-term capital asset

being land which in the two years immediately preceding the date on which the transfer took place was being used by the assessee or a parent of his for agricultural purposes and the assessee has within a period of two years after the date on which the transfer took place purchased any other land for being used for agricultural purposes then , instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain which is not appropriated by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [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] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."

2.2.2 Hon'ble Punjab & Haryana High Court in the case of Jai Narain V ITO 306 ITR 335 held as under :

"In interpreting the words contained in a statute, the Court has not only to look at the words but also to look at the context and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. The word "assessee" occurring in s. 54B must be interpreted in such a manner as to accord with the context and subject of its usage. A reading of s. 54B nowhere suggests that the legislature intended to advance the benefit of the said section to an assessee who purchased the agricultural land even in the name of a third person. Wherever the legislature intended it to be so, it had specifically provided under the provision. The term "assessee" is qualified by the expression "purchased any other land for being used for agricultural purposes", which necessarily means that the new asset which is purchased has to be in the name of the assessee himself for seeking exemption under s. 54B. The purchase of agricultural land by the assessee in his son or grandson's name, therefore, cannot be held to be entitled to exemption under s. 54B."

Hon'ble Punjab & Haryana High Court in its recent decision passed in the case of CIT V Dinesh Verma 60 Taxman.com 461 vide judgement dated 06.07.2015 also held that for claim of exemption u/s 54B agricultural land should be purchased in the name of the taxpayer himself and not in the name of any third party including the taxpayer's wife, son, father etc.

Hon'ble Punjab & Haryana High Court in its decision in the case -of Kamal Kant Kamboj Vs. ITO (2017), 88 Taxmann.com 541: 397 ITR 240

also held that section 54B of the Act nowhere suggests the legislature intended to advance the benefit of the said section to an assessee who purchases agricultural land even in the name of a third person. The term assessee is qualified by the expression "purchased any other land for being used for agriculture purposes" which necessarily means that the new asset has to be in the name of the assessee himself.

2.2.3. Hon'ble Punjab & Haryana High Court in the case of Dinesh Verma & Kamal Kant Kamboj (supra) which are later decisions of jurisdictional Hon'ble Punjab & Haryana High Court framed the specific identical issue and denied the claim of assessee under section 54B of the Income Tax Act because the property was purchased in the name of a person other than the assessee. Decisions of jurisdictional High Court are binding on income tax authorities.

keeping in view the above facts and following the decision of Hon'ble P&H High Court in the case of Jai Narayan, Dinesh Verma & Kamal Kant Kamboj (Supra), purchase of land in the name of assessee's wife is not allowed to be exempted u/s 54B. Therefore exemption u/s 54B is hereby disallowed and amount of Rs. 12,69,146/- is hereby added back to the returned income of the assessee. I am satisfied that the assessee has willfully attempted to furnish inaccurate particulars of his income hence penalty proceedings u/s 271(i) (c) of the Act are being initiated separately for furnishing inaccurate particulars of income."

10. Further, the learned CIT(Appeals) confirmed this view by holding as under:

"5.3 I have carefully considered the facts of the case and the submissions of the appellant. As regards the disallowance of deduction u/s 54B, the issue to be examined is whether deduction is allowable u/s 54B where the land is purchased in the name of the spouse.

(a) *Sub-section (1) of sec. 54B of the Act reads as under;-*

"54B(1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer

took place, was being used by the assessee or a parent of his for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax...."

- (b) *The question that arises for consideration is whether the expression "assessee" meant only the person who sold the property, which was subjected to Capital gain, i.e., whether the new asset should necessarily be invested in the name of the person who sold the property. The issue has been considered in a number of decisions where in it has been held that the term "assessee" used in sec. 54B/54F of the Act cannot be extended to mean the son/wife or major married daughters. The benefit of exemption u/s 54B and 54F could be given to an assessee only if the new property is purchased in his own name. Reference in this regard may also be made to a recent decision of the Hon'ble Jurisdictional P&H High Court in the case of Kamal Kant Kamboj v/s ITO 84 taxnuin.com 541 (P&H). In this decision dated 24/05/2017, the Hon'ble Jurisdictional High Court held that purchase of agricultural land by the assessee in the name of his wife would not qualify for exemption u/s 54B.*
- (c) *Reference in this regard may also be made to the decision of the Hon'ble jurisdictional Punjab and Haryana High Court in the case of CIT v. Dinesh Verma (2015) 233 Taxman 409 (P&H)(HC). In this case, the facts of the case were that the respondent/assessee sold the land for a consideration of Rs. 60,00,000/-. He purchased another immovable agricultural property within two years. He utilized a sum of Rs. 44,76,000/- out of the sale proceeds of Rs. 60,00,000/- for the payment of the consideration of the plot that he purchased subsequently. The balance consideration in respect of the plot of Rs. 16,84,000/- was paid by his wife. The Hon'ble High Court held as under:*

" 17. The Tribunal observed that it is settled now that an assessee can purchase a new asset or part thereof in the name of his wife and that there was sufficient justification for the same on considerations, such as, stamp duty rebate, social considerations, security for ladies. The Tribunal noted that as long as the funds are invested the respondent's exemption cannot be denied.

18. It is difficult to accept this view. Section 54B requires the assessee to purchase the property from out of the sale consideration of the capital asset. It does not entitle the assessee to the benefit conferred therein if the subsequent property is purchased by a person other than the assessee including a close relative even such as his wife or children. If the legislature intended conferring such a benefit, it would have provided for the same expressly. Indeed, an assessee can purchase an asset or a part thereof in the name of his wife but he would not be entitled then to the benefit of Section 54B.

Moreover, it is not the case of the assessee that he purchased the asset benami in the name of his wife. We have proceeded on the basis that his wife invested the amount of Rs. 16,84,700/- herself"

It may be relevant to mention here that during the course of this appeal, the Hon'ble High court by order dated 02.03.2015, issued notice of motion on the following further question of law No. 7:—

"7. Whether the respondent-assessee was entitled to the benefit under Section 54-B of the Income Tax Act, 1961 in respect of the property purchased from the sale proceeds in the name of his wife?"

The Hon'ble High Court held as under:

"19. A Division Bench of this Court in *Jai Narayan v. ITO* [2008] 3061TR 335

10. In interpreting the words contained in a statute, the court has not only to look at the words but also to look at the context and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of

the words under the circumstances. The word "assessee" occurring in section 54B must be interpreted in such a manner as to accord with the context and subject of its usage. A reading of section 54B of the Act nowhere suggests that the Legislature intended to advance the benefit of the said section to an assessee who purchased the agricultural land even in the name of a third person. Wherever the Legislature intended it to be so, it had specifically provided under the provision. The term "assessee" is qualified by the expression "purchased any other land for being used for agricultural purposes", which necessarily means that the new asset which is purchased has to be in the name of the assessee himself for seeking exemption under section 54B of the Act. The purchase of agricultural land by the assessee in his son or grandson's name, therefore, cannot be held entitled to exemption under section 54B of the Act.

11. *We may make a brief reference to the decision relied upon by counsel for the assessee. Learned counsel mainly relied upon the decision in V. Natarajan [2006] 287 ITR 271 (Mad), with reference to section 54 of the Act.*

12. *The Madras High Court in V. Natarajan's case [2006] 287 ITR 271 was dealing with a case relating to section 54 of the act wherein the assessee who after selling his residential house had purchased another residential house in his wife's name, the court had concluded that the assessee in such circumstances was entitled to exemption under section 54 of the Act. After giving our thoughtful consideration, we are unable to accept the view as laid down in V. Natarajan's case [2006] 287 ITR 271 (Mad).'*

Thus, even assuming that the assessee had invested the said amount of Rs. 16,84,700/- in the name of his wife, it would have made no difference.

20. *The order of the Tribunal to this extent is, therefore, overruled. It is declared that respondent shall be entitled to the benefit of Section 54B on the basis that he invested only a sum of Rs.44,76,000/- in the agricultural property purchased by him after the sale of the*

agricultural property earlier owned by him. Even the additional question No. 7 raised by us in our order dated 02.03.2015 is answered in favour of the appellant/department."

- (d) *Reference in this regard may also be made to the decision of the Hon'ble Punjab and Haryana High court in the case of Jai Narayan v. ITO [2008] 306 ITR 335 wherein the Hon'ble High court held as under:*

"10. In interpreting the words contained in a statute, the court has not only to look at the words but also to look at the context and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. The word "assessee" occurring in section 54B must be interpreted in such a manner as to accord with the context and subject of its usage. A reading of section 54B of the Act nowhere suggests that the Legislature intended to advance the benefit of the said section to an assessee who purchased the agricultural land even in the name of a third person. Wherever the Legislature intended it to be so, it had specifically provided under the provision. The term "assessee" is qualified by the expression "purchased any other land for being used for agricultural purposes", which necessarily means that the new asset which is purchased has to be in the name of the assessee himself for seeking exemption under section 54B of the Act. The purchase of agricultural land by the assessee in his son or grandson's name, therefore, cannot be held entitled to exemption under section 54B of the Act."

Head notes of this decision read as under:

- Capital gains - Exemption under s. 54B - Investment in the names of assessee's son and grandson - Sec. 54B nowhere suggests that the legislature intended to advance the benefit of the said section to an assessee who purchases agricultural land even in the name of a third person - Term "assessee" is qualified by the expression "purchased any other land for being used for agricultural purposes"- This necessarily means that the new asset has to be in the name of the assessee himself - Therefore, purchase of agricultural land by the assessee in the name of his son or grandson does not qualify for exemption under s. 54B.

(e) In this regard, reliance is also placed on the following case laws:-

(i) Ganta Vijaya Lakshmi v. ITO [2013] 37 taxmann.com 263 (Visakhapatnam - Trib.)

Investment made in the name of major married daughters - the term 'assessee' used in sections 54B / 54F could not be extended to mean the major married daughters. Thus, assessee was not entitled to claim deduction u/s 54B and 54F in respect of investments made in the name of her major married daughters. This decision of the Hon'ble Tribunal has been upheld by the Hon'ble AP High Court in the case of Ganta Vijaya Lakshmi v. Income-tax Officer, Ward - 1(3), Vijayawada [2015] 54 taxmann.com 301 (Andhra Pradesh)

(ii) Prakash v. ITO [2009] 312 ITR 40/[2008] 173 Taxman 311 9Bom).

- Capital gains - Exemption under s. 54F - Purchase of new property in the name of son - New property must be owned by the assessee having legal title over the same - Assessee admittedly purchased the new property in the name of adopted son with clear intention to transfer the property to him - Thus, he transferred the property before the prescribed period as per the scheme of the section, and the son became owner of the property for all purposes - Assessee had no domain and / or right whatsoever in the said property - Therefore, he is not entitled to exemption under s. 54F.

(iii) ITO v. Prakash Timaji Dhanjode [2003] 81 TTJ 694 (Nag.)

- Capital gains - Exemption under s. 54F - condition precedent - Investment has to be made in the name of assessee - Sale proceeds not invested in the name of assessee but in the name of his adopted son - Assessee not entitled to exemption under s. 54F. (This decision of Tribunal has been approved by Hon'ble High Court of Bombay in the preceding decision).

5.7 Keeping in view the aforesaid factual and legal position the claim of deduction u/s 54B in the case of the appellant is not allowable. This ground of appeal is dismissed.”

11. From the above finding of the authorities below it is clear that both the authorities have followed the binding precedents. Therefore, I do not see any reason to interfere in the finding of the authorities below. The same is hereby affirmed. The ground raised by the assessee is devoid of any merit, hence dismissed.

12. Ground no. 5 is general in nature and needs no adjudication.

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 18/02/2022.

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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