

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.436/PUN/2019
निर्धारण वर्ष / Assessment Year : 2013-14

Ramdas Pandharinath Kale (HUF),
Kalewasti, Kesanand Road,
Wagholi, Pune – 412207

PAN : AAQHR7916A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 12(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhay Avachat

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 20-09-2022

घोषणा की तारीख / Date of Pronouncement : 05-12-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 17-12-2018 passed by the Commissioner of Income Tax (Appeals)-5, Pune [‘CIT(A)’] for assessment year 2013-14.

2. Ground Nos. 1, 8 and 9 are general in nature, hence, require no adjudication.

3. The ld. AR submits that the assessee is not interested to prosecute ground Nos. 2, 6 and 7. Accordingly, the same are dismissed as not pressed.

4. Ground Nos. 3 and 4 raised by the assessee are relating to denial of deduction u/s. 54F of the Act.

5. I note that the assessee is an HUF, derives income from business, capital gains and from other sources. According to the AO, the assessee's share declared at 21% from profit from the business i.e. housing project under the name and style as "Shriram Residency". The assessee shown long term capital gain of Rs.1,05,85,572/-. The assessee claimed for Rs.25,00,000/- deduction u/s. 54F of the Act. In support its claim, the assessee furnished copy of agreement for sale dated 19-03-2016 and according to the AO the said agreement for sale was not registered. The assessee contended that he has invested for purchase of a new property and furnished a receipt for Rs.11,00,000/- from M/s. Aaryan Enterprises. According to the AO, the assessee did not invest a new property within stipulated time and denied exemption u/s. 54F of the Act for entire amount of Rs.25,00,000/-. The CIT(A) confirmed the same. Aggrieved by the order of CIT(A) in denying the exemption u/s. 54F of the Act and also for enhancement of income u/s. 54B of the Act, the assessee is before this Tribunal.

6. Heard both the sides and perused the material available on record. The ld. AR submits that the assessee declared capital gain in the year under consideration and drew my attention to receipt dated 10-02-2014 at page 126 of the paper book. He argued that the AO denied entire deduction without considering the payment of Rs.11,00,000/- paid within

stipulated time. He placed reliance on the decision of Hon'ble High Court of Bombay in the case of Humayun Suleman Merchant reported in 73 taxmann.com 2 (Bombay) and argued that the Hon'ble High Court of Bombay was pleased to allow deduction to the extent paid during the stipulated time as contemplated u/s. 54F of the Act. On careful reading of the decision of Hon'ble High Court of Bombay, I note that a substantial question of law was framed under para 2(b) of the said judgment "*Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Assessing Officer has rightly computed the deduction u/s. 54F of the Income Tax Act, 1961, restricting the investment in the new asset at Rs.35,00,000/- and thus restricting the exemption u/s. 54F of the Act proportionately to the amount invested?*" The brief facts before the Hon'ble High Court were that the AO determined net consideration at Rs.75.39 lakhs, but allowed proportionate exemption of Rs.31.55 lakhs which was paid till the filing of return from capital gain in terms of section 54F of the Act. The AO disallowed the balance consideration and brought to tax under the head capital gains on account of assessee's failure to deposit the unutilized consideration for purchase of new flat in specified bank accounts in accordance with the scheme of Central Government as provided u/s. 54F of the Act. The CIT(A) though recorded assessee obtained possession on 27-01-1997, but however, confirmed the order of AO in allowing proportionate exemption. Having not satisfied with the order of CIT(A), the assessee preferred an appeal before the Tribunal, which was also dismissed against the assessee. Against such order passed by the Tribunal, the assessee preferred an appeal before the Hon'ble High Court of Bombay seeking entire consideration as deduction u/s. 54F of the Act. The Hon'ble High having framed the substantial question of law under para 2(b) above and was pleased to affirm the said question of law under para 2(b) in favour of the Revenue. Therefore, it is clear from the decision of

Hon'ble High Court of Bombay, exemption was allowed proportionately to the amount paid before filing of return of income.

7. In the present case also as rightly conceded by the ld. AR that the assessee made investment in a new property to an extent of Rs.11,00,000/- vide receipt dated 10-02-2014, 27-0402914 and 27-04-2014 which are at pages 126 to 128 of the paper book. It is noted from the perusal of said receipts that Aaryan Enterprises issued receipts dated 10-02-2014 under Receipt No. 0361, dated 27-04-2014 under Receipt No. 0360 and dated 27-04-2014 under Receipt No. 0359 for site at Shreeram Residency, are well before filing of return of income. Admittedly, the assessee's share at 21% of profit from housing project i.e. Shriram Residency which is evident from para 4 of the assessment order. Therefore, there is no dispute with regard to capital gain arising from housing project i.e. Shriram Residency. Therefore, in my opinion, the assessee is entitled to proportionate deduction to the extent investment made in a new property up to the filing of return of income. I note that the AO disallowed entire claim made u/s. 54F of the Act to the extent of Rs.25,00,000/- which was confirmed by the CIT(A). Therefore, in terms of the decision of Hon'ble High Court of Bombay, that the assessee is entitled to claim proportionate deduction as evident from receipts at pages 126 to 128 of the paper book, which are payments made towards new property and also the said payments were made before filing of return of income. Admittedly, the return of income was filed on 31-07-2014 which is evident from para 1 of the impugned order. Thus, the assessee is entitled to get deduction of Rs.11,00,000/- u/s. 54F of the Act as against the entire disallowance of Rs.25,00,000/-. Thus, ground Nos. 3 and 4 raised by the assessee are allowed.

8. Ground No. 5 raised by the assessee challenging the action of CIT(A) in denying exemption u/s. 54B of the Act by enhancing the income of the assessee in the facts and circumstances of the case.

9. I note that the assessee claimed deduction of Rs.80,85,572/- on account of re-investment in agricultural land. The AO allowed the same. The assessee filed additional evidences on other issue by way of a registered agreement dated 08-07-2016 on account of purchase of new house property in support of claim u/s. 54F of the Act. The CIT(A) having found the said information not before the AO, sought remand report. The AO furnished remand report. According to the AO relating to this issue u/s. 54B of the Act held that the assessee purchased agricultural land to an extent of Rs.72,21,240/- on individual capacity and Rs.8,64,335/- in HUF capacity. By holding so, the AO submitted remand report to the CIT(A) seeking enhancement of income. The CIT(A) discussed the said issue from paras 12 to 12.2 of the impugned order, wherein, the disallowance made Rs.72,21,240/- on account of having purchased agricultural land in individual capacity and allowed to an extent of Rs.8,64,335/-. Thereby, the CIT(A) enhanced the total income of the assessee to an extent of Rs.72,21,240/-. Before me, the ld. AR placed on record the order of Surat Bench of Tribunal in the case of Babubhai Arjanbhai Kanani (HUF) reported in 130 taxmann.com 112 (Surat-Trib.) The relevant portions of the said decision of Surat Bench Tribunal are as under :

“12. Now coming to the assessee’s case under consideration, in the light of the above noted judicial precedents, we note that entire purchase consideration for agricultural land was paid by utilizing money of HUF. We note that Purchase Deed is in the name of the Coparcener (one of the HUF members). However, the property (land) is owned by HUF. The property (land) is shown in the Balance Sheet of HUF. The Co-parcener of the HUF may hold property on behalf of the HUF. The HUF money was utilized to purchase the said agricultural land. The HUF is doing agricultural activities. For example, in case of a company, a property may be registered in the name of the Director, because company is an artificial person which can not talk,

walk and think, however, the Directors do all the activities on behalf of the Company, therefore, just because property is registered in the name of director does not mean that director is owner in substance. In substance, the Company will be treated as owner of the property. Likewise, HUF is also an artificial person which can not talk, walk and think, however, the Coparceners (member of HUF) do all the activities on behalf of the HUF. In substance, the HUF is owner of the said agricultural land though it is registered in the name of the Coparcener, as the HUF is enjoying all the fruits of the said agricultural land. Thus, the HUF is entitled to claim exemption/deduction under section 54B of the Act. Therefore, based on these factual position narrated above, we are not inclined to accept the contention of the Id CIT(A) and assessing officer in any manner and therefore the addition so made is deleted. Hence this ground of the assessee is allowed.”

10. The Id. AR argued that the Surat Bench of Tribunal by placing reliance on the decision of Hon'ble High Court of Rajasthan in the case of Laxmi Narayan reported in 402 ITR 117 (Raj.) held that where assessee had purchased new agricultural land out of sale consideration of his agricultural land, assessee could not be denied deduction u/s. 54B of the Act merely because registered document of new land was executed in name of his wife. On perusal of para 12 of the said order of Surat Bench of Tribunal which held the HUF is owner of the said agricultural land though it is registered in the name of the coparcener, as the HUF is enjoying all the benefits of the said agricultural land. Admittedly, in the present case, the assessee being an HUF purchased agricultural land to an extent of Rs.72,21,240/- in individual capacity. The copy of said purchase deeds of agricultural land are furnished from pages 16 to 53 of the paper book. Further, I find the Hon'ble High Court of Delhi in the case of Ravinder Kumar Arora reported in 342 ITR 38 held that the provisions of section 54 of the Act are the beneficial provision which should be interpreted liberally in favour of the deduction to the taxpayer and deduction should not be denied on hyper technical ground. There is no dispute with regard to re-investment on agricultural land by the assessee in his individual capacity, the provisions u/s. 54 of the Act being the beneficial provision which should be interpreted liberally in favour of the assessee seeking deduction

u/s. 54B of the Act. Therefore, following the order of Surat Bench of Tribunal in the case of Babubhai Arjanbhai Kanani (HUF) (supra), I hold that the assessee is entitled to claim deduction u/s. 54B of the Act and enhancement made by the CIT(A) is not justified. Thus, the order of AO is restored in allowing deduction u/s. 54B of the Act to an extent of Rs.80,85,572/-. Thus, ground No. 5 raised by the assessee is allowed.

11. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 05th December, 2022.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th December, 2022.
रवि

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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