आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE PARTHA SARATHI CHAUDHURY,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

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आयकरअपीलसं. / ITA No.32/PUN/2021
निर्धारणवर्ष / Assessment Year : 2015-16

Naryansingh Dongarsingh Patil, Khalchi Galli, Near Motha Maruti Mandir Sakari Deepnagar, Bhusawal – 425307. PAN: BGLPP 3996 G	Vs	The Principal Commissioner of Income Tax-2,Nashik.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Ms. J R Chandekar – AR
Revenue by	Shri M. M. Chate –DR
Date of hearing	30/08/2022
Date of pronouncement	28/11/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee isdirected against the order of ld.Principal Commissioner of Income Tax-2, Nashik, dated 30.03.2020for the A.Y. 2015-16 under section 263 of the Act. The assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law the Ld. Pr. CIT was not justified in holding the assessment order of Pr. CIT-2, Nashik as erroneous and prejudicial to interest the interest of Revenue within the meaning of S. 263 of the Act. Since on the Facts and law S. 263 does not apply the order passed by Pr. CIT-2 Nashik be quashed and set aside.

2. On the facts and in the circumstances of the case and in law the agricultural land sold was not converted in to NA Land and in view of

this it continued to be Agricultural land and the appellant assessee was entitled to deduction under section 54B of the Act. In view of this the order of the A.O. was neither erroneous not prejudicial to the interest of Revenue. As such the order passed by Pr. CIT-2 Nashik under section 263 is not sustainable in law. It be quashed and set aside.

3. *On the facts and in the circumstances of the case and in law and perusal of the assessment order, the statutory Notices issued for compliance, and the also compliance made by the assessee it cannot be said that the order passed by the A.O. under section 143(3) was erroneous and prejudicial to the interest of Revenue. The order passed by the principal CIT-2 Nashik under section 263 in not according to law enshrined in S. 263 of the Act. The same be quashed and set aside.*

4. *On the facts and in the circumstances of the case and in law the order passed by CIT Nashik is not according to law when legal position is that once the provisions of S. 50C are applied then no addition can be made u/s 69B is possible. The order u/s 263 be quashed and set aside.*

5. *On the facts and in the circumstances of the case and in law the filing of this appeal is delayed. The entire period is COVID-19 period. The Hon'ble Supreme Court in Cognizance for Extension of Limitation in Re (2020) 424 ITR 314 (SC) held the period of limitation in all proceedings to stand extended w.e.f. March 15th 2020 till further orders. Also the assessee was pursuing wrong forum of jurisdiction as the appeal was filed before Ld. CIT(A) and notice of hearing was issued in Faceless Jurisdiction. The assessee file his affidavit in support of condonation of delay. The appeal be admitted condoning the delay to do complete justice to the assessee."*

2. Brief facts of the case are that the assessee filed return of Income for AY 2015-16 on 31/03/2017 declaring total income of Rs.3,25,820/-.The case was selected for scrutiny. As per the assessment order the assessee derives income from sale of land. During the year the assessee has sold land and claimed deduction u/s

54B. The AO has allowed the deduction u/s 54B in the assessment order dated 18/12/2017. The Ld.Pr.Commissioner of Income Tax issued notice u/s 263 to the assessee dated 21/02/2020. After giving opportunity to the assessee , the Pr.CIT passed an order u/s 263 dated 30/3/2020. Aggrieved by the same the assessee filed an appeal before this tribunal.

3. The assessee in the written Statement of Facts submitted that the assessee became owner of the land as per WILL of his mother. His mother expired on 9/9/2009. The said land was cultivated by mother upto 1997-98. After that the land was not cultivated and remained “pad” land. The land is agricultural land in revenue record. He relied on the ITAT decision in the case of Murtuza Shabbir Jamnagarwala vs ITO 175 ITD 494 (Pune Trib). Pr.CIT vs Khetilala Sharma .

4. Ld.DR relied on the order of the Pr.CIT.

5. We have heard both the parties and perused the records. This is an appeal against Order u/s 263 of the Act. The Commissioner of Income Tax can invoke jurisdiction under Section 263 only if the assessment order is erroneous and prejudicial to the interest of revenue. Both these conditions need to be satisfied together. Therefore, we have to decide, whether the Assessment Order was erroneous and prejudicial to the interest of revenue?

5.1 We have gone through the Assessment Order . The Assessee had claimed deduction u/s54B of the Act. The provisions of Section 54B are reproduced here 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 being an individual or his parent, or a Hindu undivided family 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 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 (hereinafter 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, the cost shall be reduced, by the amount of the capital gain."

Thus, for availing benefit u/s.54B, the crucial condition is that the land which was transferred should have been used for agricultural purpose immediately preceding two years of date of transfer.

5.2 The assessing officer had allowed deduction u/s 54B of the Act to the assessee. However, the assessee in the written statement of

facts filed before this tribunal has accepted that the impugned land was cultivated only upto 1997-98. The AO had not asked the assessee to prove that the impugned land was used for Agricultural Purpose in preceding two years. The AO had not carried out necessary inquiry to find out whether the impugned land was used for agricultural purpose in preceding two years of transfer. The Ld.AR could not prove that the AO had made any inquiry with the assessee on the issue whether the land was used for agricultural purpose in preceding two years of transfer. We have read the assessment order, we could not find any evidence of any inquiry conducted by AO regarding use of impugned land for agricultural purpose in preceding two years of transfer. Similarly it is observed that the assessee had not established the basis on which the cost of acquisition has been estimated by the assessee. Even, before, the Pr.CIT the assessee could not file any evidence based on which the assessee had estimated the cost of land. Therefore, we agree with the Pr.CIT that the assessment order was erroneous. Also, we have already mentioned , that the assessee in the statement of facts had admitted that the impugned land was used for agricultural purpose only upto 1997-98. It means, the impugned land was not used for agricultural purpose in preceding two years of sale. One of the condition for allowing Deduction u/s 54B is that the original asset was used for agricultural purpose in preceding two years of sale. Therefore, the impugned assessment order is erroneous and

prejudicial to the interest of revenue. Therefore, we uphold the order u/s 263 of the Pr.CIT. Accordingly, the grounds raised by the assessee are dismissed.

6. In the result, appeal of the Assessee is Dismissed.

Order pronounced in the open Court on 28th November, 2022.

Sd/-	**Sd/-**
(PARTHA SARATHI CHAUDHURY)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 28th Nov, 2022/ *SGR**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.