

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 100/Rjt/2020
Assessment Year: 2015-16**

Shri Sharad M. Kumbhani, At- Dhudiya Agariya, Ta: Rajula, Dist: Amreli, Rajula-365560 PAN No: ASAPK7378P (Appellant)	Vs	The Pr. C.I.T.-3, Rajkot (Respondent)
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**Assessee Represented: Shri D.M. Rindani, A.R.
Revenue Represented: Shri Shramdeep Sinha, CIT-DR**

Date of hearing : 23-11-2022
Date of pronouncement : 11-01-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee against the Revision order dated 28.02.2020 passed by the Principal Commissioner of Income Tax-3, Rajkot, under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2015-16.

2. The brief facts of the case is that the assessee is an individual and engaged in the business of Labour Contract. For the Assessment Year 2015-16, the assessee filed its Return of Income on 04.09.2015 declaring total income of Rs. 4,34,900/-. The return was selected for scrutiny assessment and after issuance of notices, the Assessing Officer found that the assessee sold agricultural land situated at Rajula, Piyat Jamit, Survey No. 110 P2 and registered before the SRO, Rajula vide Document No. 578/2014 on 07.04.2014 for a sale consideration of Rs. 1,37,24,875/-. However, the SRO, Rajula has assessed/valued the said land for Rs. 2,51,93,900/- as per Jantry/guideline value and stamp duty. Therefore the difference between the Jantry value and the sale consideration is of Rs. 1,14,69,025/- should be added as income as per Section 50C of the Act.

2.1. Further verification of the computation of income and claim of deduction u/s 54B of the Act, the assessee has made payment of Rs. 40 lakhs in the financial year 2014-15 for the purchase of the new property valued at Rs. 60 lakhs. So why the balance consideration of Rs. 20 lakhs should not be disallowed added to the total income of the assessee for the Assessment Year 2015-16.

2.2. The assessee made a detailed reply vide his letter dated 05.12.2017 as follows:

Reg. Proposed addition u/s 50C:

1. It is proposed by you that an addition of Rs.1,14,69,025/- is required to be made in view of the higher value adopted by Stamp Valuation Authority in respect of land sold by me to APMC, as compared to the documented value as per registered deed of sale. In this regard, it is pertinent to note

that the Stamp Valuation Authority has calculated the value for the purpose of levy of stamp duty as if the land sold was an open plot of non-agricultural land whereas in fact what was sold by the assessee to APMC by way of registered deed of sale no.578 dated 07.04.2014 (copy enclosed marked "E" of submission dated 17.11.2017) was of the nature of agricultural land and not a non-agricultural piece of land.

2. The stamp duty valuation rate in respect of agricultural land was Rs. 155/- per sq. mtr (copy enclosed marked "A"). Whereas our sale of agricultural land took place at a rate of Rs.1,150/- per sq. mtr. in respect of open land. The buyer appears to have agreed to be levied stamp duty as non-agricultural land and appears to have accepted the said valuation. It may have been on account of its application to the District Collector seeking permission to buy and hold agricultural land. However, as far as the seller is concerned, what has been actually sold is agricultural land and therefore the stamp duty value leviable on agricultural land ought to be considered in the proper context and facts of the case.

*3. In support of the nature and character of land sold by me, the copy of registered sale deed may kindly be referred to wherein the land is described not as non-agricultural land but as irrigated land near the town of Rajula. I may also invite your kind attention, to the land revenue records being 8-A and 7*12 which show the same lands to be agricultural lands held by me (copy enclosed marked "E" of submission dated 20.11.2017). It may be noted that at as point in time have I made any application for conversion of the said lands into NA lands. I continued to hold the same as agricultural lands ever since acquiring the same.*

4. It may be noted from the contents of the said deed of sale (page 6 in particular) that the permission to purchase the said agricultural lands was sought and granted to the APMC under the applicable land revenue law in Saurashtra region and not to me. Under the applicable law in this region relation to agricultural lands, no person other than and agriculturist (a farmer cultivation) can acquire or hold agricultural lands without express permission from the Government. Such permission is granted in specific cases when the buyer intends to use the land for other purposes. Clause (3) of the permission letter dated 02.01.2014 (copy enclosed marked "B") itself states that the said lands were agricultural lands and further permission by the holder/applicant will have to be obtained in order to put the said lands to non-agricultural usage. It was only if such permission to but agricultural land is obtained by the buyer that it could acquire agricultural land was applied for and granted independently to the buyer-APMC much after the sale by me took place, that is on 30.11.2016. Therefore, the transaction of transfer cannot be said to be that of non-agricultural land and hence the stamp valuation rate of the specific type of land actually sold will have to be considered though the authority may have assessed the stamp duty at higher amount for the buyer.

5. Without prejudice to above, I have to submit that the higher valuation made by the Stamp Valuation Authority is not acceptable to me because according to me it exceeds the fair market value of the property sold as on the date of transfer. In my considered view, the fair market value is the same as the value of consideration that actually passed between me and APMC for the transfer by me of agricultural land and not at the higher value that may have been adopted by the Authority as if it is a non-agricultural land. From the photographs attached to the sale deed, it is further apparent that agricultural land was sold on the date of transfer. Therefore, as mandated u/s 50C(2), kindly make a reference to the valuation officer in case my aforesaid contention is not acceptable to you. After the reference is made, suitable opportunity may be granted to me in order to support my contentions with regard to the nature of land and the value thereof.

6. In above regards, Jantri has been calculated as it is non-agricultural land only because of a specific instruction of the government to do so (copy enclosed marked "C") in cases where the buyer applies for purchase of agricultural land which is to be used for other purposes. In view of the above, it is apparent that the Jantri valuation was made for a special reason and not because of the fair market value of the land. Hence for section 50C purposes the Jantri value of what is not sold cannot be considered. Reg. Deduction u/s 54B.

7. With regard to the claim of deduction u/s 54B, you have proposed to reduce the same by Rs.20,00,000/- on the ground that part of the payment of the consideration towards purchase of agricultural lands was made by me earlier to the date of transfer of the land sold. In this regard, I have to submit that Sec. 54B is a special section that grants special deduction when proceeds of sale of agricultural land are reinvested in agricultural land and hence the said section has been interpreted by Courts in a liberal manner so as to advance the object behind such provisions such as Sec. 54, 54F etc.

8. The said section requires that the capital gain on sale of agricultural land should be utilized for purchase of new asset within a period of two years after the date of transfer. I have satisfied this condition because the gain has been reinvested by registering the purchase on 25.03.2015 whereas the sale was effected on 07.04.2014. The amount of Rs.20,00,000/- was paid by me prior to registration of deed of purchase, that is on 02.12.2013. The said amount was paid out of advance sale proceeds received on 23.11.2013. Thus, even the advance sale proceeds were reinvested in agricultural land and ultimately the final purchase was affected and possession of new asset was granted to me on 25.03.2015. In other words, what is material for claiming the benefit of Sec. 54B and such other sections is that the capital gain/sale proceeds should be utilized for the specified new assets and that too within the time limit for utilization thereof. The said section does not prohibit utilization prior to

date of transfer by way of sale, more so when the advance sale proceeds were received and have been duly reinvested. Therefore, the outer limit of two years has not been violated by me and thus the deduction so claimed may kindly be granted.

9. I shall be glad to provide any further information that may be required in this regard. With respect to both the aforesaid issues, it is also relevant to submit that when a deeming fiction such as Sec. 50C is applied and a deemed sale consideration amount is applied by the Dept., and when a corresponding deduction u/s 54B etc. is claimed to the full extent required therein, the complete exemption/deduction of capital gains is available to the assessee irrespective of the consideration value adopted under a deeming fiction such as Sec 50C. In other words, full and true effect to a deduction provision should be granted by considering that Sec. 50C and Sec. 54B are distinct provisions operating in their separate fields.”

2.3. The Assessing Officer has not accepted the submissions made by the assessee and added the sum of Rs. 1,34,69,025/- as the assessed income and demanded tax thereon.

3. On examination of the assessment records by the Ld. PCIT, it is found that the assessee sold agricultural land and purchased another agricultural land jointly with his wife and claimed deduction u/s. 54B of the Act to the tune of Rs. 1,24,82,922/-. The assessee produced only copy of the extract of 7/12 which could not show actual use of land for agricultural purpose. As per Section 54B, the assessee must establish that the land should be used for agriculture purpose for a period of two years prior to the date of transfer. The assessee has not produced any documentary evidence to substantiate that the lands were used for agriculture purpose to claim deduction u/s 54B of the Act. It is seen that the land was purchased on 16.09.2010 and thereafter the purchaser has applied to the Assistant Collector, Rajula for obtaining permission for non-agricultural purpose. The said land was converted into non-

agricultural land vide Assistant Collector, Rajula order dated 02.01.2014 and sold for non-agriculturist by execution of sale deed on 07.04.2014. Thus, at the time of registration of sale deed, the land is not an agriculture land. Therefore the assessee is not entitled for deduction u/s 54B of the Act. The Assessing Officer has not verified the above details and simply disallowed only Rs. 20 lakhs towards the claim of deduction u/s. 54B of the Act. Thus the assessment order passed by the Assessing Officer without making inquiries or verification of record which is an erroneous order and prejudicial to the interest of Revenue, as the income was under assessed to that extent.

3.1. Therefore a show cause notice dated 05.11.2019 was issued proposing to revise the assessment order u/s. 263 of the Act. There was no response from the assessee. Another notice dated 17.01.2020 was issued both physically as well as on the e-mail addressed registered with the Income Tax Department. Physical notice was delivered on 27.01.2020, however, no one responded to the notice. Therefore with the materials available on record, the Ld. PCIT set aside the assessment order dated 30.12.2017 with a direction to the A.O. to revise the income and also eligibility of deduction u/s. 54B of the Act, after allowing an opportunity being heard to the assessee.

3.2. This Revision order is challenged before us by raising the following Grounds of Appeal:

1. The learned Principal Commissioner of Income-tax-3, Rajkot erred in assuming jurisdiction u/s 263 of the Act, particularly in the light of reasons stated by him in the show cause notice and in the order passed u/s 263 of the Act and hence the impugned order is bad in law.

2. The learned Principal Commissioner of Income-tax-3, Rajkot erred in setting aside the assessment order framed u/s 143(3) of the Act by holding that assessment order passed by the assessing officer was erroneous and prejudicial to the interest of revenue.

3. The learned Principal Commissioner of Income-tax-3, Rajkot failed to appreciate that necessary inquiries were made by the assessing officer during assessment proceedings u/s 143(3) in respect of claim of deduction u/s 54B of the Act and hence the order could not have been considered as erroneous u/s 263.

4. The Ld. Counsel Shri D.M. Rindani appearing for the assessee filed before us two Paper Books running to 40 pages and 32 pages respectively. In Paper Book No. I, document no. 1 is show cause notice was issued by the Ld. PCIT and the remaining documents 2 to 9 namely Return of Income, 143(2) notices issued by the A.O. and the reply filed by the assessee. In Paper Book No. II, contained the Returns of Income filed for the Assessment Year 2013-14 and 2014-15 as document no. 1 & 2 and document no. 3 is copy of the sale deed dated 05.04.2014, which are all filed before the Assessing Officer.

4.1. Relying upon all these documents, the assessee counsel submitted that the Ld. PCIT failed to consider that the detailed enquiries were conducted by the Assessing Officer before disallowing partial claim of deduction u/s. 54B and framed the assessment order, which is not an erroneous order and prejudicial to the interest of Revenue. Hence, the Revision proceedings initiated is bad in law.

5. Per contra, the Ld. CIT-DR Shri Shramdeep Sinha appearing for the Revenue taken us through the Revision order passed by the Ld. PCIT that inspite of two notices given by PCIT namely on 15.11.2019 and 17.01.2020. The Assessee has not represented before the Ld. PCIT. Therefore with the available materials on record, the above Revision order being passed. In the interest of justice, the matter may be remanded back to the file of the Ld. PCIT to consider the above submissions of the assessee and passed fresh orders on merits of the case.

6. We have given our thoughtful consideration and perused the materials available on record. Though the assessee filed two Paper Books and claimed all the details were submitted by the assessee during the original assessment proceedings before the Assessing Officer. However the assessee failed to appear before the Ld. PCIT pursuant to the show notices dated 15.11.2019 and 17.01.2020. In the interest of principle of natural justice and fair play, we deem it fit the matter be set aside back to the file of the Ld. PCIT to decide afresh the issues by giving one more opportunity to the assessee. Needless to state, the assessee should file all relevant documents placed before us or any other documents, in support of its claim before Ld. PCIT and pursue the case on merits. Thus the appeal filed by the assessee is allowed for statistical purposes.

7. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 11-01-2023

Sd/-
(WASEEN AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 11/01/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट