

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “**SMC**” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.53/SRT/2022 (AY 2014-15)

(Hearing in Physical Court)

Jerambhai Bhagvanbhai Gohil, 51 Mohan Ni Chowk, Mohan Nagar, 1 st Floor, b/h Hiramoti Apartment, Varachha, Surat-386546 PAN No: ACMPG 7438 A	Vs	Income Tax Officer, Ward-3(3)(2), Aayakar Bhawan, Majura Gate, Opp New Civil Hospital, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Seth, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	01.03.2023
उद्घोषणा की तारीख/Date of pronouncement	28.04.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/ Ld. CIT(A)”] dated 08.12.2021 for assessment year 2014-15, which in turn arises out assessment order passed by Income-tax Officer-ward-3(3)(2), Surat/Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 29.12.2017. The assessee has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the I.T. Act 1961.

2. On the facts and circumstances of the case as well as law on the subject the learned Commissioner of Income Tax(Appeals), National Faceless Appeal Centre has erred in confirming the action of assessing office in disallowing exemption of Rs.22,54,910/- claimed by the assessee u/s 54B of the I.T. Act, 1961.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Perusal of record shows that NFAC/Ld. CIT(A) passed impugned order on 08.12.2021, however, this appeal was filed before Tribunal on 08.03.2022, the registry has calculated delay of 30 days in filing appeal. The assessee has filed his application for condonation such delay. The Ld. Authorized Representative (Ld.AR) for the assessee submits that the order of NFAC/Ld. CIT(A) was not received by assessee and the assessee was not aware about passing of said impugned order though the assessee has given e-mail portal in Form-35 (Appeal Form before Ld. CIT(A). the assessee came to know about passing of the impugned order in second week of January 2022 and immediately downloaded the copy of order and filed appeal. Thus, the period of limitation is to be counted from second week of January 2022. The Ld. AR for the assessee submits that assessee has a good case on merit and would suffer prejudice if the delay in filing of assessee's appeal is not condone. The Ld. AR for the assessee submits that there is

no deliberate or inordinate delay in filing the appeal before the Tribunal and same may be condoned.

3. On the other hand, Ld. Senior Departmental-Representative (Ld. Sr-DR) for the Revenue after going through the affidavit filed by assessee and hearing the plea of Ld. AR for the assessee fairly submits that the Bench may take proper view in accordance with law.
4. I have considered the submission of both the parties and perused the materials available on record. I find that main contention of Ld. AR for the assessee is that assessee came to know about the passing of impugned order only on downloading the order from ITBA portal in second week of January 2022 and took step to file appeal before Tribunal. The assessee has filed appeal before Tribunal on 08.03.2022. Thus, keeping in view that the delay in filing appeal is not deliberate or intentional and there is no inordinate delay. The delay, if any has been explained reasonably by the assessee, therefore, considering the principle that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, the delay in

filing of assessee's appeal is condoned. Now adverting the merit of the case.

5. At the outset of hearing, Ld Authorized Representative (Ld.AR) for the assessee submitted that he is not pressing Ground No.1, which relates to re-opening of assessment under section 147 of the Act. Considering the submission of Ld. AR for the assessee, hence, Ground No.1 is dismissed as "**not pressed**".

6. Brief facts of the case are that assessee is an individual. During re-assessment proceedings, the Assessing Officer noted that assessee sold an immovable property situated at Block No.1084, Variyav, Surat for a sale consideration of Rs.2.27 crores. The assessee was having 1/10th share in the said property as per the computation of income, the assessee has shown capital gains of his share and claimed exemption 54B of the Act for purchase of new residential house. The Assessing Officer was of the view that for claiming deduction under section 54B, the assessee or his specified persons referred in Section 54B is required to carry out agricultural activities on the land sold as well as on newly purchased land. The Assessing Officer asked the

assessee to substantiate such claim and noted that as has given only expenses for agricultural expenditure but no other supporting evidence was furnished. The Assessing Officer issued a show cause notice vide order-sheet entry dated 07.12.2017. The assessee filed his reply vide reply dated 12.12.2017 and contended therein that he sold ancestral agricultural land, which was used for agricultural purposes for his family members. The land was jointly hold by all his family members, bills of agricultural produce were not in the exclusively name of assessee, although copy of bills available with assessee were furnished. For purchase of agricultural land, the assessee submitted that the said land is used subsequently for agricultural purposes. The assessee is a small farmer and it is not always maintained that agricultural produce was sold to Co-Operative Societies or through organised market but sometimes agricultural yield, which sold to individual person also, who take away agricultural product from the assessee's farm directly. The assessee furnished copy of extract 7/12 or certificate from Talati. The reply of assessee was not accepted by Assessing Officer by taking view that no details of agricultural

activities were furnished in respect of land sold and no agricultural sell bills, detailed of expenses carrying out agricultural activities were furnished. Even if, stand of assessee that family members of assessee were doing agricultural activities on the selling agricultural land of assessee, even the assessee is not entitled for deduction under section 54 of the Act because agricultural activity should be carried out exclusively by the assessee, his parents, assessee is an Undivided Hindu Family (HUF), for making claim of section 54. The agricultural activities carried out by other family members do not make the assessee eligible for claiming such deduction under section 54 of the Act. The Assessing Officer further held that capital gains earned or sale of agricultural land should be invested in a new agricultural land before filing return of income but in the present case, the assessee failed to file his return of income as per the provision of Section 139 of the Act and failed to utilize the land on capital gains by the month of July of the next financial year. Thus, the assessee has violated the primary condition for claiming deduction under section 54 of the Act. Further the balance unutilized

amount had not been invested in a specified securities for claiming deduction under section 54 of the Act. Further from the list of property purchased for utilization of capital gains, the status of one of the property is “Bin Kheti Premium Patra Land”. Thus, the status of land is non-agricultural land at the time of purchase and not eligible for deduction under section 54B of the Act. On the basis of aforesaid observation, the Assessing Officer disallowed the exemption of Rs.22,54,913/-.

7. Aggrieved by the addition in the assessment order, the assessee filed an appeal before Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee filed his detailed written submission. The submission of assessee is recorded in **para-5** of the order of NFAC/Ld. CIT(A). The assessee in his written submission, reiterated earlier submission and submitted that assessee has rightly claimed deduction under section 54B and fulfilled all stipulated conditions. The assessee given the details of agricultural land purchased on sale of ancestral property existing in the following manner:

Sr. No.	Description of property	Date of purchase	Share of assessee	Cost to assessee
1	Block No.1213, Moje Variav, Tal. Surat, City Surat	28/02/2014	10%	16,95,000/-

2	Agricultural land R.S. No.724, Block No.1469 Moje Talsana Gam, Dist. Surendarnagar	11/02/2015	100%	6,40,000/-
3	Agriculture land bearing survey No.203, Paiki 1/3, Moje Monpar, Tal Mahua, Dist. Bhavnagar	24/08/2015	25%	42,750/-
4	Agricultural land R.S. No.13/3 paiki-1, Block No.48, Moje Talsana Gam, Tal Laktar, Dist. Surendarnagar	22/05/2015	100%	5,85,260/-

8. The assessee also furnished copy of purchase deed and submitted that the Assessing Officer disallowed the claim of assessee under section 54B on various reasons. On the objection that no details were furnished about agricultural activities, the assessee stated that the assessing officer in para 5.1 has admitted that one of the bill is in the name of Chhaganbhai, who is the co-owner and is party to the sale deed, which itself proves the agriculture activities. The land records clearly show that the land was used for agriculture activities. On the time limit of investment, the assessee submitted that, time limit for making investment under the scheme of the Act does not mean only section 139(1) only, but will mean all sub-sections of section 139. No such condition is prescribed in section 54B and claim cannot be disallowed on this ground. To support his submission, the assessee relied on the decision various High Courts

including in CIT Vs Jagruti Aggarwal (339 ITR 610 P & H), CIT Vs Jagtar Singh Chawla (259 ITR 388 P& H), CIT Vs Rajesh Kumar Jalan (286 ITR 274 Gau) and Fatimabai Vs ITO (32 DTR 243 Kol). On the objection of assessing officer that there was reference in the purchase deed about 'bin Kheti premium patra land', the assessee explained that land is agriculture land and can be used as 'NA' (non-agriculture) subject to premium of payment, which means conditional permission was granted.

9. The ld CIT(A) after considering the submissions of the assessee confirmed the action of assessing officer by retreating the same contentions. Further aggrieved the assessee has filed present appeal before Tribunal.
10. I have heard the submission of Ld. AR for the assessee and Ld. Sr-DR for the Revenue and perused the materials available on record. The ld AR for the assessee submits that the assessee along with his other co-owners sold agriculture land. The assessee earned capital gain on sale of such land. The assessee invested such capital gain in purchasing other capital gain and claimed deduction of section 54B. The nature of agriculture land sold by assessee and his co-

owners is recorded in the sale deed itself. The assessing mainly disallowed the claim of deduction under section 54B on the ground that there is no bill of expenses for agriculture activities, investment was not made within the time prescribed under section 54 and land use shown in the purchase deed is shown other than non-agriculture. The ld AR for the assessee submits that there is no dispute that the assessee was having only 1/10 share in the land sold. The area of the land was only 10821 square meter and it was owned by 15 share holder. Bills of expenses which were in the name of other co-owners were furnished to the assessing officer. The assessee has shown agriculture income in the return of income, which was not disputed. The assessing officer has not investigated the fact, except doubting the explanations and the evidence filed by the assessee. The assessee invested the capital gain with the extended time prescribed under section 139(4). The dates of purchase of new agriculture are not in dispute, the assessee explained the entire facts before ld CIT(A). The ld CIT(A) instead of considering the facts independently upheld the addition made by assessing officer. The nature of land in

duly mentioned in the purchase deed. The assessing officer raised the objection that in the purchase deed it is mentioned 'bin Kheti premium patra land', the ld AR for the assessee explained that land is 'agriculture land' and can be used as 'NA' (non-agriculture) subject to premium of payment, which means conditional permission was granted but the land was not converted to NA land. The ld AR for the assessee finally submit that beneficiary provision in the Act should be interpreted liberally and as such the assessee is entitled for deduction under section 54B. the ld AR for the assessee also relied on various case laws, and filed copies thereof, which was relied before ld CIT(A)

11. On the other hand, the ld Sr DR for the revenue submits that the assessing officer while disallowing the deduction under section 54B, clearly held that the assessee does not fulfil the conditions of eligibility of such deduction. The ld Sr DR for the revenue prayed for dismissal of appeal.
12. I have considered the rival submissions of both the ld representative and seen the lower of lower authorities carefully. I also deliberated on various case laws on which the ld AR for the assessee relied. On considering the facts

and submissions of parties I find that the assessing officer basically disallowed the deduction under section 54B on three counts, that no bills of expenses are in the name of assessee. I find that the assessing officer himself recorded that the bills are in the name of Chhaganbhai, who is the co-owner and is party to the sale deed dated 12.02.2014, which itself proves the agriculture activities. Moreover, keeping in view the size of land I do not find any justification of such objection. Second objection of the assessing officer was that capital gain was not utilised before due date of filing return of income under section 139.

13. I find that Hon'ble Karnataka High Court in Fatima Bai Vs ITO (supra), while considering almost similar question of law, though, on the deduction under section 54, held that due date for filing return of income in the said case was 30.07.1998, the assessee was entitled to file return of income under section 139(4), which was within 31.03.1990. The assessee did not file the return within the extended due date, but filed the return on 27.2.1990. However, the assessee had utilized the entire capital gains by purchase of a house property within the stipulated period of section

54(2) i.e., before the extended due date for return under section 139. the assessee technically may have defaulted in not filing the return under section 139(4). But, however, utilized the capital gains for purchase of property before the extended due date under section 139(4). The contention of the revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention. The High Court followed the view taken by Gauhati High Court in CIT Vs Rajesh Kumar Jalan (supra), wherein it was held that time limit for deposit under the scheme or utilization can be made before due date for filing return under section 139(4). Thus, in view of the legal position, the second objection of the assessing officer also not tenable.

14. So far as third objection of the assessing officer is concerned that nature of land recorded on the purchase deed is 'bin Kheti premium patra land', I find merit in the submissions of the ld AR for the assessee that land purchased by assessee is 'agriculture land' and can be used as 'NA' (non-agriculture) subject to premium of payment, which means conditional permission was granted but the land was not

converted to NA. Thus, I find merit in the submission that nature of land purchased was not changed. Hence, third objection of assessing officer is also overruled.

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

Order pronounced in the open court on 28/04/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत /Surat, Dated: 28/04/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

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By order

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT,
Surat