

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.349/SRT/2022

निर्धारण वर्ष/Assessment Year: (2016-17)

(Physical Hearing)

Kristina Nathabhai Krichchan, 2/4, Zankhana Apartment, 21 Narmad Nagar Society, Athwalines, Surat – 395001.	Vs.	The DCIT, Circle-2(3), Surat.
(Assessee)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: DWIPK2888D		

Assessee by	Shri P. M. Jagasheth, CA
Respondent by	Shri Ashok B. Koli, CIT(DR)
Date of Hearing	10/05/2023
Date of Pronouncement	26/06/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (In short ‘NFAC’), Delhi, which in turn arises out of an assessment order passed by Assessing Officer, under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 24.12.2018.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.4,04,08,003/- on account of disallowance of deduction claimed u/s.54B of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in not allowing exemption u/s 54B of the Income Tax Act amount of Rs.4,04,08,003/-

for the purchase of the agriculture land against capital gain arose on sale of land.

3. On the facts and in the circumstances of the case as well as law on the subject, the Ld. AO has erred in initiating penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961.

4. On the facts and in the circumstances of the case as well as law on the subject, the Ld. AO has erred in initiating penalty proceedings u/s.271F of the Income Tax Act, 1961.

5. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.

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

3. Brief facts *qua* the issue are that the assessee filed his original return of income for AY.2016-17 on 09.03.2018 declaring total income of Rs.32,31,060/-. The assessee`s case was selected for limited scrutiny under CASS. Accordingly, notice under section 143(2) of the Income Tax Act was issued on 16.08.2018 and served upon the assessee through e-mail. In response to the Notices issued under section 143(2)/142(1) of the Act, the assessee furnished various details e filling portal on ITBA. The details called for were examined by the assessing officer. During the year under consideration, the assessee has derived income from other sources and capital gain. On perusal of the return, the assessing officer noted that assessee has sold land used for the purpose of the agriculture and claimed deduction u/s 54B of the Income Tax act, 1961. In this regard a show cause notice was by the assessing officer, which is reproduced below:

“2. During the course of assessment proceedings, on perusal of the ITR and computation of income, it is noticed that you have computed the capital gain and have claimed deduction u/s 54B of the Income Tax Act, 1961 for the amount of Rs.4,04,08,003/- for the purchase of the agricultural land.

3. Further in support of the claim you have submitted the copy of the registered deed of the sale of the land at Kosmada Block No. 59 & 60, and with respect to purchase of the land you have submitted the copy of the satakhiiit dated 28/07/2016 Vide notice u/s 142(1) of the Income Tax 1961 dated you were asked to furnish the copy of the registered document as already considerable time has been passed since the statkhat. The reply furnished by you dated is reproduced below-

1. Copy of sale agreement with possession is already submitted “Annexure -6” of my earlier submission. Regarding Registered deed for the purchase of the land, I would like to state that at the time of purchase, Milanhai Jayantila Zalavadiya and Rutikbhai Jayantilal Zalavadiya was minor, hence registered deed for the purchase of the land was not made. Further, I have applied for court permission to make registered deed. But no permission received till date.

3.1 The reply is duly considered. On perusal of the same it is noticed that you have applied to for the permission for the registration of the land but till date court has not given permission. Your reply is self-explanatory, as the court has not granted the permission for the registration till date, so the process of the transfer is not yet valid as per the law.

4. Further you had placed reliance on the statkhat. As per the provision of the contract Act, minor is not competent to enter into the contract agreement. The provisions

10. What agreements are contracts —

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Who are competent to contract —Every person is competent to contract who is of the age of majority according to the law to which he is subject to, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

5. Further the agreement/satakhat is not registered with the competent authority for the validity and genuineness. Therefore, you are requested to show cause as to why not exemption claimed u/s 54B of the Income Tax Act, 1961 is to be disallowed and should be included in the capital gain income for the year.”

4. In response to the notice of the assessing officer, the assessee submitted the reply dated 19/12/2018, and the same is reproduced below:

“I am in receipt of your show cause notice, notice no.ITBA/AST/F/I 43(3) (SCN)/2018-19/1014241206(1) dated on 13/12/2018, asking me to furnish certain information and explanation and in this regard, I make the following submission for the kind consideration of your honour:

In my earlier submission I have stated that the registration of the purchased land is pending due to court permission due to two of the co-sellers were minor at the time of purchase of the said land but now at present both the above two parties became major and they have executed a notarized declaration of accepting the transactions and confirmed the enforceability of the documents in form of Satakhat/sale agreement and possession letter signed by their guardians

on their behalf and therefore a documents on which I have purchased is valid and enforceable ab initio.

Copy of declaration by these two parties are enclosed herewith for kind consideration of your honour in "Annexure - 14", and a declaration by all the parties to gather regarding the sale of agriculture land and execution of sale deed with in short time in my favour is also enclosed in "Annexure -15" for the kind consideration of your honor.

I have claimed the amount already paid for the purchase of a new agriculture land which is confirmed by the above parties and also confirmed the enforceable of transaction and documentation in my favour and hence my claim u/s. 54B of the Act is allowable as the transaction is enforceable in the eyes of the law and therefore I most humbly request your honour that to consider the above facts in the natural justice.

I hope that the above submission shall satisfy the requirement of your good self, however your good self-require any further information or explanation in this regard; I shall be pleased to provide the same on hearing from your end."

5. However, assessing officer rejected the contention of the assessee and observed that as per the submission of the assessee the both the minors are major now and competent to enter into any transaction or contract, but still the assessee has only submitted the affidavit and could not get the registered document of the land purchased. The affidavit and agreement to sale can only give right to sue the other party but does not confer any right on the land if it is not registered. The agreement of sale will give only a right to sue for transfer of property and that itself will not amount to a transfer. The plain construction of section 54B contemplates sale of agricultural land in the first instance and subsequent to such sale, purchase of similar agricultural land with the aid of the consideration received thereunder to enable the assessee to claim exemption for the purpose of computing the income tax on capital gains. Since the assessee has not complied with the above mandatory provisions of the section, the assessee is not entitled to the exemption. Thus, assessing officer held that as the assessee has not been able to get the land registered till date therefore the amount of deduction of Rs.4,04,08,003/- claimed u/s 54B of the Income Tax Act, 1961 was disallowed by the assessing officer.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. The Ld CIT(A) observed that claim of assessee under section 54B of Income tax Act is not acceptable for simple reason that purchase deed of the new land has not been shown and it is not being shown that land parcel belongs only to the assessee. Income tax has to be taxed in the right hands and it is not enough that formal and procedural requirements are fulfilled but also that the tax has been paid if it all in the right hands for the right assessment year. The very fact that the assessee has shown the entire gains in her hands even when due to other co-owners does not mean that the reinvestment would be allowed benefit of section 54B of the Act. Hence, Ld CIT(A) dismissed the appeal of the assessee, therefore, the assessee is in appeal before us.

7. Shri P. M. Jagasheth, Learned Counsel for the assessee begins by pointing out that registration of the purchased land was pending due to court permission because of the reason that two of the co-sellers were minor at the time of purchase of the said land but now at present both the above two parties became major and they have executed a notarized declaration of accepting the transactions and confirmed the enforceability of the documents in form of Satakhat/sale agreement and possession letter signed by their guardians on their behalf and therefore a documents on which basis, assessee had purchased is valid and enforceable in law. Besides, the assessee had claimed the amount already paid for the purchase of a new agriculture land which is confirmed by the above parties and also confirmed the enforceable of transaction and documentation in assessee`s favour and hence assessee`s claim u/s 54B of the Act is allowable as the transaction is enforceable in the eyes of the law. This way, Ld Counsel prays the Bench addition sustained by Ld CIT(A) should be deleted.

8. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. The assessee has filed appeal against the denial of benefit under section 54B of the Income Tax Act claimed by her on transfer of agriculture land and purchased of another parcel of land. The assessing officer had denied benefit under section 54B of Income Tax Act 1961, on the ground that assessee was unable to furnish purchase deed for so called new agriculture land. The reason given by the assessee before the assessing officer was that two of the co-owners were minor due to which application had been filed in the appropriate court for permission to purchase land and sell land in their name. The assessee was acting as a guardian for these minors.

10. In our opinion, the contention urged by Id Counsel for the assessee, merits acceptance. The Id Counsel has submitted before the Bench, the following documents and evidences to support his plea, which are reproduced below:

- (i) Copy of agreement for sale (vide PB. 1 to 10)
- (ii) English Translation of agreement for sale (vide PB. 11 to 17)
- (iii) Bank statement highlighting payment for purchase of land (vide PB. 18 to 21)

- (iv) Agreement for sale deed with possession (vide PB. 22 to 29)
- (v) English translation of agreement for sale deed with possession (vide PB.30 to 33)
- (vi) Application for permission to sale under guardian and wards Act (vide PB.34 to 38)
- (vii) English translation of relevant portion of application for permission to sale (vide PB. 39 to 40)
- (viii) Affidavit filed by the assessee to substantiate the facts (vide PB.41 to 46)
- (ix) Identity Proof of Milan Zalavadiya and Rutvik Zalavadiya (vide PB. 47 to 48)
- (x) Acknowledgment of return of income (ROI) for AY.2016-17 (vide PB. 49 to 51)
- (xi) Revised computation of income for AY.2016-17 (vide PB.52 to 53)

Based on these evidentiary facts and circumstances, the Ld. Counsel for the assessee submitted that deduction claimed by the assessee under section 54B of the Act should be allowed, as the assessee has fulfilled the conditions of claiming deduction under section 54B of the Act. At the cost of repetition we state that registration of the purchased land was pending due to court permission because of the reason that two of the co-sellers were minor at the time of purchase of the said land but now at present both the above two parties became major and they have executed a notarized declaration of accepting the transactions and confirmed the enforceability of the documents in form of Satakhath/sale agreement and possession letter signed by their guardians on their behalf and therefore a documents on which basis, assessee had purchased is valid and enforceable in law. The assessee had claimed the amount already paid for the purchase of a new agriculture land which is confirmed by the above parties and also confirmed the enforceable of transaction and documentation in assessee`s

favour and hence assessee's claim u/s 54B of the Act is allowable as the transaction is enforceable in the eyes of the law.

11. On the identical facts, Hon'ble High Court of Delhi in the case of Balraj, [2002] 123 Taxman 290 (Delhi) held that section 54 of the Act speaks of purchase only and for availing benefit under this section, it is not necessary that assessee should become owner of property. Where assessee paid a sum at time of entering into an agreement for purchase of a property within a year from sale of another property, he would be entitled to benefit provided under section 54 even though there was no registration within said period. The findings of the hon'ble Court is reproduced below:

"2. The basic fact of the matter is not in dispute. The assessee sold a property, 15/16, East Patel Nagar, New Delhi, belonging to him on 3-12-1974 for Rs. 98,000. By reason of the agreement of sale coupled with possession the assessee purported to have purchased a property No. 12, West Patel Nagar, New Delhi, for Rs. 2,03,000 on 6-2-1975. It is not in dispute that if the aforementioned transaction amounts to purchase of property, the same would be within a period of one year. The only question, which, therefore, arises for consideration is whether the aforementioned agreement dated 6-2-1975 would answer the description of purchase within the meaning of section 54 of the Income-tax Act, 1961 ('the Act'). Out of the consideration of Rs. 2,03,000, the assessee admittedly at the time of entering into the aforementioned agreement paid a sum of Rs. 1,73,000 which was more than the amount of Rs. 98,000 which he received by way of consideration in terms of the transaction which took place on 3-12-1974. Section 54 relates to profit on sale of property used for residence. The said provision reads, thus :

"54. Profit on sale of property used for residence.—(1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head 'Income from house property' (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, . . ."

3. The Assessing Officer, the appellate authority as well as the Tribunal rejected the claim of the assessee in respect of the assessment year 1975-76 on the ground that he did not become the owner of the property, as the said transaction was not evidenced by registration thereof as provided under section 17 of the Registration Act. For the purpose of attracting the provisions of section 54, it is not necessary that the assessee should become the owner of the property.

Section 54 speaks of purchase. Moreover, the ownership of the property may have different connotations in different statutes. The question which arises for consideration appears to be squarely covered by a decision of the Apex Court in CIT v. T.N. Aravinda Reddy [1979] 120 ITR 46¹ where it has been held that the word 'purchase' occurring in section 54(1) of the Act had to be given its common meaning, viz., buy for a price or equivalent of price by payment in kind or adjustment towards a debt or for other monetary consideration. Each release in this case was a transfer of the releasor's share for consideration to the release and the transferee, the assessee, "purchased" the share of each of his brothers and the assessee was, therefore, entitled to the relief under section 54(1). The question now is no longer res integra having regard to the decision of the Apex Court in CIT v. Podar Cement (P.) Ltd. [1997] 226 ITR 625². The Apex Court categorically held that section 22 of the Act does not require registration of sale deed. The meaning of the word 'owner' in the context of section 22 has been held to be a person who is entitled to receive income in his own right. The Apex Court in Mysore Minerals Ltd. v. CIT [1999] 239 ITR 775¹ and this Court in CIT v. R.L. Sood [2000] 245 ITR 727² have held that registration of the document is not mandatory for claiming depreciation on the property. In this view of the matter, we have no doubt in our mind that the learned Tribunal went wrong in holding that for the purpose of applicability of section 54, registration of document is imperative. We, therefore, answer the question in the negative, i.e., the assessee is entitled to exemption in terms of section 54."

12. Our view is also fortified by the judgment of the Coordinate Bench of ITAT Chandigarh, in the case of Anil Bishnoi, 86 taxmann.com 217 (Chd-Trib.), wherein it was held as follows:

"7. We have heard the rival contentions and have also gone through the record. Admittedly, the assessee paid the consideration through cheques and also obtained the possession of the property in question. The claim of deduction u/s 54B of the Act has been denied to the assessee on the ground that the said deed of purchase/ sale had not been registered with the competent authority. The Hon'ble Supreme Court in the case of 'Sanjeev Lal' (supra) has discussed as to whether the agreement to sell can be considered to be an instrument of transfer of property. The Hon'ble Supreme Court observed that though in normal circumstances by executing an agreement to sell in respect of immovable property, a right in personam is created in favour of the transferee/vendee and when such a right is created, the vendor is restrained to sell the said property to someone else because the transferee has got a legitimate right to enforce specific performance of said agreement to sell. In normal circumstances, it cannot be said that entire property have been sold at the time when agreement to sell is entered into. However, looking at the provisions of section 2(47) of the Income-tax Act, 1961, 'transfer' in relation to the capital asset is complete if a right in a property is extinguished by executing an agreement to sell, the capital asset can be deemed to have been transferred. The Hon'ble Supreme Court thus held that the transfer was complete on the execution of agreement to sell and that the assessee was entitled to claim of deduction u/s 54 in respect of purchase of new residential house subsequent to such transfer through agreement to sell. In the case of 'T.R. Ardvinda Reddy' (supra), the Hon'ble Supreme Court while interpreting the word 'purchase' referred to in section 54(1) of the Act held that

the ordinary meaning of the word 'Purchase' as buying for price or equivalent of price by payment in kind or adjustment towards an old debt or other monetary consideration and that there was no reason to divorce this ordinary meaning from the legal meaning of the word in section 54(1) of the Income Tax Act. The decision of the Hon'ble Supreme Court has been further followed by the Hon'ble Bombay High Court in the case of 'Dr. Laxmichand Narpal Nagda' (supra), wherein the Hon'ble Bombay High Court has observed as under:—

'6. Taking into consideration the letter as well as the spirit of section 54 and the "towards" used before the word "Purchase" in sub-section (2) of section 54, it seems to us that this said word is not used in the sense of legal transfer and, therefore, the holding of a legal title within a period of one year is not a condition precedent for attracting section 54. In the instant case, the whole consideration was paid, possession of the flat was obtained and it was actually put to use for dwelling within four months, as a result exemption contemplated u/s 54 was clearly attracted.'

8. We may further like to add here that if capital gains are deemed to have been earned by the assessee on transfer of land as per the provisions of Section 2(47) of the Act, as per which the registration of the sale deed is not necessary, the consequences are that the seller or the assessee is said to have transferred his right in property and consequently those rights are acquired by the transferee; if in the case of transferor the same is to be treated as sale, then, we do not find any reason to give a different meaning to the word 'Purchase'. If someone has sold a property, consequently the other person has purchased the said property. If the transfer of property is complete as per the definition of transfer u/s 2(47) of the Act, the assessee is made liable to pay tax on the capital gains earned by him, on the same analogy, the transfer is also complete in favour of the purchaser also. The provisions cannot be interpreted in a manner to say that transfer vis-a-vis selling is complete but vis-a-vis purchase is not complete in respect of same transaction. In view of this, the word 'Purchase' cannot be interpreted and detached from the definition of word 'transfer' as given u/s 2(47) of the Act. When the transfer takes effect as per the provisions of section 2(47) of the Act, if a liability to pay tax arise in the case of the seller, the consequent right to get deduction on the purchase of property accrues in favour of the purchaser, if he otherwise is so eligible to claim it as per the relevant provisions of the Act.

9. In view of our above observations, the Assessing officer is directed to give the benefit of deduction u/s 54B of the Act in respect of the purchase of the property at Village Dadu to the assessee.

10. In the result, the appeal of the assessee is allowed.”

13. We note that assessee's issue under consideration is also squarely covered by a decision of the Apex Court in CIT v. T.N. Aravinda Reddy [1979] 120 ITR 46 where it has been held that the word 'purchase' occurring in section 54(1) of the Act had to be given its common meaning, viz., buy for a price or equivalent of price by payment in kind or adjustment towards a debt or for other monetary consideration. Each

release in this case was a transfer of the releasor's share for consideration to the release and the transferee, the assessee, "purchased" the share of property therefore, assessee is entitled to the relief under section 54(1) of the Act. In normal circumstances by executing an agreement to sell in respect of immovable property, a right in personam is created in favour of the transferee/vendee and when such a right is created, the vendor is restrained to sell the said property to someone else because the transferee has got a legitimate right to enforce specific performance of said agreement to sell. Therefore, based on these facts and circumstances, we are not inclined to accept the contention of the Id CIT(Appeal) in any manner and hence the addition so made by the assessing officer is deleted. Hence, we direct the Assessing officer to give the benefit of deduction u/s 54B of the Act, to the assessee.

14. Ground Nos. 3 and 4 raised by the assessee relate the penalty under section 271(1)(c) of the Act and 271F of the Act respectively, we note that these grounds are premature in nature, hence do not require adjudication.

15. In the result, appeal filed by the assessee is allowed.

Order pronounced on 26/06/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 26/06/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat