

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 38/Ind/2023**  
**Assessment Year: 2012-13**

Shri Santosh Mandloi, 750, Kanadia Road, Indore	<b><u>बनाम/</u></b> Vs.	ITO, 5(4), Indore.
(Assessee / Appellant)		(Revenue / Respondent)
<b>PAN: CSXPS0923D</b>		
Assessee by	Shri Manish Mittal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.08.2023	
Date of Pronouncement	22.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 09.12.2022, passed by Learned Commissioner of Income-tax (Appeal), National Faceless Appeal Centre, Delhi, ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 14.11.2019 passed by ITO, 5(4), Indore, ["Ld. AO"] u/s 147 read with section 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal on the grounds mentioned in Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts are such that the AO, from the information reflected in Annual Information Return (AIR), found that the assessee sold an agricultural land situated at Village Kanadia, Patwari Halka No. 23 (New 58) Survey No.150/3, jointly with other three persons for a total consideration of Rs. 68,00,000/- (actual sale consideration was Rs. 20,00,000/- but the stamps authority valuation was Rs. 68,00,000/-) and earned capital gain which had escaped assessment. The AO issued notice u/s 148 on 25.03.2019 followed by notice u/s 142(1) which remained un-complied with by the assessee. Ultimately, the AO made assessment u/s 147 read with section 144 whereby the assessee's 1/4<sup>th</sup> share in the consideration of Rs. 68,00,000/- amounting to Rs. 17,00,000/- was assessed as long term capital gain.

4. Aggrieved, the assessee carried matter in first appeal and explained the facts as also filed documentary evidences to CIT(A). It was submitted that the sale consideration of Rs. 20,00,000/- was received by assessee and three joint owners through 4 cheques, each of Rs. 5,00,000/- and each dated 24.02.2011 as mentioned in the sale-deed, and the assessee's cheque of Rs. 5,00,000/- was cleared and credited in his Bank A/c on 28.02.2011. It was further submitted that the possession was handed over to buyers on 22.03.2011 and that the sale-deed was also executed as well as presented to the office of sub-registrar on 22.03.2011; therefore the transaction of sale had taken place during the financial year 2010-11 relevant to AY 2011-12. Hence the capital gain was taxable in AY 2011-12 and the AO had wrongly assessed in AY 2012-13. The assessee requested the CIT(A) to delete the addition made by AO in AY 2012-13. But the CIT(A) noted, in Para No. 5.2 of his order, that the registration date of sale-deed was 19.05.2011 falling within previous year 2011-12 relevant to AY 2012-13, therefore the AO had rightfully assessed in AY 2012-13. Accordingly, he rejected assessee's claim. The assessee also made an alternative claim before the CIT(A) that he had purchased another agricultural land on 21.03.2011 and, therefore, eligible for exemption u/s 54B which should be allowed. The assessee also filed

additional evidences before the CIT(A) in support of claim of exemption but the CIT(A) did not grant any relief on that count also. This way, the assessee could not get any success in first appeal.

5. Still aggrieved, the assessee has come before us in this appeal.

6. Ld. AR for the assessee carried us to the documents filed in Paper-Book. He drew our attention to page no. 27-50 of the paper book where a copy of registered sale-deed of the impugned land is filed. Referring to Page No. 1 (first page) and 10 (last page), he showed that the sale-deed was actually executed on 22.03.2011. Then, referring to the back of several pages of sale-deed, he showed that the deed was submitted in the Office of Sub-Registrar on 22.03.2011 which is very much evident from sign and seal of Sub-Registrar. Thereafter, referring to condition no. 4 on Page No. 4 of sale-deed, the Ld. AR demonstrated that the assessee has given possession to buyer on the very same date i.e. 22.03.2011. Further referring to condition no. 2 of the sale-deed, Ld. AR demonstrated that the sellers including assessee had received full consideration from buyer through cheques dated 24.02.2011 drawn on Bank and the assessee's own cheque of Rs. 5,00,000/- was also cleared and credited in assessee's bank a/c on 28.02.2011 as is evident from copy of bank pass book placed at page no. 51 of Paper-Book. This way, Ld. AR successfully demonstrated that the assessee has made sale of the impugned land on 22.03.2011 itself falling within the previous year 2010-11 relevant to AY 2011-12. Therefore, the impugned capital gain was taxable in AY 2011-12 and not in AY 2012-13. On a query by Bench as to what was the basis available to AO / Income-tax Department for assessing capital gain in AY 2012-13, Ld. AR submitted that on Page No. 2 of sale-deed, a copy of receipt dated 19.05.2011 of duty/fee is affixed. Therefore, it seems so, in the AIR filed to Income-tax department, the office of sub-registrar might have shown the transaction in financial year 2011-12 and on that basis the AO has considered in AY 2012-13. But, Ld. AR contended, it is a fact that the assessee has sold property on 22.03.2011

itself and the time taken in final registration might be on the part of deficient payment of duty/fee by the buyer. Ld. AR submitted that as far as assessee is concerned, the transaction has been fully completed on 22.03.2011 falling within the previous year 2010-11 and therefore the capital gain had arisen in AY 2011-12. Therefore, the AO has wrongly assessed capital gains in AY 2012-13 which deserves to be deleted. Without prejudice, Ld. AR also submitted that the assessee has made investment in new agricultural land and the evidences were filed before CIT(A) and also filed in the paper book, therefore the exemption u/s 54B must be allowed to assessee.

7. Ld. DR for the revenue opposed the submission of Ld. AR and heavily relied upon the orders of lower authorities. He argued that the sale-deed was eventually registered on 19.05.2011, therefore, the AO has rightly assessed the amount of capital gain in financial year 2011-12 relevant to AY 2012-13.

8. We have considered rival submissions of both sides and also perused the documents filed before us in paper book. We find that it is not a case of unregistered sale of land. In fact, the sale is done through a registered sale-deed executed between parties. But the controversy has cropped because of the reason that though the sale-deed was executed on 22.03.2011 and presented to the Office of Sub-Registrar also on 22.03.2011, which is an undisputed fact duly acknowledged by seal and signature of Sub-Registrar, but the registration was finally done/cleared on 19.05.2011 after payment of some duty/fee by buyer. In this situation, firstly there seems to be no fault of assessee when the assessee has done everything on 22.03.2011. The documents on record clearly establish that the consideration had been

received and possession had also been given by/on 22.03.2011. Secondly, we are consciously aware of the decision of the Hon'ble Supreme Court in **Hamada Ammal Vs. Avadiappa Pathar and 3 others, Civil Appeal No. 110 of 1984 dated 07.11.1990**, wherein the Hon'ble Court, after analysing the provisions of Registration Act, was pleased to hold as under:-

"4. Section 54 of the Act defines sale as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". Thus after the execution of the sale deed with consideration all the ingredients of sale are fulfilled except that in case of tangible immovable property of the value of Rs. 100 and upwards it can be made only by registered instrument. **Now, if we read Section 47 of the Registration Act, it clearly provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. This provision makes it clear that after the registration it will relate back to the date of execution of the sale deed.** The act of registration is to be performed by the registering authority. According to Section 23 of the Registration Act a document of the nature of sale deed shall be accepted for registration within four months from the date of its execution. Thus a statutory period of four months has been provided for presenting the sale deed for registration from the date of its execution. In case of dispute regarding the execution of the document an enquiry is permitted under Section 74(a) of the Registration Act and that may also take some time. The legislature being alive to such situations has already provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus in our view the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 CPC read together with Section 47 of the Registration Act."

9. Therefore, it can be safely concluded that the sale-deed even if finally registered on 19.05.2011 would relate back to 22.03.2011 (i.e. date of execution). Being so, we agree to the contention of Ld. AR that the sale of land had taken place on 22.03.2011 in the financial year 2010-11 and the capital gain was taxable in AY 2011-12. The necessary outcome of this is such that the AO has wrongly assessed the capital gain in AY 2012-13 under consideration. Faced with this situation, we are inclined to delete the addition made by AO in AY 2012-13. The assessee succeeds in this claim.

10. At this stage, we would like to mention that since we have deleted the very addition made by AO, there is no need to adjudicate the alternative pleading of exemption u/s 54B. The same is kept open and we are not adjudicating at this stage.

**11. Resultantly, this appeal of the assessee is allowed.**

*Order pronounced in the open court on 22.08.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 22.08.2023.

CPU/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*