

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.200/Ind/2014
(Assessment Year:2007-08)

Shri Jeevan Patel Bicholi Maradan, Indore	Vs.	ACIT-2(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ALMPPO 483B		
Assessee by	None (Written Submission)	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	18.08.2023	
Date of Pronouncement	21.08.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 30.12.2013 of Commissioner of Income Tax(Appeals)-I, Indore, for Assessment Year 2007-08.

2. None has appeared on behalf of the assessee however the assessee has filed a letter dated 18th July 2018 and prayed that the appeal of the assessee is to be decided on the basis of the submissions of the assessee in the paper book. Accordingly we propose to hear and dispose of this appeal *ex-parte* by considering the submissions of the assessee.

3. We have heard the ld. DR and carefully perused the submission of the assessee placed at page no.21 to 33 of the paper book. Earlier the appeal of the assessee was decided by this Tribunal vide order dated

29.06.2017 whereby after admitting additional evidence filed by assessee the matter was set aside to the record of the assessing officer for deciding the same afresh. The AO was also directed to decide the claim of deduction u/s 54B of the Act in accordance with law. Thereafter, the assessee filed the MA No.115/Ind/2017 which was decided by this Tribunal vide order dated 6th September 2018 in para 4 as under:

“4. We have heard the rival contentions and perused the material available on record before us. In the impugned order of the Tribunal dated 29.06.2017 direction have been given to the Ld. AO to decide the claim of deduction u/s 54B of the Act which relates to “capital gain on transfer of land used for agricultural purpose cannot be charged in certain cases”. When we look into the impugned assessment order, we find that the assessee revised its claim mentioning section 54 of the Act which deals with the deduction in case of profits on sale of property used for residence and further investment was made into residential house. Now, the ld. AR in its submissions mentions that it has wrongly made claim u/s 54 of the Act because the assessee is eligible for deduction u/s 54F of the Act and not section 54. There are three sections being discussed i.e. 54, 54B, & 54F and all three sections have a clear distinction. In these circumstances in our considered view it will not be justified to merely amend the order of the Tribunal amending the section. Rather, we deem it proper to recall the order of the Tribunal dated 29.06.2017 and re-fix the case for hearing for the limited purpose to adjudicate the issue as to under which section the assessee is eligible for claiming the deduction against the gain from sale of agricultural land.

Registry is directed to re-fix the case for hearing and issue notice to both the parties.”

4. Thus it is clear that the earlier order of the Tribunal dated 29.06.2017 was recalled by the Tribunal on the issue of deduction claimed by the assessee u/s 54/54B/54F of the Act and the case was to be

re-fixed for hearing for limited purpose of adjudicating on the said issue. Though thereafter the appeal of the assessee was dismissed for non-prosecution vide order dated 14th August 2019 however, the said order dated 14th August 2019 was recalled and appeal was restored vide order dated 24.11.2022 in MANo.7/Ind/2020. This appeal was again fixed for hearing and adjudication of the limited issue of deduction under chapter IV of the Act. The Tribunal vide order dated 29th June 2017 restored this issue to the record of the AO in para 6 as under:

“6. In the light of relying on above decisions, facts and in circumstances of the case, we admit the additional evidence and the matter is restored to the file of AO to decide the same afresh. The AO is directed to decide the claim of deduction under section 54B in accordance with law and claim of advance receipt of Rs. 60 Lakh from sale of agricultural land and investment of the same in purchase of land after making such enquiries as necessary as deem fit in the interest of justice. Accordingly, enter assessment is set-aside to the file of the AO for denovo consideration after affording proper opportunity of being heard. Nevertheless, the assessee will cooperate in the enquiry and assessment and furnish necessary evidences as required by the Assessing Officer.”

5. Since the tribunal subsequently recalled the said order vide order dated 06.09.2018 for limited purpose of deciding this issue of deduction u/s 54/54B/54F of the Act afresh. Thus, now the assessee has claimed that he is eligible and entitled for the claim of deduction u/ 54F of the Act which was earlier claimed by the assessee u/s 54 & 54B of the Act. In view of the above facts and circumstance of the case the issue of deduction claimed under chapter IV is remanded to the record of the AO for proper verification and examination of the relevant facts and adjudication of the same as per law. Needless to say the assessee be given appropriate opportunity of hearing before passing afresh order by AO.

6. In the result, ground no.1 of the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.08.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 21 .08.2023

Patel/Sr. PS

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

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore