

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

**आयकर अपील सं./ITA No.219/RPR/2023**  
**निर्धारण वर्ष /Assessment Year: 2015-16**

Ajay Chouhan First Floor, Chouhan Estate Supela, Bhilai-490 023	Vs	The Asst. Commissioner of Income Tax-1(1) 32/32 Bungalow, Bhilai-490 009 (C.G.)
<b>PAN: ACFPC 0549K</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.R. Rao, Adv.
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, SR-DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	23/08/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	06 /09/2023

**आदेश / ORDER**

**Per Arun Khodpia, AM :**

The captioned appeal is filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 02.06.2023 u/s 250 of the Income Tax Act, 1961. The grounds of the appeal raised by the assessee are as under:

*"1) In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) has erred in confirming the disallowance of exemption of Rs.47,90,164 claimed u/s 54B of the Income-tax Act, 1961.*

*2) The impugned order is bad in law and on facts.*

*3) The appellant reserves the right to add, alter or omit all or any of the grounds of appeal in the interest of justice."*

3. The brief facts of the case are that the assessee is engaged in the business of construction of commercial and residential complexes and filed his return of income for AY 2015-16 on 28.09.2015 declaring total income of Rs.4,09,14,080/-. The assessment was completed u/s 143(3) of the Income-tax Act, 1961 and total income was assessed at Rs.4,57,04,244/-. The enhancement in return income pertains to addition of Rs.47,90,164/- made on account of denial of exemption claimed u/s 54B of the Act. In the financial year 2011-12 relevant to AY 2015-16. The appellant has sold the agricultural land and purchased agricultural land from the one Smt. Meena Gupta. The AO has observed that the nature of land is 'padath' i.e. just lying without nothing therefore, he denied exemption claimed u/s. 54B of the Act. As per provisions of sec.54B of the new asset needs to be any other land for being used for agricultural purposes and it need not be actually used for agriculture purposes as in the case of original asset. With such contentions, the assessee challenged the decision of Ld. AO before the Ld. CIT(A), NFAC, Delhi, however, the contentions of the assessee were not considered by the Ld. CIT(A) as supported with cogent material, thus, was treated as devoid and bereft of merits, consequently, the appeal of the assessee was dismissed wherein the finding and decision of the Ld. CIT(A) reads, as under:

*"5. FINDINGS & DECISION: The impugned order of the AD and the submissions made by the appellant have been carefully perused and the appeal is adjudicated in the following paras;*

**Ground No.1** *the facts and circumstances of case and in law, the id. A.O has erred in denying exemption of Rs. 47.90 164 claimed us 548 of the Income-tax Act, 1961.*

*Decision As per the provisions of Sec. 548, one of the conditions for an assessee to be eligible to claim deduction u/s 548 is the agricultural land should be used by the individual or his parents for agricultural purpose at least for a period of 2 years immediately preceding the date of transfer in case of HUF the land should be used by any member of HUF”.*

*In this regard the observations of the AO made in para-3 of the Assessment order is same is appended below;*

*Further on perusal of the computation of income under the head Long Term capital Gain, it is noticed that the assessee has claimed deduction u/s 548 for an amount of Rs 47,90,164/- and also shown investment in Agriculture land u/s 54B at Rs.57,82,870/- Regarding this, the assessee was asked to file sale deed. On perusal of the sale deed it is found that the seller of the said land is Smt. Meena Gupta and the purchaser is Shri Ajay Chouhan and in the deed, the facts regarding the land is also mentioned. It is clearly written in the deed that there is not any construction in the land, there is no any irrigation source in the land and the land is described as "Padath" in hindi i.e. just lying without anything and the cost of the land is Rs.54 lacs. Further Form P-II was also obtained and on verification of this it was noticed that on the same Khasra No, the land is mentioned as "Padath" and that too for more than 5 years. Thus, it is clear from the Sale deed and Form P-II wherein both it is written that the land is lying barren without any irrigation while the assessee has claimed deduction u/s, 54B for an amount of Rs.47,90,164/- in the return. In view of above, the said amount of Rs.47,90,164/- is disallowed and added to the total income of the assessee. Disallowance Rs. 47,90,164/.*

*In the impugned order, the AO has proved with documentary evidences before making the disallowance of Rs. 47,90,164/- that the land is barren and there is no source of any irrigation. Further, the appellant has not produced any credible piece of documentary evidence before the AO to prove that the land has been used by the appellant or his parents for agricultural purposes in the preceding 2 years.*

*However, the appellant has relied his arguments on the orders of the Hon'ble High Court of Punjab and Haryana, which is not applicable jurisdictionally as the appellant. is a resident of Bhilai in Chattisgarh. The case referred is not squarely applicable in the appellant's case because, vide para 10 of the referred order, the Hon'ble HC has observed that there was agricultural activities on the land sold before 2 years from the date of sale. However, in the instant case the appellant has not produced any evidences to prove the same. On the contrary, the evidences relied upon by the AO i.e. Form P-II does not speak of any such activities.*

*Further, it is seen that the appellant has cited the case of Manish Shukla vs. ACIT in IT A No.03/&05/BLPR/20213 dated 16/04/2018 the order of which could not be found from any of the sources.*

*Thus, based on the submissions made and on careful perusal of the orders of the AO, this appellate authority is of the considered opinion that the appellant's case is not found eligible to claim deduction u/s 54B of the Act and thus, upholds the orders of the AO disallowing the claims made."*

4. At the outset, the Ld. AR of the assessee drew our attention to the order of Ld. CIT(A) wherein, it was the observation of Ld. CIT(A) that the assessee placed his reliance on the order of Hon'ble Punjab & Haryana High Court in the case of *CIT vs. CIT vs. Smt. Savita Rani [2004] 270 ITR 40 (Punjab)*. According to the said judgment, it was the contention of the appellant that the case of the assessee is covered by the said judgment, since, there was agricultural activity on the impugned land sold before two years from the date of sale. However, it was observation of the Ld. CIT(A) that in the instant case, the appellant has not produced any evidence to prove the execution of agricultural activities, on the contrary the evidence relied upon by the AO i.e. Form P-II does not speak of any such activities. While reading the observation of Ld. CIT(A) with regard to appellant non-production of evidence in support of agricultural activities in two years before the land was sold, it was submissions of the Ld. AR that such contention of the Ld. CIT(A) was never confronted to the assessee and, therefore, the assessee was not provided with reasonable and adequate opportunity to refute on this aspect. It was further submitted by the Ld. AR that since the appropriate and reasonable opportunity required was not granted by the Ld. CIT(A), it is a hardship with the assessee which is against the principle of natural justice, therefore, it was the prayer that the matter should be remitted back to the file of the Ld. CIT(A), so as to enable

the assessee to submit an explanation on the issue with supporting evidence on the facts of the case, to prove against the adverse inference drawn by Ld. CIT(A).

5. Ld. Sr. DR, on the other hand, vehemently supported the orders of the Ld. AO and Ld. CIT(A), however, on the request of the assessee to send back the issues in the present appeal to the file of Ld. CIT(A), the Ld. Sr. DR, fairly agreed with the same.

6. We have heard the rival contention, perused the materials available on record and the orders of the authorities below. Admittedly, the issue pertaining to agricultural used of land in previous two years before it was sold explained by the Ld AR of assessee before the Ld. CIT(A), which was not found to be acceptable argument of the assessee in absence of any cogent evidence produce by the assessee before the Ld. CIT(A), however, since, the assessee was not show caused on this aspect to respond on the same which is fairly admitted by both the parties, in the interest of substantial justice, we are of the considered opinion that in all fairness the matter should restore back to the file of Ld. CIT(A) for adjudicating the same afresh. With such observation, we find it appropriate to set aside the order of Ld. CIT(A) and restore the issue back to the file of CIT(A) in terms of our observations hereinabove.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the court on 06/09/2023.

**Sd/-  
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-  
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 06/09/2023

*Pramod Kumar, Sr. PS (on tour)*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,  
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur