

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR
[THROUGH VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.54/NAG./2020
Assessment Year 2015-2016

Ghanshyam Shankarrao Astankar, Sumthana Tahsil, Hingna Distt Nagpur. PIN – 441 122 Maharashtra PAN ATTPA7605F	vs.	The Income Tax Officer, Ward – 3 (1), Ground Flor, Saraf Chambers, Sdar, Nagpur, Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Ghanshyam Shankarrao Astankar [Party-in-Person]
For Revenue :	Shri Sanjay Agrawal

Date of Hearing :	01.09.2023
Date of Pronouncement :	28.09.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

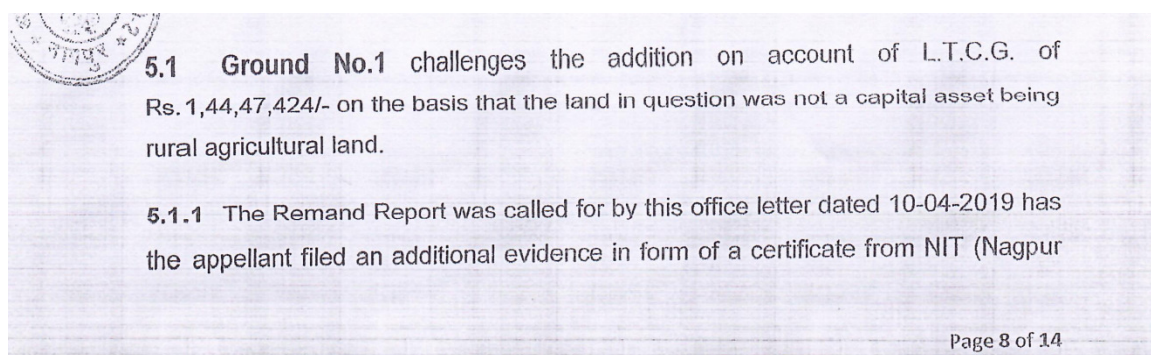
This assessee's appeal for assessment year 2015-2016, arises against the CIT(A)-2, Nagpur's Order in Appeal No.CIT(A)-2/364/2017-18 ITBA No.10526, dated 27.12.2019, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal :

1. *“That on the facts and in the circumstances of the case the learned CIT(A)2, Nagpur was not justified in not considering the Areal Distance of 8 Kms from the side of the Area where Assessee's Agricultural Land was situated and this honourable court be pleased to allow the same, as claimed U/s 2(14) (iii)(a) b(iii).*
2. *On the facts and in the circumstances of the case the learned CIT(A)2, Nagpur was not justified in not considering the Non Receipt Of Rs.7100000/- out of sales consideration of Rs.14600000/- while taxing the entire sales proceeds and this honorable court be pleased to allow the deduction of Rs.7100000/- which was never received by the appellant.*
3. *Any other ground as may be raised at the time of hearing of this appeal, for which the appellant craves leave.”*

3. Next comes CIT(A)'s detailed discussion upholding the Assessing Officer's action treating the assessee's land/capital asset transferred in the relevant previous year as failing within 8 KM u/sec.2(14)(iii)(a) and (b) as under :



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Improvement Trust) which was rejected by the Ld. AO in the assessment proceedings. The said certificate stated that the land was situated beyond the aerial distance of 8 KMS from the municipal limit of Nagpur.

5.1.2 The Remand Report was dated 26-04-2019 (received also on the same date in this office). The Rejoinder was received in this office on 22-05-2019. However, because of ill health of the wife of the Ld. Counsel and some research on the case laws related to the issue in hand the case was finally heard on 26-12-2019. At the outset the Ld. Counsel contested the opinion of the Ld. AO (mentioned in the Remand Report) that Rule 46A does not apply to the facts of the case and therefore the appellant was not entitled to produce any additional evidence. However, it is found that the case in hand is covered by the Sub-Rule c) of Rule 46A of I.T. Rules, 1962 wherein it has been provided that where the appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal then the same evidence can be produced in the first appeal.

In the reply, as mentioned in para no. 4.1 supra, it was submitted that

"during the appellate proceedings a new point or plea was taken which was in accordance with the rule laid down by the Supreme Court decision in case of Jute Corporation of India Vs CIT reported in (1991) 187 ITR 688SCC"

Further, it has been submitted that

"new plea was that, that investment made by THE APPEALANT in Agricultural Lands in the names of his sons and married daughters could qualify for Deduction U/s 54B.

Furthermore,

"In Fact the plea taken by the appellant brings a new claim before the appellate authority, is valid, in view of the Supreme Court decision. Hence this plea has no concern with the application under rule 46(A)."

5.1.3 In the reply to remand report, the Ld. Counsel also mentioned some case law and its application to facts of this case (54B investment should be in the name of the assessee only etc.) as the Ld. AO in the para no.3, page no.4 of the impugned Remand Report quoted the same

"That as regards the application of decision of Punjab and Haryana HCT, in case of CIT Faridabad Vs Dinesh Verma, the Learned AO did not give any opportunity to the appellant to go through the above decision which has not been properly Quoted."

Also,

"The citation is not having details of year of judgment and journal in which it reported."

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5.1.4 Besides giving reply to admission of additional evidence under Rule 46A of I. T. Rules, 1962 mainly three following substantial arguments / prayer have been taken / made by the Ld. Counsel while giving rejoinder to the Remand Report:-

a) **Aerial distance of the land sold :-**

As regards to the aerial distance an argument has been taken as the words used in the relevant provision of the Act i.e. Section 2(14)(iii)(b) are "in any area". Thus, this entitles to the appellant to choose the aerial distance of the land sold from municipal limits of Nagpur, but from the Hingna side.

b) **54B exemption / deduction:-**

i. It has been submitted, in this regard, that for claiming exemption U/s 54B, because of the investment in Agricultural Lands made in the names of the Sons and Daughter of the assessee, the appellant derives Support from the Following Decisions in the Cases of

- 1) Late Gulam Ali Khan Vs CIT reported in (1987) 165 ITR228(A.P)
- 2) C.V.Ramanathan Vs CIT(1980)125 ITR 191
- 3) C.I.T Vs P.R. Seshadri(2010) 329 ITR 377(Kar)
- 4) CIT Vs Kamal Vahal(2013)258 CTR 0251(Delhi)

It was further contended that having regard to the **Rule of Purposive Construction** and the **object which Sec 54B** Seeks to achieve, has to be considered.

ii. Further, as mentioned above in para no.5.1.3 of this order the Ld. AO emphasized that for claiming objection / deduction u/s 54B the investment of new asset should be in the name of the assessee only. Quoting a case law known as **CIT Faridabad Vs Dinesh Verma (P & H)** (which the Ld. Counsel could not reply as he could not trace it). In fact, this case law was decided in **ITA No.381/2014** by Hon'ble High Court of Punjab and Haryana. On basis of this judgement, the **Ld. AO, in his remand report, concluded that the assessee was NOT entitled for 54B exemption / deduction as the purchase of new asset (agricultural land) was in the name of appellant son and married daughter etc.**



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In support of this, the Ld. AO has quoted one recent judgement in page no.5 of the remand report wherein a **5 Judge Constitutional Bench** in its decision in **CC vs Dilip Kumar [2018]** as reported in **9 SCC 1** ruled as below:-

"(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2)When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3)The ratio in Sun Export Case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled."

However, the above case law is related to such exemption notifications as are issued, from time to time to give exemption to a particular assessee / taxpayer or a class of assesseees / taxpayers. This has nothing to do with interpretation of benevolent sections like 54 / 54B / 54F of the Act.

- c) **Non receipt of Rs.71,00,000/- :-** In the remand proceedings, the appellant stated that the cheque was not presented with the bank at the request of the purchaser and that till that date the said amount was not received.

5.1.3 Related to the above three stands taken by the appellant, the Remand Report sent by the Ld. AO is as under:-

a) Aerial distance of the land sold

- i. The Ld. AO discussed the argument of the appellant the Nagpur Metro Region Department letter dated 06-12-2017 maintaining the aerial distance to 3.1 kms was not applicable for FY 2014-15 (relevant for AY under consideration i.e. AY 2015-16). However, the Ld. AO reported that such contention was totally baseless as the reason as to why the same is not applicable for the said FY 2014-15 has not provided by the appellant or his Ld. Counsel. Ld. AO, therefore, observed that since Nagpur Metro Region Department is a state body established for development of Region around Nagpur it had complete detail of entire area falling Metro area. Thus, the Ld. AO concluded that the facts regarding distance certified by the same department cannot be doubted.
- ii. Further, the Ld. AO has also dealt with the argument that the purpose of deflation of Metro Region was for giving advantage for development for Nagpur Region and that it could not be connected with the provision of Section 2(14) of the Act. the Ld. AO has observed that such contention of the appellant is irrelevant as the said department had all the information regarding aerial distance etc. and there was no



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question of giving any opinion by the department on the provisions of Income Tax Act e.g. Section 2(14).

b) 54B exemption / deduction:-

As already discussed above in para no.5.1.4 (b) of this order, the Ld. AO was of the opinion that the said exemption / deduction u/s 54B of the Act was not available to the appellant as the new asset purchased was not in his name.

c) Non receipt of Rs.71,00,000/- :-

In the remand proceedings, the appellant stated that the cheque was not presented with the bank at the request of the purchaser and that till that date the said amount was not received. The Ld. AO opined that the appellant could not substantiate this claim. Further, he has also not been able to show initiation of any legal action for recovery of the said amount.

5.1.4 Related to all the three issues involved, the facts and circumstances were duly considered and it is decided as under:-

a) Aerial distance of the land sold:- In this regard, the reply of the Ld. Counsel given on behalf of the appellant has no merit and is therefore rejected. The impugned land was within the prescribed limit and therefore was a 'Capital Asset' within the meaning of those words as are used in Section 2(14) of the Act.

b) 54B deduction / exemption:- There are different case laws related to the admissibility of deduction / exemption u/s 54B when the investment was made in the name of a family member e.g. spouse (husband / wife), son / married daughter of the appellant like taxpayers. The taxpayers were held to be entitled / not entitled to claim deduction / exemption u/s 54B of the Act. Since, similar deduction / exemption is available as regards to Section 54 / 54F of the Act and they or similar deduction / exemption u/s 54B are benevolent sections the Courts have ruled that deduction / exemption u/s 54B of the Act is also available to a tax payer if a new asset is even not purchased in his / her own name (i.e. the purchase has been made in name of any other family member e.g. spouse / children etc. as is the case here). Support, in this regard, is drawn from the following case laws:



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- i. **Laxmi Narayan vs CIT [2018] as reported in 89 taxmann.com 334 (Raj.)**

Facts:-

Where assessee had purchased new agricultural land out of sale consideration of his agricultural land, **assessee could not be denied deduction under section 54B merely because registered document of new land was executed in name of his wife.**

The assessee sold an agricultural land and out of sale proceeds purchased another agricultural land in name of his wife. He claimed deduction under section 54B, but same was disallowed as land was purchased by the assessee in name of his wife.

Held that since the assessee had invested sale proceeds of agricultural land in purchase of new land, the assessee could not be denied deduction under section 54B merely because new property was not in his name but in name of his wife. Further, expenses for purpose of carrying on agricultural activity, tubewell and other expenses for purpose were for betterment of land and therefore, it would be considered as part of investment in land and same were to be allowed.

This decision is also supported from the famous and landmark decision of none other than **Hon'ble Supreme Court** known as **CIT vs Vegetable Products** as reported in **88 ITR 192** in which their Lordships **held** that:-



"If two opinions are possible then one interpretation i.e. favourable to assessee should be given effect."

Further, in support of his stand for disallowance of the deduction / exemption u/s 54B of the Act, the Ld. AO has quoted one recent judgement in page no.5 of the remand report wherein a **5 Judge Constitutional Bench** in its decision in **CC vs Dilip Kumar [2018]** as reported in **9 SCC 1** [as also reproduced above in para no.5.1.4 (b)(ii) of this order]. However, the above case law is related to such exemption notifications as are issued, from time to time to give exemption to a particular assessee / taxpayer or a class of assesseees / taxpayers. This has nothing to do with interpretation of benevolent sections like 54 / 54B / 54F of the Act. In light of above discussion, the **Ground No. 2 is allowed.**

4. Suffice to say, the only issue before us is regarding distance of the assessee's land transferred in the relevant previous year as to whether the same falls within or beyond 8 KM distance from Nagpur city's municipal limits. The Revenue could hardly dispute that the 'Nagpur Improvement Trust' had indeed issued a certificate in favour of the assessee that his land was situated at a distance of 8.64 KM from municipal limits as per the assessment discussion itself at page-2 para-4 in assessment order dated 18.12.2016. The Revenue placed vehement reliance on the Assessing Officer's subsequent discussion in para-4 wherein he had measured the impugned distance by google map which culminated in the Assessing Officer's land transferred getting treated as a capital asset within the meaning of sec.2(14) of the Act.

5. We have given our thoughtful consideration to the vehement rival stands and find merit in assessee's arguments for the precise reason that the competent authority herein i.e., 'Nagpur Improvement Trust' had already issued a certificate certifying the exact distance of assessee's land from municipal limits. We thus conclude that merely because some google map assistant indicated the distance less than that would hardly support the Revenue's stand. We thus accept the assessee's instant sole substantive grievance in very terms. Ordered accordingly.

6. This assessee's appeal is allowed.

Order pronounced in the open Court on 28.09.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th September, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-2, Nagpur.
4.	The PCIT concerned, Nagpur.
5.	D.R. ITAT, Nagpur Bench, Nagpur.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.

S.No.	Details	Date	
1	Draft dictated on	25.09.2023	Sr.PS
2	Draft placed before author	26.09.2023	Sr.PS
3	Draft proposed & placed before the Author	.09.2023	J.M.
4	Draft discussed/approved by Second Member	.09.2023	A.M.
5	Approved Draft comes to the Sr. PS/PS	.09.2023	Sr.PS
6	Kept for pronouncement on	.09.2023	Sr.PS
7	Date of uploading of Order	.09.2023	Sr.PS
8	File sent to Bench Clerk	.09.2023	Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		