

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.869/PUN/2023
निर्धारण वर्ष / Assessment Year : 2015-16

Ramdular Jamnadas Sahu, 215, Hadapsar, Shimpali Circle-14, Pune – 411028. Maharashtra. PAN: ADIPS 7528 Q	V s	The Deputy Commissioner of Income Tax, Circle-14, Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Pramod Shingte - AR
Revenue by	Shri M.G.Jasnani - DR
Date of hearing	09/10/2023
Date of pronouncement	26/10/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] dated 08.06.2023 under section 250 of the Income Tax Act, 1961 for A.Y.2015-16; emanating from order of the Assessing Officer under section 143(3) of the Income Tax Act, 1961 dated 18.10.2017. The assessee has raised the following grounds of appeal :

“1. On the facts and in the circumstances of the case and in law the lower Authorities have erred in denying the claim of exemption under section 54B for Rs. 1,55,12,500, being purchase of agriculture land against sale of agriculture land which was under cultivation, by rejecting appellant’s contention and documentary evidences, your appellant prays that the deductions under section 54B may kindly be allowed as claimed.

Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the interest of natural justice.”

Brief Facts of the case :

2. Assessee had filed Return of Income electronically on 09.09.2016. As per the assessment order para 3.1, assessee had sold agricultural land at Survey No.65, HISS No.2AK/3AK/4B/1B/1, Area of 16R located in residential area at Hadapsar, Pune. Assessee had claimed exemption under section 54B of the Act as assessee purchased another agricultural land during the year.

2.1 The assessee claimed that the assessee had grown “Jowar” on the impugned land. It was consumed and hence assessee do not have any sale bills. The assessee relied on copy of the 7/12 extract which shows “Jowar” for years 2011-12, 2012-13, 2013-14 and 2014-15.

2.2 The Assessing Officer(AO) held that the land which was sold was not used for agricultural purposes in preceding two years, which is the requirement of section 54B. The AO relied on Google Images. Assessing Officer also observed that assessee had not produced any Bills to demonstrate sale of agricultural produce. Assessing Officer observed that said land is situated in residential area and does not have any Water-Well or Irrigation Facility. Accordingly, AO denied exemption under section 54B.

3. Aggrieved by the order of the Assessing Officer, assessee filed appeal before the Id.CIT(A). The assessee also filed additional evidence before the Id.CIT(A). The Id.CIT(A) called for Remand Report from the Assessing Officer. The assessee had filed affidavits of the owners of the neighbouring land that assessee's land was used for agricultural purpose. However, Id.CIT(A) upheld the order of the AO. Aggrieved by the same, assessee filed appeal before this Tribunal.

Findings & Analysis :

4. We have heard both the parties and perused the records. The only dispute before us is whether impugned land at Survey No.65, HISS No.2AK/3AK/4B/1B/1, Area of 16R located in residential area at Hadapsar, Pune was used for agricultural purposes prior to its sale or not!

4.1 We have gone through copy of the 7/12 extract which was at Page no.100 of the paper book. The said 7/12 extract is duly signed by “Talati”, Hadapsar, District Pune. On perusal of the said 7/12 extract, it is observed that there is entry of agricultural produce of “Jowar” during the period 2011-12, 2012-13, 2013-14 and 2014-15. The “Talati” has also mentioned in the last column the word “खुद्द” means owner of the land has himself cultivated the land. This evidence has not been rebutted by AO or Id.CIT(A). The AO has relied on the Google Images. The Id.Authorised Representative(Id.AR) for the assessee submitted that these images were taken on 27.03.2013, 31.01.2014, 19.02.2014, 03.05.2014 which is not monsoon season. The Id.AR submitted that since the land is not having Water Well or other Irrigation Facilities, the assessee used to grow “Jowar” only during rainy season. Therefore, Id.AR submitted that the

Google Images do not show agricultural crop. We agree with the assessee's submission that Google Images were taken by the AO during winter and summer season. It is observed that *“Jowar crop requires rainfall about 40cm annually. Jowar is extreme drought tolerant crop and recommended for dry regions.”* The Jowar Crop is ready within 2 ½ to 3 months of sowing of seeds. Therefore, it is possible that Google Images are not showing agricultural crops as these images were not taken during monsoon period. Be it as it may be, assessee has filed strong evidence in the form of 7/12 extract. There is no reason to doubt the entries made by the “Talati” in the 7/12 extract that assessee himself has been cultivating Jowar on the impugned land. Talati is a Local Revenue Officer. The duties of a Talati include maintaining village crop and land records. Therefore, unless proved otherwise, the entries in 7/12 extract has to be accepted as true.

5. In these facts and circumstances of the case, we agree that the impugned land was used for agricultural purposes in preceding two years from date of sale. Section 54B is reproduced here under :

“Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.

54B. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for

the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.”

5.1 Thus, assessee has fulfilled first condition of section 54B that assessee's impugned land was used for agriculture purpose in preceding two years. The AO has also mentioned in the order in the last paragraph that assessee has not produced any evidence of agricultural activities carried out in newly purchased land. However, as per section 54B, assessee has to purchase any other land within two years from the date of sale to be used for agricultural purposes. Thus, the other condition of section 54B is that purchase of any other land within two years of the sale of the land for the purpose of agriculture. Thus, in this case, assessee had purchased agricultural land, immediately after sale of the impugned land. For claiming deduction under section 54B assessee need not have to prove that assessee had carried out agricultural activity during that particular year, in this case

A.Y.2015-16 on the newly purchased land. Therefore, since we have held that impugned land was used for agricultural purposes in preceding two years from the date of sale, assessee has also purchased agricultural land, assessee has fulfilled both the conditions mentioned in section 54B of the Act. Therefore, assessee is eligible for deduction under section 54B of the Act.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 26th October, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th Oct, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.