

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. 202/Ind/2023
(Assessment Year: 2015-16)

Shri Parmanand Sisodiya, Flat No.404-405, AX-18-C, Satyamitra Paradise, Scheme No.71, Gumasta Nagar, Indore.	Vs.	ITO, 1(2), Indore.
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ALOPS1416K		
Assessee by	Shri S.S.Solanki, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.10.2023	
Date of Pronouncement	30.10.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 27.05.2023 of Commissioner of Income Tax (Appeal, NFAC, Delhi, for the Assessment Year 2015-16. The assessee has raised following grounds of appeal :-

- "1. That the Id. AO erred in not adjudicating the issue that the transaction of sale of land on which capital gain was offered was*

cancelled. When the sale of land is not there, the question of any capital gain does not arise.

2. WITHOUT PREJUDICE TO THE ABOVE :

That the Ld. CIT(A) erred in maintaining disallowance of Rs. 22,03,000/- by denying deduction u/s 54B on agricultural land purchased through agreement. The disallowance so sustained being illegal and wrong, the same may very kindly be deleted.

2. The assessee is an individual and filed return of income on 31st March, 2016, declaring total income of Rs. 1,90,050/-. The case of the assessee was selected for scrutiny through CASS. During the assessment proceedings, the AO noted that the assessee has claimed deduction u/s 54-B for Rs. 87,03,000/-, in respect of capital gain declared by the assessee for exchange of agricultural land valuing Rs. 95 lakhs for another agricultural land for Rs. 65 lakhs and balance amount of Rs. 30 lakhs was received in cash vide Deed of Exchange dated 24.11.2014. The assessee also claimed to have purchased an agricultural land for a sum of Rs. 36 lakhs on 12.12.2014 out of which Rs. 23 lakhs was paid in cash. The assessee has also claimed to have purchased another agricultural land of Rs. 65 lakhs, which was part of the exchange. The AO denied the claim of deduction u/s 54-B in respect of the land purchased by the assessee of Rs. 36 lakhs out of which Rs. 23 lakhs was paid in cash, on the ground that in the absence of registered title deed, the transfer of land cannot be treated as valid in view of the judgement of Hon'ble Supreme Court in the case of CIT vs. Balbir Singh Maini. The assessee challenged the action of the AO before the CIT(A), but could not succeed.

3. Before the Tribunal, the Ld. Authorized Representative of the assessee submitted that the only dispute in this appeal of the assessee is regarding denial of deduction u/s 54-B of Rs. 23 lakhs, which was paid by the assessee for purchase of agricultural land vide agreement dt. 12.12.2014. The Ld. Authorized Representative of the assessee has submitted that for the purpose of deduction under Section 54-B, the purchase of land can be without registered title deduction. He has submitted that the registration is required only in case of transfer of immovable property/capital assets and, therefore, the judgment of Hon'ble Supreme Court in the case of **CIT vs. Balbir Singh Maini, 398 ITR 532**, is not applicable when the assessee has paid purchase consideration of agricultural land. He has further submitted that Section 54-B used the terms "purchase" and not "transfer" and, therefore, the conditions of registration applicable for transfer is not relevant for purchase of agricultural land. He has relied upon the following decisions :-

- (i) Dy. CIT & Anr. V. Assa Singh & Anr. , 46 CCH 0287 (Amritsar Trib)
- (ii) Ramesh Narhari Jakhadi v. ITO, 11 CCH 0081 (Pune Trib)
- (iii) Anil Bishnoi vs. ACIT, I.T.A.No.1459/Chd/2016
- (iv) CIT vs. Ved Prakash Rakhra, 370 ITR 0762 (H.C. Karnataka)
- (v) Hiralal Ram Dayal vs. CIT, 122 ITR 0461.
- (vi) Shri Mahesh Nemichandra Ganeshwade vs. ITO, 594/PN/10.
- (vii) ACIT vs. Smt. Pushpa Devi Jain, 93 ITD 0289.

4. Alternatively, the Ld. Authorized Representative of the assessee has submitted that now the assessee has received the legal notices from the other

party with whom, the assessee has exchanged the agricultural land and realized that the land transferred by the assessee under the said exchange was a Government land. The Ld. Authorized Representative of the assessee has filed an affidavit of the assessee in this respect alongwith copies of the legal notices dt. 05.03.20 and 27.01.2023. Hence, the Ld. Authorized Representative of the assessee has submitted that when the land in question was a Government land and transfer under the exchange was not valid transfer then no capital gain on such invalid transfer is assessable to tax.

5. On the other hand, the Learned Departmental Representative has submitted that the claim of deduction u/s 54-B is not admissible in the case of the assessee as there was no valid transfer of the land in favour of the assessee in the absence of registered title deed or agreement. He has submitted that the judgment of Hon'ble Supreme Court in the case of CIT vs. Balbir Singh Maini, 398 ITR 532 is applicable. Further, he has relied upon the decision of the Hon'ble Supreme Court in the case of Suraj Lands Industries Private Limited, 340 ITR 1, and submitted that an immovable property can be legally and lawfully transferred/conveyed only by way of registered deed of conveyance. He has relied upon the orders of the authorities below.

6. We have heard the rival submissions as well as material placed on record. The first contention raised by the Ld. Authorized Representative of the assessee is that no registration of title document is required for claiming deduction u/s 54-B as the assessee has purchased the land vide un-registered

agreement and making the payment in cash and taking the possession of the agricultural land. Section 54-B(1) uses the term "transfer" for the transaction resulting capital gains and the exemption of the said capital gain is provided if the assessee has purchased another agricultural land within the period of two years. Therefore, the term "transfer" used in the first part of Section 54-B is in the context of a transaction of transfer of Capital asset in any of the modes as per the definition provided u/s 2(47) of the Income-tax Act, 1961, which reads as under :-

"2(47) ["transfer", in relation to a capital asset, includes, -

- (i) *The sale, exchange or relinquishment of the asset; or*
- (ii) *The extinguishment of any rights therein; or*
- (iii) *The compulsory acquisition thereof under any law; or*
- (iv) *in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ;] [or]*
- (iva) *the maturity or redemption of a zero coupon bond; or]*
- (v) *any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 43A of the Transfer of Property Act, 1882 (4 of 1882); or*
- (vi) *any transaction (whether by way of becoming a member of, or acquiring shares in, a cooperative society, company or other association of persons or by way of any agreement or any arrangement of in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.*

[Explanation 1]- For the purposes of sub-clauses (v) and (vi), immovable property" shall have the same meaning as in clause (d) of section 269 UA.]

[Explanation 2 – For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India:] "

7. Thus, the transfer is a wider term, which includes sale, exchange or relinquishment of assets or extinguishment of right therein and so on, whereas the purchase is a specific term, but part of transfer. Thus, a transfer may or may not involve a sale or purchase, but the purchase is definitely falling in the ambit of transfer. Capital gain arising from transfer may not be necessarily resulting any consideration, but the purchase of another land certainly involves the payment of consideration either in cash or kind. The capital gain on transfer is computed as per the provisions of the Act and, therefore, even in case of no consideration is received by the assessee under a mode of transfer, the full value consideration has to be taken into consideration as per the provisions of Section 50C of the Income-tax Act, 1961. Hence, a purchase has an inevitable transaction of sale by the other party to the transaction and therefore, is part of the transfer, then purchase of an immovable property cannot be without a valid title document as held by the Hon'ble Supreme Court in the case of CIT vs. Balbir Singh Maini (supra). The decisions relied upon by the Ld. Authorized Representative of the assessee are prior to the judgment of the Hon'ble Supreme Court in the case of Balbir Singh Maini(supra) and, therefore, those decisions cannot be applied by ignoring the judgment of the Hon'ble Supreme Court. Accordingly, we do not find any merits or substance in the contention of the Ld. Authorized Representative of the assessee that for

claiming the benefit of section 54-B, the registration of the title deed is not required.

8. As regards the validity of the transaction of exchange of land between the assessee and one Mr. Suresh Verma, the assessee has now filed an affidavit as under :-

Sr. No. 2634/23
Date 23/10/23



AFFIDAVIT

I, **Parmanand Sisodiya, son of Shri Chajju Sisodiya**, aged 63 years, Hindu by religion, and holding Indian nationality, residing at 404-405, AX-18 C, Satyamitra Paradise, Scheme NO 71, Indore (M.P), do hereby affirm and state as follows:

1. Personal Details:

Name:	Parmanand Sisodiya
Father's Name:	Shri Chajju Sisodiya
Age:	63 years
Religion:	Hindu
Nationality:	Indian
Address:	404-405, AX-18 C, Satyamitra Paradise, Scheme NO 71, Indore (M.P)

2. Exchange of Land:

I entered into an agreement to exchange my land located at Survey No 340, Gram Morod, Tehsil Rau, Dist Indore (M.P) for a consideration of Rs 95,00,000/- (comprising Rs 30,00,000/- in cash and the remaining Rs 65,00,000/- in exchange for land situated at Survey No 60 MIN 2, PHN 30, Gram Khajarana, Indore during the financial year 2014-2015 with Mr. Suresh Verma.

3. Legal Ownership Issues:

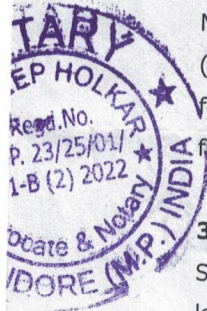
Subsequently, I discovered that the land I exchanged with Mr. Suresh Verma had legal ownership issues that came to my knowledge after the execution of the exchange deed.


4. Legal Notice Received:

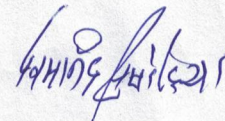
I have received a legal notice from Mr. Vaibhav Jain, Advocate on behalf of Mr. Suresh Verma, requesting the cancellation of the aforementioned Exchange Deed.

5. Defective Title:

It has come to my knowledge that the title of the land located at Survey No 340, Gram Morod, Tehsil Rau, Dist Indore (M.P) was found to be defective, and there is a claim that the said land was registered in the name of the Government.



Sworn Before Me

PRADEEP HOLKAR
NOTARY
INDORE (M.P.)



6. Truthfulness:

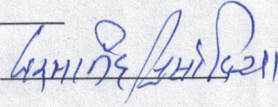
To the best of my knowledge and belief, the particulars mentioned above are true and complete in all respects.

VERIFICATION

I solemnly affirm and declare that the contents of this affidavit are true and correct to the best of my knowledge, information, and belief, and that nothing material has been concealed or misrepresented herein.

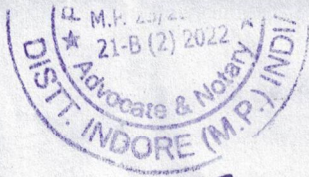
Date: _____

Place: _____

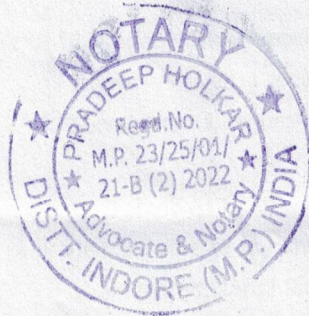
Signature: 

Parmanand Sisodiya

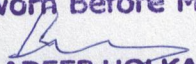
(Sworn and subscribed before me)



IDENTIFY BY ME



Sworn Before Me


PRADEEP HOLKAR
NOTARY
INDORE (M.P.)

9. The assessee has also filed the copies of legal notices dated 05.03.2020 and 27.01.2023, wherein the transaction has been challenged as illegal being The Government land which was transferred by the assessee under the said exchange. Accordingly, in the facts and circumstances of the case, we set-aside the matter to the record of the AO for proper verification and deciding the same after considering the new development in respect of the land transferred by the assessee under the exchange. Needless to say, the assessee be given an appropriate opportunity of hearing before passing the fresh order.

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

Order pronounced in the open court on 30.10.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 30.10.2023
CPU/Sr. PS

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

By order

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