

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 844/Kol/2023
Assessment Year: 2013-14

Achhelal Yadav G/4/3, Phase-II, Dankuni Housing Complex P.O. Dankuni West Bengal - 712331 [PAN: AAKPY3403B]	Vs	Income Tax Officer, Ward- 23(1), Hooghly
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 10/10/2023
घोषणा की तारीख /Date of Pronouncement: 14/12/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The above captioned appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dt. 17/07/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:-

"1. For that the Ld. CIT(A) erred in confirming the order of the AO passed u/s 154 when in fact the entire sold lands were Rural Agriculture lands and thus the said lands do not come under the purview of the definition of Capital Asset as provided under section 2(14)(iii) and thus the entire calculation of capital gain on sale of rural agriculture land was illegal, wrong and without any sanction of law.

2. For that the Ld. CIT(A) erred in confirming the action of AO by invoking the provision of section 154 of the Income Tax Act since the mistake, which was sought to be rectified by the AO, was not a mistake apparent from the record as prescribed under section 154.

3. *For that the CIT(A) erred in confirming the order of the AO when the assessment was completed after due application of mind the exemption was granted on account of purchase of new agricultural land which is permissible and exemption as allowable and in fact allowed u/s 54B of the Income Tax Act.*
4. *For that even otherwise the Ld. CIT(A) should have considered that the exemption of Rs.69,80,000/-was allowable u/s 54B when it was evident and on record that assessee had purchased new agricultural land of Rs.69,80,000/-.*
5. *For that although in original assessment TDS of Rs.34,460/- was allowed but in rectification order no TDS was allowed for an unknown reason.*
6. *For that the Ld. CIT(A) erred in holding the view that the exemption was originally allowed u/s 54F and therefore the assessment is to be rectified when no exemption u/s 54F was claimed or allowed.*
7. *For that the order is otherwise bad in law since two opinions were possible on the issue."*

3. Facts in brief are that the assessee is an individual earning income from salary, long-term capital gain and other sources and disclosed an income of Rs.5,42,300/-in the return for Assessment Year 2013-14 furnished on 24/03/2014. Case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act. As per the ITS data, transaction amount reflected in the name of assessee is Rs.1,02,90,660/- but the sale consideration from sale of agricultural land declared in income tax return at Rs.66,66,657/-. In the return of income assessee had claimed exemption under section 54 of the Act at Rs.69,80,000/-on account of purchase of agricultural land. However, the ld. Assessing Officer completed the assessment recalculating the long-term capital gain at Rs.42,48,171/- as against Nil income declared by the assessee after claiming exemption under section 54 of the Act. Income assessed at Rs.47,90,471/-. Thereafter, the ld. Assessing Officer on

perusal of the assessment records observed that certain apparent mistakes have occurred and thus passed an order under section 154/143(3) of the Act and during the course of proceedings carried out u/s 154 of the Act, the assessee claimed that the lands sold during the year were agricultural land and they do not fall under the category of capital asset and the gain arising from the sale thereto is exempt from income taxes. The Id. Assessing Officer was not satisfied with the submissions made by the assessee and disallowed the claim of deduction/exemption of Rs. 51,37,862/- made towards purchase of land and recomputed the total income at Rs.99,28,332/-.

3.1. Aggrieved the assessee preferred an appeal before the Id. CIT(A) but partly succeeded.

4. Now, the assessee is an appeal before the Tribunal.

5. The Id. Counsel for the assessee has firstly contended that the lands sold by the assessee during the year are agricultural lands which do not fall under the category of capital asset as provided under section 2(14) of the Act and gain from sale of such land is exempt from income tax. Further he submitted that the consideration received against the sale of land has been utilised for purchasing new agricultural land during F.Y. 2013-14, totaling to Rs. 97,55,000/- which was inadvertently claimed at Rs.69,80,000/- in the ITR. Further reliance was placed on the decision of this Tribunal in the case of *Ritum Jain vs. DCIT in ITA No. 466/Kol/2021; Assessment Year 2014-15, order dt. 30/03/2022*, in support of the contention that no tax can be levied or collected except by the authority of law and that if the assessee, has by mistake or inadvertence or on account of ignorance included in his income any amount which is

non-taxable or is not income within the contemplation of law, the assessee may bring the same to the notice of the Assessing Officer to which the Assessing Officer is satisfied, he may grant the assessee necessary relief and refund the tax paid in excess. Citing this decision, it is submitted that since the lands sold during the year are agricultural lands which were being used for the purpose of agricultural operation and they are not capital assets as defined u/s 2(14) of the Act, the capital gain arising from the sale of such land is exempt. Further it is claimed that even if agricultural land sold during the year are considered as capital asset then also assessee is eligible to claim exemption under section 54B of the Act, for the agricultural land purchased within the time limit prescribed under section 54B of the Act.

5.1. On the other hand, the Id. D/R, vehemently argued supporting the orders of both the lower authorities.

6. We have heard the rival contentions and perused the record placed before us. We observe that the assessee who is an individual, sold agricultural land during the year and also purchased agricultural land during the year and in the subsequent year. In the return of income, the assessee has declared the said transactions and sale consideration has been shown at Rs.66,66,657/-. Exemption u/s 54 of the Act has been claimed against land purchased at Rs.69,80,000/-. During the course of assessment proceedings, the Id. Assessing Officer based on the ITS data information noticed that the sale consideration as per the stamp duty value is Rs.1,08,70,746/- and accordingly applied the same for computing the capital gain. The Id. Assessing Officer also made some addition towards change in the figure of indexed cost of

acquisition and allowed the exemption u/s 54 of the Act at Rs.51,37,862/-.

6.1. Thereafter, the Id. Assessing Officer after perusing the assessment records noticed that certain apparent mistakes have been made while framing the assessment and he thus invoked the provisions of Section 154 of the Act and carried out the proceedings. One of the apparent mistakes noticed by the Id. Assessing Officer was that the assessee had claimed exemption u/s 54 of the Act but this Section relates to profit on sale of property used for residence and cannot apply on the case of the assessee where agricultural land has been sold. The Id. Assessing Officer also observed that even Section 54F of the Act cannot be applied because the same pertains to capital gain on transfer of certain capital assets not to be charged in case of investment in residential house. During the course of proceedings u/s 154 of the Act, assessee gave detailed reply firstly contending that agricultural land in question is not a capital asset and, therefore, capital gain arising from sale thereof is exempt from tax. Second contention by the assessee was that even if the land sold during the year is not considered as a capital asset, then also assessee deserves to get the exemption u/s 54B of the Act towards purchase of agricultural land amounting to Rs. 97,55,000/- against the gains from sale of agricultural land. The Id. Assessing Officer did not consider both these contentions and denied the benefit of exemption u/s 54B of the Act and mentioned in the rectification order that exemption given during the course of assessment proceedings u/s 54F of the Act stands disallowed.

6.2. Further we observe that though all the above observations made by the assessee during the course of assessment proceedings as well as rectification proceedings u/s 154 of the Act and the contentions of the assessee claiming that the agricultural land sold during the year, do not fall under the category of capital asset u/s 2(14) of the Act and alternatively is also eligible for exemption u/s 54B of the Act at Rs.97,55,000/-, Id. CIT(A) failed to find any merit and confirmed the action of the Assessing Officer observing that the Id. Assessing Officer has rightly rectified the mistake apparent on record.

7. Before us, Id. Counsel for the assessee, took us through the paper book containing 175 pages of which page 158 to 160 provides copy of *Notification dated 6th January, 1994 vide Notification No. [SO 9447] (File No. 164/3/97-ITA.I)*, in order to prove that the land sold during the year is not a capital asset. We have gone through the said notification and also gone through the details of sale deeds as well as certificate issued by Dadpur Gram Panchayat and find merit in the claim of the assessee that the agricultural land sold during the year do not fall within the definition of capital asset provided u/s 2(14)(iii) of the Act and, therefore, the capital gain arising from sale thereto is exempt from tax. So far as the finding of the lower authorities that the assessee did not provide this fact during the course of assessment proceedings, we note that during the course of rectification proceedings, though the same were initiated by the Assessing Officer but once certain facts were placed before the Assessing Officer during the course of such rectification proceedings, then he ought to have taken note of the same and should have dealt with the said contentions. It has been

consistently held by the Hon'ble Courts that no tax can be levied or collected except by the authority of law and that if the assessee by mistake or inadvertence or on account of ignorance included in his income any amount which is non-taxable or is not income within the contemplation of law, the assessee may bring the same to the notice of the Assessing Officer to which if the Assessing Officer is satisfied, he may grant the assessee necessary relief and refund the tax paid in excess. We draw support from the judgment of the Hon'ble Delhi High Court in the case of *Vijay Gupta vs. Commissioner of Income tax* in WP(C) 1572/2013 order dt. 23 March, 2016, wherein, the Hon'ble Court has held so by referring to Article 265 of the Constitution of India. Similar view was also taken by this Tribunal in the case of *Ritum Jain (supra)*.

8. Under these given facts and circumstances, when the assessee had given sufficient documentary evidence during the course of the rectification proceedings that the agricultural land sold during the year do not fall under the category of capital asset u/s 2(14) of the Act and inadvertently the assessee has shown it as a capital asset in the Income-tax return, therefore, the assessee deserves to succeed and we accordingly hold that the capital gain arising from the sale of agricultural land in question is exempt from tax. Since we have allowed this claim of the assessee that the agricultural land sold during the year is not a capital asset and gain arising from there is exempt from tax, the remaining grounds raised by the assessee becomes merely academic in nature, still we would like to take note of the fact that the assessee also deserves to succeed on the alternative ground that even if the agricultural land is considered as capital asset, even then the assessee

who has sold agricultural land and has purchased the agricultural land within a period of two years, after the date of sale for a total purchase consideration of Rs.97,55,000/-, the assessee is entitled for exemption u/s 54B of the Act for the total sum of Rs.97,55,000/- or the long term capita gain arising from sale of agricultural land whichever is lower. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 14th December, 2023 at Kolkata.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 14/12/2023

Sd/-

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
 आयकर अपीलीय अधिकरण
 ITAT, Kolkata