

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 742/JPR/2023  
निर्धारण वर्ष/Assessment Year : 2012-13

Bhagirath Yadav 176 Dhani Indokiya Vill PO Bhamori, Teh, Jaipur	बनाम Vs.	Income Tax Officer, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABHPY 3985 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Yogesh Kumar Sharma (Adv.)  
राजस्व की ओर से / Revenue by : Sh. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 17/01/2024  
उदघोषणा की तारीख / Date of Pronouncement: 13/02/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] for the assessment year 2012-13 dated 19.10.2023, which in turn arises from the order passed by the ITO, Ward-7(2), Jaipur passed under Section 144 r.w.s. 147 of the Income tax Act, 1961 (in short 'the Act') dated 15.11.2019.

2. The assessee has taken following grounds in this appeal;

1. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt.19.10.2023 stating that "It is noted from the submissions furnished by the appellant before this office that the appellant has stated that the appellant has invested of Rs. 29,32,775/- in accordance the provision of Section 54B of Income tax Act, 1961 to purchases agricultural land out of sale consideration of Rs.37,64,082/-

2. However, the appellant has not furnished his Return of Income for the year under consideration", whereas on the amendment in section 139(1) of sixth Proviso, section 54, section 54B or section 54D or section 54EC or section 54F or section 54G or section 54GA or section 54GB were inserted by the Finance Act, 2019 which is effective from 01.04.2020, but the impugned case on hand is related to the AY 2012-13. It indicates that the exemption u/s 54B can be claimed without filling of return of income , now it has been amended by the Finance Act. 2019.

3. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt.19.10.2023 stating that "the appellant has not furnished any documentary evidences to substantiate his claim" in respect of the Section 54B of the Income Tax Act, whereas Copy of the Purchases deed of agricultural land of Rs. 29.32.775/- was already submitted with the written submission as Annexure-7 & 8 but the Ld. Apeallate authority has not mentioned complete written submission of appellant in his order. Further these purchases copies is attached herewith as Annexure-7 & 8 for you kind consideration.

4. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt.19.10.2023 and in accordance to the Assessment order points where the Ld. Appellant authority has considered the grounds and detailed written submission but in the finding and decision, Ld. Appellant authority has not given any relief on such Basis. These grounds in detail are reproduced hereunder for your kind consideration-

5. That agricultural land in Rural Area in India is not considered a capital asset. Therefore any gains from its sale are not taxable under the head Capital Gains Under Section 10(37) of the Income Tax Act. Further the such agricultural land is situated 9 km away from the municipal limit of the Municipal Board or Nagar Nigam. The captioned land is not a Capital Asset within the

meaning of section 2(14) as it is an agricultural land under clause (iii) of this section and not covered by exclusions of agricultural land given in sub clauses (a) & (b) of this clause (iii) of section 2(14).

6. The appellant had sold own 31.60 percent share in an agricultural land situated at village-Bhambori Patwar Halka, Bhambhori, Kalwar tehsil, Jaipur, Rajasthan having Khasra Number 602,603,604,605,606. A copy of such sold agricultural land sale deed is attached herewith as Annexure-1. Further to ascertain the sold agricultural land is capital assets or not, the appellant has applied to the concerned Tehsil Kalwar, Jaipur, on 04<sup>th</sup> March, 2021.

7. In reply to such application, Tehsildar has given the report on 05<sup>th</sup> March, 2021 stating that “ *The said agricultural land khasra Number 602,603,604,605,606 is situated 9 Km. away from the Nagar Nigam (Municipal corporation) Limit of village Siwar*”. Whereas the Nagar Nigam is Jaipur, Rajasthan and its limit upto the village Siwar. A copy of such Report with application is attached herewith as Annexure-3. With this Report, the above sold agricultural land is Agricultural land in rural India and it is not capital assets. Due to the following reason-

8. Definition of rural area (from AY 2014-15) – Any area which is outside the jurisdiction of a municipality or cantonment board, having a population of 10,000 or more is considered a rural area. Also, it should not fall within a distance (to be measured aerially) given below – (population is as per the last census).

9. That in respect of the above sold agricultural land, a civil suit was filed by us for partitions in 1996 and such case was decided on 15/02/1999 . As a proof of such case, Final Decree is also attached herewith As Annexure-4. Further we had incurred some legal expenses such as Advocate fees during the year 1996 to 1999 , approx 1,29,167/- as my share. Hence the such cost of legal expenses as Indexed value of Rs. 309125/- Should be allowed. A copy of the Bill of Advocate fees is also attached herewith as Annexure-5.

10. That indexed cost of improvement of Rs 343722/- where in respect of the above sold agricultural land, we had incurred some expenses of improvement like sand filling, tarbandi, muddi on that specified agricultural land. The copies of the proof of such cost of improvement is attached herewith as Annexure-6.

11. Reason for such Cost of Improvement and its sources a. Sand filling – The agricultural property was in deep and to achieve the object of farming on such the agricultural land, we had incurred some expenses on sand filling on such agricultural land so that the value and quality of the property could be developed. B House on such agricultural land- To take care and living purpose we have incurred some expenses construction of House on such agricultural land. In such construction, it was one room, kitchen, cattle feed place, hall , Bathroom etc.. The cost was being my share was 60,198 in total in FY 2000-01. c Tarbandi d Muddi Both of the expenses was incurred to protect the crops from animals and expenses was for the tarband and stone pillar as Muddi surrounding the agricultural land. e Well Water is the base requirement for farming, so a well to supply water to crop was constructed and digging in the FY 2010-11.”

3. The fact as culled out from the records is that in this case, no return of income was filed by the assessee u/s 139(1) of the Income Tax Act 1961. Subsequently, on possession of information regarding sale of capital assets during the year by the assessee, necessary reasons were recorded and after obtaining approval of Pr. CIT-3, Jaipur on 28.03.2019, the case was re-opened and notice u/s 148 was issued on 29.03.2019 which was served through Regd. Post and the assessee was required to furnish return of income within the stipulated time but compliance of the same was not made.

3.1 The assessee is agriculturist and main sources of income is sale proceed of crops from own agricultural Land and some part of

contract work. That assessee sold own 31.60 percent share in an agricultural land situated at village-Bhambori Patwar Halka, Bhambhori, Kalwar tehsil, Jaipur Jaipur on 13/10/2011 in consideration of Rs. 1,19,11,000/-. The DLC rate at that time were Rs. 1,19,11,000/- The share of the assessee for the income tax purpose was of Rs. 37,64,08. That such agricultural land is situated 25 km away from the municipal limit of the Municipal Board or Nagar Nigam. The agricultural Land was purchased by assessee's father. The DLC Value of such land at the time of FY 1981-82 assumed by Rs. 5,000/- only due to non availability of DLC rates of the FY 1981-82. That in respect of the above sold agricultural land, a civil suit was filed for partitions in 1996 and such case was decided on 15/02/1999. Further assessee incurred some legal expenses such as Advocate fees during the year 1996 to 1999, approx 3,50,000/- Share in such expenses was 1,29,167/- according to the land share. The same was paid on 30/06/1996 Rs.42,000, on 12/12/1997 Rs. 45,000 and on 15/02/1999 Rs. 42,167/-. In respect of the above sold agricultural land, assessee had incurred some expenses of improvement like sand filling, tarbandi, muddi on that specified agricultural land. That the

assessee invested of Rs. 29,32,775/- out of the sale proceed of Rs.37,64,082/- in accordance the provision of Section 54B of Income tax Act, 1961 to purchases agricultural land at village- Narsinghpura, patwar area-mahapura, Tehsil- Sanganer, Disstt.- Jaipur, Rajasthan on 17th Oct,2011 in consideration of Rs. 18,99,930/- with stamp duty of Rs. 97,145 in assessee name and purchases 1/3 share in agricultural land at village- Gramdani Khedi Alufa, Tehsil-Phulera, Jaipur (Rajasthan) in consideration of Rs. 9,35,667. Hence the total investment was of Rs. 29,32,775/- Further, these purchases was within the due date of filling of the return of income for the concerned financial year 2012-13 in accordance of section 54B. Notice under section 148 of Income Tax Act, 1961 was issued and consequently assessment under section 147/144 (Ex-parte) of Income Tax Act, 1961 was completed on 15/11/2019.

4. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:-

## “6. FINDINGS & DECISION

6.1 I have gone through the Assessment Order and submissions of the appellant. The Ld. AO has carried out additions to the tune of Rs. 37,64,082/- under the head of Capital Gains by the during the year under consideration.

6.2 The Ld. AO has stated that during the course of the assessment proceedings, the Ld.AO has stated based on information available with him that the appellant along with 4 others have sold an immovable property bearing Khasra No. 602,603,604,605,606 total 19 Bigha Rakba 05 Biswa situated at Village Bhamori, Patwar Halka, Bhamori Tehsil, Jaipur on 13.10.2011 for a total sale consideration of Rs. 1,19,00,000/-. Further the Ld. AO has stated that the 50C value for such property was also. calculated at Rs. 1,19,00,000/- wherein the appellant's share is Rs. 37,64,082/-.

6.3 The Ld. AO has stated that the appellant has neither filed his Return of Income nor declared his capital gain for the year under consideration. The appellant was asked for explanation of for the same. However, the appellant was failed to furnish the same before the Ld. AO. Accordingly, the assessment proceedings was concluded by the Ld. AO after making an addition of Rs. 37,64,082/- under the head of Capital Gain for the year under consideration.

6.4 It is noted from the submissions furnished by the appellant before this office that the appellant has stated that the appellant has invested of Rs. 9, 32 ,//5/- in accordance the provision of Section 54B of Income tax Act, 1961 to purchases agricultural land out of sale consideration of Rs.37,64,082/-. However, the appellant has not furnished his Return of Income for the year under consideration and the appellant has not furnished any documentary evidences to substantiate his claim. Therefore, the contention of the appellant are considered but not found to be acceptable.

6.5 In view of the above, I am of the considerate view that the reason mentioned by the appellant is not satisfied. Therefore, the addition made to the tune of Rs. 37,64,082/- under the head of Capital Gain by the Ld. AO is upheld.

6.6 Accordingly, the Grounds No. 1 to 6 of the appeal are dismissed.”

5. As the assessee did not received any favour from the appeal so filed before the Id. CIT(A) wherein the claim of the assessee

was denied on the ground that since the assessee has not filed any return of income so the Id. CIT(A) denied the benefit of section 54B to the assessee and the appeal of the assessee was not supported by the various evidence even before the Id. AO as it was ex parte. The Id. AR of the assessee humbly prayed that the assessee being small agriculturist one opportunity be granted before the Id. AO as even the appeal of the assessee was decided by the Id. CIT(A) in the absence of the details.

6. Per contra Id. DR relied upon the order of the lower authority and submitted that the assessee is not serious and has not submitted the details.

7. We have heard the rival contentions and perused the material placed on record. It is not under dispute that the assessee is an agriculturist and has sold his agricultural land. The assessment was reopened u/s 147 of the Act and the same was completed ex parte without any submission on merits. The Id. AO made a total sale consideration of Rs. 37,64,082/- as long term capital gain income. Whereas before the Id. CIT(A), the assessee contended that he has sold one agricultural land and has claimed exemption

u/s. 54B of the Act. Since the documents related to the said claim were not placed before the file of the AO. The Id. CIT(A) has simply rejected the claim of the assessee u/s 54B of the Act stating that the assessee has not furnished his return of income for the year under consideration and has not made any documentary evidence to substantiate his claim. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee is a very small agriculturist and has sold his land considering the facts placed on record the Bench feels that the assessee may be given one opportunity to substantiate his claim based on evidences which were not placed on record account of the detailed discussions made in the assessment order and order o of the Id. CIT(A). Considering the specific prayer of the assessee, the bench feels that the assessee should be heard afresh on merits based on the evidence. Therefore, we restore back the issue of long term capital gain income to be assessed in the hands of the assessee to the file of the AO to decide the issue on merits. Based on these set of facts we are inclined to accept the request of the Id. AR of the assessee to set aside the case to the file of the Id. AO to decide the case of the assessee on merits after giving proper

opportunity of being heard to the assessee. At the same time, the assessee is directed to represent and present all the facts before the Id. AO and should not ask for adjournment on trifles grounds. At this stage, we remand back the matter without commenting upon the merits of the case and Id. AO is directed to pass an order in accordance with law.

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

Order pronounced in the open court on 13/02/2024.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13/02/2024

\*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Bhagirath Yadav, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 742/JPR/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar