

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.795/Mum./2023**

**(Assessment Year : 2011-12)**

Shri Madan Mohan Mishra  
R-80, TTC Industrial Area  
MIDC, Rabal Navi, Mumbai 400 701  
PAN - AABPM3701B

..... Appellant

v/s

Income Tax Officer  
Ward-8(2)(4), Mumbai

..... Respondent

Assessee by : Shri S.L. Jain  
Revenue by : Smt. Mahita Nair

Date of Hearing - 12/02/2023

Date of Order - 20/02/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 29/12/2017, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-51, Mumbai, [*learned CIT(A)*], for the assessment year 2011-12.

2. In its appeal, the assessee has raised the following grounds:-

*"(1) The learned commissioner of income tax (appeal)-17 has erred in law, in confirming the addition of agricultural income as a undisclosed sours of Rs.2270575/-which is arbitrary and unjustified.*

*(2) The learned commissioner of income tax (appeal)-17 has erred in law in rejecting the claim & exemption of section 54 of invested in residential house of Rs.161051/- which is most arbitrary and unjustified.*

*(3) The learned commissioner of income (appeal) tax has erred in law in confirming the expanses disallowed Rs. 20596/-by the assessing officer which is most arbitrary and unjustified. not Prosod*

*(4) The commissioner of income tax (Appeals) has erred in law in confirming the initiation of penalty proceeding under section 271(1)(c) which is most arbitrary and unjustified."*

3. The issue arising in ground No. 1, raised in assessee's appeal, pertains to addition on account of agricultural income.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and for the year under consideration filed its return of income on 22/10/2011 declaring a total income of Rs. 14,36,618. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142 (1) of the Act were issued and served on the assessee. During the year under consideration, the assessee has shown an agricultural income Rs. 22,70,575 which is claimed to be exempt. During the assessment proceedings, the assessee submitted a copy of 7/12 extracts pertaining to the year 2006, a certificate by Tehsildar, a statement showing the agricultural income of Rs. 1.09 crore against estimated expenses of Rs. 5.19 lakhs was shown and out of that assessee's share stood at Rs. 22.70 lakh. During the assessment proceedings, the assessee was asked to submit details with regard to agricultural income, viz. copy of 7/12 extract of the year, details of crop sown and yield of the same, certified copy of Talati register in respect of agricultural produce cultivated and sold during the year, certificate of Talati stating the quantum of agricultural produce item wise and expected amount of sale/actual

amount of sale, a statement showing total area of agricultural land held by the assessee individually and in case of joint holding the area pertaining to the assessee out of total area and nature of holding of assessee and also submit whether on land held by the assessee is irrigated land or non irrigated. After considering the submissions of the assessee, the Assessing Officer ("AO") vide order dated 04/03/2014 passed under section 143(3) of the Act held that the claim of exemption of agricultural income shown by the assessee cannot be allowed as the assessee has failed to produce 7/12 extract for the relevant financial year, extract of Talati register, transporter bill/lorry receipt/road challan/labour charges bill for transportation, details of expenses related to agricultural activity and supporting bills for extension produces, etc. The AO further held that the assessee has completely failed to substantiate that the agricultural activities were carried out and agricultural produce was sold. It was held that the 7/12 extract submitted by the assessee pertains to the year 2006 and therefore cannot be accepted as evidence for the year under scrutiny. It was also held that the assessee has not furnished any documentation supporting the statement showing yield on the sale of fruits, etc., and therefore no cognizance of the claim can be taken. Accordingly, the AO treated the agricultural income of Rs. 22,70,575 as unexplained cash credit and taxed the same as income from other sources in the hands of the assessee.

5. The learned CIT(A), vide impugned order, while dismissing the ground raised by the assessee on this issue held that the 7/12 extract is the only evidence which the assessee has filed in support of the claim of agricultural income. It was further held that the assessee has carried out primary and

secondary operations as required by the Hon'ble Supreme Court in CIT v/s Raja Benoy Kumar Sahas Roy, [1957] 32 ITR 466 (SC). Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee has shown agricultural income of Rs. 22,70,575, which has been claimed as exempt under section 10(1) of the Act. As per the assessee, it has land holding in Sindhudurg district by all the family members. In support of his claim that the aforesaid income was earned from agricultural operations, the assessee submitted a copy of 7/12 extracts pertaining to the year 2006, a certificate by Tehsildar, a statement showing the agricultural income of Rs. 1.09 crore against estimated expenses of Rs. 5.19 lakhs was shown and out of that assessee's share stood at Rs. 22.70 lakh, during the assessment proceedings. However, the AO as well as the learned CIT(A) rejected the plea of the assessee on the basis that the aforesaid documents do not support the claim of the assessee since the 7/12 extract doesn't pertain to the year under consideration and the certificate issued by Tehsildar is a photocopy and appears to be issued on self-declaration. Further, the statement showing the agricultural income of Rs. 1.09 crore, out of which assessee's share stood at Rs. 22.70 lakh is also not supported by any documentary evidence. During the hearing, the learned Authorised Representative ("*learned AR*") placed on record the surveyors' report, wherein the land used for agriculture activities, types of trees, and other activities are mentioned. Accordingly, the learned AR submitted that the land measuring 66.8135 Hectar was used for the plantation of mango, cashew, coconut, pineapple, banana, jackfruit, chikoo, jamun,

bamboo, and animal feeding plantation. Thus, it is the claim of the assessee that apart from the 7/12 extract the aforesaid surveyors' report also justifies the claim of the assessee that an amount of Rs. 22.70 lakh is the agriculture income of the assessee.

7. Since the aforesaid document, now placed as additional evidence, was not considered by any of the lower authorities, therefore, in the interest of justice, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after consideration of the additional document furnished by the assessee. In this regard, we also direct the AO to conduct thorough verification/examination of all the aspects pertaining to the claim of income as agricultural income. Needless to mention the AO shall have the liberty to call for/summon any party from whom the assessee has claimed to have purchased various products in respect of its agricultural activity. The AO can also conduct a field visit to verify the claim of cultivation of agricultural products by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of being heard to the assessee. The assessee is also directed to furnish all the information/details as may be sought by the AO. With the above directions, we remand this issue to the file of the jurisdictional AO and set aside the impugned order on this issue. As a result, ground no. 1 raised in assessee's appeal is allowed for statistical purposes.

8. The issue arising in ground no. 2, raised in assessee's appeal, pertains to the claim of exemption under section 54F of the Act.

9. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, upon perusal of the computation of income it was observed that the assessee has sold shop for a consideration of Rs. 16,10,051. It was further observed that the assessee has computed the long-term capital gains on the same at Rs. 13,10,051 and claimed exemption under section 54F of the Act in respect of investment of Rs. 52,63,600 in residential house. During the assessment proceedings, the assessee was asked to justify the claim of exemption under section 54F of the Act by way of supporting. In response thereto, the assessee submitted that on 29/01/2011 he entered into an agreement with Mrs Usha Umesh Mishra for the purchase of flat for a consideration of Rs. 50 lakh. Out of the total amount of Rs. 50 lakh, only 10 lakh was paid by cheque and the balance consideration has not been paid till date. The AO noted that the assessee has claimed exemption under section 54F of the Act in respect of entering into an agreement to sell, which has not been converted into a sale agreement as only part consideration has been forwarded/paid to the transferor. Accordingly, the assessee was asked as to why the exemption claimed under section 54F of the Act should not be rejected as the purchase of the residential house is not complete and merely some amount has been advanced by entering into an agreement of sale which has not been converted into sale agreement/deed. After considering the submission of the assessee, the AO held that under section 54F of the Act, the assessee is required to purchase the new house within a period of one year before or two years after the transfer of any long-term capital asset. In the present case, the assessee sold the shop on 14/02/2011, and therefore to claim exemption under section 54F of the Act,

the assessee was required to purchase the residential house by 13/02/2013. However, the assessee entered into an agreement to sale with Mrs Usha Umesh Mishra on 29/01/2011 and paid Rs. 10 lakh and the remaining amount has not been paid till 18/02/2014. Since the entire consideration has not been paid, and the agreement of sale has not been converted into a sale deed, therefore the purchase is not complete. Thus, it was held that the assessee has failed to produce any evidence to show that the entire consideration has been paid within the period of two years from the date of sale of the capital asset, and the assessee has also failed to prove that the purchase of a new asset is complete. Further, by referring to the agreement to sale, the AO held that the vacant and peaceful possession of the flat was to be transferred only on receiving full and final consideration by the seller. However, the assessee has not made the full and final payment of the purchase consideration of the residential house, therefore the transaction of sale was not complete and thus the assessee is not entitled to claim a deduction under section 54F of the Act.

10. Since the assessee could not controvert the facts noted by the AO, the learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

11. We have considered the submissions of both sides and perused the material available on record. As per the assessee, during the year under consideration, he sold the shop for a consideration of Rs. 16,10,051 and earned long-term capital gains on the same of Rs. 13,10,051. The assessee claimed exemption of the capital gains under section 54F of the Act on the basis that it has invested in the residential house. However, the AO observed

that out of the total purchase consideration of Rs. 50 lakh, the assessee has only paid Rs. 10 lakh and the balance consideration is yet to be paid. Thus by referring to the agreement to sell entered between the parties, the AO came to the conclusion that the vacant and peaceful possession of the residential house is not handed over to the assessee as full and final consideration is not paid. Accordingly, the agreement to sell is not converted into a sale deed, therefore assessee is not entitled.

12. During the hearing, in support of the claim that the assessee is the lawful owner of the flat and the share certificate by the Co-operative Housing Society has also been transferred in its name, reference was made to the copy of share certificate issued by Dheeraj Valley Building No.2 Co-operative Housing Society Ltd. Further, the assessee also furnished the copy of ledger of Mrs Usha Umesh Mishra in its book in support of the submission that entire consideration has been paid. The assessee furnished the aforesaid documents by way of an application seeking admission of additional evidence under Rule 29 of the ITAT Rules. Further, the assessee also referred to the letter dated 18/03/2011 issued by Mrs. Usha Umesh Mishra, forming part of the paper book on page 53, handing over the position of the flat to the assessee.

13. It is evident from the record that the aforesaid documents have not been considered by the lower authorities and the claim of the assessee was rejected under section 54F of the Act on the basis that the assessee is not the owner of the flat. Therefore, in the interest of justice, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after consideration of all the material as furnished by the assessee. Needless to

mention no order shall be passed without affording reasonable opportunity of being heard to the assessee. The assessee is also directed to furnish all the information/details as may be sought by the AO. With the above directions, the impugned order on this issue is set aside, and ground no. 2 raised in assessee's appeal is allowed for statistical purposes.

14. Ground no. 3 raised in assessee's appeal was not pressed during the course of the hearing. Accordingly, the same is dismissed as not pressed.

15. The issue arising in ground no. 4 pertains to the levy of penalty, which is premature in nature. Therefore, the same is dismissed.

16. As a result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 20/02/2024

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 20/02/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai