

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.466/Ind/2023
(Assessment Year: 2011-12)

Gendalal Jadhav, 168-G Palakhedi, Gandhi Nagar Indore (Appellant / Assessee)	vs.	ITO 1(1) Aaykar Bhawan Indore (Respondent/ Revenue)
PAN: APHPJ4675K		
Assessee by	Shri Santosh Deshmukh, AR	
Revenue by	Shri Harshit Bari Sr. DR	
Date of Hearing	20.03.2024	
Date of Pronouncement	21.03.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by the Assessee is directed against the order dated 26.09.2023 of Commissioner of Income Tax (Appeal), Bhopal for Assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Ld. CIT-(A) grossly erred in confirming the addition made by learned AO of Rs 70,00,235.

2. On the facts and circumstances of the case and in law the Ld. CIT-(A) grossly erred in confirming the addition made by learned AO in not allowing the deduction of Rs 3,53,820 for brokerage paid against the sale of agricultural land which has been through account payee cheques.

3. On the facts and circumstances of the case and in law the Ld. CIT - (A) grossly erred in confirming the addition made by learned AO in denying the exemption under section 54B of The Income Tax Act for purchase of agriculture land at Rs 66,46,415 in the name of the assessee wife which according to the various judicial decision is allowable. Further Ld. CIT(A) erred in considering in that the provisions us 54 are beneficial sections and the interpretation has to be made liberally.”

2. Ground no.1 is general in nature depending on outcome of specific issues raised by the assessee in ground no.2 & 3.

3. Ground no.2 is regarding disallowance of the claim of deduction on account of brokerage charges while computing the capital gain arising from the sale of agricultural land. During the year under consideration the assessee sold agricultural land measuring 0.698 hectare situated in village Palakhedi for a consideration of Rs.1,17,94,270/-. The assessee claimed brokerage expenses of Rs.3,53,820/- in respect of the sale transactions against the capital gain. However, the AO disallowed the said claim of deduction on the ground that the assessee has not produced any supporting evidence despite sufficient opportunity is given. Before the Ld. CIT(A) the assessee has reiterated its claim but could not succeed. The CIT(A) has upheld the action of the AO on the ground that the assessee has not submitted any evidence in support of his

arguments and to prove that the payment of Rs.3,53,820/- was made for sale of property.

4. Before the Tribunal Ld. AR of the assessee has referred to the copies of brokerage receipt placed at page no. 33-34 as well as the assessee's submission before the AO giving details of payment of brokerage of Rs.3,53,800/- through four cheques to two persons namely Shri Bane Singh and Shri Ramnarayan. Thus, the Ld. AR has submitted that when the payment was made by the assessee through cheques and receipts from the brokers have been produced before the AO then the disallowance made by the AO is not justified.

5. On the other hand, ld. DR has submitted that the AO as well as CIT(A) has recorded the fact that the assessee has not produced any supporting evidence to prove that the payment in question was made as brokerage charges in respect of sale of agricultural land in question. He has relied upon orders of authorities below.

6. We have considered rival submission as well as relevant material on record. The AO has denied the claim of the assessee while recording the reasons in para 4 as under:

“4. करदाता द्वारा उपरोक्त संपत्ति के बिक्रय पर रू 353,820/- दलाली व्यय दावा करते हुए पूंजीलाभ की संगणना प्रस्तुत की गई ! निर्धारण कार्यवाई के दौरान करदाता से सुसंगत साक्ष्य की प्रति प्रस्तुत करने के लिए कहा गया लेकिन समुचित अवसर दिए जाने के बावजूद भी करदाता इस संबंध में भुगतान बावत

कोई साक्ष्य नहीं प्रस्तुत कर सके । अतः उक्त दलाली व्यय अमान्य किया जाता है !”

6.1. Thus, the AO has stated in the assessment order that the assessee has not produced any supporting evidence to show that the payment was made in respect of the sale of agricultural land. Though the assessee has challenged this disallowance made by the AO before the CIT(A) however, the assessee has not produced any evidence or record before the CIT(A). Accordingly the CIT(A) has upheld the action of the AO for want of supporting evidence to prove that the payment was made in connection with sale of property. The assessee has now referred to the brokerage receipts as well as bank account statement in supporting of the claim however, the brokerage receipts are required to be verified and examined. Accordingly in the facts and circumstances of the case and in the interest of justice we set aside the impugned order of the CIT(A) and the issue is remanded to the record of the AO for proper verification and examination of the brokerage receipts to ascertain whether payment in question was made by the assessee as brokerage charges in respect of the agricultural land sold by the assessee. In case the payment is found in the nature of brokerage then the same is allowable being an expenditure incurred in relation to the transfer of the capital asset as per section 48 of the Act.

7. Ground no.3 is regarding disallowance of the claim u/s 54B of the Act. In the return of income the assessee claimed deduction

u/s 54B & 54F of the Act. The AO allowed the claim of deduction u/s 54F but disallowed the benefit of section 54B in respect of the agricultural land measuring 1.060 hectare situated in village Chintaman Jvasiya purchased vide sale deed dated 09.02.2011 for a consideration of Rs.66,46,415/- on the ground that the said agricultural land was not purchased by the assessee in his own name but the same has been purchased in the name of wife of the assessee. The assessee challenged action of the AO before the CIT(A) who has upheld the action of the AO by following the decision of the Delhi Benches of the Tribunal in ITANo.2023/Del/2017.

8. Before the Tribunal Ld. AR has submitted that though the agricultural land was purchased by the assessee in the name of wife however, the entire purchase consideration was paid by the assessee from his bank account. He has referred to the bank account statement of the assessee at page no. 104 -110 of the paper book and submitted that the entire purchase consideration has been paid by the assessee through cheques and the details of which are also mentioned in the sale deed itself placed at page no.38 to 77 of paper book. Thus, ld. AR has submitted that when the investment has been made by the assessee and the payment is through banking channel from the bank account of the assessee then deduction u/s 54B cannot be denied merely because the land was purchased in the name of the wife of the assessee. In support of his contention he has relied upon the decision of this Tribunal dated 28.02.2024 in case of M/s. Siddhulal Patidar vs. ITO in

ITANo.110/Ind/2023. He has also relied upon the decision of the Delhi Benches of the tribunal dated 08.11.2023 in case of Ravinder Kumar vs. ITO in ITANo.2265/Del/2023 and submitted that the Tribunal has taken consistent view by following the decision of various High Courts including decision of Hon'ble jurisdictional High Court and held that deduction u/s 54B cannot be denied merely on the ground that the new agricultural land is purchased by the assessee in the name of wife. Ld. AR has further submitted that apart from purchase consideration paid as reflected in the sale deed the assessee has also paid a purchase consideration of Rs.15,51,000/- at the time of agreement to sell which is placed at page no.73 to 77 of the paper book and submitted that the said payment of Rs.15,51,000/- shall also be added to the purchase consideration along with stamp duty paid by the assessee for the purpose of calculating deduction u/s 54B of the Act. He has pointed out that out of Rs.15,51,000/- the assessee paid Rs.51,000/- in cash and balance of Rs.15,00,000/- in cheque. The details of the Cheque are reflected in the bank account of the assessee.

9. On the other hand, ld. DR has submitted that as per sale deed total sale consideration is shown and paid at Rs.37,05,000/- and there is no mention about any prior agreement between the assessee and the seller Ld. DR has further submitted that the alleged agreement to sell is also not between the same parties as the sale deed is executed by them. Thus, Ld. DR has submitted that

purchase consideration shown in sale deed can be considered for the purpose of deduction u/s 54B of the Act.

10. We have considered rival submission as well as relevant material on record. So far as the disallowance of claim of deduction u/s 54B on the ground of purchase of land in the name of wife is concerned we find that agricultural land was purchased by the assessee by making the payment from his bank account though the sale deed was executed in the name of the wife of the assessee Smt. Durga Bai. Once the investment was made for purchase of new agricultural land from the bank account of the assessee and no payment was made by the wife of the assessee then the said investment for purchase of new agricultural land will be treated as made by the assessee. An identical issue has been considered by this Tribunal in case of M/s. Siddhulal Patidar vs. ITO (supra) in para no.11.2 as under:

“11.2 We have considered rival submissions of both sides. After a careful consideration, we find that there is no dispute between the parties qua the factual aspect that the investment in new land has been made by assessee from sale proceeds of the land sold. The dispute is only for the reason that the new land has been got registered in the name of son and not in the name of assessee himself. On a careful consideration, we find that the assessee's case is directly covered by decision of Hon'ble Jurisdictional High Court of Madhya Pradesh in PCIT Vs. Balmukund Meena ITA No. 188/2016. Furthermore, there are few more decisions quoted by Ld. AR, mentioned in foregoing paragraph, which again decide the issue in favour of assessee.

Therefore, even if the decision of Hon'ble Punjab & Haryana High Court in Bahadur Singh (supra) referred by Ld. DR is against assessee, the assessee shall be entitled to the favourable view coming from all decisions as held in CIT Vs. Vegetable Products 88 ITR 192 (SC). Thus, in any case, the assessee can be said to be entitled for exemption u/s 54B even if the registration has been taken in the name of son. At this stage, we may also mention that the Hon'ble Supreme Court has dismissed the assessee's SLP against the decision of Hon'ble Punjab & Haryana High Court by passing a one line summary order; therefore as per settled judicial view such dismissal cannot be treated as pronouncement of final law by the Hon'ble Supreme Court. The effect of dismissal in this manner can only have the effect that the decision of High Court remains intact and did not get disturbed.”

10.1 Thus it is clear that this tribunal has decided this issue in favour of the assessee by following judgment of Hon'ble jurisdictional High Court in case of Pr. CIT vs. Balmukund Meena ITANo.188/2016. Similar view has been taken by Delhi Benches of the Tribunal in case of Ravinder Kumar vs. ITO (supra) in para 7 &8 as under:

“7. We have heard both the parties and perused the material on record. We note that ITAT in the case of Ashok Kumar vs. ITO (supra) has held as under:

“6. Before me, learned counsel appearing for the assessee submitted that investment in purchase of agricultural land in the name of wife would also be eligible for deduction under Section 54B of the Act. In support of such contention, learned counsel for the assessee relied upon the following decisions:

- 1. Laxmi Narayan vs. CIT, (2018) 402 ITR 0117, High Court of Rajasthan;*
- 2. CIT vs. Kamal Wahal, (2013) 351 ITR 0004, High Court of Delhi;*

3. *CIT vs. V. Natarajan, (2006) 287 ITR 0271m High Court of Madras; &*

4. *CIT vs. Ravinder Kumar Arora, (2012) 342 ITR 0038, High Court of Delhi.*

7. *Learned Departmental Representative strongly relied upon the observations of the assessee.*

8. *I have considered rival submissions in the light of decisions relied upon and perused the material available on record.*

9. *The short issue arising for consideration before me is whether the assessee is eligible to claim deduction under Section 54B of the Act. The factual aspect relating to this issue remains undisputed. Therefore, there is no need to deliberate further on facts. The only reason for which learned Commissioner (Appeals) has denied assessee's claim of deduction under Section 54B of the Act is because the agricultural land in which the capital gain was invested was purchased in the name of assessee's wife. This, in my view, is unsustainable. In the decisions cited before me, various Hon'ble High Courts including the Hon'ble Delhi High Court have clearly and categorically held that deduction under Section 54B/54F of the Act is available in cases where investments are made in property purchased in the name of wife. Therefore, following the ratio laid down in these decisions, I hold that the assessee is eligible for deduction under Section 54B of the Act. Accordingly, I direct the Assessing Officer to allow deduction under Section 54B of the Act. 10. In the result, the appeal is partly allowed."*

8. *We further note that in the decision relied upon by the Learned Departmental Representative, it was a dismissal of SLP simpliciter by Hon'ble Apex Court against the decision of Hon'ble Punjab & Haryana High Court. We note that dismissal of SLP simpliciter by Hon'ble Supreme Court does not merge the order of Hon'ble High Court with that of Hon'ble Supreme Court. We note that there is no jurisdictional High Court decision on this issue. Further, in case of conflicting, Hon'ble High Court decision one in favour of assessee has to be adopted as per Hon'ble Supreme Court decision in vegetable products. Accordingly, we follow the precedent relied upon by the assessee which also draws support from Hon'ble High Court*

decisions referred therein. Hence, we set aside the order of the Revenue authorities and decide the issue in favour of the assessee.”

10.2 In view of the facts and circumstances of the case as well as by following the earlier decisions of this Tribunal we hold that the assessee is entitled for deduction u/s 54B in respect of the land purchased by the assessee from his own fund but the sale deed is registered in the name of wife.

10.3 The quantum of deduction is required to be verified after considering the actual cost of purchase of the agricultural land in question. Though the assessee has claimed that apart from the purchase consideration shown in the sale deed dated 08.02.2011 a payment of Rs.15,51,000/- paid by the assessee at the time of the alleged agreement to sell is also eligible for deduction 54B of the Act however, we find that the alleged agreement to sale is undated and the same is in the name of Shri Pawan, son of the assessee whereas the sale deed is executed in the name of wife of the assessee. The total purchase consideration is shown in the sale deed at Rs.37,05,000/- and there is no mention about any earlier agreement between the purchase or any payment received by the seller except the details of the payment mentioned in the sale deed itself. Accordingly this claim of the assessee cannot be allowed when the total purchase consideration is shown in the sale deed itself. Once the alleged undated/unregistered agreement to sell is not given effect then the possibility of the same stand cancelled is not ruled out and the payment if any made by the assessee would

certainly have been refunded. Accordingly in the facts and circumstances of the case the AO is directed to allow the claim of deduction u/s 54B by considering cost of purchase of agricultural land as per consideration shown in the sale deed, stamp duty and any other expenditure in connection with the said transactions allowable as per law. Needless to say the assessee be given an appropriate opportunity of hearing before passing fresh order.

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

Order pronounced in the open court on 21.03.2024.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 21 .03.2024

Patel/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