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

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

आयकर अपील सं./ITA No. 678/JP/2024
निर्धारण वर्ष/Assessment Year : 2014-15.

Munni Devi C-66, Adarsh Nagar, Jaipur.	बनाम Vs.	Asstt. Commissioner of Income-tax, Circle-5, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ACQPV 4185 M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri S.R. Sharma, CA &
Shri R.K. Bhatra, CA

Revenue by : Shri A.S. Nehra, Addl. CIT D/R

सुनवाई की तारीख/ Date of Hearing : 27/08/2024
उदघोषणा की तारीख/Date of Pronouncement : 30/09/2024

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 16.04.2024 of ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the Income Tax Act, 1961 for the assessment year 2014-15. The grounds raised in the appeal are reproduced as under :-

1. *That on the facts and in the circumstances of the case the ld CIT(A) is wrong, unjust and has erred in law in upholding finding recorded by the ld AO that*

agricultural land at vill Manpur Nanglia, Sanganer sold by the appellant during the year is a capital asset and not an agricultural land within meaning of sec. 2(14)(iii) of the IT Act, 1961 and therefore profit of Rs. 110887/- earned by the appellant on sale thereof is not exempt but chargeable to tax as Long term Capital gain.

2. *That on the facts and in the circumstances of the case the ld CIT(A) is wrong, unjust and has erred in law in upholding finding recorded by the ld AO that agricultural land at vill Rampura, Tehsil Chaksu sold by the appellant during the year is a capital asset and not an agricultural land within meaning of sec. 2(14)(iii) of the IT Act, 1961 and therefore profit of Rs. 14050400/- earned by the appellant on sale thereof is not exempt but chargeable to tax as Long term Capital gain.*

3. *That without prejudice to the ground No (1) & (2) above the ld CIT (A) in further wrong and has erred in law in confirming action of the ld AO is not allowing benefit of investment of Rs. 13640000/- and Rs. 12935000/- made by the appellant in agricultural land and residential house u/s 54B and 54F of the IT Act, 1961 respectively from long term Capital gain of Rs. 14161287/- assessed by him.*

4. *The appellant craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.*

2. The brief facts of the case are that the assessee is an individual deriving income from rent, interest and capital gain. She filed her return of income for A.Y. 2014-15 declaring an income of Rs. 21,35,200/- on 18-3-2015 which was processed under section 143(1) of the IT Act, 1961. The case was selected for scrutiny under CASS for limited scrutiny under section 143(3) of the IT Act, 1961 and notice under section 143(2) was issued on dated 18.09.2015 which was duly served upon the assessee. Further, notices were issued under section 142(1) along with questionnaire on 25.05.2016 and duly served upon the assessee. In response to the notices, assessee attended the assessment proceedings and furnished the required information, which are

placed on record. The assessee had two pieces of agricultural land (i) Khasra No. 222/2, Manpur Nangalia, Tehsil Sanganer measuring total area 0.21 hectare, this piece of land was sold by assessee alongwith adjacent land belonging to others and assessee's share in sale consideration was Rs. 19,50,000/- which is not at all in dispute, and (ii) agricultural land at Khasra No. 747/1, 825, & 714 at Village Rampura, Tehsil Chaksu which was sold by assessee vide seven different sale deeds on 22-08-2013 for sale consideration of Rs. 1,75,50,400/- which is also not in dispute. The assessee did not shown any capital gain on transfer of said land(s) as she claimed that agricultural land (i) above is beyond 8 Km of Jaipur Municipal limit so provisions of section 2 (14) (iii) (b) (iii) are applicable as population of Jaipur is more than 10 lakhs and so land is agricultural and (ii) land at Chaksu Tehsil which has also Municipality and as Chaksu is having population of more than ten thousand but less than one lac and accordingly as per provisions of section 2 (14) (iii) (b) (1) the land is agricultural land which is situated beyond 2 Km from Municipal limits of Chaksu. In course of assessment proceedings the assessee obtained certificate from Tehsildar Sanganer in respect to land at (i) above in which it is specifically mentioned that the agricultural land sold by assessee were outside 8 Km of Municipal limit.

2.1 The A.O. to verify the claim of assessee sought information u/s 133(6) of I.T. Act, 1961 vide letter dated 18-07-2016 from Tehsildar, Sanganer and Tehsildar Chaksu in reply to which respective Tehsildar, Sanganer and Chaksu informed that the aerial distance of the agricultural land at village Manpur Nangalia (i) above from Jaipur Municipal Corporation is 7 Km and for agricultural land (ii) at village Rampura Tehsil,

Chaksu stated that it is approximately 2 Km from Chaksu Municipality. The A.O. thereafter issued show cause notice asking the assessee as to why the agricultural land sold by assessee during the year should not be considered as capital assets and capital gain should be computed accordingly.

2.2 The assessee replied to show cause notice and derived support from certificate issued to her by same authority Tehsildar, Sanganer certifying that agricultural land situated at Sanganer sold by assessee is beyond 8 Km from Municipal limits and for agricultural land situated at Chaksu, the Tehsildar, Chaksu stated that aerial distance is approximately 2 Km. The assessee claimed that the from Municipality of Chaksu which is having population of more than ten thousand but less than one lac and so according to provisions of section 2(14)(iii)(b)(1) the land is agricultural land as it is beyond 2 km from Municipal limits of Chaksu and, therefore, claim made by assessee in the return is correct.

2.3 In the alternative the assessee claimed that assessee has purchased new agricultural land within the same year utilizing sale consideration received and, therefore, benefit u/s 54B and 54F of the IT Act, 1961 is allowable as assessee has invested the entire sale consideration on purchase of new agricultural land situated at village Bilwa for Rs. 1,36,40,000/- and residential plot at A-13, Vijay Path Tilak Nagar, Jaipur for Rs. 1,29,35,000/-, which may be allowed to her. The A.O. thereupon held that *"the assessee has produced photocopy of certificate not original one which does not seems authentic certificate primarily and so I relied upon the information received under section 133 (6) of IT Act from Tehsildar (L.A.), Sanganer which reveals that aerial*

distance of the Khasra 228/2 is 7 Km from Jaipur Municipal Corporation." As regards alternate claim for allowing deduction u/s 54B and 54F, the A.O. held that *the benefit of exemption only allowable if same are claimed in return filed u/s 139 (1) of IT Act or in revised return u/s 139 (5) within prescribed time limit. The exemption cannot be claimed during the proceeding by filing the application. I put reliance on the case of* ***Goetz (India) Ltd. v CIT 1998 229 ITR*** *383 (SC) wherein Hon'ble Supreme Court held that additional claim cannot be made before the assessing officer as there is no provision under the income tax to make amendment in the return without filing revised return* and rejected the claim. The AO while finalizing assessment, determined long term capital gain at Rs. 1,41,61,587/- and included the same in the income of assessee and determined total income of assessee at Rs.1,62,96,787/-. Aggrieved by the order of the ld. CIT (A), the assessee preferred appeal before ld. CIT (A). The ld. CIT (A) after considering the written submissions filed by the assessee, which are reproduced in his appeal order dated 16.04.2024, sustained the addition.

Now the assessee is in appeal before us.

3. Before us, the ld. A/R of the assessee reiterated his submissions as made before the ld. CIT (A) and also placed ground-wise written submissions as under :-

" Ground No. (1)

1. That on the facts and in the circumstances of the case the ld CIT(A) is wrong, unjust and has erred in law in upholding finding recorded by the ld AO that agricultural land at vill Manpur Nanglia, Sanganer sold by the appellant during the year is a capital asset and not an agricultural land within meaning of sec. 2(14)(iii) of the IT Act, 1961 and therefore profit of Rs. 110887/- earned by the appellant on sale thereof is not exempt but chargeable to tax as Long term Capital gain.

1.1 It is evident from assessment order that assessee also filed before A.O. a copy of certificate from Tehsildar, Sanganer to the effect that impugned agricultural land is beyond 8 Km from Jaipur Municipal limit. The Ld. A.O. without finding any short coming therein issued a notice u/s 133 (6) of I. T. Act, 1961 to verify the claim made by assessee. The Tehsildar, Sanganer in reply to notice u/s 133 (6) vide letter dated 30-8-2016 stated that the said agricultural land is beyond 7 Km from Municipal limit of Jaipur which Ld. A.O. used in case of assessee and added the word aerial distance used in assessment order by himself which is not in the certificate issued by Tehsildar. It is submitted that when same Tehsildar issued two different certificates for the same agricultural land than Ld. A.O. should have examined the Tehsildar thereon and should have made enquiry that how distances were measured while issuing two different certificates. Thus if prima facie appears that Tehsildar issuing certificates on his whims without verifying the actual distance only on estimates as per dictate which cannot be relied. The distance is to be measured aerially as per law in force for A.Y. 2014-15 which can only be done scientifically by putting aerial line on khasra maps from municipal limit and should have attached with certificate so as to rely any certificate of distance. Thus reliance placed by Ld. A.O. on certificate issued by Tehsildar disregarding the certificate produced by assessee by same Tehsildar is wrong and bad in law.

1.2 Without prejudice to the above it is also submitted that Ld. CIT(A) in his order did not appreciate the correct facts of the case and given incorrect findings in the order. The Ld. CIT(A) at page no. 13 in last para of the order stated that "*appellant assessee itself provided the Tehsildar and Patwari certificate of the Sanganer land and it states that, the said land is outside 7 kms from the municipal limits, but as per section 2(14)(iii) of the Act the land should be more than 8 kms out the Municipal limits of Jaipur. Thus, the land in question cannot be considered as rural agricultural land and is thus found to be subject to Capital gain tax.*

The said finding given is grossly wrong and far from the facts of the case. The correct facts of the case are that above said certificate was issued by Tehsildar in response to notice issued u/s 133(6) of the I T Act, 1961 by Ld. Assessing Officer. The said fact is duly mentioned in the assessment order at para no. 4.3 (1). The said para of assessment order is reproduced by Ld. CIT(A) in his order at page no. 13 first para also but at the time giving the finding he misunderstood the facts. It is submitted that certificate produced by Appellant showing the land outside the 8 KM of municipal limits. The Ld. Assessing Officer only on the ground that appellant produced photocopy of the certificate and not original hence he cannot rely/authenticate the certificate. In view of the above facts duly verifiable from the assessment order and appeal order itself the Ld. CIT(A) recorded the findings on wrong footing. The Ld. CIT(A) is thus wrong and has erred in law in denying the claimed exemption.

Ground No. (2)

2. That on the facts and in the circumstances of the case the ld CIT(A) is wrong, unjust and has erred in law in upholding finding recorded by the ld AO that agricultural land at vill Rampura, Tehsil Chaksu sold by the appellant during the year is a capital asset and not an agricultural land within meaning of sec. 2(14)(iii) of the IT Act, 1961 and therefore profit of Rs. 14050400/- earned by the appellant on sale thereof is not exempt but chargeable to tax as Long term Capital gain.

2.1 The assessee claimed that said agricultural land is beyond 2 Km from Chaksu Municipality which has population of more than ten thousand but less than one lac. The Ld. A.O. obtained certificate from Tehsildar, Chaksu who stated that the land sold by assessee is at distance (aerial distance) of approximately 2 Km from outer limit of Municipality of Chaksu. It is submitted that word "distance (aerial distance) is approximately 2 Km beyond outer limit of Chaksu Municipality" covers the case of assessee who is stating that land is beyond 2 Km of Chaksu Municipal limit. The Ld. A.O. is wrong in drawing inference from the certificate that it states the land is within 2 Km at Chaksu Municipal limits. The word approx. 2 Km means that it is 2 Km distance. Thus the land sold by assessee is clearly agricultural land and as agricultural land is not a capital asset no capital gain is assessable in the hands of assessee. The Ld. A.O. in para – 3 has drawn wrong inference from dictionary meaning of 'approximate i.e. British dictionary is *"inexact number, relationship, or theory that is sufficiently accurate for a specific purpose"*. Similarly, as per oxford dictionary meaning of the approximate is *"Estimate or calculate (a quantity) fairly accurately" from both the definition it is clear that approximate indicate close to the actual*." The close to actual includes even small distance beyond 2 Km. and do not suggest only not more than 2 Km as held by Ld. A.O. The distance is to be measured aerially as per law in force for A.Y. 2014-15 which can only be done scientifically by putting aerial line on khasra maps from municipal limit and should have attached with certificate so as to rely any certificate of distance. It is submitted that Ld. A.O. is wrong in relying the said certificate issued by Tehsildar, Chaksu to hold that the land does not comes within the definition of Section 2 (14) (ii) of I. T. Act and same is capital asset which is to be held as agricultural land even as per certificate of Tehsildar.

2.2 It is further submitted that Ld. CIT(A), Udaipur (Camp at Jaipur) vide letter dated 23-01-2018 instructed Ld. AO for calling of remand in the case of her husband Shri Rakesh Kumar Vijay (Appeal No. 2/10988/2016-17) A.Y. 2014-15 having identical facts of the case as in case of appellant. The Ld. AO sought the report from Director RGDC, Survey of India and sent it to Ld. CIT(A) vide letter dated 22-07-2017. The Ld. CIT(A) vide letter dated 13-03-2018 forwarded copy of remand report alongwith report of Director RGDC, Survey of India to assessee for his comments. It is submitted that in respect to agricultural land at Khasra No. 747/1, 825 & 714 at village Rampura, Bujurg

Tehsil Chaksu the Ld. A.O. alongwith remand report sent letter No. 606/44-J-1 (Data supply) dated 07-02-2018 wherein in table given at the end at S.No. 2 the Director RGDC, survey of India has certified that the distance of said land from Jaipur Municipal limit is minimum 18.4 Km and maximum 19.7 Km and so the said land of assessee being agricultural land within the meaning of section 2 (14) and as it is not falling in exceptions given in Section 2 (14) (iii) (b) of I. T. Act, 1961 and therefore is not a capital asset. The land being agricultural land which is not a capital asset and hence no capital gain tax is leviable thereon u/s 45 of the Act and long term capital gain tax levied by Ld. A.O. on the sale of said agricultural land is wrong which deserves to be deleted.

It is thus prayed that the said land be held as agricultural land and not being capital asset not being liable to assess capital gain.

Ground No. (3)

3. That without prejudice to the ground No (1) & (2) above the ld CIT (A) in further wrong and has erred in law in confirming action of the ld AO is not allowing benefit of investment of Rs. 13640000/- and Rs. 12935000/- made by the appellant in agricultural land and residential house u/s 54B and 54F of the IT Act, 1961 respectively from long term Capital gain of Rs. 14161287/- assessed by him.

3.1 It is evident from assessment order that assessee put forth his claim for allowability of deduction u/s 54B and 54F before Ld. A.O. and produce before him copy of purchase deed of agricultural land for purchase of agricultural land for Rs. 1,36,40,000/- for allowable deduction u/s 54B and a copy of purchase deed of residential house for purchase of Residential House at Rs. 1,29,35,000/- for allowable deduction u/s 54F. It is submitted that Ld. A.O. found the claim of assessee as correct but in respect to claim he on the ground that claim is not made through revised return and by relying on judgement of *CIT Vs. Goetz (India) Ltd.* rejected the claim though assessee submitted details of the transactions. It is now settled law that A.O. should pass correct assessment as per law and cannot take benefit of any mistake committed by Ld. A.O. moreso for which claim made before A.O. was found correct. The decision of Supreme Court in Goetze (India) Ltd.'s case [2006] 284 ITR 323 (SC) is a short one rendered in the context of the order of the Tribunal as regards exercise of powers of rectification under section 254. The decision has also been understood in a number of decisions of the Tribunal that the decision could not refer to a case where a claim was made during the course of assessment. Even granting that the Assessing Officer could not have entertained the same where there had been a valid appeal or revision petition on such order, there could be no objection to jurisdiction of CIT (A)/ CIT in allowing the claim. When there is no bar for entertaining a new ground in appeal, it could hardly be the law that a legitimate claim made during a regular assessment after issue of notice under section 143 (2) could be shut

once unless a formal revised return is filed. Such an inference is contrary to established law since Goetzz (India) Ltd.'s case (Supra) cannot be understood de hors all the other binding decisions of the Supreme Court and the statutory law as to the scope of scrutiny assessment under section 143 (3) of the Act. Recently the Madras High Court in case of *CIT Vs. Adhinitha Foundation P. Ltd. (2017) 249 Taxman 37* – Copy of submitted after considering and analyzing various judgements on the issue held that "*the power of entertaining the claim vests with the Appellate Authorities based on the facts and circumstances of the case. The power of the Appellate Authorities to consider claims made based on material already on record is co-terminus with the power of the Assessing officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in law. Any other view will set at naught the plenary powers of appellate authorities. It is well settled that even if a claim made by the assessee does not form part of the original return or even the revised return, it can still be considered, if, the relevant material is available on record, either by the Appellate Authorities, which includes both the Commissioner (Appeals) and the Tribunal by themselves or on remand, by the Assessing officer.*

Further Hon'ble Bombay High Court in the case of CIT Vs Pruthvi Brokers & Shareholders Pvt. Ltd. (2012) 349 ITR 336, 23 Taxmann. Com 23 (Bom) dated 21-06-2012 *after taking cognizance of the judgment of the Hon□ble Supreme Court in the case of Goetze (India) Ltd. (supra) observed, that an assessee in the course of proceedings before the appellate authorities is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it.*

The Hon'ble Supreme Court of India in the case of Perlo telecommunications and Electric Components India P Ltd. (2022) 141 Taxmann. Com 388 (SC) held that "*where assessee-company had claimed certain amount of business expenditure under section 37(1) during original assessment proceedings and during scrutiny assessment had filed revised computation of income claiming further losses, since assessee had not claimed any additional deductions or exemption or made a fresh claim, such claim of expenditure made through revised computation should be considered by Assessing Officer on merit*

Further recently Hon'ble ITAT, Raipur Bench, Raipur (ITA No. 347/RPR/2014) dated 02-02-2022 having identical facts of the case held as under:-

Now, in the case before us, we find that the assessee at the time of filing of his returns of income u/s. 139(1) and u/s 148 of the Act had remained under a bonfaide belief that as the agricultural land in question i.e at Village Dharampura was situated beyond the municipal limits, and thus not a „capital

asset□, therefore, the gain on transfer of the same was not exigible to tax under the Act. Accordingly, backed by his aforesaid conviction, the assessee in our considered view had no occasion to have raised in his aforesaid returns of income filed u/s 139(1) and u/s 148 of the Act a claim for deduction u/s 54B w.r.t the investment that was made by him towards purchase of new agricultural lands. In fact, it was only after the aforesaid claim of the assessee for exemption of the gain on transfer of the agricultural land in question was scuttled by the A.O for the reason that the agricultural land in question was situated within the municipal limits, and thus, was a capital asset, that the assessee on account of such changed circumstances had raised the aforesaid claim for deduction u/s 54B of the Act. Insofar the declining of the assessee□s claim for deduction u/s 54B by the A.O is concerned, we are of the considered view, that as the same was raised by the assessee on the basis of a simpliciter claim in the course of the assessment proceedings and not by filing of a revised return of income, therefore, in the backdrop of the judgment of the Hon□ble Supreme Court in the case of Goetze (India) Ltd. (supra) no fault can be attributed to the A.O for refusing to entertain the said claim of deduction of the assessee. But then, the assessee remaining well within his rights had rightly raised the aforesaid claim for deduction u/s 54B before the CIT(Appeals), who in our considered view, remaining well within the realm of his jurisdiction had rightly entertained the assessee□s claim for deduction u/s 54B of the Act, and finding the same in order had directed the A.O to allow the same. Before parting, we may herein observe, that as our indulgence has been sought by the department only for adjudicating as to whether or not the CIT(A) was well within his jurisdiction to allow the assessee□s claim for deduction u/s 54B of the Act, despite the same not having been raised in the return of income, therefore, we are confining our adjudication to the said extent only. Accordingly, finding no infirmity in the order of the CIT(Appeals), who in our considered view remaining well within the realm of his jurisdiction had entertained the assessee□s claim for deduction u/s. 54B of the Act and directed the A.O to allow the same, we uphold his order. We, thus, finding no merit in the claim of the revenue that the CIT(A) had erred in allowing the assessee□s claim for deduction u/s 54B of the Act, dismiss the appeal.

There is an old Circular issued by the Central Board of Direct Taxes Circular No: 14 (XL-35) dated April 11, 1955. It states that:

"Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run,

benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department.

Thus in view of the above submission and settled position of law it is prayed that the claim of assessee is admissible and accordingly may kindly be allowed."

4. On the other hand, the ld. D/R supported the orders of the revenue authorities and submitted that the order of the ld. CIT (A) be upheld.

5. We have heard the rival contentions and perused the material available on record. The issue of sales of agricultural lands situated at Manpur Nangalia, Tehsil Sanganer and Rampura, Tehsil Chaksu are being adjudicated together. Regarding land sold at village Manpur Nangalia, Sanganer, the A/R submitted that during the course of assessment proceedings, appellant filed a Certificate from the Tehsildar Sanganer to the effect that the impugned agricultural land is situated beyond 8 km from Jaipur Municipal Limits. However, the AO without finding any shortcomings in the said certificate, issued a notice under section 133(6) of the Act, 1961 to verify the claim of the assessee to Tehsildar Sanganer. In reply to the said notice, the Tehsildar Sanganer stated that the aerial distance of the said agricultural land is beyond 7 km from Municipal Limits of Jaipur. Thus the Tehsildar has issued two different distances one is in the form of certificate and another in response to notice under section 133(6) in the form of letter for same agricultural land. In these circumstances, the AO should have examined the Tehsildar thereon and should also make enquiry from him that how the distances were measured while issuing two different distances for the same land. The AO did not make any enquiry to verify the correctness of position. The AO only on the

ground that the certificate filed by the appellant is in photo copy and not in original, held that the certificate furnished by the appellant cannot be relied on. Thus, prima facie it appears that Tehsildar Sanganer has issued certificates on his whims without verifying the actual distance only on estimates as per dictate which cannot be relied. The distance is to be measured aerially as per law in force for A.Y. 2014-15 which can only be done scientifically by putting aerial line on khasra maps from municipal limit and should have attached with certificate so as to rely any certificate of distance. Thus reliance placed by A.O. on certificate issued by Tehsildar, Sanganer is disregard of the certificate produced by assessee of the same Tehsildar, is without any basis and is wrong and bad in law.

5.1 Regarding land sold at village Rampura, Tehsil Chaksu, the assessee claimed that said agricultural land is beyond 2 Km from Chaksu Municipality which has population of more than ten thousand but less than one lac. On the other hand, the A.O. obtained certificate from Tehsildar, Chaksu who stated that the land sold by assessee is at distance (aerial distance) of **approximately** 2 Km from outer limit of Municipality of Chaksu. It is further noted from the record that during appeal proceedings the Ld. CIT (Appeals-2), Udaipur (Camp at Jaipur) vide letter dated 23-01-2018 called for the remand report from the AO in the case of assessee's husband Shri Rakesh Kumar Vijay (Appeal No. 2/10988/2016-17) A.Y. 2014-15 wherein identical facts relating to sale of adjoining agricultural land by husband of the appellant, as in case of appellant was involved. On the basis of instruction of ld. CIT (A-2), the AO sought the report from Director, Rajasthan Geo-Spatial Data Centre (RGDC), Survey of India, Jaipur vide letter

dated 30.01.2018 which is on record. On receipt of report from AO, the Ld. CIT(A-2) vide letter dated 13-03-2018 forwarded copy of remand report along with report of Director RGDC, Survey of India to assessee Shri Rakesh Kumar Vijay for his comments. It is verifiable from the said report that in respect to agricultural land at Khasra No. 747/1, 825 & 714 at village Rampura, Bujurg Tehsil Chaksu, that the Director, RGDC, Survey of India, Jaipur vide his letter No. 606/44-J-1 (Data supply) dated 07-02-2018 addressed to ACIT, Circle-5, Jaipur, wherein at Sl. No. 2 of the table has certified that the distance of said land from Jaipur Municipal limit is minimum 18.4 Km and maximum 19.7 Km. Thus the said land of assessee's husband is agricultural land within the meaning of section 2 (14) and as it is not falling in exceptions given in Section 2 (14) (iii) (b) of I. T. Act, 1961 and therefore is not a capital asset. Similar is the position in the case of assessee. Therefore, in the case of assessee before us, on the same identical facts that agricultural land of the assessee being adjoining to the agricultural land of the assessee's husband, the certificate issued by the Director, RGDC, Survey of India being authentic/reliable, correct and scientifically acceptable, is equally applicable. Therefore, relying on the certificate issued by the Survey of India, Government of India, we are of the considered opinion that the land being agricultural land in the case of assessee, situated at village Rampura, Chaksu is beyond 2 km of Municipal limit of Chaksu Tehsil and accordingly not a capital asset as per law. Hence no capital gain tax is leviable thereon u/s 45 of the IT Act, 1961. The long term capital gain tax levied by A.O. on the sale of said agricultural land is wrong and unjustified.

In view of the above discussion and evidence furnished by the ld. A/R, we find no justification to sustain the addition. Thus the additions made by the AO and sustained by the ld. CIT (A) in respect of both the agricultural lands are deleted.

5.2 Regarding the issue involving grant of deduction under section 54B and 54F, we have considered the submissions of the ld. A/R and perused the records placed before us. It is evident from assessment order that assessee has claimed exemption/deduction under section 54B and 54F of the IT Act, 1961 before A.O. and produced before him copy of purchase deed of agricultural land for purchase of agricultural land for Rs. 1,36,40,000/- and a copy of purchase deed of residential house for purchase of Residential House at Rs. 1,29,35,000/- for allowing deduction under section 54B and under section 54F respectively. The AO denied the claim of the assessee on the ground that the assessee has not claimed the deduction in return filed under section 139(1) of the IT Act, 1961 nor filed a revised return claiming the said deduction. The ld. A/R submitted that the facts have been mentioned in the total income computation statement filed along with the return claiming the fact that the agriculture lands are situated beyond the Municipal limits. However, complete documentary evidences of purchase of new assets have been filed during the course of assessment proceedings. The ld. A/R submitted that the AO found the claim of the assessee as correct, but denied the claim of the assessee by placing reliance on the decision in the case of Goetz (India) Ltd. vs. CIT on the ground that claim is not made through revised return, though assessee submitted details of the transactions. It is now settled law that A.O. should pass correct assessment as per law and cannot take benefit of any mistake

committed by assessee more so for which claim made before A.O. was found correct. The decision of Supreme Court in Goetze (India) Ltd.'s case [2006] 284 ITR 323 (SC) is a short one rendered in the context of the order of the Tribunal as regards exercise of powers of rectification under section 254. The decision has also been understood in a number of decisions of the Tribunal that the decision could not refer to a case where a claim was made during the course of assessment. The ld. A/R further submitted that when there is no bar for entertaining a new ground in appeal, it could hardly be the law that a legitimate claim made during a regular assessment after issue of notice under section 143 (2) could be denied unless a formal revised return is filed. Such an inference is contrary to established law since Goetze (India) Ltd.'s case (Supra) cannot be understood de hors all the other binding decisions of the Supreme Court and the statutory law as to the scope of scrutiny assessment under section 143 (3) of the Act. Recently, the Hon'ble'ble Madras High Court in case of *CIT Vs. Adhinitha Foundation P. Ltd. (2017) 249 Taxman 37 (Madras)* after considering and analyzing various judgements on the issue held that "*the power of entertaining the claim vests with the Appellate Authorities based on the facts and circumstances of the case. The power of the Appellate Authorities to consider claims made based on material already on record is co-terminus with the power of the Assessing officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in law. Any other view will set at naught the plenary powers of appellate authorities. It is well settled that even if a claim made by the assessee does*

not form part of the original return or even the revised return, it can still be considered, if, the relevant material is available on record, either by the Appellate Authorities, which includes both the Commissioner (Appeals) and the Tribunal by themselves or on remand, by the Assessing officer. In support of the claim of the assessee, the ld. A/R placed reliance on the following case laws :-

(1) Hon'ble Bombay High Court in the case of CIT Vs Pruthvi Brokers & Shareholders Pvt. Ltd. (2012) 349 ITR 336, 23 Taxmann. Com 23 (Bom) dated 21-06-2012 *after taking cognizance of the judgment of the Hon"ble Supreme Court in the case of Goetze (India) Ltd. (supra) observed, that an assessee in the course of proceedings before the appellate authorities is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it.*

(2) The Hon'ble Supreme Court of India in the case of Perlo telecommunications and Electric Components India P Ltd. (2022) 141 Taxmann. Com 388 (SC) held that "*where assessee-company had claimed certain amount of business expenditure under section 37(1) during original assessment proceedings and during scrutiny assessment had filed revised computation of income claiming further losses, since assessee had not claimed any additional deductions or exemption or made a fresh claim, such claim of expenditure made through revised computation should be considered by Assessing Officer on merit*

(3) Further recently Hon'ble ITAT, Raipur Bench, Raipur (ITA No. 347/RPR/2014) dated 02-02-2022 having identical facts of the case held as under:-

Now, in the case before us, we find that the assessee at the time of filing of his returns of income u/s. 139(1) and u/s 148 of the Act had remained under a bonfaide belief that as the agricultural land in question i.e at Village Dharampura was situated beyond the municipal limits, and thus not a „capital asset", therefore, the gain on transfer of the same was not exigible to tax under the Act. Accordingly, backed by his aforesaid conviction, the assessee in our considered

view had no occasion to have raised in his aforesaid returns of income filed u/s 139(1) and u/s 148 of the Act a claim for deduction u/s 54B w.r.t the investment that was made by him towards purchase of new agricultural lands. In fact, it was only after the aforesaid claim of the assessee for exemption of the gain on transfer of the agricultural land in question was scuttled by the A.O for the reason that the agricultural land in question was situated within the municipal limits, and thus, was a capital asset, that the assessee on account of such changed circumstances had raised the aforesaid claim for deduction u/s 54B of the Act. Insofar the declining of the assessee"s claim for deduction u/s 54B by the A.O is concerned, we are of the considered view, that as the same was raised by the assessee on the basis of a simpliciter claim in the course of the assessment proceedings and not by filing of a revised return of income, therefore, in the backdrop of the judgment of the Hon"ble Supreme Court in the case of Goetze (India) Ltd. (supra) no fault can be attributed to the A.O for refusing to entertain the said claim of deduction of the assessee. But then, the assessee remaining well within his rights had rightly raised the aforesaid claim for deduction u/s 54B before the CIT(Appeals), who in our considered view, remaining well within the realm of his jurisdiction had rightly entertained the assessee"s claim for deduction u/s 54B of the Act, and finding the same in order had directed the A.O to allow the same. Before parting, we may herein observe, that as our indulgence has been sought by the department only for adjudicating as to whether or not the CIT(A) was well within his jurisdiction to allow the assessee"s claim for deduction u/s 54B of the Act, despite the same not having been raised in the return of income, therefore, we are confining our adjudication to the said extent only. Accordingly, finding no infirmity in the order of the CIT(Appeals), who in our considered view remaining well within the realm of his jurisdiction had entertained the assessee"s claim for deduction u/s. 54B of the Act and directed the A.O to allow the same, we uphold his order. We, thus, finding no merit in the claim of the revenue that the CIT(A) had erred in allowing the assessee"s claim for deduction u/s 54B of the Act, dismiss the appeal.

There is an old Circular issued by the Central Board of Direct Taxes Circular No: 14 (XL-35) dated April 11, 1955. It states that:

> "Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department.

Thus in view of the above discussions and considering the various judgments referred herein above, we are of the view that the assessee is entitled to benefit of exemption/deduction under section 54B and 54F in respect of investments made in purchase of agricultural land and residential house purchased by the assessee.

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

Order pronounced n the open court on 30/09/2024.

Sd/-	Sd/-
(राठौड़ कमलेश जयंतभाई)	(संदीप गोसाई)
(RATHOD KAMLESH JAYANTBHAI)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/09/2024.

Das/

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

1. अपीलार्थी / The Appellant- Smt. Munni Devi Vijay, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-5, 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 No. 678/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar