

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

(HYBRID HEARING)

**I.T.A. No. 354/Asr/2024
Assessment Year: 2012-13**

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| ITO, Muktsar. (Appellant) | Vs. | Ajaib Singh, Village Bharu, Tehsil Gidderbaha, Distt. Muktsar, Punjab. [PAN:-DKGPS8536E] (Respondent) |
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| Appellant by | Sh. P.N. Arora, Adv. |
| Respondent by | Sh. Bharat Bhushan Garg, CIT. DR |

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| Date of Hearing | 08.04.2025 |
| Date of Pronouncement | 30.06.2025 |

ORDER

Per: Udayan Dasgupta, J.M. :

This appeal filed by revenue against order of Ld. CIT (A), NFAC, Delhi, u/s 250 of the act 61, dated 18/12/2023, which has arisen out of the order of the AO Ward-2(5) Muktsar passed u/s 143(3) dated 28.12.2019.

Condonation of Delay:

2. It is seen that this appeal has been filed belatedly by 117 days (one hundred seventeen days). An application for condonation of delay has been filed by the ITO Ward 2(2) Muktsar stating that on account of some technical glitch in the system,

the order passed by the Id. CIT(A) dated 18.12.2023 was not visible on the ITBA system. Subsequently pursuing the recovery of tax under the high demand category, the status of pending appeal was checked on the ITBA Portal and it came to knowledge of the AO that the Id. CIT(A) has already passed the order deciding the case in favour of the assessee. Thereafter necessary procedure has been followed by the AO for filing of second appeal and approval has been obtained from higher authorities on 29.05.2024 and the appeal has been filed before the Tribunal on 12.06.2024 belated by 117 days. It was submitted that since the delay has arisen because of technical glitch in the portal, the same may please be condoned and the appeal may please be admitted to be heard on merits.

2.1 Considering the reasons contained in the application for condonation of delay, we condone the delay and admit the appeal to be heard on merits.

3. The grounds of appeal in Form No. 36 are as under:

“(i) On the facts & circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs.3,68,15,000/- made on account of long term capital gain on sale of residential land.

(ii) The Ld. CIT(A) erred in not accepting the version of the AO that as per Girdauri record (Crop sown record maintained by state govt.), the agricultural activities prior to sale were made on land measuring 10 Kanai 4 Marla and balance land 12 Kanai 18 maria is shown as “Gair Mumkin” and hence condition u/s 54B that “Land in question is being used for agriculture

purposes in the two years immediately preceding the date on which transfer took place is not satisfied.

(iii) The Ld. CIT(A) has erred in not accepting the facts that the state revenue authority passed order that the land in question was residential and sold in the shape of cutting plots.

(iv) Without prejudice to the above, there is no evidence on record that this land is “agriculture land” capital assets as defined u/s 2(14)(iii) of the IT Act 1961.

(v) The appellant craves leave to add or amend any ground of appeal before the appeal is finally heard or disposed off.”

4. Brief facts emerging from record are that the assessee is an agriculturist and is about 92 years old, and his source of income is only from agricultural activities carried out on ancestral agricultural land. During the F.Y. 2011-12 the assessee has sold his agricultural land measuring 23 kanal and 2 marla vide registered deed of sale dated 09.12.2011 and on 12.12.2011 for an amount of Rs.3.72 crores. From sale proceeds of this agricultural land the assessee purchased another land in the name of himself and other family members and claimed deduction u/s 54B of the Act. It is however, noted by the AO that the assessee has claimed to have sold the agricultural land, but the same has been reported and mentioned as residential in the order passed by the State Government Stamp Duty Officer under the Stamp Duty Act. As such, the AO was of the opinion that since the land has been recorded as residential in the order of the State Revenue authorities, the assessee

is not entitled to the claim of benefit u/s 54B of the Act. It is further observed by the AO that on the basis of documentary evidence and *Girdawari* record of land revenue furnished by the assessee, agricultural activities were carried out on some part of the land measuring *10 kanal and 4 marla* and the balance portion of the land was shown as *gairmumkin land*. As such, the AO concluded that the assessee has sold *non-agricultural capital asset* worth Rs.3.92 crores during the previous year and long term capital gains tax is payable by the assessee as per the computation of income reproduced in the assessment order where long term capital gains has been assessed as Rs.3,68,15,000/-, as per order u/s 143(3).

4. The matter was carried in appeal before the first appellate authority. The Id. CIT(A) NFAC, deleted the addition by holding as follows:

“3. *The Assessee is an individual and is an agriculturist. The Assessee and his family are earning agricultural income from their ancestral agricultural land. During the previous year relevant for the A.Y. 2012-13 the Assessee had sold agricultural land measuring 23 Kanai 2 Marla vide registered sale deeds dated 12.12.2011. The said land was being used for agriculture from the year 2006-07 upto the date of sale. The said land was sold at Rs. 1,36,00,000/- per acre and the total sale consideration for 23 Kanai 2 Marla is Rs.3,92,70,000/-. The Assessing Officer observed that as per information available, the Assessee had made cash deposit of Rs.27,00,000/- in his bank account. Since, the Assessee had not filed the Return of Income,*

the Assessing Officer after recording reasons and obtaining approval of PCIT issued a notice u/s 148. In response to the notice the Assessee filed Return of Income on 27.04.2019 declaring agricultural income of Rs.1,92,580/- and nil taxable income.

3.1 The Assessing Officer on scrutinising the sale deeds of the land sold by the Assessee noted that the land is mentioned as being agricultural. However, the Assessee had filed complained against the purchaser with the Additional Deputy Commissioner, Muktsar that they have got the land registered on a very low rate than the actual consideration received by him from the purchaser. Accordingly, the matter was taken up under the Stamp Act and orders were passed re-fixing the Stamp Duty after categorising it as residential. Thus, the Assessing Officer held that the said land was residential and therefore is a capital asset in terms of Section 2(14). Thereafter, the Assessing Officer computed the Long Term Capital Gain at Rs.3,68,15,000/-. The Assessee had submitted that the sale consideration received by him was utilised for purchase of 24 acres 1 Kanai agricultural land at village Daulatpura, Tehsil Abohar for Rs.3,73,48,255/- and claimed benefit of section 54B. The Assessing Officer denied the benefit of section 54B holding that the same is not allowable against the sale of a capital asset other than agricultural land. The Assessing Officer passed an order u/s 143(3) r.w.s. 147 dated 28.12.2019 assessing the Long Term Capital Gain at Rs.3,68,15,000/-. Aggrieved by the said order the Assessee has instituted the current appeal.”

5. Thereafter, in para no. 5.1 in appellate order the Id. CIT(A) has observed as follows:

“5.1 1 As per Section 54B(1) any capital gain arising out of transfer of land, being used for agricultural purposes in the two years immediately preceding the date on which the transfer took place, is utilised for purchase of any other land for being used for agricultural purposes then the Assessee is entitled to benefit of deduction of the amount so invested. The Assessing Officer’s interpretation that the benefit of section 54B is available on the sale of agricultural land is not correct. The benefit of section 54B is available for any land which is utilised for the purpose of agriculture for atleast two years immediately preceding the date on which the transfer took place. In the instant case it is not disputed that the appellant was cultivating the said land. The appellant in his written submissions has produced the revenue record as proof of doing agriculture in the said land. Further, the appellant had submitted copies of sale deeds evidencing purchase of 24 acres 1 Kanai agricultural land at village Daulatpura, Tehsil Abohar for Rs.3,73,48,255/- by him. Therefore, the appellant is entitled for benefit u/s 54B of the total sale consideration received by him. In view of the above facts the appellant is entitled for deduction u/s 54B. Accordingly, the Assessing Officer is directed to allow the claim of the Appellant-Assessee u/s 54B. The appeal on this ground is allowed.”

6. In course of hearing the ld. DR relied on the assessment order and submitted that as per *Girdawari record (Crops Sown record maintained by state government)* the agricultural activities prior to sale were made on the land measuring (10 kanal 4 marla and the balance land of 12 kanal 18 marla) shown as “*Gair mumkin*” land and hence condition u/s 54B that land in questions is being used for agricultural purpose in the two years immediately preceding the date on which transfer took place, is not satisfied.

6.1 He further submitted that the land was sold in the shape of various plots and there was no evidence on record that the land is *agricultural land* and as such, he argued that the sale of this non-agricultural land will result in taxable capital gains and the AO was justified in arriving at treating the said transaction of sale being sale of capital asset and determining the taxable capital gains on the same. He prayed that the order of the AO may please be restored.

7. Per contra, the ld. AR of the assessee submitted that the assessee has sold agriculture land measuring 23 kanal 2 marla on 12.12.2011 for Rs.3.72 crore and subsequently the assessee has purchased agricultural land measuring 193 kanal at village Daulatpur, Abohar, in his name and in the name of his family members for Rs.3.73 crore vide purchase deed dated 09.05.2012 and has claimed the benefit u/s 54B.

7.1 He further submitted that since the purchase price of the new land was more than the sale proceeds of the old land (original asset) there cannot be any capital gains on such sale as per provision of section 54B(1)(ii). He further relied on the judgment of jurisdictional High Court in the case of *CIT vs. Gurnam Singh in ITA 616/2007 order dated 01/04/2008 reported in 327 ITR 278* where it has been held by the Hon'ble Court that purchase of another piece of land in the joint name of the assessee and his son or for that matter the investment of the sale proceeds of land (original asset) in purchasing any other land for agricultural use, in such cases, benefit u/s 54B cannot be denied, merely because the land was purchased in joint name of family members.

8. The Id. AR further submitted that in the instant case, the revenue authorities has prepared a report after the sale of land by the revenue authorities by the SDM bearing no. 8420 dated 06.01.2015 declaring the land to be non-agricultural land. On this issue the argument of the Id.AR is that the nature of the land should be considered, as it is, at the time of sale and not thereafter and in the instant case, on the date of sale the said land was agricultural land, as per records.

8.1 Regarding the issue raised by the Id. DR regarding the activity carried out on the said land, he referred to the copy of the *jamabandi of agricultural land (which is placed in paper book page 22)* which is signed by the Patwari and the translated English language is placed in *paper book page 22A* (duly certified by the Advocate

where the full description of the name of the owner of the land in column no. 3 is stated as Ajaib Singh S/o Mal Singh and it is described to be under self-cultivation and the area of land is stated as 30 kanal and the name of crops that are cultivated on such land is stated as *cotton, paddy and wheat* and the same details are also available in the *F.Ys. 2007-08 to 2011-12* which proves that the particular land was under cultivation for more than last two years (*this documentary evidence has been stated to be submitted before the AO and also before the Id. CIT(A) and it is also certified to be a true copy by the Advocate of the assessee under his stamp and signature. (The said copy is also made a part of this order):*

8.2 Since the original is in regional language, we consider the contents of this English translation as true and correct, as read out by the Id. Advocate of the assessee Mr. P.N. Arora, in course of hearing which is duly stamped and signed by the Advocate, post hearing in our presence, and is made a part of this order.

8.3 This proves that the entire land (original asset) transferred by the assessee was under agricultural activity, where various crops were grown, for more than two years preceding.

12-19-1860

(Translation from Persian into English)

| Serial No. | Name of Sice or Field or Well | Full description name of owner & number in Nagar 340 | Full description of sully or name & Khotan No. | Area of Lane | Grid of land according previous land record | Cult. (Arable) | | Tahsil | | Circar | | Dist. (Arable) | | Cult. (Arable) | | Dist. (Arable) | | Cult. (Arable) | | Dist. (Arable) | |
|------------|-------------------------------|--|--|--------------|---|----------------|-------|--------|-------|--------|----|----------------|-------|----------------|-------|----------------|----|----------------|-------|----------------|-------|
| | | | | | | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | |
| 10 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 11 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 12 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 13 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 14 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 15 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 16 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 17 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 18 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 19 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 20 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 21 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 22 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 23 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 24 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 25 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 26 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 27 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 28 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 29 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |
| 30 | above | above | above | 7-4 | 11 | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat | Wheat | X | Wheat |

Hard Work count..... is recovered.
 Note:- The upper rate of labour will not be related to the work but will be calculated without the extra

9. Now, considering the above documentary evidence, we are also in agreement with the observation of the Id. CIT(A) that benefit u/s 54B is available on the sale of land where agricultural activity was carried out for the last two years, immediately preceding the date of transfer, and the sale proceeds in this case, has also been utilized for the purchase of another land which is again used for agriculture purpose by the assessee and as such, the assessee is entitled to the benefit of claim u/s 54B of the Act for the purpose of section 45 of the Act. As such, we uphold the order of the Id. CIT(A) and the appeal of the revenue is dismissed as devoid of merits.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced on 30.06.2025 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-

(KRINWANT SAHAY)
Accountant Member

Sd/-

(UDAYAN DASGUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order