

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No. 854/Ind/2024
Assessment Year : 2015-16

Goverdhan Lal Yadav, 112/12, Nanda Nagar, Opp. Anoop Takies, Indore	<u>बनाम/</u> Vs.	ITO-3(5) Indore
(Revenue / Appellant)		(Assessee / Respondent)
PAN: AAYPY9432A		
Assessee by	Shri Venus Rawka, AR	
Revenue by	Shri Anoop Singh, CIT-DR	
Date of Hearing	22.07.2025	
Date of Pronouncement	24.07.2025	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 09.04.2024 passed by learned Commissioner of Income-tax (Appeal), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 11.12.2017 passed by ITO, 3(5), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the assessee has filed this appeal on following effective grounds:

"1. That the Ld. CIT(A) erred in law and the facts of the case and confirmed the assessed total income at Rs.3,10,13,610/- under section 143(3) of the Income Tax Act 1961 as against the return income at Rs.49,130/-.

2. That the Ld. CIT(A) erred in law and the facts of the case and confirmed the disallowance of exemption claimed u/s 54B of the Income Tax Act, at Rs.3,09,64,475/- without considering full facts and reasoning. The addition made is totally wrong and illegal on the facts of the case."

2. The registry has informed that the present appeal is delayed by 157 days and therefore time-barred. Ld. AR for assessee submitted that the assessee has filed a condonation-application supported by an affidavit. Referring to same, Ld. AR explained (i) that the assessee is an agriculturist and not adequately educated and that is why mentioned "No" against "Whether notices/ communication may be sent on mail?" in Form No. 35 filed to CIT(A). Despite this, the notices of hearing as well as order of first-appeal were sent by CIT(A) on the e-mail; (ii) that neither the notices nor the order of first-appeal have been served physically upon the assessee; and (iii) that it is when the Income-tax Department initiated recovery proceedings against assessee that the assessee searched the matter and came to know about the impugned order having been passed *ex-parte* by CIT(A). Immediately, the assessee filed present appeal on 04.12.2024 without further delay. Ld. AR very humbly submitted that there is no lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He further submitted that the sole reason of delay is as explained in the condonation-application. He submitted that there is "sufficient cause" for delay and hence the delay should be condoned. On merit of appeal, Ld. AR

submitted that the AO has assessed capital gain in the hands of assessee from sale of land without giving exemption u/s 54B but the assessee was 1/3rd co-sharer in the impugned capital gain and assessee's brother "Shri Rajendra Singh Yadav" was another co-sharer having 1/3rd share and the case of assessee's brother having identical facts and controversy has already been decided by ITAT, Indore. Therefore, the assessee's case is well covered by decision of ITAT, Indore and having full merit. Ld. DR for Revenue expressed no objection against condonation of delay and left the matter to the wisdom of Bench. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a "sufficient cause" for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a "sufficient cause" for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in ***Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387*** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the facts of case, the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

3. The background facts leading to this appeal are such that the assessee-individual filed return of AY 2015-16 declaring a total income of Rs.

49,130/- . In the return so filed, the assessee declared capital gain from sale of an agricultural land after claiming exemption u/s 54B. The case of assessee was subjected to scrutiny-assessment due to large claim of exemption. During proceedings, the AO found that the assessee, jointly with his two brothers, sold an agricultural land situated at Gram Tigriya Badshah, Indore on 10.12.2014 for a consideration of Rs. 9,31,38,041/-. The assessee declared 1/3rd share in land at Rs. 3,10,46,013/- against which claimed indexed cost of acquisition of Rs. 81,538/-, leaving net capital gain of Rs. 3,09,64,475/-. From such capital gain, the assessee claimed exemption u/s 54B of Rs. 3,09,64,475/- on the strength of investment in another agricultural land situated at Gram Bijukhedi, Indore purchased for Rs. 3,11,00,000/- on 22.08.2016. When the AO asked assessee to explain the exemption claimed, the assessee submitted details of purchase of aforesaid new agricultural land for which exemption u/s 54B had been claimed. The AO, however, disallowed exemption to assessee. Aggrieved, the assessee carried matter in first-appeal and contested the issue of availability of exemption u/s 54B. However, the assessee could not participate in the hearings fixed by CIT(A) and therefore the CIT(A) dismissed assessee's appeal on account of non-prosecution and upheld AO's order. Now, the assessee has come in this appeal.

4. Ld. AR for assessee submitted that the controversy in present case relates to the denial of exemption u/s 54B by AO. He submitted that this controversy as well as the underlying facts and figures are exactly same as

involved in assessee's brother **Shri Rajendra Singh Yadav's** case, ITA No. **152/Ind/2024** decided by Co-ordinate Bench of ITAT, Indore vide order dated **07.10.2024** (except one difference that in assessee's case, the CIT(A) has dismissed first-appeal due to non-prosecution and therefore assessee has come in present appeal whereas in Shri Rajendra Singh Yadav's case, the CIT(A) himself allowed assessee's claim and the revenue was in appeal before ITAT). Ld. AR pointed out that the assessee was having 1/3rd share in the very same lands (sold as well as newly invested) and his brother Shri Rajendra Singh Yadav was also having 1/3rd share. He submitted that the reasoning assigned by AO for denial of exemption to assessee, is also same i.e. the assessee did not deposit money in Capital Gain Deposit Scheme, 1988 and straightaway made investment in new land. Therefore, the decision in Rajendra Singh Yadav would equally apply to assessee. For immediate reference, we re-produce below the order passed by ITAT in **Rajendra Singh Yadav (supra)** being relied by Ld. AR:

"2. The background facts leading to this appeal are such that the assessee-individual filed return of AY 2015-16 declaring a total income of Rs. 4,64,460/-. In the return so filed, the assessee declared capital gain from sale of an agricultural land after claiming exemption u/s 54B. The case of assessee was subjected to scrutiny-assessment due to large claim of exemption. During proceedings, the AO found that the assessee, jointly with his two brothers, sold an agricultural land situated at Gram Tigriya Badshah, Indore on 10.12.2014 for a consideration of Rs. 9,31,38,041/-. The assessee declared 1/3rd share in land at Rs. 3,10,46,013/- against which claimed indexed cost of acquisition of Rs. 81,538/-, leaving net capital gain of Rs. 3,09,64,475/-. From such capital gain, the assessee claimed exemption u/s 54B of Rs. 3,09,64,475/- on the strength of investment in another agricultural land situated at Gram Bijukhedi, Indore purchased for Rs. 3,11,00,000/- on 26.08.2016. When the AO asked assessee to explain the exemption claimed, the assessee submitted details of purchase of aforesaid new agricultural land for which exemption u/s 54B had been claimed. Additionally, the assessee also made a new claim of exemption u/s 54F on the basis of another

investment of Rs. 16,44,370/- in a residential house property. The AO allowed exemption u/s 54F to assessee but disallowed the exemption u/s 54B. Aggrieved, the assessee carried matter in first-appeal and contested the issue of availability of exemption u/s 54B. The CIT(A) accepted assessee's claim. Now, the revenue has come in this appeal.

3. Heard the learned Representatives of both sides and case records perused.

4. In Para 3 to 5 of assessment-order, the AO has noted that the assessee sold agricultural land on 10.12.2014 during the financial year 2014-15 relevant to AY 2015-16 and made investment in new agricultural land on 26.08.2016. Thus, the new investment has been made within the prescribed period of 2 years in section 54B which is not disputed by AO. However, the sole reason of denial of exemption u/s 54B as assigned by AO in assessment-order is such that assessee did not follow the procedure of depositing capital gain in Capital Gain Deposit Scheme by the due date for filing of return u/s 139(1) for AY 2015-16. The AO is of the view that the proper procedure would have been to deposit money in Capital Gain Deposit Scheme before due date u/s 139(1) and thereafter utilize such deposited money in new investment within 2 years.

5. The CIT(A) has, in first-appeal, accepted assessee's submission that the section 54B is a beneficiary provision and must be interpreted in a beneficial manner. He accepted that the purpose of section 54B is to encourage re-investment in agricultural land which stands satisfied. The CIT(A) relied upon certain decisions and granted exemption u/s 54B holding that the investment has been ultimately made in new land within the stipulated period of section 54B.

6. During hearing before us, Ld. DR for revenue/appellant supported the order of AO. Per contra, Ld. AR for assessee/respondent relied upon order of CIT(A).

7. We have considered rival submissions of both sides and perused the orders of lower-authorities and facts of case in the light of judicial view. The undisputed fact is that the assessee has made investment in new agricultural land within the prescribed period of 2 years as per section 54B. The only point is that the assessee has not followed the route of Capital Gain Deposit Scheme while making such investment. This very situation has been directly dealt in following cases where it has been held that the exemption provision is a beneficial law and the benefit of same cannot be denied on hyper-technical ground of procedural lapse where the assessee has made investment in new asset within the prescribed period:

- (i) ITAT, Delhi in Ms. Sarita Gupta Vs. PCIT, ITA No. 1174/Del/2022 order dated 07.12.2023
- (ii) ITAT, Banglore in Sri Ramaiah Dorairaj Vs. ITO, Bangalore, ITA No. 1899/Bang/2018 order dated 09.12.2020

8. *The view taken by CIT(A) is supported by above decisions of ITAT benches. Therefore, we do not find any illegality in the order of CIT(A) granting exemption u/s 54B to assessee. Accordingly, the order of CIT(A) is hereby upheld and the revenue's appeal is dismissed being devoid of merit.*

9. *Resultantly, this appeal is dismissed."*

5. Ld. DR for revenue did not controvert the factual aspect that the assessee's case is covered by aforesaid order of ITAT, Indore in assessee's brother **Shri Rajendra Singh Yadav (supra)**. But he contended that in the said order, the ITAT, Indore has relied upon two decisions, namely (i) *ITAT, Delhi in Ms. Sarita Gupta Vs. PCIT, ITA No. 1174/Del/2022 order dated 07.12.2023* and (ii) *ITAT, Bangalore in Sri Ramaiah Dorairaj Vs. ITO, Bangalore, ITA No. 1899/Bang/2018 order dated 09.12.2020*. He submitted that the **Sarita Gupta's** case dealt by ITAT, Delhi was concerned with 263 proceeding and therefore, the said decision *per se* does not apply. Further, in **Shri Ramaiah Dorairaj's** case, the ITAT Bangalore has merely held that the provision of section 54B is beneficial and accordingly given benefit to assessee but the ITAT, Bangalore has not given a thoughtful adjudication that there is a legal requirement in section 54B which requires the assessee to deposit money in a separate a/c under Capital Gain Deposit Scheme, 1988 [if not utilized by the due date for filing of return u/s 139(1)] and thereafter invest money in new land by withdrawing from such a/c. Therefore, he submitted, the decision is particular for ITAT, Bangalore Bench only. With these arguments, Ld. DR submitted that ITAT Indore's decision in **Rajendra Singh Yadav (supra)**, which in turn is based on decisions of ITAT, Delhi and ITAT, Bangalore, should not be considered as a

precedent and the order passed by AO denying the benefit of section 54B to assessee must be upheld. Ld. DR also made an alternative plea that the order of CIT(A) is ex-parte due to non-prosecution by assessee, therefore also the assessee's present appeal must be dismissed.

6. We have considered rival submissions of both sides and carefully perused the case record. There is no dispute that the facts of present case of assessee are identical with the facts of **ITA No. 152/Ind/2024** in assessee's brother **Shri Rajendra Singh Yadav (supra)**. In fact, the assessee and his brother Shri Rajendra Singh Yadav were co-shares, each one having 1/3rd share in the very same transactions of capital gain. Therefore, the decision of ITAT, Indore already rendered in **Shri Rajendra Singh Yadav** shall apply. However, Ld. DR for revenue has made a good effort to plead that the said decision should not be applied to present appeal. Hence, we would like to deal Ld. DR's pleading in next paras.

7. Ld. DR has submitted that the decision of ITAT, Delhi in **Sarita Gupta (supra)** was concerned with limited purpose of adjudicating a case of revision u/s 263. It is true that the said decision dealt a case of section 263 but on a careful reading of the para 5 of order, we find that the ITAT has vehemently adjudicated that when the basic condition (i.e. making new investment within the period specified in section 54) is satisfied, the assessee remains entitled to claim the deduction. The relevant para of ITAT's order is re-produced below:

*"5. We have considered rival submissions and perused the materials on record. From the order sheet maintained by the Assessing Officer in the assessment record, it is evident that in course of assessment proceedings, the Assessing Officer has thoroughly examined the issue of sale of the immovable property and the resultant capital gain arising from such sale. In fact, in order-sheet entry dated 18.06.2019, the Assessing Officer has clearly stated that assessee's counsel has furnished written reply, sale deed, copy of purchase of property and computation of capital gain. In the said order sheet, the Assessing Officer has also called upon the assessee to furnish the details of exemption claimed under section 54 with supporting evidences. Thus, as could be seen from the order-sheet entries in the assessment record, the Assessing Officer has duly examined the issue relating to capital gain from sale of property as well as assessee's claim of deduction under section 54 of the Act. A perusal of the show-cause notice issued under section 263 of the Act as well as the order passed under the said provision clearly reveal that the revisionary authority has not expressed any doubt regarding the quantum of capital gain arising at the hands of the assessee and also the fact that such capital gain was invested in purchase/construction of residential house within the time limit prescribed under section 54(1) of the Act. Only because the capital gain was not deposited in the capital gain account scheme, the revisionary authority has treated the assessment order to be erroneous and prejudicial to the interest of Revenue. **In our view, learned PCIT has adopted a hyper-technical approach while dealing with the issue. When the basic conditions of section 54(1) has been satisfied, in our view, the assessee remains entitled to claim the deduction under section 54 of the Act.** In any case of the matter, there is no prejudice caused to the Revenue as the assessee in terms of section 54(1) of the Act is entitled to deduction."*

[Emphasis supplied]

On further research during dictation of this order, we have come to know that the above decision of ITAT, Delhi has been approved by **Hon'ble High Court of Allahabad in PCIT Vs. Ms. Sarita Gupta Neutral Citation No. 2024:AHC:75593:DB**. We re-produce below Para 8 of Hon'ble High Court's order reading as under:

*"8. We find, there is no material to doubt the correctness of the findings recorded by the Tribunal. While procedural lapse may have been caused by the assessee in observing the provision of **Section 54** of the Act, in absence of real prejudice having arisen to the revenue, upon claim capital gain having been allowed by the Assessing Officer the Tribunal may have rightly allowed the assessee's appeal."*

8. Ld. DR has also submitted that the decision of ITAT, Bangalore in **Shri Ramaiah Deorairaj (supra)** is a particular decision applicable to Bangalore bench only. On a careful reading of order of ITAT, we find that the ITAT, Bangalore has reached a conclusion in favour of assessee after considering judicial precedents of different appellate forums. We re-produce below the relevant portion of order:

"3. The facts of the case are that the assessee filed Return of Income for the Assessment Year 2013-14 on 3.3.2014 declaring income at Rs. 3,46,640. In the Return of Income, the assessee claimed deduction Under Section 54F of the Act. The claim of the deduction Under Section 54F was denied by the Assessing Officer on the reason that the assessee has not deposited the net sale consideration in Capital Gain Scheme Account which is a clear violation provisions of Section 54F(4) of the Act. On appeal, the CIT (Appeals) observed that the assessee has not deposited the net sale consideration in Capital Gain Scheme Account during the intermittent period of construction of residential house and he confirmed the order of the Assessing Officer and dismissed the assessee's appeal. Aggrieved by the assessee filed an appeal before us.

4. The learned Authorised Representative submitted that the assessee has finally invested the net sale consideration in the construction of new residential house within the stipulated period though the assessee was failed to keep the net sale consideration in Capital Gain Scheme Account. According to him, non-depositing of fund in prescribed Capital Gain Scheme Account cannot go against the assessee when the assessee has fully utilized the net sale consideration in the construction of new residential house. The Id. AR further submitted that the investment of net sale consideration in new residential property within a period of three years from the date of sale of the property is important rather than keeping the net sale consideration in separate Capital Gain Scheme Account as notified by the Central Government. For this purpose he relied on the following judgements:

- 1. CIT Vs. K Ramachandra Rao (2015) 56 taxmann.com 163 (Kar)*
- 2. CIT Vs. Smt. B S Shanthakumari (2015) 60 taxmann.com 74 (Kar)*
- 3. CIT Vs. Sambandam Udaykumar (2012) 345 IRE 389 (Kar)*
- 4. Goverdhan Singh Sekhawat Vs. ITO (2019) 102 taxmann.com 50 (Jaipur-Trib)*
- 5. Venkata Dilip Kumar Vs. CIT (2019) 419 ITR 298 (Mad)*
- 6. Ms. Moturi Lakshmi Vs. ITO (2020) 119 taxmann.com 488 (Mad)*

7. Smt. Babitha Kemparajee Urs Vs. CIT (2017) 86 taxmann.com 43 (Bang-Trib)
8. Kannan Chandrashekar Vs. ITO (2017) 82 taxmann.com 284 (Chennai-Trib)

5. On the other hand, the Id. DR submitted that Section 54F(4) of the Act stipulates that for claiming the benefit of Capital Gain tax exemption, the assessee has to invest within a period of one year before or two years after the date of transfer took place purchased or has within a period of three years after the sale date constructed, one residential house in India, the capital gain shall be exempted from the tax. If the assessee has not complied with these requirements and not appropriated the net sale consideration towards purchase of new asset or constructed new residential house than the said net sale consideration to be deposited in prescribed capital gains scheme as notified by the Central Government. According to Id. DR if the assessee not complied with the conditions laid down under Section 54F(1) of the Act or 54F(4) of the Act, the assessee is not entitled for exemption Under Section 54F of the Act.

6. We have heard both the parties and perused the material on record. The main contention of the Id. DR is that the assessee has not complied with the conditions laid down u/s. 54F(1) or 54F(4) of the Act. U/s. 54F of the Act, when the assessee invests the sale consideration from transfer either purchasing a residential house or constructing a new house within a period stipulated in Section 54F(1) of the Act, then only the assessee entitles for deduction under this section. In the intermediary period the assessee shall deposit the amount in an account which is duly notified by the Central Government. In this case, the assessee has not deposited the net sale consideration in the Capital Gains Scheme Account notified by the Central Government. However the plea of the assessee is that within the stipulated time, the assessee has utilized the net sale consideration as enumerated in the Section 54F(1) of the Act and the assessee is entitled for exemption Under Section 54F of the Act. This issue has come up for consideration before the Hon'ble Karnataka High Court in the case of CIT Vs. K. Ramachandra Rao 277 CTR 522 (Kar) wherein the following question was before the Hon'ble High Court :

"When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under Section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under Section 139(1) of the IT Act ? "

This was answered by Hon'ble High Court as follows :

"As is clear from Sub-Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is

duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."

7. Being so, in our opinion, the Section 54F is beneficial provision and should be interpreted liberally and the Assessing Officer has to see the end utilization of net sale consideration in the way prescribed in Section 54F of the Act, the assessee is entitled for exemption Under Section 54F of the Act. With this observation, we remit the issue to the file of Assessing Officer for fresh consideration.

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

9. Therefore, we do not agree with the submission of Ld. DR that the decision of ITAT, Indore in assessee's brother's **Shri Rajendra Yadav's case**, based on above two decisions of ITAT, Delhi and ITAT, Bangalore, should not be applied. Accordingly, we agree to apply the decision of ITAT, Indore given in **Shri Rajendra Yadav**.

10. So far as the Ld. DR's alternative pleading that the order of CIT(A) is ex-parte due to non-prosecution by assessee and hence the assessee's present appeal should be dismissed, we are not inclined to accept this submission for the reason that the said non-prosecution by assessee, as discussed by us in earlier para while condoning delay in filing present appeal, had occurred because the CIT(A) issued notices of hearing to assessee through the mode of email whereas the assessee is an agriculturist and not adequately educated and specifically mentioned "No" against

“Whether notices/ communication may be sent on mail?” in Form No. 35 filed to CIT(A). Thus, the assessee opted for physical service of notices but the CIT(A) did not adhere to the request of assessee. It is also noteworthy that the non-service of notices through physical mode desired by assessee is the main reason of assessee for condonation of delayed filing of present appeal and the Ld. DR for revenue has not objected to condonation of delay (Refer earlier Para). Further, a bare reading of para 4.3 of impugned order clearly demonstrates that the CIT(A) has merely concluded for not interfering with the order of AO and thereby dismissed assessee’s first appeal summarily for non-prosecution but such an order passed by CIT(A) is not in accordance with the mandate of section 250(6) which prescribes thus: *“The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”*

11. In view of above discussions and for the reasons stated therein and respectfully following the decision of Co-ordinate Bench in **Shri Rajendra Yadav’s case**, we direct the AO to allow exemption u/s 54B to assessee. The assessee succeeds in this appeal.

12. Resultantly, this appeal is allowed.

Order pronounced in the open court on 24 /07 /2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 24.07.2025
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