

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

SHRI S.S. GODARA, JM AND DR. DIPAK P. RIPOTE, AM

ITA No. 411/PUN/2020 A.Y. 2012-13

Shri Adit Rathi
2nd floor, Gaia Apex, Sr.No. 33/2D
Vimandnagar,
Pune-411 014.
PAN; AAOPR 0726 J

Appellant

Vs.

The I.T.O. Ward 13(1) Pune,

Respondent

Appellant by : Shri Hari Krishan

Respondent by : Shri S.P. Walimbe

Date of Hearing : 30-06-2022

Date of Pronouncement : 15-07-2022

ORDER

PER S.S. GODARA, JM :

This assessee's appeal for A.Y. 2012-13 arises against the CIT(A)-10, Pune's order dated 07-02-2020 passed in case No. PN/CIT(A)-10/ITO Wd 13(1)/135/16-17/1284 involving proceedings u/s 143(3) of the Income-tax Act, 1961, in short "the Act".

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts in declining his sec. 54B deduction claim of Rs. 2,49,85,220/-, we find that the CIT(A) upheld the assessment findings as under:

(i) I have considered the submission of the appellant carefully and given thought. In fact, Section 54B of LT. Act deals about an exemption available to individual and HUF against capital gain arising from transfer of Agricultural land by investment of capital gain amount in another agricultural land, If an individual wants to shift his agricultural land for certain reason and hence he sold his old agricultural land and from the sale proceeds he purchased another agricultural land. Section 54B of I.T. Act gives relief to a taxpayer who sells his agricultural land and from sale proceeds acquires another agricultural land subject to following conditions:

(i) The benefit of Section 54B is available only to an individual or a HUF.

(ii) The asset transferred should be agricultural land. The land may be a long term capital asset or short term capital asset.

(iii) The agricultural land should be used by the individual or HUF for agriculture purpose atleast for a period of 2 years immediately preceding the date of transfer.

(iv) Within a period of 2 years from the date of transfer of old land, the taxpayer should acquire another agriculture land. In case of compulsory acquisition the period of acquisition of new agricultural land will be determined from the date of receipt of compensation. However, as per Section 10(37), no capital gain would be chargeable to tax in case of an individual or HUF. If agricultural land is compulsorily acquired under any law and the consideration of which is approved by the Central Govt. or RBI and received on or after 1.4.2004. While making assessment, the AO's reliance was placed on two facts:

(a) Both the lands, transferred land as well as purchased lands were not agricultural land

(b) Appellant's A.R. admission before the AO that transferred land was nonagricultural land. Regarding admission of appellant's A.R. before A.O. vide remand report dated 8.5.2019, it is duly admitted that no such admission of A.R. is available on record either through Affidavit or order sheet notings. Hence, the inference drawn by AO from the A.R.'s submission regarding nature of the land being nonagricultural is incorrect; therefore, the Affidavit filed by A.R.'s of the appellant denying such admission before A.O. is admitted on merit.

(ii) Now coming to the nature of both the lands, it is pertinent to refer to the report of the A.O. submitted through remand report. In para 4 of the report, AO has duly admitted that 7/12 extract of the transferred land (land at Bavdhan) was marked 'fruit garden', which amply supports and strengthen the view of the appellant that prior to transfer of the Bavdhan land,' agricultural activities were regularly carried out, whatever crops / fruits were grown in the said land. were consumed in the family of the appellant and surplus products were sold in market while earning nominal agricultural income since 2006- 07. In his support, copy of affidavit of watchman Mr. Sonyabapu Karale and several photographs are also submitted in support of the claim. However, regarding the nature of land (Wagholi land) which was purchased by the appellant while investing the long term capital gains earned on account of sale of Bavdhan land, the AO has relied on the evidence available in 7/12 extracts, in which, it is clearly mentioned the nature of land being 'pad land' i.e. barren land. As per dictionary meaning. Barren land is defined as those ecosystems, in which, less than 1/3 of the area has vegetation or other cover. In general, barren land has thin soil, sand, or rocks. Barren land includes deserts, dry salt flats. beaches. sand-dune, exposed rocks. strip mines. quarries and gravel pits etc. Therefore, no agricultural activities are carried out on barren land. In the appeal proceeding, the appellant has not denied the validity of 7/12 extracts but has merely submitted that for the purpose of Sec. 54B of I.T. Act, liberal interpretation should be taken. In fact, in order to claim exemption under impugned section, it is explicitly provided in Law that acquired or purchased land should also be agricultural land. All the evidences submitted by the appellant in his support only explain that certain agricultural activities were carried out on Wagholi land only after the acquisition of the said pad land. No single evidence is brought on record to prove that at the time of purchase of the said land, it was an agricultural land and that is the reason that concerned Govt. official while updating its 7/12 extracts land record of the Wagholi land specifically categorized it as pad land and Bavdhan land (transferred land) as agricultural land, which is the most vital and crucial evidence' available on record. If appellant accepts the validity of 7/12 extract in respect of his Bavdhan land, there is no reason to discard the same evidence while deciding the nature and character of Wagholi land. Since, the appellant has not fulfilled all the conditions laid down in Sec. 54B of I.T. Act (i.e. not investing long term capital gain amount in agricultural land), he is not entitled for the benefit of the said section. Further, the fact involved in case laws relied upon by the appellant are not identical to the fact involved in impugned case, hence are not applicable. As a result, ground No.1 to 3 are dismissed.

6. The appellant, as a part of the ground, requested to add, alter, amend or withdraw any grounds of appeal on or before final hearing of appeal. Since, no action has been taken in this regard, the same does not require any adjudication."

3. We have given thoughtful consideration to the rival submissions against and in support of section 54B deduction. Suffice to say, there is hardly any dispute between the parties that the CIT(A) has rejected the assessee's impugned deduction claim for the sole reason that his reinvestment made in Wagholil land had not proved to have been made in purchasing agricultural land. This is in light of the fact that the Assessing Officer's remand report filed before the CIT(A) had cleared all objections regarding the assessee's land sold at Bavdhan. It has further come on record that although the CIT(A) accepts the assessee to have carried out agricultural activities on the land purchased in later years in light of form 7/12, he has however affirmed the assessment findings that the reinvestment in land was not agricultural at the time of purchase.

4. We find no substance in Revenue's argument supporting the impugned disallowance for the foregoing reason(s). We deem it proper to reproduce the relevant reinvestment clause in section 54B of the Act that "the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes". It is thus clear that the legislature has nowhere incorporated that the lands re-purchased in section 54B deduction claim have to be agricultural on the date of re-investment as is sought to be projected at the Revenue's behest. We thus adopt stricter interpretation Commissioner Vs. Dilip Kumar & Co. (2018) 9 SCC 1 (FB)(SC) to hold that both the learned lower authorities have erred in law and on facts in disallowing the assessee's section 54B deduction claim. The same stands deleted.

5. No other grounds have been raised or pressed before us.

6. Delay of 70 days in filing is condoned since falling in Covid 19 Pandemic Outbreak period.

7. This assessee's appeal is allowed in above terms.

Order pronounced on 15th day of July 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated, this 15th day of July 2022
Ankam

Copy of the Order forwarded to:

1. The Appellant.
2. The Respondent.
3. The CIT Aurangabad
5. The D.R. ITAT 'A' Bench, Pune.
5. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.



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		Date	
1	Draft dictated on	30-06-2022	Sr.PS
2	Draft placed before author	05-07-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS		Sr.PS
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7	Date of uploading of order		Sr.PS
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