

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.381 of 2014 (O&M)

DATE OF DECISION: 06.07.2015

Commissioner of Income-tax, Faridabad

....Appellant

versus

Shri Dinesh Verma

.....Respondent

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA**

Present: Mr. Tajender K. Joshi, Advocate for the appellant

Mr. Pankaj Jain, Senior Advocate with
Mr. Sachin Bhardwaj and Mr. Radhe Mohan Garg,
Advocates for the respondent

..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

This is an appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal in respect of the assessment year 2006-07.

2. The appellant contends that the following substantial questions of law arise in this appeal:-

- "1. "Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of Ld. CIT(A) in allowing the exemption u/s 54B of the I.T Act even though the assessee was not entitled to the claim of exemption u/s 54B as the asset sold was not a long term capital asset but a short term capital asset that is not eligible for exemption under section 54B, 54D and 54F as is clear from CBDT Circular No.495 dated 22.09.1987?"
2. "Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of Ld. CIT(A) in allowing the exemption u/s 54B of the I.T Act when the assessee failed to furnish evidence to show that the land was being used for agricultural purpose for two year immediately preceding the date on which transfer took place.
3. "Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of Ld. CIT(A) that the agricultural income of previous year 2004-05 related to and was derived

from that particular land for which exemption u/s 54B of the Act has been claimed by the assessee, when assessee has not been able to show any correlation between the said land and agricultural income.

4. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the order of Id. CIT(A) in allowing and enhancing the exemption u/s 54B to the extent of Rs.60,00,000/- where as the assessee's own claim of his exemption was only to the extent of Rs.34,32,575/- as is evident from the return of income filed by him.

(NOTE: The figure of Rs.34,32,575/- was, during the assessment proceedings, corrected to read Rs.44,76,000/-.)

5. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in holding the capital gain as Long Term Capital Gain whereas calculation of tax by the assessee shows that the said gain was only short term capital gain.
6. "Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in dismissing the Revenue's appeal without deciding the grounds taken by the Revenue on the issue of addition of Rs.60,000/- which was made by the AO for on account of law house hold withdrawals and deleted by the Id. CIT(A)?"

By our order dated 02.03.2015, we issued notice of motion on the following further question of law No.7:-

- "7. Whether the respondent-assessee was entitled to the benefit under Section 54-B of the Income Tax Act, 1961 in respect of the property purchased from the sale proceeds in the name of his wife?"

This additional question raised by us would fall for consideration while considering question No.4.

3. The appeal is admitted in respect of the Question Nos.1,4,5,7 and the additional question raised by our order dated 02.03.2015. The appeal is dismissed as regards Question Nos.2,3 and 6 as they do not raise a substantial question of law.

4. Section 54B reads as under:-

"54-B. Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.-(1) Subject to the provisions of sub-section (2)

where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu Undivided Family] for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under Section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under Section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under Section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of Section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under Section 45 of the income of the previous year in which

the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."

FACTS

5. There were two transactions of sale of land by the assessee. This appeal concerns only one of them. For the purpose of this appeal, it is sufficient only to note that the respondent sold the land in question by an agreement dated 26.09.2005. The Assessing Officer in fact took this to be the relevant date for the purpose of considering the date on which the land could be said to have been sold. We proceed on the same basis.

The respondent/assessee sold the land for a consideration of Rs.60,00,000/-. He purchased another immovable agricultural property within two years. He utilized a sum of Rs.44,76,000/- out of the sale proceeds of Rs.60,00,000/- for the payment of the consideration of the plot that he purchased subsequently. The balance consideration in respect of the plot of Rs.16,84,000/- was paid by his wife.

6. The Assessing Officer held the gain to be a short-term capital gain. The CIT(A) and the Tribunal have held in favour of the respondent on the grounds we will shortly refer to.

Re: Questions No.1 and 5:

7. It was submitted before us that the difference between the sale price of the first property and the expenditure of Rs.44,76,000/- for the purchase of the second property ought to be taxed as a short-term capital gain as the property sold by the respondent was held by him for a period of less than three years.

8. The submission is not well founded. It proceeds on the erroneous assumption that provisions of Section 54B would be applicable only to a long-term capital asset.

Sections 2(14)(iii) and 2(42-A) read as under:-

"2. Definitions.

(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include-

(iii) agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than 10,000 according to the last preceding census of which the relevant figures have been published before the 1st day of the previous year; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;

.....
 (42-A). "short-term capital asset" means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer:"

9. Section 54B does not refer to a short-term capital asset or a long-term capital asset. It merely refers to a capital asset. Where the ingredients of Section 54B exist, the computation of capital gain is to be in accordance with that section. Admittedly, the land that was sold by the respondent was a capital asset within the meaning of Section 2(14)(iii) being in an area which is comprised within the jurisdiction of a municipality.

10. All the ingredients of Section 54B exist in the present case. Firstly, the land sold by the assessee was a capital asset.

Secondly, this capital asset was land. Thirdly, during the two years immediately preceding the date on which the transfer took place, the land was being used by the respondent for agricultural purposes. We will shortly demonstrate the existence of the third ingredient but on a basis different from the Tribunal. The fourth and the fifth ingredients are also present in this case as, admittedly, the assessee had within a period of two years after the sale purchased another land for being used for agricultural purposes.

11. The third ingredient is established by the evidence on record. The respondent had tendered a compilation of documents before the CIT(A). A copy thereof was tendered before us by Mr. Jain, the learned senior counsel appearing on behalf of the respondent. Page-44 of this compilation is a record/statement of the "Patwari" which confirms that the respondent had utilized the land sold by him for agricultural purposes during the period 03.07.2003 to 27.01.2006. There is nothing on record that suggests the contrary. The respondent, therefore, used the said land for a period of more than two years prior to the date of sale i.e. 26.09.2005.

12. Having said this, however, we must pause here to consider an observation made by the Tribunal to the effect that for the purpose of Section 54B, it is not necessary that land should have been used for agricultural purposes for full two years immediately preceding the date of transfer and that it is sufficient if it was so used in the whole of the preceding year and for some days in the year earlier to the preceding year. We are unable to agree. There is nothing in Section 54B that supports such

an inference. The plain language of Section 54B requires the land sold to have been in use by the assessee or by his parents or the HUF for agricultural purposes for a period of two years immediately preceding the date on which the transfer took place. There is nothing in this section that bifurcates the period of the use during these two years. There is nothing in this section that indicates that the land should have been used continuously only in the second of the two years and only for a few days in the first of the two years. Nor are we able to infer such a limitation from the plain language of this section on principle.

13. What constitutes use would, however, depend upon the facts of each case. We express no opinion in that regard. However, on facts, the respondent has established that he had been using the said land for a period of two years immediately preceding the date on which he transferred the same.

14. In the circumstances, questions No.1 and 5 are answered in favour of the respondent but subject to what we have said.

Re: Question Nos.2 and 3

15. Question No.3 requires only a consideration of the facts. The Tribunal, after considering the facts, came to the conclusion that the land was being used for agricultural purposes. Firstly, we have already referred to the statement of the "Patwari" that establishes the same. Secondly, as noted by the Tribunal, the respondent had derived an agricultural income of Rs.10,000/- from the use of the said land. A question of law, therefore, does not arise. The appeal as far as question Nos.2 and 3 are concerned is, therefore, dismissed.

Re: Questions No.4 and 7, the additional question raised by our order dated 02.03.2015.

16. Question No.4 must be answered in favour of the appellant.

As we mentioned earlier, the respondent sold his agricultural land for a sum of Rs.60,00,000/-. Out of the sale proceeds he invested only a sum of Rs.44,76,000/- towards the purchase of another agricultural plot. The balance consideration of Rs.16,84,000/- in respect of that plot was paid by the respondent's wife. It is not the respondent's case that it is actually he who paid the amount of Rs.16,84,700/- and that his wife's name was added benami and that the title thereof even to that extent vested in himself. We must, therefore, proceed on the basis that out of the sum of Rs.60,00,000/-, the appellant invested only Rs.44,76,000/- in the second property.

17. The Tribunal observed that it is settled now that an assessee can purchase a new asset or part thereof in the name of his wife and that there was sufficient justification for the same on considerations, such as, stamp duty rebate, social considerations, security for ladies. The Tribunal noted that as long as the funds are invested the respondent's exemption cannot be denied.

18. It is difficult to accept this view. Section 54B requires the assessee to purchase the property from out of the sale consideration of the capital asset. It does not entitle the assessee to the benefit conferred therein if the subsequent property is purchased by a person other than the assessee including a close relative even such as his wife or children. If the legislature intended conferring such a benefit, it would have

provided for the same expressly. Indeed, an assessee can purchase an asset or a part thereof in the name of his wife but he would not be entitled then to the benefit of Section 54B. Moreover, it is not the case of the assessee that he purchased the asset benami in the name of his wife. We have proceeded on the basis that his wife invested the amount of Rs.16,84,700/- herself.

19. A Division Bench of this Court in *Jai Narayan vs. Income-Tax Officer*, [2008] 306 ITR 335 (P&H) held:

"10. In interpreting the words contained in a statute, the court has not only to look at the words but also to look at the context and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. The word "assessee" occurring in section 54B must be interpreted in such a manner as to accord with the context and subject of its usage. A reading of section 54B of the Act nowhere suggests that the Legislature intended to advance the benefit of the said section to an assessee who purchased the agricultural land even in the name of a third person. Wherever the Legislature intended it to be so, it had specifically provided under the provision. The term "assessee" is qualified by the expression "purchased any other land for being used for agricultural purposes", which necessarily means that the new asset which is purchased has to be in the name of the assessee himself for seeking exemption under section 54B of the Act. The purchase of agricultural land by the assessee in his son or grandson's name, therefore, cannot be held entitled to exemption under section 54B of the Act.

11. We may make a brief reference to the decision relied upon by counsel for the assessee. Learned counsel mainly relied upon the decision in *V. Natarajan* [2006] 287 ITR 271 (Mad), with reference to section 54 of the Act.

12. The Madras High Court in *V. Natarajan's* case [2006] 287 ITR 271 was dealing with a case relating to section 54 of the act wherein the assessee who after selling his residential house had purchased another residential house in his wife's name. the court had concluded that the assessee in such circumstances was entitled to exemption under section 54 of the Act. After giving our thoughtful consideration, we are unable to accept the view as laid down in *V. Natarajan's* case [2006] 287 ITR 271 (Mad)."

Thus, even assuming that the assessee had invested the said amount of Rs.16,84,700/- in the name of his wife, it would have made no difference.

20. The order of the Tribunal to this extent is, therefore, overruled. It is declared that respondent shall be entitled to the benefit of Section 54B on the basis that he invested only a sum of Rs.44,76,000/- in the agricultural property purchased by him after the sale of the agricultural property earlier owned by him. Even the additional question No.7 raised by us in our order dated 02.03.2015 is answered in favour of the appellant/department.

Re: Question No.6:

21. Question No.6 does not raise any issue of law. The CIT(A) found that the Assessing Officer had made the estimate out of the household expenses of Rs.60,000/- on a vague and arbitrary basis unsupported by any evidence or material on record. We see no reason to interfere with this finding of fact. The appeal as far as question No.6 is concerned is, therefore, dismissed as it does not raise any question of law.

22. The appeal is accordingly disposed of.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

06.07.2015
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(G. S. SANDHAWALIA)
JUDGE

NOTE: Whether reportable: YES
