

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.104 of 2017
Date of decision: 24.05.2017**

Kamal Kant Kamboj

...Appellant

Vs.

**Income Tax Officer, Ward 3, Jagadhari, Yamuna Nagar,
Haryana**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Ruchesh Sinha, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the instant appeal under section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 7.7.2016, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short, “the Tribunal”) in ITA No.390/CHD/2016, for the assessment year 2007-08, claiming following substantial questions of law:-

- (i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law

in holding that for claiming exemption under Section 54B of the Income Tax Act, the investment in the new land cannot be made in the name of wife of the assessee?

- (ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal has erred in law in not considering that decisions of ***Jai Narayan and Dinesh Verma*** of High Court of Punjab and Haryana are not applicable to the facts of the instant case and the facts of the case of the assessee are clearly distinguishable?
- (iii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal has erred in law in not considering the other decisions on the issue of section 54B in terms that exemption shall be allowed to an assessee under section 54B of the Income Tax Act even if the investment is made in the name of spouse of the assessee?
- (iv) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal has erred in law in not considering that the provision of section 54B does not state that new agricultural land should be purchased in the name of the assessee only for the purpose of claiming exemption under section 54B of the Act?
- (v) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal has erred in law in not considering the ratio of the Hon'ble Supreme Court in case of ***CIT vs. Vegetable Products Limited*** 88 ITR 192 (SC) wherein it has been held that if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is an individual. He alongwith his brother Shri Sanjay Kumar Kamboj sold agricultural land situated in Village Ratoli, Yamuna Nagar for ₹ 72,00,000/- on 9.10.2006. The taxable half share of the assessee in this regard was ₹ 26,45,750/-. The assessee purchased another agricultural land of ₹ 35,51,000/- in the name of his wife Ms. Manjeet Kaur on 15.5.2007. As the value of the new agricultural land purchased by the assessee was more than that of the land sold, the assessee did not disclose any long term capital gain in regard to the same and claimed exemption under Section 54B of the Act. A notice under Section 148 of the Act was issued to the assessee for the assessment year 2007-08 on the ground that the assessee had not disclosed the long term capital gain in his return of income. The respondent passed assessment order dated 18.03.2014, Annexure A.1, under Section 143(3) read with section 148 of the Act and in the said order, he did not allow exemption under Section 54B of the Act to the assessee on the ground that the land was purchased in the name of wife of the assessee and not in his name. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The assessee inter alia pleaded that exemption under section 54B of the Act should be allowed because judgment of this court in *Jai Naryan's* case (Annexure P.7) was a prior judgment and that judgment in *Gurnam Singh's* case (Annexure P.9) was later judgment. Further, Section 54B of the Act does not specifically mention that the land should be purchased in the name of the assessee only and therefore the investment can be made in the name of wife of

the assessee. Vide order dated 29.3.2016, Annexure A.2, the CIT(A) dismissed the appeal. The assessee filed appeal before the Tribunal. Vide order dated 7.7.2016, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the appellant- assessee.

4. The issue that arises for consideration in this appeal is whether the assessee is entitled for exemption under Section 54B of the Act on account of agricultural land purchased by him in the name of his wife. Learned counsel for the assessee placed reliance on judgments in *Commissioner of Income Tax vs. Gurnam Singh*, (2010) 327 ITR 278, *Commissioner of Income Tax vs. Kamal Wahal*, (2013) 351 ITR 4 (Del.), *Commissioner of Income Tax vs. V.Natarajan*, (2007) 287 ITR 271 (Mad.), *Director of Income Tax, International Taxation, Bangalore vs. Mrs. Jennifer Bhide*, (2011) 15 taxmann.com 82 (Kar.) and *Commissioner of Income Tax vs. Vegetable Products Limited*, (1973) 88 ITR 192 (SC) to contend that exemption should be allowed under Section 54B of the Act to the assessee.

5. The issue has been considered by this Court in *Jai Narayan's* case (supra) and stands concluded against the assessee. The Tribunal has also passed the impugned order following the said judgment. In *Jai Naryana's* case, the question was whether the assessee who purchased the land in his son and grand son's names after the sale of the agricultural land would be entitled to the benefit of exemption under Section 54B of the Act. It was held by this Court that Section 54B of the Act nowhere suggests that the legislature

intended to advance the benefit of the said section to an assessee who purchases agricultural land even in the name of a third person. 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 has to be in the name of the assessee himself. Therefore, purchase of agricultural land by the assessee in the name of his son or grandson does not qualify for exemption under Section 54B of the Act. The relevant observations read thus:-

“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's* case (supra) with reference to section 54 of the Act.

The Madras High Court in *V.Natarajan's* case (supra) 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 (supra)."

6. In *Commissioner of Income Tax, Faridabad vs. Dinesh Verma*, (2015) 60 Taxmann.com 461 (P&H), the assessee sold the land by an agreement for a consideration of ₹ 60 lacs. He purchased another immoveable agricultural property within two years and utilized some amount out of the total amount. The balance consideration was paid by his wife. The Assessing Officer held the gain to be a short term capital gain. The CIT(A) and the Tribunal had held in favour of the assessee. It was held that where the assessee had established that he had been using land for a period of two years immediately preceding the date on which he transferred the same, exemption under section 54 of the Act was to be allowed. In case of purchase of agricultural land in the name of his wife, the relief under section 54B of the Act would not be allowed.

7. In *Gurnam Singh's* case (supra), the assessee out of the sale proceeds of the agricultural land sold by him had purchased some other piece of land in his name and in the name of his only son who was bachelor and dependent upon him for being used for agricultural purposes within the stipulated period. A pure finding had

been recorded by the Tribunal that merely because in the sale deed, his only son was also shown as co-owner, it did not make any difference because the purchased land was being used by the assessee for agricultural purposes. Thus, on the basis of the finding recorded by the Tribunal, this court concluded that no substantial question of law arose and dismissed the appeal. The situation in the present case is different. In the present case, the land was purchased by the assessee in the name of his wife only.

8. In ***Kamal Wahal's*** case (supra), it was held by the Delhi High Court that for the purpose of claiming deduction under Section 54F of the Act, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. A purposive construction is to be preferred as against a literal construction. In view of the binding precedents of this Court in the cases of ***Jai Narayan*** and ***Dinesh Verma's*** cases (supra), we are unable to subscribe to the aforesaid view in ***Kamal Wahal's*** case (supra).

9. Similar was the position in ***Natarajan's*** case (supra). The said judgment was not accepted in ***Jai Naryan's*** case (supra). The opinion in ***Mrs. Jennifer Bhide's*** case expressed by Karnataka High Court being contrary to decisions of this Court in ***Jai Narayan*** and ***Dinesh Verma's*** cases (supra), the assessee cannot derive any advantage from the said decision. In ***Vegetable Products Limited's*** case (supra), it was held by the Apex Court that the duty of the court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken

into account in interpreting a provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible, then construction which favours the assessee must be adopted. There is no quarrel with the proposition. That was a case in respect of section 271(1)(a) (i) of the Act and the principle of law enunciated therein is well recognized. However, the situation in the present case being different, the assessee cannot derive any advantage from the said decision.

10. In the present case, the assessee alongwith his brother sold agricultural land in Village Ratoli, Yamuna Nagar for ₹ 72,00,000/- on 09.10.2006. Out of his half share, he purchased another agricultural land for ₹ 35,51,000/- in the name of his wife on 15.5.2007. As the value of the said land was more than that of the land sold, he did not disclose any long term capital gain and claimed exemption under Section 54B of the Act. Notice under Section 148 of the Act was issued to the assessee. Exemption under Section 54B of the Act was not allowed to the assessee on the ground that the land was not purchased by the assessee in his own name. The CIT(A) as well as the Tribunal both dismissed the appeals filed by the assessee. Since the issue has already been concluded against the assessee by this Court in *Jai Naryan's* case (supra) and the Tribunal has also followed the said judgment, learned counsel for the appellant has not been able to controvert the applicability of the said decision or to show any error in the findings recorded by the Tribunal except to rely upon pronouncement of the High Courts referred to in the earlier part

of this judgment. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

May 24, 2017
‘gs’

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes