IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

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THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.NO.26957 OF 2019
AND
W.M.P.NOS.26342, 26344 & 32232 OF 2019

S.Sundaramurthy ...Petitioner

Vs.

1. Principal Commissioner of Income Tax,
121, Mahatma Gandhi Road,
Chennai - 600034.

2. Joint Commissioner of Income Tax,
Non-Corporate Range - 22,
No.7, Ramakrishna Street, Tambaram West,
Chennai - 600045.

3. Assistant Commissioner of Income Tax,
Non-Corporate Range - 22,
No.7, Ramakrishna Street, Tambaram West,
Chennai - 600045. ...Respondents

Prayer :
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in C.No.7032(1)/Pr.CIT 7/2018-19 and quash the order dated 26.03.2019 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondents : Mrs.Hema Muralikrishanan
Senior Standing Counsel

ORDER

The petitioner is aggrieved against the order of the first respondent dated 26.03.2019, wherein and whereby, the petition filed under Section 264 of the Income Tax Act, was dismissed.

2. The case of the petitioner is as follows:-
He purchased an agricultural lands bearing Survey No.123/3A, 123/4, measuring 0.62 cents and 0.53 cents respectively in

No.17, Thulangum Thandalam Village, Kancheepuram Taluk through registered sale deed dated 19.06.2011. The petitioner also purchased adjoining agricultural land measuring an extent of 65 cents in Survey No.123/1 by way of sale deed dated 27.06.2011. The petitioner had been carrying on agricultural activities by growing paddy in the said land. Since the income was meager, the petitioner did not report agricultural income in his Income Tax returns. The petitioner sold the above lands on 24.09.2014 to a third party purchaser and reinvested the sale proceeds in the purchase of lands bearing Survey Nos.2558/1, 2558/2 and 2558/3 at Genguvarpatti Village, Periyakulam Taluk. The petitioner filed his return for the Assessment Year 2015-16 claiming deduction of Rs.1,73,04,900/- under Section 54B of the Income Tax Act, 1961. The second respondent issued a proceedings dated 11.12.2017 holding that sufficient proof was not produced by the petitioner to prove that agricultural activities were being carried on and that the land was agricultural land. Based on the said proceedings, the third respondent passed an order holding that the petitioner is not entitled for deduction under Section 54B of the said Act, on the allegation that the land was sold not as an agricultural land as the buyer is a developer. Challenging the said order, the petitioner filed a revision before the first respondent under Section 264 of the said Act. The first respondent rejected the revision by holding that the petitioner had not produced any proof that the sold land was used for agricultural purpose for two years prior to the same. The petitioner filed copy of chitta and adangal before the authorities clearly showing that the petitioner had harvested crops in the said land. However, the same were not considered by both authorities and therefore, the present writ petition is filed.

3. The respondent filed a counter affidavit wherein, it is stated that the order passed by the first respondent cannot be considered prejudicial to the interests of the assessee as the first respondent did not give any new finding on the issue or any other issue and the order dismissing the petition, can only be considered as an order covered by the Explanation 1 to Section 264. It is also stated therein that the Assessing Officer found that the land sold by the assessee was not an agricultural land at the time of its sale and hence, disallowed the claim under Section 54B of the Act. It is further stated that the first respondent has, after due consideration of the materials produced during the course of the proceedings under Section 264, found that the petitioner had failed to produce any evidence for carrying out agricultural activity, in the land sold by the petitioner.

4. The learned counsel appearing for the petitioner submitted that the petitioner was carrying on agricultural

activities till the date of sale and in support of the same, the petitioner produced the relevant revenue records before the concerned authorities. Thus, he submitted that the rejection of those documents is not proper, more particularly, when the petitioner has satisfied the requirement under Section 54B, while seeking reduction.

5. The learned Senior Standing counsel appearing for the Revenue on the other hand submitted that in the absence of the material documents in support of the petitioner for seeking deduction under Section 54B, the Assessing Officer has disallowed the claim for deduction, which was confirmed by the first respondent.

6. Heard both sides and perused the materials placed before this Court.

7. The petitioner purchased the subject matter land in the year 2011 and sold the same on 24.09.2014 to a third party buyer. According to the petitioner, the subject matter property was an agricultural land and he utilized the land as agricultural land all along till its sale. Therefore, he seeks for deduction under Section 54B of the Income Tax Act, 1961.

8. Perusal of Section 54B of the said Act, indicates that the assessee has to satisfy that the lands were being used by him for agricultural purposes in the two years immediately preceeding the date on which the transfer took place and that within a period of two years after that due date, purchased any other land for being used for agricultural purposes.

9. Therefore, the requirement is in two part. Firstly, the assessee has to satisfy that two years prior to the sale, he was using the land for agricultural purposes. Secondly, he has to satisfy that within a period of two years from the date of the sale, he has purchased any other land for being used for agricultural purposes.

10. In this case, it is stated that after the sale, the petitioner has purchased agricultural lands within two years. However, the dispute in this case is not with regard to the second condition. On the other hand, the dispute is that the petitioner did not use the land for agricultural purposes two years immediately preceding the date on which the sale took place. Though, the Revisional Authority while rejecting the revision under Section 264, has stated so, perusal of the order passed by the Assessing Officer would show that he was carried over by the fact that the land was sold to a person, who is a developer and therefore, the petitioner is not entitled to benefit under Section 54B. Apart from saying so, the Assessing

Officer has given a finding that the assessee could not show that there has been an agricultural activity. The first respondent has also reiterated the very same contention. On the other hand, it is stated by the petitioner that he has produced chitta, adangal etc., for the relevant period in support of his contention that the subject matter land were used for agricultural purposes two years immediately preceding the date on which the transfer took place.

11. Therefore, this Court is of the view that the factual aspects raised in this writ petition, need to be considered once again by the first respondent and to decide the matter as to whether the petitioner has satisfied the requirement contemplated under Section 54B, while seeking deduction. Certainly, the reason stated by the Assessing Officer that the purchaser is the builder and therefore, the land is not an agricultural land, cannot be a reason which is in consonance with the requirement made under Section 54B of the said Act. Therefore, it is for the first respondent to consider and decide the matter afresh.

12. Accordingly, this writ petition is allowed and the order passed by the first respondent is set aside. Consequently, the matter is remitted back to the first respondent to consider the matter afresh by giving an opportunity of hearing to the petitioner and pass fresh order on merits and in accordance with law. It is open to the petitioner to file necessary documents before the first respondent once again in support of their contention seeking deduction under Section 54B. The whole exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mrs.Hema Muralikrishanan, Advocate, S.R.No.97032
+1cc to Mr.B.Raveendran, Advocate, S.R.No.96990

W.P.No.26957 of 2019

RR(CO)
CS/26/12/2019