

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D. B. Income Tax Appeal No. 112/2012
D. B. Civil Misc. Stay Application No.
1180/2012
(Shri Kalya Versus The Commissioner of Income
Tax & Others)

Dated :: 19th May, 2012

HON' BLE THE CHIEF JUSTICE MR. ARUN MISHRA
HON' BLE MR. JUSTICE MAHESH BHAGWATI

Mr. Naresh Gupta, counsel for the appellant

BY THE COURT (PER HON' BLE BHAGWATI, J.):

Challenge in this Income Tax Appeal is to the order dated 22nd November, 2011, whereby the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur partly allowed the appeal filed by the assessee-appellant, while the appeal filed by revenue was allowed for statistical purposes.

2. Shorn of unnecessary details, the facts of the case, in nub, are that agricultural land ad-measuring 1.40 ha., situated in village Balmukandpura was inherited by the assessee-appellant and the same was mutated in his name in the year 1956. The aforesaid land was sold to M/s. Vatika Limited for a total consideration of Rs. 1,61,09,100/-

vide registered sale deed dated 12.10.2006. In order to claim various exemptions including exemption under Section 54B of the Income Tax Act, the assessee purchased new agricultural land for a total consideration of Rs. 1,22,71,440/- in the name of his son and daughter-in-law. The Assessing Officer, having considered the matter ad-longum, vide its order dated 18.12.2009, assessed the capital gain of Rs. 1,59,83,761/-, in the hands of the assessee-appellant, liable for charging to tax. Dissatisfied with the order of Assessing Officer, the appellant-assessee preferred an appeal before the Commissioner of Income Tax (Appeal). The Learned Commissioner of Income Tax (Appeal) vide his order dated 28.2.2011 affirmed the order of the Assessing Officer and rejected the claim of the appellant-assessee seeking exemption under Section 54B of the Act, albeit the Learned Commissioner of Income Tax allowed the claim under Section 54B of the Act.

3. Being aggrieved with the order dated 28.2.2011 passed by the Commissioner of Income Tax Appeal, both assessee as well as revenue preferred appeals before the Income Tax Appellate Tribunal. The Tribunal vide its order dated 22.11.2011, while dealing with the appeal

of the assessee, disallowed the claim of the assessee under Section 54B and upholding the findings of CIT (A) observed that no deduction under Section 54(B) would be available on the issue of purchase of land in the name of his son and wife. The Tribunal is found to have placed reliance on the judgments of various High Courts and held thus:

“The Hon'ble Delhi High Court in the case of Vipin Malik (HUF) Vs. CIT, 330 ITR 309 has held that residential house which was purchased or constructed had to be of the same assessee whose agricultural land was sold. In the case before Hon'ble Delhi High Court, the residential house was in the individual name of the assessee and his mother while the land belonged to HUF. The deduction u/s. 54F was not allowed in the case of Jai Narain Vs. ITO, 306 ITR 335 in which it was held that term 'assessee' mentioned in Section 54B is quantified by the expression 'Purchased any other land for being used for agricultural purposes which necessarily means that the new asset should be in the name of the assessee himself. In the case of Gurnam Singh (supra), it was noticed by the Tribunal that the

assessee's son was shown in the sale deed as co-owner. The Hon'ble Punjab & Haryana High Court held that no substantial question of law is involved because it is not the case of the revenue that the land in question was exclusively used by the son of the assessee. We therefore, uphold the findings of the Id. CIT (A) that no deduction u/s 54B will be available on the issue of purchase of land in the name of his son and wife. ""

4. The appellant-assessee has filed the instant appeal challenging the order passed by the Learned Income Tax Appellate Tribunal.

5. Learned counsel for the appellant canvassed that the object of granting exemption under Section 54B of the Act of 1961 is that a person who sells agricultural land for the purpose of purchasing another agricultural land must be given exemption so far as capital gains are concerned. The word "assessee" used in section 54B of the Act for fulfilling the condition and subsequently enabling the assessee to claim exemption under Section 54B of the Act must be given a wide and liberal interpretation so as to include his legal heirs also. The provisions contained in Section 54B

of the Act being socio-welfare and beneficial in nature were required to be construed liberally in favour of assessee, but the learned Tribunal arbitrarily disallowed the claim of the appellant-assessee and upheld the findings of the CIT (A) observing that no deduction under Section 54B of the Act would be available to the assessee-appellant on the issue of purchase of land in the name of his son and daughter-in-law, hence the impugned order needs to be set-aside.

6. Having heard the learned counsel for the appellant and carefully perused the relevant material on record including the impugned order, it is noticed that the appellant-assessee sold the agricultural land, which was mutated in his name, for a sale consideration of Rs. 1,61,09,100/-. Thereafter out of the selling price, the appellant-assessee purchased land in the name of his son and daughter-in-law for a total consideration of Rs. 1,22,71,440/-. It is relevant to note that the land sold was in the name of appellant-assessee, while the land purchased was in the name of his son and daughter-in-law.

7. A bare reading of Section 54B of the Income Tax Act does not suggest that assessee

would be entitled to get exemption for the land purchased by him in the name of his son and daughter-in-law. In the facts and circumstances of the case also aforesaid inference has not been drawn. Same is question of fact. No substantial question of law arises in appeal. Question whether purchase was by assessee or by son, is a question of fact.

8. Secondly, the word "assessee" used in the Income Tax Act needs to be given a 'legal interpretation' and not a 'liberal interpretation', as contended by the learned counsel for the appellant. If the word 'assessee' is given a liberal interpretation, it would be tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of the Government, which the law does not permit.

9. The Income Tax Appellate Tribunal, having considered all the facts and circumstances of the case, is found to have rightly disallowed the exemption under Section 54B of the Act.

10. The impugned order passed by the learned Tribunal is just and apposite, based on cogent findings, with which we fully concur and thus, the same warrants no intervention.

11. For the reasons stated above, the income tax appeal fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed accordingly.

12. Consequent upon the dismissal of income tax appeal, the stay application, filed herewith, does not survive and the same also stands dismissed.

(MAHESH BHAGWATI), J.

(ARUN MISHRA), C. J.

DK

All Corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Dilip Khandelwal
Personal Assistant