आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2518/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Smt. Jayshree Shankar Done,
House No. 5137, Near Patil Talim,
Miraj – 416410

PAN : BMNPD3438F

.......अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1(1), Sangli

......प्रत्यर्थी / Respondent

Assessee by	: Shri M.K. Kulkarni
Revenue by	: Shri Alok Malviya

सुनवाई की तारीख / Date of Hearing	: 25-08-2020
घोषणा की तारीख / Date of Pronouncement	: 31-08-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 21-08-2017 passed by the Commissioner of Income Tax (Appeals)-1, Kolhapur ['CIT(A)'] for assessment year 2012-13.

2. The only issue is to be decided as to whether the Capital Gains arose on transfer of assets in A.Y. 2012-13 or in A.Y. 2013-14 in the facts and circumstances of the case.

3. Heard both parties and perused the material available on record. The assessee is an individual sold agricultural land which was inherited through her father along with others. The sale consideration being 1/6th is Rs.70,16,667/-. On perusal of record it is noted that the date of transfer of subjected property was on 26-08-2011. The contention of Assessing Officer was that since the date of transfer of asset was on 26-08-2011 the Capital Gains should be assessed in A.Y. 2012-13. We note that the assessee contended that the major portion of sale consideration (Rs.30,00,000/- and Rs.31,66,666/-) were realized on 07-04-2012 and 14-07-2012, respectively the Capital Gains should be assessed in A.Y. 2013-14. The said contention was found not acceptable to the Assessing Officer. The Assessing Officer observed that the assessee has not utilized sale consideration within stipulated period for acquisition of new asset i.e. purchase of flat or construction of house, for which it was submitted by the assessee that an amount of Rs.65,60,000/- in Syndicate Bank under Capital Gains Scheme for 60 months. The Assessing Officer having not found the submissions of assessee acceptable assessed Long Term Capital Gain of Rs.68,21,776/- under the year under consideration i.e. A.Y. 2012-13. The CIT(A) confirmed the same having holding the date of transfer being 26-08-2011 is a conclusive evidence of transferring title to property which give rise to Capital Gain on 26-08-2011 and confirmed the denial of exemption claimed u/s. 54F of the Act.

4. We note that the details of sale consideration and details of deposits made are at page 4 of the assessment order. Admittedly, the assessee received major part of consideration on 07-04-2012 and 14-07-2012 relevant to A.Y. 2013-14 but however, it is seen the cheques were dated 20-02-2012 and 20-05-2012, respectively. It is seen that the assessee made investments from 31-12-2012, 02-01-2013, 05-08-2013 and 06-08-2013 under the Capital Gain Scheme with Syndicate Bank. The contention of Assessing Officer was that the assessee must have made investments within 6 months from the date of transfer but however as discussed above the assessee made deposits beyond prescribed time of 6 months as required u/s. 54E of the Act.

5. Another contention of Assessing Officer was that the assessee must have declared Capital Gains in the year under consideration before due date of filing of return i.e. 31-07-2012 relevant to the year under consideration. We note that though the assessee received major consideration as stated above on 07-04-2012 and 14-07-2012 made investments only on 31-12-2012 onwards which is appears to be beyond 6 months.

6. The ld. DR, Shri Alok Malviya submits that the AO called upon the details of payments from the bank authority for verification and it was found the assessee has not utilized the sale consideration within stipulated period for acquisition of new asset i.e. purchase of flat or construction of new house/residence. He argued that the assessee has herself admitted during the course of assessment proceedings that she did not utilize the sale consideration for purchase of flat or construction of house. Further, he submits that the stamp duty was paid on the date of transfer of asset

and it was registered on 26-08-2011 and at the same time the possession of property were also handed over to the purchasers on the said date itself. He argued the Capital Gain has to be assessed in the year under consideration i.e. 2012-13 since the assessee failed to utilize the sale consideration in any of the conditions prescribed therein u/s. 54F of the Act and failure to deposit in the Capital Gain account within prescribed time, the assessee is not entitled to claim exemption u/s. 54F of the Act. The ld. DR supported the order of CIT(A).

7. We note that the claim of assessee is u/s. 54F of the Act. The provisions of section 54F explains in order to claim the exemption that the assessee has within a period of one year or after the date on which the transfer took place purchased or within a period of 3 years after the date constructed one residential house. In the present case, admittedly, the assessee neither purchase one residential house within the period of one year before the date of transfer or after two years of date of transfer nor constructed house within a period of three years. The only contention that the assessee was that the assessee made investments under the Capital Gain Scheme almost entire consideration under fixed deposits with the Syndicate Bank.

8. We find that the assessee transferred original asset on 26-08-2011 therefore in our opinion, the Capital Gain has to be assessed in the year under consideration i.e. A.Y. 2012-13. In order to get exemption u/s. 54F of the Act, the assessee must have purchased new asset one year before (26-08-2010) or two years after (26-08-2013) or constructed one residential house within a period of three years (26-08-2014). As rightly pointed by Shri Alok Malviya, ld. DR that the assessee did not utilize the sale

consideration for purchase of flat or construction of one residential house. Therefore, the exemption as claimed by the assessee u/s. 54F of the Act is liable to be denied. Thus, in our opinion the order of CIT(A) is justified that the Capital Gains is to be assessed under the year under consideration, consequently, the assessee is not entitled to claim exemption u/s. 54F of the Act. We uphold the same. Thus, only issue raised by the assessee is dismissed.

9. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 31st August, 2020.

Sd/-	Sd/-
(P.M. Jagtap)	(S.S. Viswanethra Ravi)
VICE PRESIDENT	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st August, 2020.
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Kolhapur
4. The Pr. CIT-1, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune