

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND  
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 290/Jodh/2019**  
**(ASSESSMENT YEAR-2016-17)**

Anil Kumar Nuwal, 9, Main Sector, Shastri Nagar, Bhilwara, Rajasthan- 311001.	Vs	A.C.I.T., Circle- Bhilwara.
<b>(Appellant)</b>		<b>(Respondent)</b>
PAN: AAVPN 4375 L		

<b>Assessee By</b>	Shri Avdhesh Singhvi (CA)
<b>Revenue By</b>	Shri Abhimanyu Singh Yadav (JCIT-DR)
<b>Date of hearing</b>	19/03/2020
<b>Date of Pronouncement</b>	20/03/2020

**ORDER**

**PER SANDEEP GOSAIN, J.M.**

The present appeal has been filed by the assessee against the order of the Ld. CIT(A), Ajmer dated 15/07/2019 for the assessment year 2016-17. Following grounds have been taken by the assessee:

- "1. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the disallowance of claim of Rs.1,04,59,000/- on account of deduction claimed us 54B of the IT Act, 1961.*
2. *On the facts and in the circumstances of the case, the Hon'ble CIT(A) erred in confirming the disallowance of claim of Rs. 15,71,918/- on account of indexed cost of improvement being interest paid on the borrowed money to purchase the said agricultural land in various years.*

3. *On the facts and in the circumstances of the case, the Hon'ble CIT(A) erred in confirming addition of Rs. 25,350/- being agriculture income on account of income from unexplained sources."*

2. The brief facts of the case are that the return of income was filed by the assessee declaring income of Rs. 48,11,250/- and agriculture income of Rs. 25,350/-. The case was selected for limited scrutiny through CASS and after issuance of notice and reply of the assessee, the A.O. passed order U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) on 16/12/2018 whereby making various additions/disallowances under various heads including disallowance U/s 54B of the Act.

3. Aggrieved by the order of the A.O., the assessee preferred appeal before the Id. CIT(A), who after considering the facts and circumstances available on record, dismissed the appeal filed by the assessee.

4. Aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before the ITAT on the grounds mentioned above.

5. With regard to ground No. 1 of the appeal, the Id AR appearing on behalf of the assessee reiterated the same argument as were raised before the Id. CIT(A) and relied upon the written submissions filed before the Id. CIT(A) which is contained in para 5.2 of the order of the Id. CIT(A) and the same is reproduced below.

On the facts and in the circumstances of the case and in law, the Ld. A.O erred in making disallowance of claim of Rs.1,04,59,000 on account of deduction claimed u/s 54B of the IT Act 1961-

- a) During the period under consideration, the assessee has sold the agricultural land on 27th June 2015 situated at Velemala (V), Ramachandrapuram Mandal, Dist. Medak, Telangana for Rs. 1,58,00,000/- against which the assessee has claimed the deduction of Rs. 1,04,59,000/- u/s 54B of the Act and the assessee has also purchased the agricultural land on 10th May 2016, Situated at Aaraji No. 944 – 03 Biswa, Aaraji No. 945 – 4 Bigha 4 Biswa Aaraji No. 946 – 1 Bigha 19 Biswa, Raisinghpura, Bhilwara, within a period of two years from the date of transfer.
- b) Since the agricultural land sold by the assessee has been used for agricultural purpose in the two years immediately preceding the date on which transfer took place i.e. between 28.06.2013 to 27.06.2015 and the title of Land which has been sold was agricultural during preceding two year from the date of Sale, the assessee has claimed deduction u/s 54B of the Income Tax Act.
- c) While disallowing the claim of the assessee, the Ld. A.O. has pointed out in para no. 3.2 that *the assessee has failed to submit any other documentary evidence which can prove the utilization of subjected capital asset for agriculture activity in last two years from the sale of said capital asset. Thus, the condition of utilization of capital asset being land for agriculture purpose by the assessee or his parent, HUF remain unproved.*

In para no. 3.3, the Ld. A.O has also pointed out that *the assessee did not offer any agriculture income in the ROI for A.Y. 2014-15 and A.Y. 2015-16, which give strength to the view of the AO that no agricultural activity were performed by the assessee on the subjected piece of land. Strategically, the assessee has shown agriculture income for the period under consideration at Rs. 25,350 for which no supporting evidence was furnished.*

*In addition to the above, the Ld. A.O has also pointed out that the subjected capital asset was sold on 27.06.2015 and the new asset being agriculture land was purchased on 10.05.2016, the new asset was purchased after the expiry of ten month from the sale of subjected asset and assessee has failed to furnish any documentary evidence as to whether the sale consideration of Rs. 1,58,10,000/- received from sale of subjected capital asset was deposited in an account in any such bank or institution as may be specified in, and utilized in accordance with any scheme which the central government notified in official gazette. The assessee has not deposited the said amount for gap period in any capital gain scheme or bond notified by the government. Thus, the condition laid down in section 54B(2) of the Act were also not complied for.*

- d) At this outset, we wish to draw your attention to the provisions of the section 54B of the Income Tax Act 1961 which are as under:

*Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.*

*54B. (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 as 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.*

From the perusal of the above provisions of law, it is clearly seen that the assessee has to satisfy all the below conditions set out in section 54B for claiming exemption which are as under.

- i. The agricultural land is transferred by any individual or HUF.
- ii. The agricultural land has been used by the individual or his parents for agricultural purpose during two years immediately preceding the date of transfer.
- iii. The assessee had purchased another agricultural land (rural or urban) within a period of two years after the date of transfer of the original agricultural land to be used for agricultural purpose.

- iv. If the amount of Capital Gain is not utilized by the assessee for the purchase of another agricultural land before the date of furnishing return of income u/s. 139 of the Act, the same should have been deposited before furnishing such return in a notified Capital Scheme account with bank.
- e) In so far as conditions given in clause (i), (iii) are concerned there is no dispute in the present case has been raised by the Ld. A.O in his assessment order because the assessee has satisfied these conditions. The dispute is related to clause no. (ii) and (iv) whether the assessee has used the land for agricultural purpose during the period of 2 years immediately preceding the date of transfer and whether the assessee has utilized the amount of Capital Gain for the purchase of another agricultural land before the date of furnishing return of income u/s. 139 of the Act and if not, then the same should have been deposited before furnishing such return in a notified Capital Scheme account with bank.
- f) To substantiate the claim of the assessee that the land was used for agricultural purpose/agricultural activities were performed or not, Copy of Agriculture income Certificate received from MRO office is submitted evidencing cultivation of crop in the subjected piece of agricultural land as per annexure 1. The sale deed of land is referred as agricultural land and the lands are appearing as agricultural lands in Pattadar passbooks (Encumbrance Certificate downloaded online from the website). (Copy of same is enclosed for your kind perusal as per annexure 2.). Moreover it is also submitted that the assessee is not seeking mere exemption of the capital gains from the sale of exempted agricultural land. The assessee has instead sought exemption under section 54B of the

Act as the sale proceeds of the agricultural land were invested in acquiring other agricultural lands, which were being to agricultural use.

g) It is further submitted that, the assessee has cultivated the agriculture crops during the period of 2 years immediately preceding the date of transfer and incurred the loss after meeting of all the expenditure incurred during the agricultural activities and debit the loss directly to capital account. Hence agriculture income was not shown in the ROI of AY 2014-15 & AY 2015-16.(Copy of Agriculture income and expenses for FY 2013-14 & 2014-15 is enclosed for your kind perusal as per annexure 3).

h) Going further, Ld. A.O has mentioned *that the subjected capital asset was sold on 27.06.2015 and the new asset being agriculture land was purchased on 10.05.2016, the new asset was purchased after the expiry of ten month from the sale of subjected asset and assessee has failed to furnish any documentary evidence as to whether the sale consideration of Rs. 1,58,10,000/- received from sale of subjected capital asset was deposited in an account in any such bank or institution as may be specified in, and utilized in accordance with any scheme which the central government notified in official gazette. The assessee has not deposited the said amount for gap period in any capital gain scheme or bond notified by the government. Thus, the condition laid down in section 54B(2) of the Act were also not complied for.* To Substantiate the assessee claim, we wish to submit that, the Ld. A.O. has ignored the facts of the case which we resubmit as under :

Particulars	Date
Date of Sale of Agricultural Land Situated at Village Velemala, Dist. Medak (Telangana	27.06.2015

Purchase of New Agricultural Land	10.05.2016
Due date of filing of return u/s 139(1) being Tax Audit was applicable for the year under consideration	17.10.2016
Actual Date of Return Filing	15.10.2016

From the above facts of the case, it is crystal clear that the assessee had purchased new agricultural land on 10.05.2016 i.e. before the due date of filing return under section 139 which is 17.10.2016 ( 5 months before the due date) and as per the provision of the section 54B(2) of the Income Tax Act if *the amount of the capital gain which is not utilized 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 utilized 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 utilized 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.*

Hence in view of the above facts of the case and provisions of section 54B (2) of the Income Tax Act, the Ld. A.O contention to disallow the claim of the assessee above is bad in law and liable to be deleted.

6. On the other hand, the Id DR has relied on the orders passed by the revenue authorities.

7. We have heard the Id. counsels for both the parties and have also considered the material placed on record, order passed by the Revenue Authorities as well as judgements relied upon by the parties. From the record, we notice that the assessee has sold the agricultural land on 27th June 2015 in the State of Telangana as detailed in the orders of the revenue authorities, against which the assessee had claimed deduction U/s 54B of the Act on the ground that the assessee had purchased agricultural land after the sale of the agricultural land. However, the claim of the assessee U/s 54B of the Act was disallowed by the A.O. on the ground that the assessee had failed to prove that the utilization of subjected capita asset for agriculture activity in last two years from the sale of said capital asset. Thus, in the event of, the condition of utilization of capital asset being land for agriculture purpose by the assessee or his parent, HUF remain unproved. Therefore, the disallowance was made while passing the order of the assessment by the A.O.

8. However, during the course of appellant proceedings, the assessee filed application for leading additional evidence under Rule 46A of the Income Tax Rules, 1962 (in short, the Rules) in order to place on record the certificate of agricultural income issued by the Govt. Of Telangana,

revenue department which is at page No. 13 of the paper book. In order to support his contentions, the assessee had submitted before the Id. CIT(A) that this certificate of agricultural income could not place on record before the A.O. as there were process of assembly elections was being undertaken in the State of Telangana and thus in that eventuality, the assessee could not get that certificate in time from the Revenue Department of Telangana. Consequently, the Id. CIT(A) sought remand report from the A.O. on this certificate placed on record by the assessee and the remand report filed by the A.O. is contained in para 7 of the Id. CIT(A)'s order, which is reproduced below.

"The written submission filed by the appellant were forwarded to the AO. The AO has submitted the remand report as under:-

"Kindly refer to your office letter No. 5020 dated 19.03.2019 on above mentioned subject.

2. During the appellant proceedings the AR of the assessee has made written submission before your office which was forwarded to this office for remand report/comments. The comments of the AO are as under:-

2.1 Ground No.-1- The assessee company has requested to grant relief and to allow the disallowance of claim of Rs. 1,04,59,000/- on account of deduction claimed U/s 54B of the Act. The submission in para a to e are factual in nature, hence no comments are offered. In para-f the assessee submitted that the land was used for agricultural activities and submitted copy of agricultural income certificate received from MRO office evidencing cultivation of crop in the

subjected piece of land (Annexure -1). The certificate fails to prove contention of the assessee on following ground:-

a) *In is pertinent to mention here that the said certificate was issued on 04.03.2019 i.e. after the expiry of almost 4 to 5 years of the period under consideration. Further, the said certificate does not clarify the amount of agriculture income earned during the FY 2013-14, 2014-15, and 2015-16 (till the date of sale of the agricultural land)*

b) *On date of issuance of certificate, the subjected land was not owned/possessed by the assessee.*

c) *In the certificate, the assessee is shown to be resident of village – Velmala which is not correct, the assessee resided at Bhilwara.*

d) *At the Bottom of the certificate, there is a disclaimer that "this certificate is not valid for any civil, criminal case and any other purpose, except to obtain bank loan subject to rules and regulation of the bank". Therefore, the said certificate has been issued for the purpose of bank loan and has no legal sanctity or binding on the income tax proceedings.*

e) *Moreover, the period of income derived is also not mention in the certificate. The period of use of subjected land is very vital element to be mentioned which could not be ascertained from the certificate.*

*In view of the above, the said certificate failed to prove that the subjected land was used for agricultural purpose by the assessee or his parent in eligible time period referred in the section 54B of the Act.*

*In support of claim, the assessee submitted ' Encumbrance certificate' downloaded from the website (Annexure-2). The said certificate is encumbrance certificate which shows the status of ownership of the land and transaction of sale/purchase of such land. This certificate could not be utilized to prove that subjected land was utilized for agricultural purpose or not?*

*In para-g, the assessee want prove that the subjected land was used for agricultural purpose and incurred loss out of such activities. In support of his claim, he has furnished copies of ledger account of agricultural account of agricultural income and expenses for FN. 2013-14 & 2014-15 and marked as Annexure-3. The assessee has submitted only the ledger account of Agriculture sale and Agriculture work made in cash and has failed to produce any corroborating evidence such as sale bills of crop, purchase bills and khad & beej, payment proof of salary/wages expenses, details of person to whom the salary was paid. Even the details of crop, its quantity details have not been mentioned/submitted. The evidence so produced are self serving and have no gravity in the eye of law. The said documents have been procured, arranged and prepared purposely to prove his claim u/s 54B of the Act correct. Thus, the submission of the assessee before your good office is liable to be rejected in light of above facts. Therefore, the grounds raised by the assessee company in ground No. 1 may kindly be dismissed and addition on this ground may kindly be sustained."*

9. The Id AR has also drawn our attention to the reply/rejoinder filed by the assessee in regard to the said remand report which is at page No. 8 of the Id. CIT(A)'s order, which is reproduced below:

*"The assessee has submitted the rejoinder to the remand report as under:-*

On the comments offered by the Ld. A.O. in relation to Ground No 1 of the Appeal, we wish to submit our stand as under:

1. In Para 2.1 the Ld. A.O. has mentioned the following observation which are set out verbatim as under

*(a) "it is pertinent to mention here that the said certificate was issued on 04.03.2019 i.e. after the expiry of almost 4 to 5 years of the period under consideration. Further, the said certificate does not clarify the amount of agriculture income earned during the FY 2013-14, 2014-15, and 2015-16 (till the date of sale of the agricultural land)*

*(b) On date of issuance of certificate, the subjected land was not owned/possessed by the assessee.*

*(c) In the certificate, the assessee is shown to be resident of village – Velmala which is not correct, the assessee resided at Bhilwara.*

*(d) At the Bottom of the certificate, there is a disclaimer that "this certificate is not valid for any civil, criminal case and any other purpose, except to obtain bank loan subject to rules and regulation of the bank". Therefore, the said certificate has been issued for the purpose of bank loan and has no legal sanctity or binding on the income tax proceedings.*

*(e) Moreover, the period of income derived is also not mention in the certificate. The period of use of subjected land is very vital element to be mentioned which could not be ascertained from the certificate.*

*In view of the above, the said certificate failed to prove that the subjected land was used for agricultural purpose by the assessee or his parent in eligible time period referred in the section 54B of the Act.*

After perusal of the comments given by the Ld. A.O. we wish to state that the Ld. A.O has generally perused the agriculture income certificate issued by the Concerned Tahsildar of the Subjected Agriculture land - Revenue Department – Government of Telangana and out-richtly rejected the certificate issued by the government Authority by stating that said certificate failed to prove that the subjected land was used for agricultural purpose by the assessee or his parent.

Further, to support the assessee claim, we submit as under:

1. The Agriculture income certificate issued by the concerned Tahsildar of the subjected piece of land itself states the fact that as per government records there is an agricultural income derived from the subjected piece of land which substantiated the fact that the land was used for agricultural purposes.

2. Ld. A.O. has mentioned in point no (c) above that, *“in the certificate, the assessee is shown to be resident of village – Velmala which is not correct, the assessee resided at Bhilwara”*. The certificate issued by the Tahsildar is as per the prescribed format under Rules and regulations of the concerned state and in general any government authority will mention the address as per his official records only. Hence it is to state that the assessee is residing in Bhilwara and land was not used for agricultural purposes is a perception only and not on facts.

3. Ld. A.O. has mentioned in point no (d) above that "*at the Bottom of the certificate, there is a disclaimer that "this certificate is not valid for any civil, criminal case and any other purpose, except to obtain bank loan subject to rules and regulation of the bank". Therefore, the said certificate has been issued for the purpose of bank loan and has no legal sanctity or binding on the income tax proceedings".* We welcome the comments of the Ld. A.O. but the certificate issued by the Government Authority will govern according to the concerned state's prescribed rules and regulations and not according to the Income tax Act Rules and regulations. However certificate issued by the concerned Tahsildar of the subjected piece of land states the fact that as per government records there is an agricultural income derived from the subjected piece of land which substantiated the fact that the land was used for agricultural purposes and assessee is eligible for the claim u/s 54B of the IT Act 1961.

4. Moreover, in the case of Asstt. CIT v. N. Raghu Varma (Hyd-Trib) :(2013) 142 ITD 0421 has recognized the Agriculture income certificate issued by the MRO office – (Tahsildar office of the Government of the Telangana) and dismissed the appeal of the revenue. In para 5 of the order, The Hon'ble Tribunal observed that "*the sale deed land is referred as agricultural land. The lands are appearing as agricultural lands in Pattadar Passbooks and in the returns of income were filed earlier claiming agricultural income. Copy of Pahani from MRO office is submitted evidencing cultivation of subabul. MRO certificate is evidencing cultivation of subabul crop on the land".*

5. Going Further, the Hon'ble Tribunal had also considered the decision of the Hon'ble Supreme Court in the case of *CWT v. Officer-in-charge (Court of Wards) (1976) 105 ITR 133* wherein the Apex Court held that :

*"The determination of the character of the land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality, which will only affect its valuation as part of assets, but its actual condition and intended user which has to be seen for purposes of exemption from wealth-tax. One of the objects of the exemption is to encourage cultivation or actual utilization of land for agricultural purposes. If there is neither anything in its condition, nor anything in the evidence to indicate the intention of its owners or possessors so as to connect it with an agricultural purpose, the land could not be agricultural land for the purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence."*

*Moreover, the Finance Act, 1970 also introduced Section 54B granting exemption in case the proceeds of sale of agricultural lands are reinvested in the purchase of other agricultural lands. The Finance Bill did not contain this section and, therefore, we do not have any Notes on Clauses in respect of this section. However, the CBDT has explained its meaning by Circular No. 45, dated 2-9-1970. It states:*

*"The effect of the amendments to Section 2(14) and Section 47, as stated above, will be that capital gains arising from transfer of agricultural lands situated in the municipal and other urban areas on or after 1-3-1970, will become liable to taxation even where such land was held for bona fide agricultural purposes, often as the main source of livelihood. With a view to relieving the burden of taxation on the capital gains in such cases, a provision has been made, in a new Section 54B, for exempting from tax the capital gain arising from the transfer of agricultural land in certain circumstances. Under the new Section 54B, where the capital gain arises from transfer of land which in the two years immediately preceding the date of transfer was being used by the assessee or a parent of his for agricultural purposes, and the assessee has, within a period of two years after that date, purchased any other land (whether in the same area or elsewhere) for being used for agricultural purposes, then the capital gain will not be charged to tax to the extent that it has been utilized for acquiring the fresh land. Where the amount of the capital gain exceeds the cost of acquisition of the fresh land, only the excess will be chargeable to tax. The concession will, however, be fortified if the assessee transfers the fresh land acquired by him within a period of three years from the date of its purchase.*

*Though the observations of the Supreme Court is with reference to the Wealth-tax Act, where agricultural land is not defined, it equally applies to Income-tax Act, where also agricultural land has not been denied. We must, therefore, determine the character of the land in question applying the tests given by the Supreme Court. The evidence available in the present case is that the land was*

*entered in the revenue records as agricultural land. It is stated that the land was always treated as agricultural land.*

In the instant case, it is submitted that the assessee used for the land for agricultural purpose/agricultural activities and copy of Agriculture income Certificate received from MRO office- (Tahsildar office of the Government of the Telangana) is also submitted evidencing cultivation of crop in the subjected piece of agricultural land and the sale deed of land is referred as agricultural land and the lands are appearing as agricultural lands in Pattadar passbooks also. Hence in view of the facts of the case and above Apex Court decision and CBDT Circular No. 45, dated 2-9-1970, assessee is eligible for claim under section 54B of the IT Act 1961.

10. After having appreciated facts of the present case, we found that as per provisions of Section 54B of the Act, we clearly observe that that the assessee has to satisfy certain conditions as set out in Section 54B of the Act for claiming exemption which are enumerated below:

- i. The agricultural land is transferred by any individual or HUF.
- ii. The agricultural land has been used by the individual or his parents for agricultural purpose during two years immediately preceding the date of transfer.
- iii. The assessee had purchased another agricultural land (rural or urban) within a period of two years after the date of transfer of the original agricultural land to be used for agricultural purpose.
- iv. If the amount of Capital Gain is not utilized by the assessee for the purchase of another agricultural land before the date of furnishing return of income u/s. 139 of the Act, the same should

have been deposited before furnishing such return in a notified Capital Scheme account with bank.

11. In so far as condition given in clause (1) & (iii) are concerned, there is no dispute in the present case because the assessee had already satisfied these conditions. The only dispute is relating to clause (ii) and (iv), as to whether the assessee has used the land for agricultural purposes during the period of 2 years immediately preceding the date of transfer and as to whether the assessee has utilized the amount of capital gain for the purchase of another agricultural income before the date of furnishing return of income U/s 139 of the Act and if not, then the same should have been deposited before furnishing such return in a notified Capital Scheme account with bank. However, from perusal of the order of the Id. CIT(A), we notice that the disallowance U/s 54B of the Act was upheld by the Id. CIT(A) only on the ground that the assessee has failed to prove that he or his parents were carrying on agriculture activities for two years immediately preceding the sale of the land. In order to substantiate his claim that the agricultural land was used for agriculture activities. We have perused the copy of agricultural income certificate issued by the Department of Revenue, Govt. Of Telangana evidencing the only income derived from the agricultural land owned and possessed by the assessee. Although in his remand report, the A.O. had raised objections to the said certificate but no where the revenue authorities

have challenged the authenticity or the veracity of the said certificate which has been issued by the Govt. Of Telangana, Department of Revenue. Thus, in our view, since the certificate issued in favour of the assessee was issued by the government department, therefore, the presumption of correctness is attached with the said document and on the contrary, the revenue authorities have not lead any evidence in order to controvert or rebut the said public document issued by the Govt. Of Telangana, Department of Revenue. The assessee had also filed a detailed rejoinder as reproduced in the above paras of this order wherein pointwise, the assessee has dealt with the objections so raised by the A.O.. Moreover, the Coordinate Bench of the ITAT Hyderabad in the case of ACIT Vs N. Raghu Varma (2013) 142 ITD 0421 has recognized the Agriculture income certificate issued by the MRO office – (Tahsildar office of the Government of the Telangana) and dismissed the appeal of the revenue. In para 5 of the order, The Coordinate Bench of the Tribunal has categorically been held that *“the sale deed land is referred as agricultural land. The lands are appearing as agricultural lands in Pattadar Passbooks and in the returns of income were filed earlier claiming agricultural income. Copy of Pahani from MRO office is submitted evidencing cultivation of subabul.MRO certificate is evidencing cultivation of subabul crop on the land”*.

12. Further the Coordinate Bench of the Tribunal had also considered the decision of the Hon'ble Supreme Court in the case of CWT Vs Officer In Charge (1976) 105 ITR 133 (SC).

13. As per the facts of the present case, it was categorically submitted by the assessee that the assessee used the land for agricultural purpose/agricultural activities and copy of Agriculture income Certificate received from MRO office (Tahsildar office of the Government of the Telangana) is also submitted evidencing cultivation of crop in the subjected piece of agricultural land and the sale deed of land is referred as agricultural land and the lands are appearing as agricultural lands in Pattadar passbooks also. We have also considered the fact that the agriculture income certificate issued by the revenue department of the State of Telangana has been got issued in favour of the assessee by applying online and the format in which it is issued is as per the concerned state's prescribed rules and regulations. We have so considered the submission of the assessee to the effect that the assessee had cultivated the agriculture crops during the period of 2 years immediately preceding the date of transfer and incurred the loss after meeting of all the expenditure incurred during the agricultural activities and debit the loss directly to capital account. Therefore, the agricultural income was not shown in the return of income for the A.Y. 2014-15 and 2015-16.

14. We have also meticulously considered the chronological even of sale and purchase of agricultural land which is reproduced as under:

Particulars	Date
Date of sale of agriculture land situated at village velemala, Dist. Medak (Telangana)	27.06.2015
Purchase of New agriculture land	10.05.2016
Due date of filing of return U/s 139(1) being Tax Audit was applicable for the year under consideration	17.10.2016
Actual date of return filing	15.10.2016

From the above facts of the case, it is crystal clear that the assessee had purchased new agricultural land on 10.05.2016 i.e. before the due date of filing return under section 139 which is 17.10.2016 (5 months before the due date) and as per the provision of the section 54B(2) of the Income Tax Act if the amount of the capital gain which is not utilized 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 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 of any such bank or institution as may be specified in, an utilized 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, in an account in any such bank or institution as may be specified in, and utilized 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 purpose of sub-section (1), the amount, if any, already utilized 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.

Therefore, keeping in view our above observations and also considering the decision of the Coordinate bench of the ITAT and the provisions of Section 54B of the Act, we allow this ground raised by the assessee and set aside the order passed by the revenue authorities and direct the A.O. to allow exemption U/s 54B of the Act.

15. Grounds No. 2 and 3 of the appeal are consequential in nature as per our finding of ground No. 1 of the appeal. Therefore, these two grounds become infructuous.

16. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 20/03/2020.

**Sd/-**  
**(R.C.SHARMA)**  
**Accountant Member**

**Sd/-**  
**(SANDEEP GOSAIN)**  
**Judicial Member**

Dated :. 20/03/2020

\*Ranjan

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Jodhpur
6. Guard File (ITA No. 290/Jodh/2019)

Assistant Registrar  
Jodhpur Bench