
(2008) 04 P&H CK 0052
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Gurnam Singh

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Income Tax Act, 1961 — Section 139, 158BD, 260A, 54B, 54F

Citation : (2008) 218 CTR 674 : (2010) 327 ITR 278 : (2008) 170 TAXMAN 160

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The instant appeal filed by the Revenue u/s 260A of the IT Act (hereinafter referred to as the Act") is directed against the order dt. 24th April, 2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in IT/SS/No. 5/Chandi/2003 in case of the respondent assessee for the block period 1st April, 1988 to 15th July, 1998 by raising the following substantial question of law:

Whether on the facts and law, the Hon"ble Tribunal was justified in allowing deduction u/s 54B of the IT Act, 1961 in respect of agricultural land purchased in the name of son of respondent assessee when Section 54B stipulated investment of capital gain in purchase of another agricultural land by the assessee ?

2. In the present case, the respondent is an illiterate agriculturist. During the search which was conducted in the business premises of M/s S.S. Property Dealer on 15th July, 1998, an agreement to sell dt. 26th March, 1997 was seized. The said agreement revealed that Gurnam Singh (respondent) sold 60 Kanals of agricultural land situated in village Bhamia Kalan to one Sukhdev Singh @ Rs. 8,00,000 per acre. The amount of Rs. 5,00,000 was obtained by him as earnest money. The AO on the basis of said agreement initiated the proceedings u/s 158BD of the Act by giving notice to show cause why the respondent had not paid the capital gains tax on the sale of the said agricultural land. The AO vide

order dt. 28th June, 2002 assessed the income at Rs. 18,33,200. The claim made by the respondent for deduction of Rs. 16,33,200 u/s 54B of the Act in respect of the agricultural land purchased by him along with his son was not allowed on the ground that exemption from capital gains was available in case the same was invested by the assessee for the purpose of purchasing another agricultural land and not in respect of the land purchased by any other person.

3. Feeling aggrieved against the aforesaid order, the respondent filed an appeal before the CIT(A), who vide his order dt. 17th Dec., 2002 allowed the same and set aside the action of the AO in denying the deduction u/s 54F of the Act to the respondent. Against the said order, the Revenue filed an appeal before the Tribunal, who vide its order dt. 24th April, 2006 has dismissed the appeal, while observing as under:

The issue before us revolves around allowability of deduction under Sections 54B and 54F of the Act. The land in question was purchased by the assessee in the name of his son. The learned AO disallowed the deduction on the ground that the land is in the name of the son of the assessee, so the deduction cannot be allowed, specially when the land was purchased by Sh. Gurnam Singh out of the sale proceeds of agricultural land and since Palwinder Singh was bachelor and was not having any independent source of income was dependent upon his father even for livelihood. The conclusion of the learned AO is available on p. 4 of the assessment order. Before coming to a conclusion, we are supposed to analyse Section 54B which is applicable where the capital gains arise from the transfer of capital asset and was being used for agricultural purposes which was invested in the purchase of any other land and again being used for agricultural purposes. There is no dispute to the fact that the assessee sold his agricultural land and then purchased other agricultural land out of the sale proceeds and got registered some portion of the land in the name of his only son who was a bachelor at the relevant time. If the "Ikrarnama"/agreement is analysed which is available at p. 9 of the paper book, it clearly speaks that "the purchaser is at liberty to execute the sale deed in the name of any member of his family. He is also at liberty to execute as many as sale deeds as he desires...." If the contents of the "Ikrarnama"/agreement to sale" is analysed one undisputed fact is oozing out that the sale proceeds of the agricultural land were in fact used to purchase another agricultural land. Section 54B speaks about transfer of capital asset being land within a specified period and another land is purchased for agricultural purposes, then it shall be dealt within accordance with the provision of this section. It is not the case of the Revenue that the capital gains was not utilized by the assessee for the purchase of new asset before the date of furnishing the return of income u/s 139. In fact, if the facts as detailed in the "Ikrarnama" are analysed, the capital gains was utilized by the assessee for purchasing the new asset. Section 54B is applicable as per the provision of Clause 2 of the section. The only dispute raised by the Revenue is that the land was got registered in the name of his son. This fact is not disputed that the assessee was an old and illiterate person and never filed any return. At the same time, he was not having

any other source of income also. It is not the case that the sale proceeds were used for any other purposes or beyond the stipulated period. This fact was also not disputed that the son of the assessee was bachelor and was not having any other source of income and was totally dependent upon his father. Undisputedly, the earlier land which was sold, also belonged to the assessee and the sale proceeds were also used for purchasing agricultural land. The possession of the said land was also taken by the assessee. The only objection raised by the Revenue was that the said land was registered in the name of his son. In view of these facts, it cannot be said that the capital gains/sale proceed were in any way misused for any other purposes contrary to the provisions of law.

4. We have heard the counsel for the Revenue and gone through the aforesaid impugned order. In our opinion, from the impugned order, no substantial question of law is arising for consideration of this Court as the Tribunal while recording a pure finding of fact has dismissed the appeal of the Revenue. Undisputedly, in this case the assessee had sold the agricultural land which was being used by him for agricultural purposes. Out of sale proceeds of the said sale, the assessee has purchased other piece of land (land in question) 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 time. Further, it is not the case of the Revenue that from the sale proceeds of the agricultural land earlier owned by the assessee, the land in question was purchased for any other purpose than the agricultural purpose. Undisputedly, the purchased land is being used by the assessee only for agricultural purpose and merely because in the sale deed his only son was also shown as co-owner, the Tribunal has rightly come to the conclusion that it does not make any difference because the purchased land is being used by the assessee for agricultural purposes. It is not the case of the Revenue that the said land is being used exclusively by his son. In our view, a pure finding of fact has been recorded by the Tribunal which does not require any interference in this appeal.

No substantial question of law is involved in this appeal. Dismissed.