(2007) 08 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Jai Narayan APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:
Income Tax Act, 1961 — Section 148, 260A

Citation : (2009) 221 CTR 255 : (2008) 306 ITR 335

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.

C.M. No. 14769-CII of 2006

1. This is an application for condonation of 126 days'' delay in refiling the appeal.

2. For the reasons mentioned in the application, the same is allowed and the delay of 126 days in refiling the appeal is condoned.

I.T.A. No. 447 of 2006

3. In this appeal by the assessee u/s 260A of the Income Tax Act, 1961 (for short "the Act"), the order dated July 29, 2005, of the Income Tax Appellate Tribunal, Delhi Bench "E", New Delhi (hereinafter referred to as "the Tribunal"), passed in I.T.A. No. 3835/Delhi/2003 relating to the assessment year 1996-97 has been challenged. The assessee has claimed that the following substantial question of law arises for consideration of this court:

Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in disallowing the exemption u/s 54B regarding capital gain investment in the name of assessee''s son and grandson?

4. Briefly, the facts are that on December 8, 2000, the Assessing Officer issued a notice u/s 148 of the Act to the assessee on the basis of information that the

assessee had received a sum of Rs. 14,21,860 from M/s. Ratika Construction Company Pvt. Ltd. for the land sold in village Islampur during the period relevant to the assessment year 1996-97. The Assessing Officer, while computing the income under the head "Capital gains", did not allow the deduction u/s 54B of the Act for the purchase of land as the same had been purchased by the assessee in the name of his son and grandson. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) who, vide order dated May 28, 2003, allowed the appeal holding that the assessee was entitled to deduction u/s 54B of the Act for the agricultural land purchased by him in the name of his son and grandson and directed the Assessing Officer to recompute the income. The Revenue took the matter before the Tribunal and the Tribunal, vide its order dated July 29, 2005, set aside the order of the Commissioner of Income Tax (Appeals) and restored the order passed by the Assessing Officer. The Tribunal held that the assessee on utilising the capital gain arising from the transfer of capital asset being agricultural land in purchasing other land in the name of his son and grandson disentitled himself from deduction u/s 54B of the Act.

5. Learned Counsel for the appellant vehemently argued that, according to Section 54B of the Act, there is no stipulation in the said Section which restricts that the land should be purchased in the name of the assessee himself. According to learned Counsel, the assessee has purchased the land in his son and grandsons'' name and the same would be entitled to exemption u/s 54B of the Act. Learned Counsel placed reliance upon the judgment of the Madras High Court in Commissioner of Income Tax Vs. V. Natarajan, , to submit that where on the sale of residential house, the assessee had purchased house for residence within the stipulated period though it was in his wife''s name, yet the assessee was held entitled to exemption u/s 54 of the Act.

6. We have heard learned Counsel for the appellant and with his assistance have perused the record.

7. The primary point which would arise for consideration in this appeal is as to the assessee who purchased the land in his son and grandson''s name after the sale of the agricultural land would be entitled to the benefits of exemption u/s 54B of the Act.

8. It would be profitable to reproduce Section 54B of the Act, as it stood at the relevant time, which reads thus:

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 or a parent of his 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 u/s 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 u/s 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 u/s 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 u/s 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.

9. A careful reading of the aforesaid provisions shows that the following conditions are to be satisfied before an assessee can claim the benefit of Section 54B of the Act.

(i) a capital gain arises from the transfer of a capital asset being land by the assessee,

(ii) such land was being used by the assessee or a parent of his for agricultural purposes in the two years immediately preceding the date of the transfer, and

(iii) the assessee has within a period of two years after the date of the transfer, purchased any other land for being used for agricultural purposes.

10. In interpreting the words contained in a statute, the court has not only to look at the words but also to look at the context and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. The word "assessee" occurring in Section 54B must be interpreted in such a manner as to accord with the context and subject of its usage. A reading of Section 54B of the Act nowhere suggests that the Legislature intended to advance the benefit of the said Section to an assessee who purchased the agricultural land even in the name of a third person. Wherever the Legislature intended it to be so, it had specifically provided under the provision. The term "assessee" is qualified by the expression "purchased any other land for being used for agricultural purposes", which necessarily means that the new asset which is purchased has to be in the name of the assessee himself for seeking exemption u/s 54B of the Act. The purchase of agricultural land by the assessee in his son or grandson''s name, therefore, cannot be held entitled to exemption u/s 54B of the Act.

11. We may make a brief reference to the decision relied upon by Counsel for the assessee. Learned Counsel mainly relied upon the decision in Commissioner of Income Tax Vs. V. Natarajan, , with reference to Section 54 of the Act.

12. The Madras High Court in Commissioner of Income Tax Vs. V. Natarajan, was dealing with a case relating to Section 54 of the Act wherein the assessee who after selling his residential house had purchased another residential house in his wife''s name. The court had concluded that the assessee in such circumstances was entitled to exemption u/s 54 of the Act. After giving our thoughtful consideration, we are unable to accept the view as laid down in Commissioner of Income Tax Vs. V. Natarajan, .

In view of the above, the question of law posed hereinbefore is answered against the assessee and finding no merit in the appeal, the same is hereby dismissed.