

(2012) 05 RAJ CK 0094

In the Rajasthan High Court

Case No : IT Appeal No. 112 of 2012 and Civil Miscellaneous Stay Application
No. 1180 of 2012

Kalya

APPELLANT

Vs

Commissioner of Income Tax and Others

RESPONDENT

Date of Decision : 19-05-2012

Acts Referred:

Income Tax Act, 1961 — Section 54B, 54F

Citation : (2012) 251 CTR 174 : (2012) 208 TAXMAN 436

Hon'ble Judges : Arun Mishra, C.J.; Mahesh Bhagwati, J

Bench : Division Bench

Advocate : Naresh Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—Challenge in this income tax appeal is to the order dt. 22nd Nov., 2011, whereby the Tribunal, Jaipur Bench, Jaipur partly allowed the appeal filed by the assessee-appellant, while the appeal filed by Revenue was allowed for statistical purposes. Shorn of unnecessary details, the facts of the case, in nub, are that agricultural land admeasuring 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 Ltd. for a total consideration of Rs. 1,61,09,100 vide registered sale deed dt. 12th Oct., 2006. In order to claim various exemptions including exemption under s. 54B of the IT 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 AO, having considered the matter ad longum, vide its order dt. 18th Dec, 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 AO, the appellant-assessee preferred an appeal before the CIT(A). The learned CIT(A) vide his order dt. 28th Feb., 2011 affirmed the order of the AO and rejected the claim of the appellant-assessee seeking exemption under s. 54B of the Act, albeit

the learned CIT allowed the claim under s. 54B of the Act.

2. Being aggrieved with the order dt. 28th Feb., 2011 passed by the CIT(A), both assessee as well as Revenue preferred appeals before the Tribunal. The Tribunal vide its order dt. 22nd Nov., 2011, while dealing with the appeal of the assessee, disallowed the claim of the assessee under s. 54B and upholding the findings of CIT(A) observed that no deduction under s. 54B would be available on the issue of purchase of land in the name of his son and son's 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. Commissioner of Income Tax, 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 under s. 54F was not allowed in the case of Jai Narayan Vs. Income Tax Officer, in which it was held that term "assessee" mentioned in s. 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 learned CIT(A) that no deduction under s. 54B will be available on the issue of purchase of land in the name of his son and wife.

3. The appellant-assessee has filed the instant appeal challenging the order passed by the learned Tribunal.

4. Learned Counsel for the appellant canvassed that the object of granting exemption under s. 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 s. 54B of the Act for fulfilling the condition and subsequently enabling the assessee to claim exemption under s. 54B of the Act must be given a wide and liberal interpretation so as to include his legal heirs also. The provisions contained in s. 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 s. 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.

5. 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.

6. A bare reading of s. 54B of the IT 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.

7. Secondly, the word "assessee" used in the IT 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 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.

8. The Tribunal, having considered all the facts and circumstances of the case, is found to have rightly disallowed the exemption under s. 54B of the Act.

9. 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.

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