

Pune ITAT

Members

Sushma Chowla
Anil Chaturvedi

Lawyers (Assessee)

P. S. Shingte

Lawyers (Revenue)

N. Ashok Babu

Timeline

ITAT PUNE

22 May 2017

Case filed

19 Sep 2018

Hearing

15 Oct 2018

Hearing

31 Jan 2019

Listed for
hearing

07 Jun 2019

[Judgement](#)

RAJENDRA BASTIMAL CHORDIYA vs INCOME TAX OFFICER



07.06.2019 Income Tax 1295-PUN-2017

Text Highlight

Issues & Grounds of
appeal

Arguments

Holding &
Outcome

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) 1, Nashik dated 01.03.2017 for the assessment year 2013-14.
2. The relevant facts as culled out from the material on record are as under :- electronically filed his return of income for A.Y. 2013-14 on 25.02.2014 declaring total income at Rs.2,76,967/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dt.08.12.2015 and the total income was determined at Rs.13,01,560/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dated 01.03.2017 (in appeal No.Nsk/CIT(A)-1/588/2015-16) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. On the basis of the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of proportionate exemption of Rs. 10,24,588/- claimed u/s 54B of the I.T.Act without appreciating the fact that agricultural land which was sold was used for agriculture purposes in two years immediately preceding the date of its transfer. The Appellant prays that disallowance made of Rs. 10,24,588/- may please be deleted.

2. Without prejudice to Ground No. 1 and on the basis of the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance without appreciating the fact that observations in assessment order that Authorised Representative of the appellant was confronted and he agreed for the disallowance, are wrong and contrary to the facts on records. No opportunity of being heard was given to appellant by the learned AO. The Appellant prays that disallowance made of Rs. 10,24,588/- may please be deleted.”
3. Both the grounds being inter connected are considered together.

Law Referred

Income Tax Act, 1961
Section 143(3), Section 54B

Case Map

This case refers to:

[Deputy Commissioner Of Income-tax Vs Shri Mahesh Danabhai Patel](#)

for Rs.50 lakhs (assessee's share being 1/3rd amounting to Rs.16,66,667/-). Assessee had shown long term capital gains of Rs.12,64,923/- being his share. It was stated that assessee had invested the capital gains for purchase of another agricultural land and accordingly had claimed exemption u/s 54B of the Act. The assessee was asked to produce

7/12 extract of land for sale of land and justify the claim of exemption u/s 54B of the Act. On perusing 7/12 extract and the confirmation of Talathi of Titoli, AO noticed that out of the total area of 1 hectare 12 R, rice was grown only on 0.20 R piece of land and the balance land of 0.81 R was non agricultural land. AO noted that no documentary evidence for carrying out any agricultural activities on the aforesaid land was brought on record. AO further noted that the Authorised Representative of the assessee agreed for proportionate disallowance. AO accordingly worked out the investments at Rs.10,24,588/- being not allowable u/s 54B of the Act and disallowed the same. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by noting the fact that the Authorised Representative of the assessee had agreed for proportionate disallowance at the time of assessment proceedings and therefore he cannot revert back. She thus upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. reiterated the submission made before AO and Ld.CIT(A) and submitted that neither the A.R. of the assessee was confronted nor his A.R. agreed for proportionate disallowance. He further submitted that AO did not grant opportunity of being heard before making disallowance of proportionate exemption u/s 54B of the Act and thereby violated the principles of natural justice. In support of his aforesaid contentions, he pointed to copy of submissions made before Ld.CIT(A) and which are placed at Page 3 of the Paper Book. On the merits, he pointed to the map of the land which is placed at Page No.39 of the Paper Book. From the aforesaid map, he pointed that the land is one but having different survey numbers. He thereafter pointed to the copy of 7/12 extracts which are placed at Page Nos. 37 and 39 of the Paper Book and pointed to the crop which are grown in the aforesaid land. He thereafter submitted that the provisions of Sec.54B of the Act mandates that the land should be used for agricultural purpose in the immediately two preceding years prior to the date of transfer. The law does not require that entire land should be used for cultivation purpose or the land should be used for agriculture purpose throughout the years. He submitted that even if a part of the land is used for agricultural purpose by the assessee then assessee is eligible for claim of deduction u/s 54B of the Act and in support of his aforesaid contention, he placed reliance on the decision of Pune Tribunal in the case of [DCIT Vs. Shri Mahesh Danabhai Patel](#) (ITA No.1534/PUN/2015 order dated 31.01.2018). He therefore submitted that the AO was not justified in denying the claim of deduction. Ld. D.R. on the other

admitted before AO for the proportionate disallowance, the assessee now cannot take a different stand. He thus supported the order of lower authorities.

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the denial of claim of deduction u/s 54B of the Act for the reason that the land was not cultivable. We find that the reason for denying the claim of deduction u/s 54B of the Act was for the reason that out of the total area of 1 hectare 12R, agricultural activities were carried out on a portion of the land and there was no evidence of crop grown on the balance portion of the land. Before us, it is assessee's submission that the entire land is one land and the fact that crop was grown in portion of land is not disputed. We find that the Co-ordinate Bench of the Tribunal in the case of Shri Mahesh Danabhai Patel (supra) has held that provisions of Sec.54B of the Act does not specify that the entire land should be used for cultivation for claiming benefit u/s 54B of the Act. It held that if any part of the land is under cultivation for two years immediately two preceding years prior to the date of transfer, it would be sufficient to claim benefit u/s 54B of the Act. Before us, Revenue has not placed any contrary binding decision in its support nor has placed any material on record to demonstrate that the aforesaid decision in the case of [DCIT Vs. Shri Mahesh Danabhai Patel](#) (supra) has been set aside or stayed by the higher Judicial Authorities. We find that AO has noted that A.R of the assessee agreed for disallowance and therefore the AO proceeded with proportionate disallowance. On the other hand, it is assessee's contention that the statement of AO of the A.R having agreed for disallowance is factually incorrect. In the present case, we are of the view that since the issue on merits is covered in assessee's favour by the decision of Pune ITAT, cited hereinabove, then merely because of admission of disallowance, the assessee cannot be denied the benefit to which he is eligible. We therefore following the decision of Co-ordinate Bench of the Tribunal in the case of Shri Mahesh Danabhai Patel (supra) are of the view that the AO was not justified in denying the claim of deduction u/s 54B of the Act and we therefore direct the AO to deduct the claim. Thus, the grounds of assessee are allowed.

7. In the result, the appeal of assessee is allowed.

Order pronounced on 7th day of June, 2019.

Yamini