

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-3", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	ITA No. 3678/Del/2014	
	A.Y. : 2009-10	
LALIT MOHAN GUPTA D-125, MAHENDRU ENCLAVE, DELHI - 110009 (PAN: AHTPG3030a)	VS.	ITO, WARD 20(4), NEW DELHI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by : Sh. RS Singhvi, CA & Sh.  
Satyajeet Goel, CA  
Department by : Sh. A. Sreenivasa Rao, Sr.DR

**ORDER**

**PER H.S. SIDHU, JM**

Assessee has filed this Appeal against the Order dated 28.2.2014 passed by the Ld. Commissioner of Income Tax (Appeals)-XXII, New Delhi pertaining to assessment year 2009-10 on the following grounds:-

"1. As per on the facts and circumstances of the case the Ld CIT-(Appeals) has erred in not holding the Assessment Order passed u/s 143(3) of the Income tax

act 1961 as null and void even when the due processing of the case u/s 143(1) and serving the intimation to the appellant has not been done in case of refund as per the law prevailing at the time of passing the Order.

2. As per on the facts and circumstances of the case the CIT-(Appeals) has erred in confirming the addition of Rs2716388/-under the head capital gains made by the assessing officer on the basis of deeming provisions u/s 50C of the income tax act 1961, and has not considered the circle rate prevailing at the time of agreement to sell entered by the appellant on 4-8-2007.

3 As per on the facts and circumstances of the case of the Assessing Officer has erred to pass the order on 29.12.2011 without affording any opportunity to the appellant about the addition of the amount of Rs 2716388/-under the head capital gains. The case in fact has been adjourned to 1.12.2011 for want of confirmation of the cash creditors, the appellant attended the office of the assessing officer on that date and thereafter, but was told that the assessment file is with the additional commissioner of income tax and thus no

opportunity has been given to the appellant for rebuttal is against the principal of natural justice.

4. As per on the facts and circumstances of the case the CIT-(Appeals) has erred in not allowing the full amount of exemption of Rs(8105300/+2552800/)= Rs. 10658100/- on account of investment in agriculture land u/s 54B of the Income Tax Act 1961.

5 As per on the facts and circumstance of the case the CIT-(Appeals) has erred in withdrawing the deduction u/s 54B of the Income Tax Act 1961, amounting to Rs 7500300/- out of the deduction amounting to Rs 8105300 already allowed by the Assessing Officer. Thus the CIT (Appeals) has made an enhancement of income by Rs 7500300/-purely on mere conjecture surmises.

6 As per on the facts and circumstance of the case the CIT-(Appeals) has further erred in not considering the correct amount of 'advance received from the date of agreement to sell to the date of sale deed which has been utilized for the purchase of the other agriculture land."

2. The brief facts of the case are that the assessee has filed its return of income on 31.8.2009 for the assessment year 2009-10, declaring total income of Rs. 6,91,490/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as Act). The case was selected for scrutiny through CASS. Accordingly, notice u/s. 143(2) of the Act, was issued on 26.8.2010 which was duly served upon the assessee. In response to the same and subsequent notices, Assessee's Authorized Representative attended the hearing from time to time and filed requisite information and documents. During the assessment proceedings the AO observed that the assessee has undervalued the sale consideration and therefore for the purpose of Section 50C of the I.T. Act, the value adopted by the stamp valuation authority shall be deemed to be the full value of the consideration received as a result of such transfer he accepted the claim of deduction u/s. 54B but made the addition of Rs. 27,16,668/- on account of capital gain by applying provisions of section 50C of the Act on the basis of circle rate at the time of execution of sale deed. Accordingly, he completed the assessment at an income of Rs. 34,07,860/- after making other additions vide his order dated 29.12.2011 passed u/s. 143(3) of the I.T. Act, 1961.

3. Against the order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 28.2.2014 has dismissed the appeal of the assessee by confirming the addition made by the AO and enhanced the income by disallowing the deduction u/s. 54B amounting to Rs. 75,00,300/-.

4. Aggrieved with the order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

5. During the course of hearing Ld. Counsel of the assessee stated that AO accepted the claim of deduction u/s. 54B but made the addition of Rs. 27,16,668/- on account of capital gain by applying provisions of section 50C of the Act on the basis of circle rate at the time of execution of sale deed. He further stated that AO was of the view that the circle rate prevailing at the time of sale deed shall be taken into consideration while computing capital and not at the time of agreement to sell. He further stated that the ownership rights in the property were vested in purchaser vide agreement to sell and execution of sale deed was merely a formality and as such the circle rate at the time of agreement to sell is relevant and applicable to the facts of the case. To support this contention, he cited the following cases laws:-

- ITO vs. Modipon Ltd. (2015) 57 Taxmann.com 360 (Delhi).

- DCIT vs. S. Venkat Reddy (2013) 32 Taxmann.com 324 (Hyd.)

In view of the above, he stated that the assessee's case is squarely covered by the aforesaid cases of the Tribunal including the decision of the Delhi Bench, as per which the circle rate prevailing at the time of agreement to sell has to be considered for applying provisions of section 50C. Therefore, he requested that the addition of Rs. 27,16,368/- may be deleted.

5.1 With regard to next ground i.e. relating to enhancement of addition by the Ld. CIT(A) by restricting the claim of deduction u/s. 54B to the extent of Rs. 6,05,000/- as against claim allowed by AO at Rs. 81,05,300/-, he stated that Ld. CIT(A) wrongly made the enhancement to the extent of Rs. 75,00,300/- and has not properly considered the facts of the case and this disallowance is based on wrong appreciation of facts and legal principles. It was stated that the only ground on the basis of which claim was restricted is that payment for purchase of agriculture lands was not made out of proceeds from sale of agriculture land therefore the deduction u/s. 54B should be restricted to the amount actually invested out of sale proceeds. In this regard, he submitted that the lands have not been purchased out of sale proceeds is erroneous and factually incorrect as the entire payment for purchase of agriculture lands was made

out of sale proceeds which is corroborated from the Bank Statement enclosed with the Paper Book Page No. 2 and such there is no valid basis for any disallowance. It was the further contention that the Ld. CIT(A) has mistakenly considered date of issuance of cheques for purchase of property instead of date of actual debit in the bank statement in reaching to the conclusion that payment for purchase of property has not been made out of sale proceeds. To support his contention, he relied upon the following case laws:-

- CIT vs. R. Srinivasan (2010) 45 DTR 208 (Mad.)
- CIT vs. Dr. Ps Pasricha (Bombay High Court) ITA No. 1825 of 2009
- ITO vs. KC Gopalan (2000) 162 CTR 566 (Ker).

In view of the above submissions, the Assessee's counsel has stated that the investment in agriculture land has to be made out of sale proceeds and as such the assessee is eligible to claim deduction u/s. 54B for purchase of lands even presuming that payment for purchase of land was not made out of receipt of sale proceeds on sale of asset and stated that entire investment being out of sale consideration of property in accordance with provisions of section 54B, there is no justification for restricting claim of exemption u/s. 54B of the Act.

6. On the other hand Ld. DR relied upon the order of the Ld. CIT(A) authorities below. He submitted that addition of Rs. 27,16,368/- was made on the basis of Stamp Duty Valuation. He further stated that AO has allowed excess deduction which has been rightly restricted to only Rs. 6,05,000/- by the Ld. CIT(A), hence, he requested that the order of the Ld. CIT(A) may be upheld.

7. I have heard both the parties and perused the records especially the orders of the Revenue authorities. With regard to addition of Rs. 27,16,668/- is concerned, I find that the assessee has purchased agriculture land out of the sale consideration and claimed the benefit of statutory deduction u/s. 54B as per which the resultant capital gain was claimed as exempt. The AO accepted the claim of deduction u/s. 54B but made the addition of Rs. 27,16,668/- on account of capital gain by applying provisions of section 50C of the Act on the basis of circle rate at the time of execution of sale deed. However, the ownership rights in the property were vested in purchaser vide agreement to sell and execution of sale deed was merely a formality and as such the circle rate at the time of agreement to sell is relevant and applicable to the facts of the case. I also find considerable cogency in the contention of the Id. Counsel of the assessee that similar and



identical situation has been dealt by the Tribunal in the following cases:-

- ITO vs. Modipon Ltd. (2015) 57 Taxmann.com 360 (Delhi).

Section 50C of the Income-tax Act, 1961 - Capital gains - Special provision for computation of full value of consideration (Circle rate) - Assessment year 2005-06 - Assessee-company entered into an agreement to sell certain land - Said agreement was registered on 27-5-2004 - Pursuant thereto, sale deed was executed on 16-9-2004 - Circle rate on date of agreement was Rs. 13,000 per sq. mtr., but circle rate on date of execution of sale deed was Rs. 20,000 per sq. mtr. - Assessing Officer applied circle rate on execution of sale deed for computing capital gain - Whether in view of facts that enhancement of circle rate was beyond control of assessee and buyer had not paid anything above amount that had been agreed between parties, addition made by Assessing Officer was to be deleted - Held, yes [Paras 13 and 16] [In favour of assessee]

- b. DCIT v. S. Venkat Reddy[2013] 32 taxmann.com 324  
(Hyd)

Section 50C, read with section 2(47), of the Income-tax Act, 1961 - Capital gains - Special provisions for full value of consideration in certain cases [Date of transfer] - Assessment year 2006-07 - Assessee sold property and transferred possession vide sale agreement on 13-6-2005, but sale deed was registered only on 25-11-2005 - Assessing Officer took stamp duty value on date of registration as full value of consideration under section 50C for computing capital gains - Whether, where transfer was completed in terms of section 2(47) by giving possession of property on date of sale agreement, but registration was delayed on bona fide reasons and execution of sale deed was only a legal formality, stamp duty value on date of sale agreement and not on date of registration was required to be adopted for computing capital gains - Held, yes [Para 19] [In favour of assessee]

After perusing the aforesaid findings of the Tribunal, I am of the considered view that the issue in dispute is squarely covered by the aforesaid decision of the Tribunal, as per which Circle rate

prevailing at the time of agreement to sell has to be considered for applying the provisions of section 50C. Respectfully following the precedent as aforesaid, the addition of Rs. 27,16,368/- by misconstruing the provisions of Section 50C is deleted.

7.1 With regard to ground relating to enhancement of addition by Ld. CIT(A) by restricting the claim of deduction u/s. 54B to the extent of Rs. 6,05,000/- as against claim allowed by the AO at Rs. 81,05,300/- is concerned, I find that the only ground on the basis of which claim was restricted is that payment for purchase of agriculture lands was not made out of proceeds from sale of agriculture land therefore the deduction u/s. 54B should be restricted to the amount actually invested out of sale proceeds. In this regard, from the records, it reveals that the entire payment for purchase of agriculture lands was made out of sale proceeds which is corroborated from the Bank Statement enclosed with the Paper Book Page No. 2 and such there is no valid basis for any disallowance. However, Ld. CIT(A) has considered the date of issuance of cheques for purchase of property instead of date of actual debit in the bank statement in reaching to the conclusion that payment for purchase of property has not been made out of sale proceeds. Even otherwise, section 54B nowhere mandates that the purchase of agriculture land has to be made out of sale

proceeds arising from sale of agriculture land. For the sake of clarity, Section 54B is reproduced hereunder:-

***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.*

In view of the above, it is crystal clear that there is no requirement that the investment in agriculture land has to be made out of sale proceeds and as such the assessee is eligible to claim deduction u/s. 54B for purchase of lands even presuming that payment for purchase of land was not made out of receipt of sale proceeds on sale of asset. Therefore, there is no justification for

restricting claim of exemption u/s. 54B of the Act, thus we reverse the finding of the Ld. CIT(A) on this issue and allow the deduction as accepted by the AO at Rs. 81,05,300/-, as a result the ground raised by the Assessee is allowed.

8. In the result, the Appeal filed by the Assessee stand allowed.

Order pronounced in the Open Court on 02/08/2016.

Sd/-

**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date 02/08/2016*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar,  
ITAT, Delhi Benches