

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.556/PUN/2020

निर्धारण वर्ष / Assessment Year : 2015-16

Jayawant Gajanan Sutar, 787/4, B-Ward, Near Kharade Mill, Ramanand Nagar, Karvir, Kolhapur – 416 007 PAN : FXRPS1480P	Vs.	The ITO, Ward-1(5), Kolhapur
(Appellant)		Respondent)

Appellant by None
Respondent by Shri Rajesh Gawali

Date of hearing 04-05-2022
Date of pronouncement 04-05-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT (Appeals) -1, Kolhapur on 06-03-2020 in relation to the assessment year 2015-16.

2. There is a delay of 161 days in filing this appeal before the Tribunal. The Hon’ble Supreme Court in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)* dated 08-03-2021 and *421 ITR 314* has taken a *suo motu* cognizance of the situation arising out of the challenges faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the

litigants across the country and accordingly extended the time limit for filing of the appeals. I, therefore, condone the delay in filing the instant appeal and admit the same for disposal on merits.

3. The only issue raised in this appeal is against the confirmation of addition of Rs.13,21,000/- as long term capital gain on sale of immovable property against which exemption u/s.54 of the Income-tax Act, 1961 (hereinafter also called 'the Act') was denied because the new property was purchased in the name of the assessee's wife.

4. Briefly stated, the facts of the case are that the assessee sold certain immovable property jointly held with the other two members and received his share. In the return, the assessee claimed exemption u/s.54 of the Act for a sum of Rs.13,21,000/-. On perusal of details, it was observed that the new flat was purchased by the assessee in the name of his wife, Ms. Smita Jaywant Sutar. He, therefore, denied the exemption, which action came to be echoed in the first appeal.

5. I have heard the Id. DR and gone through the relevant material on record. There is no appearance from the side of the assessee despite notice. As such, I am proceeding to dispose of the appeal *ex parte qua* the assessee on merits.

6. It is an admitted position that the assessee transferred some property resulting into capital gain and the exemption was claimed

u/s.54 of the Act which has been denied by the authorities on the ground that the new property was purchased in the name of the assessee's wife. The Id. CIT(A), while affirming the order passed by the AO, has relied on the judgment of the Hon'ble Jurisdictional High Court in *Prakash Vs. ITO (2009) 312 ITR 40 (Bom.)*. The Hon'ble Jurisdictional High Court in this case has held that when a new property is purchased in the name of son with clear intention to transfer the property to him and the son becomes absolute owner of the property for all the purposes, the assessee cannot claim the benefit of exemption u/s.54B of the Act.

7. It is seen that the Hon'ble Delhi High Court in *CIT vs. Shri Kamal Wahal (2013) 351 ITR 4 (Del)* and the Hon'ble Punjab & Haryana High Court in *CIT vs. Gurnam Singh (2010) 327 ITR 278 (P&H)* have decided similar issue in favour of the assessee by allowing exemption u/s 54B observing that the assessee having invested sale proceeds of his agricultural land in purchasing another agricultural land, though in a joint name with his son, was eligible for exemption. Identical view in favour of the assessee has been canvassed by certain other Hon'ble High Courts also.

8. On the contrary, the Hon'ble jurisdictional High Court in *Prakash Vs. ITO and other (supra)* has disentitled the assessee to the claim of exemption when a new property is not purchased in the name of assessee, who transferred the original property. The Hon'ble Punjab & Haryana High Court in a later decision in the case of *CIT vs. Dinesh Verma (2015) 233 Taxman 409 (P&H)* considered a case in which the new property was not purchased in the name of the assessee who transferred the original property. The Hon'ble High Court did not grant the benefit of exemption u/s 54B to that extent.

9. Ergo, it is overt that the decisions have been rendered at variance by the two sets of the Hon'ble High Courts – one in favour of the assessee and other in favour of the Revenue. It goes without saying that the decision of a High Court is binding on the all subordinate Courts and authorities or Tribunal under its superintendence throughout the territories in relation to which it exercises jurisdiction within the terms of Article 227 of the Constitution of India. When discordant views are rendered by different High Courts, an inferior authority under one of such High Courts is bound to follow its jurisdictional High Court notwithstanding that the other view of the non-jurisdictional High Court may sound more appealing on

individual level. The principle of following a view in favour of the assessee when contrary views are available, applies to the authorities acting under neutral High Courts, namely, which have not expressed any opinion – for or against - on that point. Once the jurisdictional High Court decides a particular issue in a particular manner, that manner has to be mandatorily followed by all the authorities acting under it so long as it holds the field and is not deactivated by the Hon'ble Supreme Court. In that view of the matter, I am bound to follow the view taken by the Hon'ble jurisdictional High Court. I, therefore, hold that the authorities below were justified in denying the benefit of exemption u/s 54 of the Act.

10. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 04th May, 2022.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 04th May, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Kolhapur
4. The Pr.CIT-1, Kolhapur
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
5. / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	04-05-2022	Sr.PS
2.	Draft placed before author	04-05-2022	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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