

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1820/PUN/2018  
निर्धारण वर्ष / Assessment Year : 2009-10

Kishor Ganpatrao Karande,  
Anita Sadan, Bhokardan Road,  
Jalna – 431203

PAN : ABWPK9224B

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward – 2, Jalna

.....प्रत्यर्थी / Respondent

Assessee by : N O N E

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 22-09-2022

घोषणा की तारीख / Date of Pronouncement : 01-12-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 10-08-2018 passed by the Commissioner of Income Tax (Appeals)-1, Aurangabad [‘CIT(A)’] for assessment year 2009-10.

2. I find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent and set ex-parte. Therefore, I proceed to dispose of the appeal by hearing the ld. DR and perusing the material available on record.

3. The assessee raised six grounds of appeal challenging the action of CIT(A) in confirming the order of AO in denying exemption u/s. 54B of the Act and disallowance of improvement cost in the facts and circumstances of the case.

4. I note that according to the AO, the assessee is an individual and an agriculturist. The Government of Maharashtra acquired the land belonging to the assessee admeasuring 1H 21R and paid compensation to the assessee. The AO opined that as per 7/12 extract that the said land is barren land and situated within 8 K.M. from the Municipal area of Jalna. The AO treated the said land as non-agricultural land within the meaning of provisions of section 2(14)(iii)(b) of the Act. Further, he found that the assessee did not utilize the amount of capital gain in purchasing of new asset before filing of return of income u/s. 139(1) of the Act, even not deposited in any capital gains accounts scheme. The assessee contended that he is illiterate, no knowledge of Income Tax technicalities but taken FDR. Having not satisfied with the contention of the assessee, the AO proceeded to deny exemption u/s. 54B of the Act. Further, he disallowed improvement cost for non-filing of documentary evidence. Before the CIT(A), I find the same contention was reiterated by the assessee in support of claim u/s. 54B of the Act. The CIT(A), however, confirmed the view of AO in denying exemption u/s. 54B of the Act, upheld the disallowance made by the AO towards improvement cost for want of evidence.

5. Heard ld. DR and perused the material available on record. The AO opined that land belong to the assessee is barren land as per 7/12 extract and the finding of CIT(A) that the said land is within 8 K.M. from the Municipal area of Jalna falling u/s. 2(14)(iii)(b) of the Act. I find there is no evidence brought on record by the AO to show that the land belonging the

assessee is within 8 K.M. from the Municipal area of Jalna and has population not less than 10,000. The AO before treating the said property as non-agricultural land, no evidence whatsoever brought on record issued by the competent authority that the land falling within 8 K.M. from the Municipal area of Jalna, has population less than 10,000. The AO should have enquired independently from the concerned competent authority to find out whether the said property is within 8 K.M. from the Municipal area of Jalna has population less than 10,000. In this regard, I find the AO did not even ask the assessee to furnish the said details. On perusal of assessment order, I note that the AO simply noticing that the said land is barren land treated the same as non-agricultural land without any evidence in support of its claim. It is pertinent to note that a barren land could transform into fertile land provided irrigation facilities, therefore, I am unable to subscribe to the view of AO that the barren land is a non-agricultural land. Admittedly, the compensation granted by the Government of Maharashtra for compulsory acquisition of land is non-taxable, but however an incorrect deduction u/s. 54B of the Act was claimed which was denied only on the ground that no deposits were made in the capital gains accounts.

6. I find Shri S.N. Puranik, CA filed paper book containing 40 pages, on perusal of the same 7/12 extract of assessee's agricultural land is provided at page 4. According to which it is noted that the said land was in cultivation from 2002-03 to 2007-08. The ld. DR did not dispute the same. Though it was alleged as barren land, was in cultivation during immediately two preceding years of the year under consideration. Further, at page 6, English translation of sowing sheet is provided issued from Talathi office stating that the assessee is owns agricultural land admeasuring 1 Hectare 21 R at G.N. 57 at Mouje Nagewadi and sown the produce Mung in 1 Hectare area of land in F.Y. 2006-07. Further states,

he has sown the produce Bajari in 1 Hectare area of land in F.Y. 2007-08. Further, it is clarified that the said sowing sheet dated 05-01-2008 issued on the basis of 7/12 extract. I note that the above said sowing sheet at page 6 of the paper book clearly shows that the assessee is the owner of agricultural land and was into agricultural activity for F.Ys. 2006-07 and 2007-08.

7. Further, at pages 27 to 31 of the paper book Shri S.N. Puranik, CA placed reliance on the decision of Hon'ble High Court of Bombay in the case of Balmukund Acharya reported in 310 ITR 310 (Bom). On careful reading of the said decision, I note that the Hon'ble High Court of Bombay was pleased to hold that the authorities under the Act are required to assist the assessee and ensure that only legitimate taxes due are collected, if any assessee, under a mistake, misconception or on not being properly instructed. I note that the assessee placed reliance on the said decision in favour of the fact that the assessee made wrong claim before the AO seeking deduction u/s. 54B of the Act. It is contended that the compensation given by the Government of Maharashtra for compulsory acquisition of assessee's land is actually non-taxable u/s. 10(37) of the Act. It is noted that no claim or whatsoever claimed in this regard before the AO. As discussed above, the AO proceeded on the premise of claim made by the assessee u/s. 54B of the Act. I note that the fact of compulsory acquisition of assessee's land by the Government of Maharashtra for the purpose of MIDC is not disputed and the compensation thereon is non-taxable u/s. 10(37) of the Act.

8. Section 10 of the Act describes income not included in total income. Sub-section (37) of section 10 of the Act was inserted by Finance Act 2 of 2004 and came into effect from 01-04-2005. Sub-section (37) of section 10 provides exemption on capital gain arising from compulsory acquisition of

agricultural land situated within specified urban limits. Further, the said exemption on capital gain is available to HUF or to an individual from the transfer of agricultural land by way of compulsory acquisition under any law or under transfer of such land. The conditions for non-inclusion of any income chargeable under the head "Capital Gains" are provided under clause (i) to (iv) of sub-section (37) of section 10 of the Act. According to the AO at page 2 of the assessment order that the land of assessee is a capital asset u/s. 2(14)(iii)(b) of the Act. As already discussed by me in aforementioned paragraphs that there was no evidence brought on record by the AO to show that it is not an agricultural land by conducting independent enquiries from the competent revenue authority. The evidences furnished at pages 4, 6 and 7 amply shows that the land belonging to the assessee which was compulsorily acquired by the Government of Maharashtra is a agricultural land, the assessee was into agricultural activity during the period of two years immediately preceding the date of transfer was being used agricultural purposes by the assessee. Further, the said compensation was received by the assessee on or after 01-04-2004. Therefore, going by the conditions contemplated in clause (i) to (iv) of sub-section (37) of section 10 of the Act the compensation received by the assessee for compulsory acquisition of his land by the Government of Maharashtra is not chargeable under the head "Capital Gains" arising from transfer of agricultural land, therefore, do not form part of total income of the assessee. In this regard, it is noted the notarized affidavit dated 06-05-2019 at page 39 of the paper book was filed before this Tribunal by Shri Ganpat Mohanrao Shinde who is the co-owner of agricultural land at Gate No. 57, Nagewadi, Jalna along with the assessee. He deposed that he did not engage in any agricultural activity because of land of rain/insufficient rain, but however, the assessee cultivated this land for all years before acquisition by MIDC. Further, I find notarized affidavit dated 06-05-2019 deposed by the assessee at page 40 of the paper

book. On perusal of the same, I note that the assessee was into agricultural activity by sowing Bajara in his land for F.Y. 2008-09 and the same has been shown as padik in the revenue records in 7/12 extract due to lack of rain and draught. On careful reading of the said two notarized affidavits filed by the co-owners of the land in Gat No. 57 and the assessee establishes the reasons for classification as barren land due to non-availability of irrigation facilities. Therefore, the assessee is entitled to claim exemption u/s. 10(37) of the Act.

9. Coming to the decision of Hon'ble High Court of Bombay in the case of Balmukund Acharya (supra), I note that the assessee therein filed return of income offering the capital gain to tax under mistaken belief. The Hon'ble High Court of Bombay was pleased to hold that the authorities under the Act are required to assist the assessee to ensure that only legitimate taxes due are collected. Further, it is noted the purpose of assessment proceedings before the taxing authorities is to assess correctly tax liability, in accordance with law. In the present case, the assessee shown capital gain and claimed deduction u/s. 54B of the Act, in my opinion, is a wrong claim, denial of the same for violation of provisions u/s. 54B of the Act is misconceived. As noted earlier, the assessee fulfilled all the conditions contemplated in clause (i) to (iv) of sub-section (37) of section 10 of the Act, but however, ignorant of the same as entitled to claim compensation derived from the Government of Maharashtra of compulsory acquisition as non-taxable, offered the capital gains to tax by claiming deduction u/s. 54B of the Act. As held by the Hon'ble High Court of Bombay that the authorities under the Act are required to assist the assessee in the assessment proceedings by giving effect on the correct position of law, even if the assessee makes wrong claim. Therefore, the compensation derived from the Government of Maharashtra on the compulsory acquisition of assessee's land, the assessee is entitled to claim

the same as exempted u/s. 10(37) of the Act. Thus, the order of CIT(A) in confirming the view of AO in denying the deduction u/s. 54B of the Act is not justified and the addition made thereon is deleted. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 01<sup>st</sup> December, 2022.

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01<sup>st</sup> December, 2022.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad
4. The Pr. CIT-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune