

**IN THE INCOME-TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI.**

**Before Shri N.S. Saini, Accountant Member &
Shri V. Durga Rao, Judicial Member**

**ITA No. 1832/Mds/2012
Assessment year : 2009-10**

**&
C.O. No. 179/Mds/2012 [In I.T.A. No. 1832/Mds/2012]**

The Assistant Commissioner of
Income Tax,
Company Circle I(1)
Coimbatore.

Dr. S. Balasundaram,
C/o Kovai Medical Center and
Hospital Ltd., 3209, Avinashi
Road, Coimbatore – 14.
[PAN: ACQPB7361R]

(Appellant)

(Respondent/ Cross Objector)

Appellant by : Shri Shaji P. Jacob, Addl. CIT
Respondent by : Shri G. Baskar, Advocate
Date of Hearing : 10.04.2013
Date of pronouncement : 27.05.2013

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal by the Revenue and Cross Objection at the behest of the assessee, emanate from the order of the Commissioner of Income Tax (Appeals) VI, Chennai dated 27.07.2012 relevant to the assessment year 2009-10.

2. Brief facts of the case are that the assessee is a medical practioner, filed the return of income for the assessment year 2009-10 on 17.02.2010

declaring total income of ₹.2,70,52,240/-. The return of income was processed under section 143(1) of the Income Tax Act and selected for scrutiny. Notice under section 143(2) dated 26.08.2010 was duly served on the assessee.

3. The assessee has entered into an agreement with M/s. Lotus Eye Care Hospitals Ltd., Coimbatore to sell the agricultural land for a consideration of ₹.11,00,00,000/- on 27.03.2008. In pursuant to the above agreement, the assessee was paid ₹.50.00 lakhs on 27.03.2008, ₹.4.00 crores on 17.07.2008, ₹.1.50 crores on 27.08.2008 and remaining balance of ₹.5.00 lakhs was paid on 30.12.2008 and sale deed was executed.

4. The assessee, out of the sale proceeds received from the purchaser of the above land, had purchased properties vide document No. 8547/2008 on 18.09.2008 for ₹.47,53,223/-, document No. 8743/2008 on 04.10.2008 for ₹.51,47,014/- and document No. 8295/2008 on 24.09.2008 for ₹.28,68,302/-. The total amount paid by the assessee to various purchasers of the land amounting to ₹.1,27,68,537/-. According to the Assessing Officer, the amount of ₹.1,27,68,537/- is not eligible for claiming exemption under section 54B of the Act for the reason that these above properties were purchased by the assessee before transfer of the property which he sold to M/s. Lotus Eye Care Hospital since the actual transfer of the property was effected only during December, 2008. Therefore, the Assessing Officer

denied the claim of assessee. On being aggrieved, the assessee carried the matter in appeal before the CIT(Appeals).

5. It was submitted before the CIT(Appeals) that an agreement was entered into on 27.03.2008 and the assessee received an amount of ₹.50.00 lakhs. Subsequently, as per the agreement, sale deed has to be executed on or before expiry of four months. However, both parties have agreed to extend the sale agreement upto 31.12.2008. In the meanwhile, the assessee received ₹. 4.00 crores on 17.07.2008, ₹. 1.50 crores on 27.08.2008 and with these amounts, the assessee purchased three properties amounting to ₹.1,27,68,537/- and submitted that he is eligible for claiming exemption under section 54B of the Act. The Id. CIT(Appeals), after considering the submissions of the assessee, observed that the Assessing Officer has not brought on record that the assessee has not utilized the sale proceeds for the purchase of agricultural land to claim deduction under section 54B of the Act. He further observed that M/s. Lotus Eye Care Hospital Ltd., who purchased the property enjoyed the possession of the land from 10.09.2008 directed the Assessing officer to allow exemption claimed by the assessee under section 54B of the Act. On being aggrieved, the Revenue preferred an appeal.

6. The Id. DR strongly contended that the assessee is eligible for deduction if he has purchases the land for agricultural purpose within a

period of two years after transfer of agricultural land. In the present case, the assessee purchased the land prior to the transfer of the land and he was not eligible for deduction under section 54B of the Act. He further submitted that even though sale agreement was entered into on 20.07.2008, the property was transferred only in December, 2008. Therefore, the assessee is not eligible for deduction under section 54B of the Act. He also submitted that as per Registration Act, 1908 inserted by Act 48 of 2001 section 3A with effect from 24.09.2001, the documents containing "contract to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of the said section 53A". The Id. DR relied on the decision of the Hon'ble Jurisdictional High Court in the case of K. Mani v. M.D. Jayavel & Seven Others dated 10.06.2011 and submitted that the transfer in the present case took place only on 28.12.2008, the amount received prior to the date of transfer is not eligible for deduction under section 54B of the Act.

7. On the other hand, the Id. Counsel for the assessee has relied on the Circular No. 359 and also relied on the decision of the Pune Bench of ITAT

in the case of Ramesh Narhari Jakhadi v. ITO 41 ITD (PN) 368. The Id. Counsel for the assessee strongly supported the order of the Id. CIT(Appeals) on this issue and prayed for affirming the same.

8. We have heard both parties, perused the materials available on record and also gone through the orders of authorities below. The assessee has entered into an agreement with M/s. Lotus Eye Care Hospital Ltd. to sell the property for ₹.11,00,00,000/- on 27.03.2008. The assessee has initially received at the time of sale agreement ₹.50,00,000/-. Thereafter he has received ₹.4.00 crores on 17.07.2008, ₹.1.50 crores and the sale was executed after receiving ₹.5.00 crores on 30.12.2008. Before execution of sale deed, the assessee has received ₹.6.00 crores.

9. The assessee before execution of the sale deed purchased the properties vide document No. 8547/2008 on 18.09.2008 for ₹.47,53,223/-, document No. 8743/2008 on 04.10.2008 for ₹.51,47,014/- and document No. 8295/2008 on 24.09.2008 for ₹.28,68,302/- and the total amount paid by the assessee to various purchasers of the land amounting to ₹.1,27,68,537/-. According to the Assessing Officer, the purchase consideration paid by the assessee is not eligible for deduction under section 54B of the Act. It is not the case of the Assessing Officer that the sale consideration received by the assessee under use for the purpose of purchase of the property. The only dispute is the assessee has purchased the property before transfer of the

property. Therefore, the Assessing Officer has denied the claim of the assessee. From the record, we find that the assessee had entered into an agreement to sell the property for ₹.11,00,00,000/-. As it is a fact that the sale deed was executed on 30.12.2008, but the assessee purchased three properties with the sale consideration received from M/s. Lotus Eye Care Hospital Ltd. The intention of the Legislature is that the assessee has to use the sale consideration received for the purpose of buying agricultural land. In the present case, the assessee sold agricultural land is not disputed by the Assessing Officer and also purchased agricultural land. The Id. CIT(Appeals) in his order has given a categorical finding that though the sale deed was executed on 30.12.2008, but the possession was given on 10.09.2008. He has also observed that the sale deed has to be executed on or before four months from the date of agreement. There are certain dispute between the assessee and the purchaser. Therefore, the execution of sale deed was delayed and the sale deed was executed in December, 2008. So far as the first objection raised by the Id. DR is concerned, the property was only transferred in December, 2008, therefore, the property purchased before that date is not eligible for claiming deduction under section 54B. In our opinion, this is only a hyper technical objection raised by the Id. DR, because, the assessee has received substantial amount from the purchaser before executing sale deed. So far as registration of the sale agreement is concerned, if both the parties proceeded to carry the execution of the sale as

per the agreement whether it is registered agreement or not, there is no effect so far as transfer is concerned. Therefore, the case law relied on by the Id. DR is altogether on a different context and have no application to the fact of the present case. In view of the above, we find no infirmity in the order passed by the CIT(Appeals) and the ground raised by the Revenue is dismissed.

10. The next ground raised by the Revenue in the grounds of appeal is that the CIT(Appeals) erred in directing the Assessing Officer to give relief of 50% of ₹.47,18,010/- on the strength of fresh evidences produced before him at the time of appellate proceedings. The Id. DR has vehemently argued that the assessee did not produce any evidence before the Assessing Officer for the claim of ₹.47,18,010/- during assessment proceedings and the CIT(Appeals) granted the relief without giving an opportunity to the Assessing Officer by violating Rule 46A of the Income Tax Rules.

11. The Id. Counsel for the assessee could not controvert the submissions of the Id. DR.

12. After hearing both parties, we find that the assessment order, the Assessing Officer has observed that the assessee has shown expenses in connection with the purchase of properties and many of the payments/ expenses are not backed up by proper vouchers and TDS was not deducted

and the genuineness was not proved. Therefore, the total amount of expenses of ₹.47,18,010/- incurred by the assessee was denied for eligibility under section 54 of the Act. On appeal, the CIT(Appeals) observed that the AR of the assessee produced certain bills showing that levelling was done and also fencing was put around the acquired land. Accordingly, the CIT(Appeals) directed the Assessing Officer to restrict the disallowance to 50% of ₹.47,18,010/- on the strength of fresh evidences produced without remanding the evidences to the Assessing Officer for verification or obtained any report from the Assessing Officer. This, in our opinion, amounts to violation of Rule 46A of the Income Tax Rules which elucidates that before any additional evidence is accepted, the other party has to be given an opportunity of hearing. Faced with this situation, we deem it appropriate that the matter requires re-examination by the Assessing Officer. Accordingly, we restore the issue back to the file of the Assessing Officer, who shall pass a fresh order in accordance with law after affording adequate opportunity of hearing to the assessee.

13. In the result, the appeal of the Revenue is partly allowed for statistical purpose.

14. Coming to the Cross Objection filed by the assessee, mainly it relates to disallowance of 50% of ₹.47,18,010/- towards land

development expenses in connection with purchase of properties. Since, in the Revenue's appeal, the same very issue has been raised and we have set aside the order of the CIT(Appeals) on this issue and remitted the matter back to the file of the Assessing Officer for deciding it afresh after re-examination, the objection raised by the assessee in the Cross Objection carry academic significance only.

15. In the result, the CO filed by the assessee stands dismissed.

Order pronounced on Monday, the 27th of May, 2013 at Chennai.

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 27.05.2013

Vm/-

To: The assessee//A.O./CIT(A)/CIT/D.R.