IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'D' NEW DELHI

ITA No.4923/Del./2010
Assessment Year: 2007-08

SHRI JAGTAR SINGH CHAWLA
S/O SHRI SARDAR SINGH CHAWLA
C-8, SECTOR-23, NOIDA (UP)
PAN NO:ACVPC0038R

Vs

ASST COMMISSIONER OF INCOME TAX
CIRCLE, REWARI

C L Sethi, JM and B C Meena, AM

Dated: June 30, 2011

Appellant Rep by: Shri S R Wadhwa, Adv.
Respondent Rep by: Shri K Ravi Ramchandran, Sr. DR

Income tax – Section 54F – Whether for the purpose of investing the amount in another house property for claiming exemption u/s 54F, the due date of filing of return is to be considered as per sub-section (4) of section 139 as only section 139 is mentioned in s. 54(4) and section 139 cannot mean only s. 139(1) but means all subsections of section 139.

A) Assessee an individual sold agricultural land and a residential house and declared the sale consideration of Rs.2.16 crores for the agricultural land and Rs.8.25 lacs for residential house. He claimed exemption u/s 54F and pleaded that the land was purchased in 1984. Thereafter the improvement was made in the land by way of leveling, deep boring and construction of small building in which an amount of Rs.7 lacs was spent. After the sale of land, assessee approached the Manager of the bank to open an account for capital gain scheme who misled him and deposited the amount in the flexi deposit scheme. However, the intention of the assessee was always to reinvest the sale consideration for the purchase of new assets and finally these amounts were invested in purchase of new house at Delhi. Assessee contended that for claiming the exemption u/s 54F, he was required to deposit the amount of capital gain either in the capital gain account scheme or invest in the new house before the due date of filing of return of income within the period prescribed under section 139. The due date by which the return could be filed u/s 139(4) was 31.3.2009 while the assessee has invested whole of the amount by 23.04.2008. Therefore, the assessee was entitled for the benefit of claim of exemption u/s 54F. Further the possession of the new asset purchased was taken within two years from the date of sale of asset, therefore, the other condition for reinvestment of two years period was fulfilled.

Revenue contended that in order to make the provisions of section 54F sensible, workable and rational, a harmonious reading of both the limbs of sub-section (4) is necessary. That is 'section 139' that appear in the first limb of the section 54F(4) should read in context of due date as per section 139(1) mentioned in the second limb. In other words, section 139

mentioned in the first limb of section 54F(4) would impliedly mean only the return of income filed in the normal course u/s 139(1) in order to be consonant with the time limit provided in the second limb for depositing the net sale consideration before the date u/s 139(1).

B) Assessee received a sum of Rs. 45.36 lacs in lieu of other residual things available on the land which consisted of Dera Hand Pump & Boundary wall, pucca drains, brick flooring for approach road, barbed wire fencing, crop and amount received for settlement of labours. Revenue treated the same as income from other sources and made addition.

After hearing both the sides, the ITAT held that,

++ in the assessee's case, the amount has been invested prior to the due date by which the return could be filed u/s 139 of the Act. In the case of CIT vs. Rajesh Kumar Jalan, the Hon'ble Gauhati High Court held that "Capital gains-Exemption under s. 54 - Time-limit for making deposit under the scheme - Only s. 139 is mentioned in s. 54(2) - Sec. 139 cannot mean only s. 139(1) but means all subsections of s. 139 - Therefore, assessee can fulfil the requirement of s. 54 of depositing the unutilized portion of the capital gain on sale of residential property in notified scheme upto the expiry of time-limit for filing return under s. 139(4)." Thus, the assessee was entitled to exemption of the entire investment upto the date of filing the return u/s 139(4) of the Act. Therefore, this ground of assessee's appeal is allowed;

++ the claim for investment in respect of Dera, hand-pump, boundary wall, pucca drain and brick flooring must have been supported by vouchers for expenditure and debits in books of accounts and date of investment/expenditure and must have been reflected in the books of account. No such evidences were submitted in this regard. Further the assessee has also not furnished reliable evidence in respect of the claim of compensation for crop of vegetables/fruits. The records maintained by the revenue authorities show that the rice was grown in the June, 2006, therefore, the claim of the assessee regarding various crops standing for which the compensation shows as received is unsustainable claim. Similarly, there is no reliable evidence in respect of the claim made for the compensation of the labourers. In absence of any evidence in this regard and with the fact that the amount was received at and around the time of sale of the land from the same person, thus, the amount received is treated as received towards the sale of the land. In the interest of justice and equity, the assessee shall be at liberty to claim the benefit of the cost incurred for developing the agricultural land by way of making Dera, hand-pump, pucca drains, flooring, fencing and compensation for labourers, etc., if necessary evidences are filed before the assessing authority.

Assessee's appeal partly allowed

ORDER

Per: B C Meena:

This appeal filed by the assessee for assessment year 2007-08 arises out of the order of CIT (Appeals), Rohtak dated 20.09.2000. The grounds of appeal taken by the assessee read as under :-

1. That the order dated 20.09.2010 passed by the Ld. CIT(A) Rohtak is against facts and bad in law.

2. That on the facts and circumstances of the case of the appellant, the Ld. CIT(A) erred in confirming the addition of Rs.76,85,829/- made by the Assessing Officer under the head 'long term capital gains' disallowing the claim u/s 54F of the Income-tax Act, 1961.

3. That the Ld. CIT(A) erred in confirming the addition of Rs.45,36,000/- made by the Assessing Officer representing sale of crops and temporary structure to store the crops standing on the agricultural land sold to M/s Sarv Sanjhi Construction (P) Ltd. B-47, Connaught Place, New Delhi, assessed by the AO, under the head 'Income from other sources' without any justification for the same.

Without prejudice to the said contention, the sale should have been assessed under the head 'Agricultural income' after allowing the expenditure incurred in cultivating the said crops.

4. The Ld. CIT(A) has erred in upholding the levy of interest u/s 234B of the Income-tax Act, 1961 which is unjustified and illegal.

5. The appellant craves leave to add, alter, amend or modify any of the grounds of appeal before or at the time of hearing of the appeal."

2. The brief facts of the case are that the assessee is an individual and during the relevant financial year, he has sold agricultural land and a residential house located at Karnal. He has declared the sale consideration of Rs.2.16 crores for the agricultural land and Rs.8.25 lacs for residential house. The return of income for the assessment year 2007-08 was filed on 31.7.2007. The assessment u/s 143(3) was finalized on 24.12.2009.

3. The ground nos.1 & 5 are general in nature and do not require any adjudication.

4. Ground No.2 is related to confirmation of addition of Rs.76,85,829/- under the head 'long term capital gain' by way of not allowing claim u/s 54F of the Income-tax Act, 1961.

5. Learned AR submitted as under :-

The assessee has sold agricultural land and residential house at Karnal for Rs.2.16 crores and Rs.8.25 lacs respectively. The sale consideration has been declared as long term capital gain. The assessee claimed that whole of the long term capital gain is exempted u/s 54F. He pleaded that the land was purchased in 1984. Thereafter the assessee made improvement in the land by way of leveling, deep boring and construction of small building in which an amount of Rs.7 lacs was spent. After the sale of land, assessee approached the Manager of the bank to open an account for capital gain scheme. The Manager misled the assessee and deposited the amount in the flexi deposit scheme. The assessee was under the bonafide belief/impression that the amount deposited in flexi deposit scheme shall also be entitled for benefits of capital gain scheme account. He also submitted that the intention of the assessee was always to reinvest the sale consideration for the purchase of new assets and finally these amounts were invested in purchase of new house at Delhi. The wrong advice of the Manager of the bank made assessee to believe that the scheme in which amounted was deposited was a notified scheme for capital gains. However, the assessee invested the capital gain in the purchase of new residential house at Delhi as under :-

Rs.28,00,000/-	vide Cheque No.100362	dated 16.04.2007

Rs.50,00,000/-	vide Cheque No.100367	dated 05.05.2007
Rs. 8,00,000/-	vide Cheque No.100368	dated 12.05.2007
Rs.50,00,000/-	vide Cheque No.100369	dated 31.05.2007
Rs.40,00,000/-	vide Cheque No.100370	dated 30.11.2007
Rs.24,00,000/-	vide Cheque No.100374	dated 23.04.2008

The assessee entered into an agreement to purchase of a property for Rs.2 crores and paid Rs.1.36 crores in installments before the due date of filing the return. The possession of the property was handed over to the assessee on 30.3.2008 and the sale deed was executed on 23.04.2008. This fact is evident from page 8 of the sale deed placed at page 43 of the paper book. The balance amount was also invested prior to the time permissible for filing return u/s 139 of the Income-tax Act. He pleaded that for claiming the exemption u/s 54F, the assessee was required to deposit the amount of capital gain either in the capital gain account scheme or invest in the new house before the due date of filing of return of income within the period prescribed under section 139. In this case, the due date by which the return could be filed u/s 139(4) was 31.3.2009 while the assessee has invested whole of the amount by 23.04.2008. Therefore, the assessee is entitled for the benefit of claim of exemption u/s 54F of Income-tax Act, for which he relied on the following decisions :-

(i) *Fatima Bai vs. ITO (2009) 32 DTR (Kar.) 243;* and

(ii) *CIT vs. Rajesh Kumar Jalan, 286 ITR 274 (Gau.)*

He also relied on the decision of ITAT in the case of *P.R. Kulkarni & Sons (HUF) vs. ACIT (2011) 49 DTR (Bang.)(Tri.) 442 =* ***(2010-TIOL-475-ITAT-BANG)*** and *Abdul Bashar Siddiqui vs. ITO, ITA No.3628/Del/2009 (Delhi Tribunal)*. The intention of the assessee was always to get the benefit of capital gains account scheme and the mistake was committed by Branch Manager. Further he submitted that the possession of the new asset purchased was taken within two years from the date of sale of asset, therefore, the other condition for reinvestment of two years period was fulfilled.

6. On the other hand, the learned DR relied on the orders of the authorities below. He pleaded that interpretation of section 139 appearing in section 54F to mean the time limit for depositing beyond due date as per section 139(1) shall be against the provisions of law and it will create an absurd situation. Such interpretation shall be against the principles laid down by Hon'ble Supreme Court in the case of *State of Tamilnadu vs. M.K. Kandaswamy, 36 STC 191 (SC)* where the Hon'ble Supreme Court has held that in interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute body, should be eschewed. If more than one construction is possible, that which would preserves its workability and its efficacy is to be preferred to the one which would render it otiose or sterile. Learned DR also relied on the decision of Hon'ble Supreme Court in *CIT vs. JH Gotla, 156 ITR 323(SC)* **=** ***(2002-TIOL-131-SC-IT)*** for the proposition that where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature and produces a rational construction. He also relied on the decision of Hon'ble Supreme Court in the case of *K.P. Varghese vs. ITO 131 ITR 597 (SC)* **=** ***(2002-TIOL-128-SC-IT)*** where the Hon'ble Supreme Court emphasized that a statutory provision must be so construed if possible, that absurdity and mischief may be avoided. He also relied on *RBI vs. General Finance & Investment Co. (1987) 61 Comp Cases 663 (SC)* for the

proposition that interpretation must depend on the text and the context. They are basis of the interpretation. He also relied on the decision of Hon'ble Supreme Court in the case of *Sultana Begum vs. Premchand Jain (1997) 1 SCC 373* for the proposition that the rule of interpretation requires that while interpreting two inconsistent or obviously repugnant provision of an Act, the Court should make an effort to so interpret the provision as to harmonize them so that the purpose of the Act may be given effect to and both the provisions may be allowed to operate without rendering wither of them otiose. Finally he submitted that in the case of Rajesh Kumar Jalan which was relied by the assessee, it is held that "Statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the same." In view of the above, it is respectfully submitted that in order to make the provisions of section 54F sensible, workable and rational, a harmonious reading of both the limbs of sub-section (4) is necessary. That is 'section 139' that appear in the first limb of the section 54F(4) should read in context of due date as per section 139(1) mentioned in the second limb. In other words, section 139 mentioned in the first limb of section 54F(4) would impliedly mean only the return of income filed in the normal course u/s 139(1) in order to be consonant with the time limit provided in the second limb for depositing the net sale consideration before the date u/s 139(1). Learned DR finally submitted that without prejudice to the above, it is respectfully submitted that frequent changes in stand/explanations offered by assessee and his contumacious behavior on this issue as well as other issues involved in this assessment do not entitle him for any liberal approach/concession.

7. After hearing both the sides on the issue, we hold as under :-

The assessee has sold agricultural land and a residential house for Rs.2.16 crores and Rs.8,25,000/- respectively located at Karnal. There is no dispute regarding this fact that the assessee has earned long term capital gains. First dispute is regarding the investment of the long term capital gain in the flexi deposit scheme in the bank. The assessee claims that he has handed over the cheques to the branch manager to deposit the same in capital gain scheme account but he invested in the flexi deposit scheme of the bank although the assessee's intention was always to invest in the capital gain scheme account. The assessee was always under the bonafide belief that the amount has been invested in the capital gain scheme account only. The copy of letter written by the assessee to the branch manager for forwarding the cheques shows that the intention of the assessee was to invest in capital gain scheme account (copy placed at page 20 of the paper book). The request made to the bank manager was to open a capital gain scheme account. This intention of assessee was always to reinvest in the scheme which qualify for the exception of capital gain tax. Further, the assessee has invested Rs.2 crores in the purchase of the new house by 23.04.2008. The Hon'ble Karnataka High Court in the case of Fathima Bai vs. ITO, cited supra, has held as under :-

"Sec. 54(2) declares that within one year from the date of transfer if the capital gain is not invested in purchase of building, the assessee should deposit the amount in the 'Capital Gain Account Scheme' or else the assessee should invest the capital gains before filing of return within the permitted period under s. 139, in which event, the assessee will not be liable to pay capital gain tax. In the instant case, the due date for filing of return is 30th July, 1988. Under s. 139(4) the assessee was entitled to file return in the extended time, which is within 31st March, 1990. The assessee did not file the return within the extended due date, but filed the return on 27th Feb., 2000. However, the assessee had utilised the entire capital gains by purchase of a house property within the stipulated period of s. 54(2)

i.e., before the extended due date for return under s. 139. The assessee technically may have defaulted in not filing the return under s. 139(4). But, however, utilised the capital gains for purchase of property before the extended due date under s. 139(4). The contention of the Revenue that the deposit in the scheme should have been made before the initial due date and not the extended due date is an untenable contention.-CIT vs. Rajesh Kumar Jalan (2006) 206 CTR (Gau) 361 :(2006) 286 ITR 274 (Gau) concurred with."

In the assessee's case, the amount has been invested prior to the due date by which the return could be filed u/s 139 of the Act. A similar view has also been held in the case of CIT vs. Rajesh Kumar Jalan, cited supra, by the Hon'ble Gauhati High Court wherein the Hon'ble High Court has held as under :-

"Interpretation of statutes-Beneficial provision-Purposive construction-In construing beneficial enactment, the view that advances the object of the enactment and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the beneficial enactment-Kunal Singh vs. Union of India (2003) 4 SCC 524 applied.

Capital gains-Exemption under s. 54 - Time-limit for making deposit under the scheme - Only s. 139 is mentioned in s. 54(2) - Sec. 139 cannot mean only s. 139(1) but means all subsections of s. 139 - Therefore, assessee can fulfil the requirement of s. 54 of depositing the unutilized portion of the capital gain on sale of residential property in notified scheme upto the expiry of time-limit for filing return under s. 139(4)."

In the case of Abdul Bashar Siddiqui (supra), the ITAT, Delhi Bench followed the judgments of Gauhati High Court and Karnataka High Court and allowed exemption u/s 54F by holding as under :-

"It is, thus, clear that assessee made investment in the new house before the date by which return could be filed u/s 139(4) of the Act. In the sub section (4) of section 54F, the only section mentioned is section 139, which cannot be meant only section 139(1) but it would mean all sections of 139 of the Act as was held by the Hon'ble Gauhati High Court in the case of Rajesh Kumar Jalan (supra). Therefore, respectfully following the aforesaid decision of Hon'ble Gauhati High Court in the case of CIT v. Rajesh Kumar Jalan (supra), we hold that assessee has satisfied the condition of making investment in house within the period specified u/s 54F of the Act and consequently, assessee shall be entitled to deduction available to him u/s 54F of the Act. The AO shall re-compute the capital gain accordingly after providing reasonable opportunity of being heard to the assessee. We order accordingly."

In the case of P.R. Kulkarni & sons (HUF) (supra), the AO did not allow exemption u/s 54F on the ground that net consideration was not deposited in the Capital Gain Account Scheme. The ITAT, Bangalore by following its own decision in the case of *Nipun Mehrotra v. ACIT (2008) 237 ITR 110 (Bang)(AT)* and judgements of Gauhati High Court and Karnataka High Court (supra) held that assessee was entitled to exemption of the entire investment upto the date of filing the return u/s 139(4) of the Act. The assessee's case is squarely covered by the above four judgements including ITAT, Delhi Bench. Therefore, this ground of assessee's appeal is allowed.

8. In the ground no.3, the issue raised is regarding the addition of Rs.45,36,000/-.

9. On this issue, the learned AR submitted that the assessee has received this amount in lieu of other residual things available on the land which was sold. He submitted that when

the agricultural land was sold it was having the crops over it and part of amount received for the same. It is also claimed that the payments were as per agreement dated 20.6.2006. It is claimed that there was a dera, pucca drains, brick flooring for approach road, barbed wire fencing all around the land, crops. For the crops of vegetables and fruits, the assessee has received Rs.13,90,000/-. He also claimed that the amount of Rs.18,80,000/- was also received for settlement of labourers and he pleaded that it should not be assessed as income from other sources. The details submitted are as under :-

Sl.Nos.	ITEMS	Amount of Compensation
01.	Dera (2 rooms 15x12' each) Hand Pump & Boundary wall measuring 30x40 Sq.Yards = 120 Sq.Yards =1 140 yard in length and 2 yard high	7,00,000.00
02.	Pucca Drains	1,00,000.00
03.	Brick Flooring for approach Road 65 yards	1,70,000.00
04.	Barbed wire fencing all around the land 4.50 Acres	3,00,000.00
05.	Crops (i) Potato (ii) Shimla Mirch (iii) Banana (iv) Papaya (v) Sonjna Fali (vi) Bans	 3,00,000.00 3,00,000.00 1,50,000.00 4,00,000.00 40,000.00 2,00,000.00
06.	Settlement of Labours (20 labours from Bihar, Jharkhand & M.P. was residing on the land since 6 years back. They removed after payment of compensation Rs.94,000/- per labour)	18,80,000.00
	Total	**45,40,000.00**

10. On the other hand, the learned DR relied on the orders of the authorities below and pleaded that it was income from other sources.

11. We have heard both the sides and carefully perused the records on the issue. The amount was received of Rs.9,07,200/- and Rs.36,28,800/- on 14.3.2006 and 24.6.2006. The assessee has submitted the details of the compensation. It is claimed as paid as per agreement dated 20.6.2006. However, the facts of the case suggest differently. Firstly, in the first instance, the assessee claimed that it was a compensation received in lieu of fruits and other residuals available on the land. However, in the chart given, the assessee has claimed that Rs.7 lacs was towards the Dera and hand-pump and boundary wall, Rs.1 lac for pucca drains, Rs.1,70,000/- for brick flooring for approaching road, Rs.3 lacs for barbed wire fencing all around the land, Rs.13,90,000/- for various crops including potato, shimla mirch, banana, papaya, sonjna fail, bans and Rs.18,80,000/ for settlement of labourers. These claims are not supported by any reliable evidence. These are only based on assessee's claim. The amount was received from M/s. Sarv Sanjhi Construction Pvt. Ltd. to whom the assessee had sold the land on 14.3.2006 and 24.6.2006. The sale deed was executed on 23.4.2008. The claim for investment in respect of Dera, hand-pump, boundary wall, pucca drain and brick flooring must have been supported by vouchers for expenditure and debits in books of accounts and date of investment/expenditure and must have been

reflected in the books of account. No such evidences were submitted in this regard. Further the assessee has also not furnished reliable evidence in respect of the claim of compensation for crop of vegetables/fruits. The records maintained by the revenue authorities show that the rice was grown in the June, 2006, therefore, the claim of the assessee regarding various crops standing for which the compensation shows as received is unsustainable claim. Similarly, there is no reliable evidence in respect of the claim made for the compensation of the labourers. In absence of any evidence in this regard and with the fact that the amount was received at and around the time of sale of the land from the same person, we are of the view that this was the sale consideration received towards the sale of the land. The surrounding circumstances also show that this amount received towards the sale consideration of land. For holding so, we get the support from the decision of Hon'ble Allahabad High Court in the case of *Dinesh Kumar Mittal vs. ITO reported in 193 ITR 770* where the Hon'ble High Court has held that there is no rule of law to the effect that the value determined for the purpose of stamp duty is the actual consideration passing between the parties to a sale. The actual consideration may be more or may be less. What is the actual consideration that passed between the parties is a question of fact to be determined in each case, having regard to the facts and circumstances of the case. As we have stated above, the facts and circumstances of the case show that this amount of Rs.45,36,000/- was received towards the sale consideration in addition to the amount declared in the sale deed. The revenue records show that the rice was being grown in 2006 when the sale was negotiated. Therefore, a deduction of Rs.30,000/- per acre shall be allowed towards the compensation for the standing crops at the land sold out. In the interest of justice and equity, we hold that the assessee shall be at liberty to claim the benefit of the cost incurred for developing the agricultural land by way of making Dera, hand-pump, pucca drains, flooring, fencing and compensation for labourers, etc., if necessary evidences are filed before the assessing authority. In the result, ground no.3 of the assessee's appeal is set aside to the file of Assessing Officer with above observations.

12. Ground No.4 is regarding the levy of interest u/s 234B of the Income tax Act. After hearing both the sides, we hold that levying of interest is mandatory in view of the decision of Hon'ble Supreme Court in *Anjum Ghaswala 252 ITR 1* **= *(2002-TIOL-73-SC-IT)***. Therefore, the same stands dismissed.

13. In the result, the appeal of the assessee is partly allowed.

(Order pronounced in open court on this 30.6.2011.)