आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.3012/PUN/2017
निर्धारण वर्ष / Assessment: 2013-14

Mrs. Madhuri Sudhir Joglekar,
Purti, Gharpure Colony,
1160/5, Shivaji Nagar,
Pune – 411 005
PAN : ABAPJ9190M .... अपीलार्थी/Appellant

Vs.

The Income Tax Officer,
Ward–11(1), Pune .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Aniruddha A. Andhorikar
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / **Date of Hearing : 26.12.2018**		घोषणा की तारीख / **Date of Pronouncement: 28 .12.2018**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals) – 1, Pune dated 28.09.2017 relating to assessment year 2013-14 against order passed u/s 143(3) of the Income Tax Act 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal :

"*1. The Learned CIT(A) did not give the sufficient opportunity of being heard to the appellant and completed the appellate proceedings.*

2. The Learned CIT(A) failed to observe that, the learned AO failed to give sufficient opportunity of being heard and passed the order u/s.143(3) of the I.T. Act, 1961 and therefore the assessment is bad in law.

3. The Learned CIT(A) erred in not appreciating that, on facts and in the circumstances of the case, the calculation u/r 8D is arbitrary and is bad in law.

4. The Learned CIT(A) erred in confirming the alleged addition u/s.14A even after observing that the sufficient opportunity was not given by the AO during assessment proceedings.

5. The Learned CIT(A) erred in interpreting the provisions of Sec.54B and in not allowing the benefit of exemption from capital gain tax to the appellant after the capital gains are totally invested as required by the Sec.54B of the I.T. Act, 1961.

6. The Learned CIT(A) did not appreciate the ratio of the judgments and rulings given by the higher authorities in respect of interpretation of capital gains exemption section series, i.e. Sec.54 & 54F and denied the benefit of judgments only because the judgments refers to Sec.54 and Sec.54F and not Sec.54B.

7. The appellant craves leave to add and/or amend the above grounds of appeal at the time of hearing."

3. The issue raised in the Grounds of appeal No.1 & 3 is against non provision of reasonable opportunity of hearing to the assessee by the Assessing Officer and the Commissioner of Income-tax (Appeals), against which no arguments have been raised and even both the authorities below have allowed reasonable opportunity to assessee and hence are dismissed. Further, the assessee vide Grounds of appeal No.3 & 4 has raised the issue against the disallowance made u/s.14A of the Act.

4. Briefly in the facts of the case, the assessee for the year under consideration had furnished return of income declaring total income of Rs.14,08,860/-. The assessee was a Medical professional and had derived

income from the same. In addition, the assessee had declared income from other sources and also income from long term capital gains. The case of the assessee was picked up for scrutiny. The Assessing Officer noted that the assessee had derived income from PPF of Rs.1,02,098/-, dividend income of Rs.200/- which was claimed as exempt. The Assessing Officer was of the view that in view of the provisions of section 14A of the Act read with Rule 8D, the disallowance of expenses on the investments made is to be disallowed. Hence, the disallowance was made under Rule 8D(2)(iii) of the Act @ 0.5% of the average investments at Rs.24,585/-. The CIT(A) upheld the aforesaid disallowance in the hands of the assessee.

5. On the perusal of record and especially the assessment order, it is clear that the Assessing Officer had failed to record any satisfaction before invoking the provisions of section 14A of the Act. Admittedly, the assessee had not disallowed any part of the expenditure being relatable to the exempt income but section 14A(2) lays down that the AO shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act, if, the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure relatable to the exempt income. In other words, incase, the assessee on his own motion has disallowed part of the expenditure as being relatable to exempt income under the provisions of section 14 of the Act, then the Assessing Officer has to record satisfaction before invoking the provisions of section 14A read with Rule 8D as to why the disallowance made by the assessee is not correct. Under section 14A(3) of the Act, it is provided that the provisions of sub-section (2) shall also apply, in relation to a case where the assessee claims that no expenditure has been

incurred by him in relation to such exempt income. In other words, in case, the assessee does not make any suo motu disallowance of expenditure being relatable to the exempt income, then also, the Assessing Officer has to record a satisfaction before invoking and or applying the provisions of section 14A of the Act. Such is the ratio laid down by the Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT (2017) 394 ITR 449 (SC) which reads as under :

> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."*

6. The learned Authorized Representative before me has pointed out that no show cause was issued by the Assessing Officer before making the aforesaid disallowance u/s.14A of the Act.

7. In view of the ratio laid down by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT (supra) and also the clear cut provisions of the Act, i.e. section 14A(3) of the Act, there is no merit in the disallowance made by the Assessing Officer without giving any show cause notice to the assessee before invoking the provisions of section 14A of the Act. Hence, the disallowance made by the Assessing Officer and confirmed by the CIT(A) is reversed. Grounds of appeal No.3 & 4 raised by the assessee are thus allowed.

8. The next issue raised vide Grounds of appeal No.5 and 6 is against the interpretation of provisions of section 54B of the Act and denying the benefit of deduction under the said section.

9. Briefly in the facts of the case, the assessee during the year under consideration had sold the agricultural land situated at Mauje Bhugaon, Pune for a total consideration of Rs.1,05,00,000/-. The land was purchased on 15-11-1988. The assessee computed the indexed cost of acquisition of the said land and against the capital gains so determined, claimed the benefit of deduction under section 54EC of the Act against the investment made of Rs.50,00,000/- in Capital Gain Bond Scheme. There is no dispute in respect of sale consideration and the cost of acquisition and the deduction claimed under section 54EC of the Act. Further, the assessee claimed the deduction under section 54B of the Act against two agricultural lands purchased at different places. The first investment was made in an agricultural land situated at Village Kusumali, Taluka Khanapur, Dist. Belgaum for Rs.21 lakhs and another investment was made in an agricultural land situated at Village Bhadharwadi, Taluka & Dist. Belgaum for Rs.29 lakhs. The Assessing Officer was of the view that the assessee was entitled to claim the aforesaid deduction in respect of cost of one of agricultural land purchased and consequently he allowed the deduction on account of investment of Rs.29 lakhs made by assessee in the agricultural land. The plea of the assessee before the CIT(A) was that the word singular represented plural and consequently, the assessee was entitled to claim the aforesaid deduction under section 54B of the Act in respect of both the investments made in separate agricultural lands by the assessee. The CIT(A) did not allow the claim of the assessee and upheld the order of the Assessing Officer against which the assessee is in appeal.

10. The learned Authorized Representative for the assessee before me stressed that though the word used is singular but the same has to be applied in plural. In this regard, he made strong reliance on the Circular issued by the CBDT in respect of section 54 and 54F of the Act wherein it was clarified that the said deduction is available for making an investment in one residential house. However, no such clarification was given in respect of section 54B of the Act. He stressed that the investment made by the assessee in two separate agricultural lands purchased out of the sale proceeds of the land sold by her need to be allowed in the hands of the assessee.

11. The ld. Departmental Representative for the Revenue relied on the orders of the authorities below and pointed out to the provisions of the Act in this regard and submitted that when the intention was only to allow the deduction in respect of new asset which admittedly is in singular form, then the same cannot be stretched to plural form.

12. On the perusal of record and after hearing both the authorized representatives, the issue raised vide Grounds of appeal No.5 & 6 is in respect of claim of deduction under section 54B of the Act wherein admittedly, the assessee had sold agricultural land and had further made investment in two separate agricultural lands. The assessee purchased two agricultural lands in different locations but both in District Belgaum and the question was whether the assessee could claim the aforesaid benefit under section 54B of the Act, wherein it talks about capital gains arising from transfer of capital asset, being a land which was being used by the assessee for agricultural purposes and if the assessee has within a period of two years, after that date, purchased ‘any other

land' for being used for agricultural purposes, then the assessee is entitled to the deduction as per the formula provided in (i) and (ii) of the sub-section. If the provisions of clauses (i) and (ii) are read, it talks about the amount of capital gain which is greater than the cost of land so purchased, then the difference between the amount of capital gain and cost of new asset is to be charged under section 45 as 'income of the previous year' but in case, the capital gain is equal to or less than the cost of the new asset, then no capital gain is to be charged under section 45 of the Act. It may be pointed out that section 54B talks of transfer of land used for agricultural purposes and the capital arising therefrom is not to be charged incase, the investment is made in new agricultural land. Similarly, under this Chapter IV, in case, there is sale of residential property owned by any assessee, then the capital gains arising therefrom is not to be charged to tax in case of investment in a new residential house. Similar is the provisions in section 54F of the Act wherein in case any asset is sold other than the residential house, then the capital gains arising therefrom is not be charged to tax in case investment is made in residential house. In all these sections, the deduction is allowable in case investment is made into another asset. The provisions of the Act are clear that the said investment is to be made in one new asset. There was some ambiguity in the provisions of section 54 and 54F which was clarified by the Finance Act, 2014. However, since there was no ambiguity in the provisions of section 54B of the Act, there was no clarification needed to be given. Accordingly, I find no merit in the plea of the assessee that it could claim the aforesaid deduction in respect of two separate investments in agricultural lands, made by the assessee consequent to selling of one agricultural land. In case, the assessee had sold two pieces of land, i.e. agricultural land, then it could claim the deduction

against the aforesaid investments in two separate pieces of land. However, in the present case, it is not so. Hence, I find no merit in the plea of the assessee.

13. The learned Authorized Representative for the assessee has placed reliance on the ratio laid down in CIT Vs. Smt.Savitarani (2004) 270 ITR 0040 (P&H). In the facts of the said case, the assessee sold the land out of her share in a piece of land but vide three registered separate sale deeds. The question which arose in that case was whether the land sold was agricultural land or not and the Tribunal held in favour of the assessee which view of the Tribunal was upheld by the Hon'ble High Court. The assessee in that case had claimed the exemption under section 54B of the Act as the sale proceeds were invested in the purchase of agricultural land within a period of two years. It is not a case wherein two agricultural lands were purchased and the same were allowed as deduction under section 54B of the Act. Hence, the said ratio is not applicable to the facts of the present case. Accordingly, I find no merit in the plea of the assessee

14. The learned Authorized Representative for the assessee has also placed reliance on the decision of Chandigarh Bench of the Tribunal in Anil Bishnoi Vs. ACIT (2017) 167 ITD 381 (Chandigarh) wherein the issue was also a sale of agricultural land and claim of deduction under section 54B of the Act. The assessee had then purchased two agricultural lands, one through sale deed and another through agreement to sale. The AO had denied the benefit of section 54B of the Act against the agricultural land purchased through agreement to sale. The Tribunal decided the issue and held that even where the land is purchased through agreement to sale is investment and amounts to purchase. However, the Tribunal has not addressed the issue of whether the

assessee was entitled to claim the aforesaid deduction under section 54B of the Act against the purchase of two agricultural lands. Hence, the proposition laid down by the Chandigarh Bench of the Tribunal being not on the relevant issue raised has no relevance to the present case and the same cannot be relied upon. There is no merit in the plea of the assessee in this regard and hence, the same is dismissed.

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

Order pronounced on this 28th day of December, 2018.

Sd/-

(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 28th December, 2018
Satish

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //TRUE COPY//

Senior Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	26-12-18	Sr.PS
2.	Draft placed before author	27-12-18	Sr.PS
3.	Draft proposed & placed before the second member		AM
4.	Draft discussed/approved by Second Member.		AM
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.		