

Rajasthan HC allowed sec. 54B exemption to husband even if agriculture land was purchased in name of wife

Summary – The High Court of Rajasthan in a recent case of Laxmi Narayan, (the Assessee) held that where assessee had purchased new agricultural land out of sale consideration of his agricultural land, assessee could not be denied deduction under section 54B merely because registered document of new land was executed in name of his wife

Facts

- The assessee filed his return of income declaring total income. Assessee claimed deduction under section 54B as he invested sale consideration received on sale of agricultural land into new agricultural land purchased in name of his wife.
- The assessment was completed under section 143(3) by the Assessing Officer by enhancing the income under the head long-term capital gain. The Assessing Officer disallowed deduction under section 54B which included construction of boring, pipe, boundary wall, etc.
- The Commissioner had examined the assessment and passed an order under section 263 on finding that the order of the Assessing Officer was erroneous and prejudicial to the interest of revenue.
- On appeal, the Tribunal disallowed the exemption under section 54B without appreciating that the funds, were utilized for the investment for purchase of the property eligible under section 54B belonged to the appellant only and merely the registered document was executed in the name of his wife and further, the wife had no separate source of income.
- On appeal:

Held

- On the issue of section 263 in view of the decision of *Malabar Industrial Company Ltd. v. CIT* [\[2000\] 109 Taxman 66 \(SC\)](#), section 263 provisions are taken only on the ground of prejudicial and interest loss of the revenue to the Government. Merely change of opinion will not give any right under section 263.
- On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in *CIT v. Sunbeam Auto Ltd.* [\[2010\] 189 Taxman 436/\[2011\] 332 ITR 167](#) and other judgments of different High Courts, the words used are ‘assessee has to invest’; it is not specified that it is to be in the name of assessee.
- It is true that the contentions which have been raised by the department are that the investment has to be made by the assessee in his own name but the Legislature has not used specific language with precision and the Delhi High Court in *CIT v. Kamal Wahal* [\[2013\] 351 ITR 4](#) has also held that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to section 54B regarding investment in tubewell and others. For the purpose of carrying on the agricultural activity, tubewell and other expenses are for betterment

of land and, therefore, it will be considered as part of investment in the land and same is required to be accepted.