

No sec. 54F relief if conveyance deed for sale of land was executed after 2 years from purchase of new house

Summary – The Ahmedabad ITAT in a recent case of Kishorbhai Harjibhai Patel, (the Assessee) held that where conveyance deed for sale of agricultural land by assessee was executed in favour of buyer beyond period of two years after purchase of residential property by assessee, exemption under section 54F could not be granted

Facts

- The assessee had entered into an agreement for sale of his agricultural land 13.08.2010. As per sale agreement, the assessee was required to convert said land to non-agricultural land before sale. The conveyance deed was executed by assessee on 3-7-2012 when agricultural land was converted into non-agricultural land. The assessee had claimed exemption under section 54F on grounds that it had purchased a residential property out of long term capital gain on 22.04.2010. He also claimed exemption under section 54B on ground that land sold was agricultural land.
- The Assessing Officer noticed that the transfer of the land was taken place on 3-7-2012, however, the assessee had purchased the residential house on 22-4-2010 which was beyond the time allowed as per the provision of section 54F. He had disallowed the claim of exemption under section 54F and made addition in the total income of the assessee. The Assessing Officer had also noticed that assessee had claimed exemption under section 54B on sale of agricultural land. He had noticed that the assessee had sold the land after converting it into non-agricultural land. The Assessing Officer had concluded that the assessee was not entitled for claim of exemption under section 54B as well.
- On appeal, the Commissioner (Appeals) held that the agricultural land owned by the assessee, was being transferred for non-agricultural purposes. It was clearly mentioned in the sale agreement that the sale deed would be executed only after the said land was converted to non agricultural land. Thus, the sale agreement made it very clear that neither any possession was given to the purchaser nor any right was given to the purchaser for enforcing the sale agreement prior to conversion of the land from agricultural land to non-agricultural land and payment of the sale consideration by the purchaser. Thus, no right was created by virtue of sale agreement which could be considered as transfer with the meaning of section 2(47). Thus, he disallowed the claim of exemption of the assessee.
- On appeal:

Held

- The assessee has claimed exemption under section 54. The Assessing Officer has noticed that according to the provisions of section 54F, the said exemption is available if the assessee has purchased within one year before the date of transfer or two years after the date of transfer or constructed within 3 years after the date of transfer (or from the date of receipt of compensation in the case of compulsory acquisition) one residential house. In the light to the above provision, the

Assessing Officer has observed that the transfer of the land was taken place on 03-07-2012, however, the assessee had purchased the residential house on 22-04-2010 beyond the stipulated conditions laid down in section 54F. The assessee claimed that he had executed an agreement to sell the agricultural land on 13-08-2010 and the conveyance deed was executed on 03-07-2012. The assessee contended that he had entered into sale agreement with the buyer on 13-08-2010 and the new house was purchased on 22-04-2010 which was within one year of the transfer of the land.

- In the case of the assessee, there is no any peculiar circumstances which have prohibited the assessee to execute the sale deed. Further when the assessee had executed agreement to sale on 13-08-2010 the land was agricultural land and agreement to sale was made with non- agricultural person. However, transfer of agricultural land to non-agricultural is prohibited in the state of Gujarat as per the provision of section 43 of the Bombay Tenancy & Agricultural Lands Act 1948 as applicable to the state of Gujarat. Therefore, no right can be enforced by the buyer as the land was agricultural land by virtue of sale agreement. After considering the above facts and findings, the decision of the Commissioner (Appeals) that the land was transferred only on 03-07-2012 when a registered sale deed was executed and it was absolutely correct that there was no creation of any right of the purchaser in the said land as the same were prohibited by the law relating to transfer of agricultural land as existing in the state of Gujarat is upheld.
- The assessee has also claimed exemption under section 54B on the sale of agricultural land. The assessee has claimed exemption under section 54B for making investment in agricultural land. On perusal of the sale deed dated 03-07-2012 it was noticed that the assessee had sold non-agricultural land whereas as per the provisions of section 54B the exemption is available on the sale of agricultural land and further investment out of the such sale proceeds in the agricultural land as per the conditions stipulated in the said section. When the land was conveyed to the buyer in the character of non-agricultural it was not entitled for exemption given to agricultural land under section 54B. After considering the above facts and findings, the decision of Commissioner (Appeals) that the assessee is not entitled for deduction under section 54B is upheld.