Tenet Tax & Legal Private Limited

Tenet Tax Daily
March 27, 2019

HC justified in denial of sec. 54B relief by ITAT relying on spot inquiry report of income-tax inspector

Summary – The High Court of Delhi in a recent case of Rajiv Dass, (the Assessee) held that where Tribunal found lacuna in so called bataidar's statement in respect of agricultural activity on land sold and relied on spot inquiry report of Inspector of Income-tax to deny exemption under section 54F, same was justified

Facts

- The assessee declared income by way of capital gains from transfer of land to a real-estate developer in December, 2008. He had purchased the land on 11-11-2005. The assessee claimed exemption under section 54B.
- The Assessing Officer denied the exemption claimed by the assessee.
- On appeal, the Commissioner (Appeals), relied on the report of the Tehsildar on the ground that in the said report, it was found that no agricultural activities were carried out on the land after its purchase on 11-11-2005 during financial the years 2006-07, 2007-08 and 2008-09. Thus, the assessee failed to comply with the first pre-condition as required by section 54B that the capital gain on transfer of the land used for agricultural purposes could not be charged to tax if capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which transfer of land took place, was being used by the assessee or one of his parents for agricultural purposes.
- On appeal to the Tribunal, the assessee submitted that it had undertaken agricultural activities through one 'AS' for two years over the land after purchase on 11-11-2005 and before its sale on 29-12-2008. The Tribunal found that the said 'AS' was not an agriculturist. He was unable to state Khasra Nos., area and correct situation of the land. The Tribunal, therefore, declined the submissions of the assessee and affirmed the findings of the Assessing Officer and the Commissioner (Appeals) relying on the inquiry report of the Inspector of Income-tax.
- On the assessee's appeal before the High Court:

Held

- It is undisputed that one of the conditions to claim benefit of exemption under section 54B is that the land as a capital asset should be an agricultural land, used by the assessee being an individual or by his parents or Hindu Undivided Family for agricultural purposes during the period of two years immediately preceding the date of transfer. It is not the case of the appellant-assessee that the land was used for agricultural purposes by his parents or Hindu Undivided Family. Thus, the appellant-assessee was to prove and establish that the land in Ghaziabad sold to a real-estate developer was used by him as an individual for agricultural purposes during preceding two years before the date of transfer in December, 2008.

- No doubt, Khasra Girdwari indicates that 'jai chara' (fodder) and 'jawar chara' was grown in the Rabi and the Kharif season of the Fasli year 1415 respectively, but the aforesaid recordings have been disbelieved and not accepted for cogent and good reasons. Admittedly, the appellant-assessee had not himself undertaken agricultural activities. He had not incurred any expenditure on agricultural activities, engaged any labour, purchased seeds or sold the harvest. However, the assessee had claimed that he had given the land on batai to AS.
- Said AS, in his statement recorded pursuant to the directions of the Commissioner (Appeals) had stated that he would sit with property dealers and earn income by way of commission by arranging houses on rent. His other source was rental income as he had rented out four rooms in his house. He did not own or have agricultural land. Earlier, till 1986 he had done agricultural work. Thereafter, he would sometimes get small pieces of land to cultivate. However, AS was unable to give name of any owner and details of such land, except the appellant-assessee who was known to him since 2006. He could not recollect and give khasara number of the land in question except that the land was situated in village Sioani, Noor Nagar. On being asked as to the crops grown on the land, AS had stated that he had grown 'jai chara' (fodder), 'jawar' and wheat. He did not refer to 'jai' (oat). As per Khasra Girdwari, neither wheat nor 'jai' (oats) was grown. He had also claimed that he had sold the agricultural produce at Ghaziabad Mandi for Rs. 40,000/- in cash in the first year and Rs. 47,000/- in the second year. There is contradiction in the statement made by AS regarding the sale proceeds and the statement of the appellant-assessee. It is obvious that AS had not 'worked' for free. This would contradict the appellant-assessee's assertion that he had earned or made profit of Rs. 40,000 or Rs. 47,500/- from sale of agricultural produce. Pertinently, the returns filed by the appellant-assessee for the assessment years 2007-08 and 2008-09 were processed under section 143(1) of the Act.
- The conclusions recorded by the Tribunal are based on evaluation and appraisal of facts, which would include inference to be drawn from the rather vague, faltering and contradictory assertions of AS and the appellant-assessee. Sole primacy and credence to the Khasra Girdwari in the background of facts was not warranted and justified. There were conspicuous gaps and loopholes in the case set-up by the appellant-assessee, which has been disbelieved by the Tribunal after in depth appraisal of conspectus of facts and material. Inspector's report had not only reflected on the land in 2011, but on the spot inquiries to ascertain whether the land was being used for agricultural purposes prior to sale of land in December, 2008. Pertinently, the appellant-assessee had purchased the said land on 11-11-2006 for a substantial amount of Rs. 58.90 lakhs. The land is located in Ghaziabad district, which is approximate and adjoins Delhi and falls within the National Capital Territory of Delhi. It was sold after 3 years in December, 2008 to a builder and real-estate developer for Rs. 6.51 crores. Relevant evidence and material have been considered, evaluated and appreciated by the Tribunal, which has given reasonable and cogent reasons for the findings on facts.
- This is not the case where the Tribunal's order is perverse in the sense that no reasonable person would, in the relevant field, have not been arrived at the final finding and conclusion as drawn and

under challenge. The test and parameter whether an order or judgment is perverse or not, are rather strict. Even if a different opinion was to be formed on evidence, it would not categorize the impugned order as a perverse order. Thus, the appeal has no merit and is, accordingly, dismissed.