

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.168/PUN/2019**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Mr. Mohammad Rafiq Ahemadsaheb Kokani  
1327, Fakir Mansion, Phalke Road,  
Old Nashik, Nashik – 422001

PAN: AZOPK7586J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 1(3), Nashik

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.169/PUN/2019**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Mr. Farizoddin Ahemad Kokani  
1327, Fakir Mansion, Phalke Road,  
Old Nashik, Nashik – 422001

PAN: AWXPK7596C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 1(3), Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Milind Joshi  
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 11-07-2022

घोषणा की तारीख / Date of Pronouncement : 13-07-2022

**आदेश / ORDER****PER INTURI RAMA RAO, AM:**

These two appeals are filed by related assesseees directed against respective orders of the Commissioner of Income Tax (Appeals)-1, Nashik, both dated 13.11.2018 for the assessment year 2014-15.

2. Since the identical facts and issues are involved in both the appeals, we proceed to dispose of the same vide this common order.

3. For the sake of clarity and convenience, the facts relevant for the appeal in ITA No.168/PUN/2019 for A.Y. 2014-15 are stated herein.

4. Briefly, the facts of the case are as under:

The appellant is an individual engaged in the business of purchase and sale of lands. The appellant had filed return of income for the assessment year 2014-15 on 31.03.2015 declaring total income of Rs.3,50,400/- and agricultural income of Rs.3,08,000/-. Against the said return of income, assessment was completed by the Assessing Officer vide order dated 21.12.2016 passed u/s 143(3) of the Act at a total income of Rs.78,02,540/-. While doing so, the Assessing Officer made addition of Rs.71,52,133/- disallowing the claim for deduction of amount u/s 54B of the Act.

5. The factual matrix of the case is as under:

During the previous year relevant to the present assessment year, the appellant had sold the agricultural land situated at Gat No.276-

Ramshej, Nashik, which was purchased by the appellant along with seven others on 29.06.2011 and was sold on 13.04.2013 and offered capital gains after claiming deduction u/s 54B of the Act. The Assessing Officer denied the claim primarily for two reasons; first reason being that the land was not used for agricultural purposes in the two years immediately preceding the sale and secondly, the only part of the land was cultivated during the immediately preceding two previous years, rejecting the contention of the appellant that it is necessary that the land should be used for agricultural purposes for whole of the two years and the entire land was used for agricultural activity as the assessee had grown fodder grass on the part of the land as is evident from 7/12 extract. Being aggrieved by the said addition, an appeal was filed before the CIT(A), who vide impugned order confirmed the findings of Assessing Officer.

6. Being aggrieved by the order of CIT(A), the appellant is in appeal before us. It is submitted before us that it is not necessary that the agricultural land sold should be long term capital asset. There is no significance between the short term capital gain and long term capital gain in the context of provisions of section 54B. The only condition is that the land sold should be used for agricultural purposes in two years, which does not mean that the land should be used for agricultural purposes for whole period of two years as viewed by the Assessing Officer. In this connection, he placed reliance on the decisions of Co-ordinate bench in the cases of Majid Khan Nisar Khan vs. ITO (2017) 59 ITR (Trib) 68 (Pune), Ramesh Narhari Jahadi vs. ITO (1992) 41 ITD (Pune) 368 and Rajendra Bastimal Chordiya vs. ITO in ITA No.1295/PUN/2017, order dated 07.06.2019. As regards other contention of Assessing Officer that no

agricultural operations were carried on whole of the land, it is contended that the part of land was not cultivated owing to the conditions of drought and grass was grown, it cannot be said that no cultivation was carried on the said land.

7. On the other hand, learned Sr.DR placing reliance on the orders of lower authorities submitted that no interference is called for.

8. We have heard the rival contentions and perused material on record. The issue in the present appeal relates to the exemption under the provisions of section 54B of the Act. The conditions prescribed to claim the benefit of exemption under the provisions of section 54B are that the agricultural land sold as a capital asset, used by the assessee during the period of two years immediately preceding the date of transfer for agricultural purpose. The Assessing Officer had denied the exemption u/s 54B on the grounds that the agricultural land sold was not used for agricultural purpose for two years preceding the date of sale as the same was held only for a period of 22 months and some part of the land was used for growing grass. The Co-ordinate bench of the Tribunal in the case of Majid Khan Nisar Khan vs. ITO (supra) and Ramesh Narhari Jakhadi vs. ITO (supra) held that the reference to the term "two years" has been interpreted to mean that not during the whole period of two years, even if the land is used for some days in the earlier year, it would be sufficient for compliance of the provisions of section 54B of the Act. Similarly, the fact that part of the land could not be used for agricultural purpose but grass was grown owing to the conditions of drought does not disentitle the assessee as the land was held for agricultural purposes only. In the light

of these decisions, we hold that the reasoning of lower authorities cannot be appreciated. Accordingly, the findings of lower authorities are reversed.

9. The facts and issues involved in ITA No.169/PUN/2019 are similar to the facts and issues involved in ITA No.168/PUN/2019. Therefore, the decision rendered in ITA No.168/PUN/2019 shall apply *mutatis mutandis* to ITA No.169/PUN/2019.

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 13<sup>th</sup> July, 2022.

Sd/-  
**S.S.VISWANETHRA RAVI**  
**JUDICIAL MEMBER**

Sd/-  
**INTURI RAMA RAO**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 13<sup>th</sup> July, 2022  
GCVSR

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

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

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune