

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA NO. 164/Chd/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Sh. Bhupinder Singh # 1582, Park View Street Ward-5, Near Bus Stand, Kharar, Mohali	बनाम	The ITO Ward 6(4) Mohali
स्थायी लेखा सं./PAN NO: CVWPS3344A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 165/Chd/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Sh. Palwinder Singh # 1582, Park View Street Ward-5, Near Bus Stand, Kharar, Mohali	बनाम	The ITO Ward 6(4) Mohali
स्थायी लेखा सं./PAN NO: BJMPS3950F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 166/Chd/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Sh. Gurvinder Singh # 1582, Park View Street Ward-5, Near Bus Stand, Kharar, Mohali	बनाम	The ITO Ward 6(4) Mohali
स्थायी लेखा सं./PAN NO: BJMPS3951E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 167/Chd/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Ms. Gurmeet Kaur # 1582, Park View Street Ward-5, Near Bus Stand, Kharar, Mohali	बनाम	The ITO Ward 6(4) Mohali
स्थायी लेखा सं./PAN NO: ATHPK7178F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 507/Chd/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Smt. Tej Kaur W/o Amarjit Singh # 1582, Park View Street Ward-5, Near Bus Stand, Kharar, Mohali	बनाम	The ITO Ward 6(4) Mohali
स्थायी लेखा सं./PAN NO: ASKPK3208N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 1195/Chd/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Sh. Jaswinder Singh # 1582, Park View Street Ward-5, Near Bus Stand, Kharar, Mohali	बनाम	The ITO Ward 6(4) Mohali
स्थायी लेखा सं./PAN NO:		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Ms. Jaspreet Kaur Somal

राजस्व की ओर से/ Revenue by : Smt. Chandrakanta

सुनवाई की तारीख/Date of Hearing : 19/09/2018

उद्घोषणा की तारीख/Date of Pronouncement : 31/10/2018

आदेश/Order

PER BENCH:

All the above appeals have been filed by different assesses against the separate order of Ld. CIT(A)-2, Chandigarh.

2. The appeal No. 164 to 167/CHD/2017 are barred by 16 days. The Ld. AR explained that owing to the ill health of the Assessee the appeal could not be filed in time and pleaded for condonation of delay. After according due opportunity of hearing to the Revenue, the delay which is due to the medical reason is hereby condoned. In the case of Mrs. Tej Kaur in ITA No. 507/CHD/2017 the legal heir was brought on record.

3. Assessee has raised amended grounds in all the above appeals, since the issues raised in all the appeals are common therefore they are being disposed off by way of this common order. For dealing we shall take ITA No. 164/CHD/2017 as a lead case wherein Assessee has raised the following amended grounds:

1. That order of learned AO Ward 6(4) Mohali is erroneous both on facts and in law. The confirming order of learned CIT(A)-2 Chandigarh is also erroneous both on facts and in law.

2. That learned AO has erred in not treating the rural agricultural ancestral land beyond the municipal limits, sold during the year, as agricultural land within meaning of section 2(14) of Income Tax Act 1961.

3. That learned AO is erred in treating the agricultural income as capital gain, concealed income and earned interest without considering the explanations and evidences submitted by assessee therein.

4. That learned AO has failed to appreciate that, the assessee had demonstrated that such land was actually used for agricultural purpose and various crops were produced on the said land and was reflected in various records maintained by the Patwari namely Khasra Girdwari etc which is primary record and could not have been brushed aside.

5. The learned AO failed to appreciate that the land has been assessed to the land revenue (lagaan) and entry of the same reflected in the specific column in Jamabandi.

6. That learned AO has failed to appreciate the contention of assessee regarding the population less than ten thousand, land excluded from the definition of capital asset.

7. That learned AO failed to appreciate that the income derived on sale of agricultural lands is exempt from Income Tax.

8. That learned AO has failed to appreciate the contention of assessee that the land held by assessee is not capital asset and is not exigible to capital gains tax.

It is, therefore, most respectfully prayed that instant appeal of the appellant may kindly be accepted and impugned order dated 26-03-2015 passed by Sh. Jasbir Singh (AO), ward 6(4), SAS Nagar (Mohali) and impugned order dated 17-10-2016 passed by Sh. Bhim Singh, Commissioner of Income Tax (Appeals)-2, Chandigarh are illegal, null and void and prima-facie in-fructuous. Further prayed that sale consideration of agricultural land is agricultural income not exigible to capital gain tax and order of A.O. ward 6(4), SAS Nagar (Mohali) and CIT (Appeals)-2, Chandigarh are intra-vires the Tax laws, ultra-vires the other law time being in force and ultra-vires provisions of the Constitution which provide the immunity to the agricultural income in India and stay to the notice under Section 274 & 271(1)(c) and notice of demand under Section 156 of Income tax Act 1961 be granted during pendency of appeal therefore, against the above said impugned orders may kindly be set aside in with heavy costs in the interest of law and justice.

4. Brief facts of the case are that the assessee has sold land of certain extent (19 Marlas) to M/s Hamir Real Estate Pvt. Ltd. during the assessment year for a consideration of Rs. 87.50 Lacs. The Assessing Officer held that the land sold by the assessee is capital asset in view of the provisions of Section 2(14)(iii) read with CBDT Notification No. 9447/F.No.164/3/87-ITA-I dated 06/01/1994. The specified area of Mohali as per above notification are as under:

“Area falling within 1 KM. on either side of Mohali – Kharar Road upto a distance of 6 Kms. from Municipal limits on that Road”

5. The Assessing Officer held that since the land sold by the assessee falls within one kilometer on left hand side of Mohali – Kharar Road (National Highway -21), the sale consideration received on its transfer is chargeable to

capital gains. While passing the order the Assessing Officer relied on the order of the Ld. CIT(A) pertaining to the sale of land belonging to the other persons of the same village.

6. Ld. CIT(A) confirmed the order of the Assessing Officer. The complete portion of the order of the CIT(A) relevant to the decision is as under:

5.1 Briefly the facts on the issue are that the assessee, Sh. Bhupinder Singh had sold land measuring 19 marlas 2 sarsai (equivalent to 0.119 Acres) to M/s Hamir Real Estate Pvt. Ltd. during the relevant assessment year for a consideration of Rs. 87,50,000/-. Assessing Officer made inquiries from Sub Registrar and as per the report of the Sub Registrar in the case of Smt. Tej Kaur and others, the land sold by the assessee is situated within 1 kilometer of Mohali Kharar Road and AO held that the land sold is a capital asset which is liable for capital gains. Assessing Officer accordingly computed long term capital gains at Rs. 87,36,148/- after allowing benefit of indexation to the assessee.

5.2 During appeal proceeding appellant reiterated her submission made before AO. It was submitted that AO assessed the capital gains by attracting Sec. 2(14)(iii)(a) of the Act however the impugned land is situated outside the municipal limits of Mohali. Further the land in question is assessed to land revenue of the state of Punjab since number of years. Appellant submitted that as per the certificate submitted before AO the population of village Ballumajra where the land is situated is less than ten thousand and the condition of population is applicable and the notification of CBDT is not relevant.

5.3 Submission of the appellant and the assessment order have been considered. Assessing Officer has dealt with the contention of the appellant in the assessment order in detail. The submission of the appellant regarding population of Ballumajra and the land is assessed to land revenue are not relevant as in pursuance of section 2(14)(iii), CBDT issued notification no 9447 dated 06.01.1994 which states that even the land beyond municipal limits but upto a specified area are capital assets. With regards to cities of Mohali and Kharar the notification prescribed that the agriculture land situated within 1 kilometer on either side of Mohali Kharar Road upto a distance of a 6 kilometer are capital assets. This fact was confirmed by the Sub Registrar vide its report no 359 dated 10.09.2014 in the case of Smt. Tej Kaur and Others whose land are adjacent to the land of the appellant intimating that these lands including the land sold by the appellant is situated within 1 kilometer on left side of Mohali Kharar Road and therefore AO has rightly held the agriculture land as a capital asset within the meaning of Sec. 2(14)(iii) of the Act. The appellant has not controverted the findings of AO. The long term capital gains assessed by the Assessing Officer of Rs. 87,36,148 is accordingly upheld.

7. Before us the Ld. AR filed application for admission of additional evidences. The additional evidence consists of the report of the Tehsildar, Mohali regarding the distance of land in question from National Highway 21. The Ld. DR has also been given the copies of additional evidences filed by the Assessee. Since the additional evidences were not available with the assessee earlier and since the additional evidences are required for adjudication of the issue the

same are being admitted as per the provisions of Rule 29 which permits the Tribunal to admit the additional evidence for any substantial cause. The intention behind the Rule is that substantial justice should be done and the interest of justice should be the overriding consideration. Hence the same are being admitted in accordance with Rules in force.

8. Before us, the Ld. AR argued that the Assessing Officer has wrongly taken the distance based on the Assessment Orders of other villagers of the same area without giving any opportunity to examine or know as to who are these land owners and what is the location of their land , khasra number etc.. She argued that the certificate was issued by Gram Panchayat wherein it was stated that the population of the Revenue village is less than 10,000 and does not fall within the purview of notification no. 9447/F.No. 164/3/87-ITA 1 dt. 06/01/1994. She has also produced letter from Tehsildar, Mohali District SAS Nagar certifying that the Khasra Number pertaining to the assessee are situated at a distance of 1.5 Km in the village Ballo Majra from National Highway. Further she also brought to our notice the assessment order passed under section 143(3) in the case of one of the appellants namely Smt.Tej kaur where in the land in question was treated as Agricultural land and no capital gains were charged for the A.Y. 2007-08.

9. Ld. DR relied on the orders of the lower authorities.

10. On going through the Assessment Order dt. 31/01/2014 we find that the ITO Ward 6(3) Mohali has enquired vide letter dt. 09/12/2013 from the Sub Registrar, Mohali to ascertain the following facts (excerpts from the Assessment Order):

- I. Whether the land is situated within Municipal Limit or not?
- II. Exact distance in Kilometers/Meters of this land from the National Highway No. 21 (Mohali to Kharar Road) during the F.Y. 2005-06.

III. Whether this land is urban or rural land ?

11. The Sub-Registrar vide report No. 6 dt. 03/01/2014 and No. 50 dt. 22/01/2014 has intimated that the land sold by Smt. Tej Kaur is Rural land and outside the Municipal limit of Kharar and Mohali. Its distance from National Highway No. 21 is above 1 K.M.(4427 ft. 804 Karam). Accordingly, the land of the assessee is out of urban area.

12. Thus after making due enquiries the ITO has accepted the returned income in the case of one of the applicants namely Smt. Tej Kaur in the earlier year, hence, it can be said that the Revenue, having accepted the distance after due enquiries bringing the proceeds of the sale of remaining part of the land to taxation cannot be accepted. Not only that, the certificate from the Tehsildar, Mohali again reiterated the fact that the land in question is beyond the distance of 1 Km from the National Highway. Thus, keeping in view the entire facts and circumstances of the case, the certificates of the Land Revenue Authorities, and orders of the Department in the case of the one of the assesseees for the earlier years, we hereby direct that the addition made be deleted.

13. As a result, all the above appeals of the Assessee are allowed.

Sd/-

**संजय गर्ग
(SANJAY GARG)**

न्यायिक सदस्य/ Judicial Member

AG

Date: 31/10/2018

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

Sd/-

**डा. बी.आर.आर, कुमार,
(DR. B.R.R. KUMAR, AM)**

लेखा सदस्य/ Accountant Member

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File