

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 399/CHD/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Sh. Varinder Singh, H.No. 85, Vilalge Khangesra, PO Kot, Panchkula	बनाम	The ACIT, Panchkula
स्थायी लेखा सं./PAN NO: AJBPS8512K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 740/CHD/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The ITO, Ward-5, Panchkula	बनाम	Sh. Varinder Singh, H.No. 85, Vilalge Khangesra, PO Kot, Panchkula
स्थायी लेखा सं./PAN NO: AJBPS8512K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Sudhir Sehgal, Advocate
Shri Ashok Goyal, CA

राजस्व की ओर से/ Revenue by : Smt. Renu Ambtabh, CIT DR

सुनवाई की तारीख/Date of Hearing : 23.10.2018

उद्घोषणा की तारीख/Date of Pronouncement : 13.12.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned are the cross appeals, one by the assessee and other by the Revenue against the order dated 29.03.2016 of the Commissioner of Income Tax (Appeals), Panchkula [hereinafter referred to as CIT(A)].

2. The issue involved in these appeals is relating to the taxability of the interest on enhanced compensation on compulsory acquisition of agricultural land. Before the Assessing officer, the assessee pleaded that the land in question which was compulsory acquired by Government was an agricultural land. However, the Assessing officer observed that earlier the land of one Shri Yoginder Singh was also acquired and the same was treated as non-agricultural land and accordingly was treated as capital asset exigible to capital gains tax. The Assessing officer further observed that assessee inherited the land of said Sh. Yoginder Singh, being his legal heir, hence, the same proposition will apply to the land in question. Further, that the assessee even did not furnish any reliance evidence to show that the land was an agricultural land. He, therefore, treated the land in question as capital asset and assessed the capital gain tax accordingly on the compensation received by the assessee and further the interest received on the said compensation was treated as 'income from other sources'.

3. Being aggrieved by the above order of the Assessing officer, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee submitted certain documents in the shape of 'Jamabandi' etc. and pleaded that the land in question was agricultural land. The Ld. CIT(A) admitted these documents in evidence and held the land in question was agricultural land. However, in respect of the interest received on enhanced compensation, he held that he same was to be treated as 'income from other sources'.

4. Being aggrieved by the above order of the CIT(A), the Revenue has come in appeal pleading that the Ld. CIT(A) without properly examining the documents, and even without giving opportunity to the Assessing officer to examine and rebut those documents, has in a mechanical manner held that the land in question was an agricultural land.

5. On the other hand, the assessee has agitated the order of the CIT(A) pleading that the Ld. CIT(A) wrongly treated the interest on the enhanced compensation as 'income from other sources' and further that in the light of the decision of the Hon'ble Supreme Court in the case of case of 'CIT Vs. Ghanshyam (HUF) (2009) 115 ITR 1, the interest received on enhanced compensation is to be treated as part of the compensation and as such was not exigible to taxation.

6. We have considered the rival submissions of the Ld. Representatives of the assessee. So far as the issue as to the taxability of interest received on enhanced compensation u/s 28 of the Land Acquisition Act is cornered, the same is squarely covered by the decision of this Tribunal in the group of cases with lead case in 'Shri Satbir Vs. ITO & others' in ITA Nos. 1413 to 1415/Chd/2016 vide order dated 9.7.2018, another group of cases with lead case in 'ITO Vs. Sh. Nachhattar Singh & Others' in M.A. Nos. 61/Chd/2014 (in ITA Nos. 564/Chd/2010) order dated 7.2.2018 and also in the case of 'Som Nath, Yamunanagar Vs. ITO' in ITA No. 552/Chd/2016 order dated 11.7.2018, wherein, the Tribunal after considering the decision of the Hon'ble Supreme Court in the case of 'CIT Vs. Ghanshyam (HUF)(supra) , and the decision of the Hon'ble Punjab &

Haryana High Court in the case of 'Manjeet Singh (HUF) Karta Manjeet Singh Vs. UOI' in CWP No. 15506 of 2013 dated 14.01.2014 and further decision of the Hon'ble Supreme Court in 'UOI Vs. Hari Singh and others in Civil appeal No. 1504 of 2017 dated 15.9.2017 and another decision of the Hon'ble Supreme Court in 'CIT Vs. Chet Ram (HUF)' dated 12.9.2017 in Civil appeal No. 13053/2017 has held that that the interest received by an assessee on compulsory acquisition of agricultural land u/s 28 of the Land Acquisition Act, is to be treated as part of the compensation and further that the compensation being exempt u/s 10(37) of the Act is not exigible to the tax.

7. So far as the actual issue as to whether the land in question is agricultural land or not, we find that the Ld. CIT(A) has simply relied upon the documents furnished by the assessee and has not given any opportunity to the Assessing officer to examine the same. Moreover, the land in question is a large chunk of land, a part of which may be agricultural land or part of which may not be. The record submitted by the assessee requires through scrutiny. We, therefore, restore this factual issue to the file of the Assessing officer to examine the land records submitted by the assessee including the 'jamabandi' / 'Khasra Girdawari' and also to conduct necessary enquiries, if so required, to find out whether the entire land or part thereof is agricultural land and if found so, then to allow the relief to the assessee accordingly in accordance with law in the light of the decisions of the Tribunal in the case of 'Shri Satbir Vs. ITO & Ors' (supra) and in the case of 'ITO Vs. Sh. Nachhattar Singh and Ors' (supra). This

matter in both the appeals is therefore, restored to the file of the Assessing officer for adjudication afresh as directed above.

In the result, both the appeals are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 13.12.2018.

Sd/-
(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 13.12. 2018

“आर.के.”

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar