

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.7828/DEL/2017
Assessment Year: 2008-09

Manjeet Singh, C/o R.C. Rai & Associates, 203, 2 nd Floor, Akashdeep, 26A Barakhamba Road, New Delhi.	v.	ITO, Ward-43(3), New Delhi.
TAN/PAN: BQPPS 5991A		
(Appellant)		(Respondent)

Appellant by:	Shri R.C. Rai, CA.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	13	11	2018
Date of pronouncement:	21	01	2019

ORDER

The aforesaid appeal has been filed by the Assessee against the impugned order dated 01.09.2017 passed by the Commissioner of Income Tax (Appeals)-XV, New Delhi for the quantum of assessment passed u/s.143(3)/147 of the IT Act, for the Assessment Year 2008-09. In various grounds of appeal, the assessee has challenged the validity of reopening u/s.147 and addition of Rs.23,43,698/- in respect of Long Term Capital Gain arising on sale of land.

2. The facts in brief are that a report was received from Additional DIT (Investigation), Unit-3, New Delhi that assessee along with his four brother had sold a land admeasuring 21 bighas 2 biswas, i.e., 4.39 acres at Village Chhawla. The said land was sold vide sale deed dated 05.07.2007 to M/s. Flying Realtors Pvt. Ltd. The land was sold for total consideration of

Rs.13,18,50,000/-, and the assessee received 1/5th share of the sale consideration which was Rs.2,63,70,000/-. As per the Department, this was not an agricultural land albeit was urban land and hence same falls in the nature of capital asset chargeable to tax u/s.45. Since assessee has not filed his income tax return, therefore, assessee's case was reopened vide notice dated 15.01.2015 issued u/s.148. As per the observation of the Assessing Officer in paragraph 3 of the assessment order, none of the notices issued by the Assessing Officer including the notice u/s.148 was complied with by the assessee. It was only at the fag end of the limitation to pass the order that assessee represented his case through Chartered Accountant on 19.01.2016, and therefore, participated in the proceedings. The assessee had challenged the validity of reopening on the ground that; firstly, assessee has not sold any urban land as it was a rural agricultural land; and secondly, land in question was an ancestral property and hence, the cost of acquisition of the land was 'Nil'. However, the said objection was rejected by the Assessing Officer on the ground that the land situated in Village Chhawla was within the Municipal Limit of Delhi and the cost of acquisition of the capital asset inherited by the assessee has to be taken at the cost as on 01.04.1981. During the course of assessment proceedings, the Assessing Officer also sought for information u/s. 133(6) from Tehsildar Kapashera Najafgarh Delhi, who vide letter dated 21.03.2016 stated that the aforesaid land as well as the village did not fall within the limit of 8 km from the village Bamnoli, which is an urbanized village. Based on this, he came to the conclusion

that the land in question does not fall in the category of rural agricultural land as defined in Section 2(14)(iii) the Act. Ld Assessing Officer also carried out search in Google about the distance by road between the village Bamnoli, which was an urbanized village and village Chhawla and noted out that it was only 5 km from that village and thus, the land situated in village Chhawla is less than 8 Kms. In the meantime, the Assessing Officer had also made reference to the DVO who has stated that the Fair Market Value of property as on 01.04.1981 was Rs.14,59,799/- and Rs.3,78,651/- and based on this report, the Assessing Officer had computed the Long Term Capital Gain and thereby made an addition of Rs.23,46,698/- after giving benefit of indexation and claim of exemption u/s. 54B.

3. Ld. CIT(A), not only rejected the assessee's challenge on the validity of reopening u/s.147, but also the objections raised by the assessee that cost of acquisition of the property has to be seen as on 01.04.1981 as per the fair market value. On the issue, whether the land was agriculture land or not, the assessee had submitted letter of Tehsildar dated 29.02.2016, that the land is 9 km away from Najafgarh Municipal Limit and Village Chhawla was declared as urban village land much later on vide notification dated 16.05.2017 and since sale deed had taken place on 05.07.2007, and therefore, it shows that it was an agriculture land at the time of sale. The assessee has also filed certificate from Block Development Officer, Najafgarh Delhi to show that Village Chhawla was covered under rural area.

4. Ld. CIT (A) rejected the assessee's contention that National Capital Territory of Delhi comprises of various Municipalities and Union Territory of Delhi comprises of rural and urban areas. The land under reference was situated in Chhawla village which a rural area of MCD at the time of sale and vide government notification even though at a later date, it has been notified to be an urban area. Thus, he held that as per the definition given in Sub Sections 61 and 62 of 'Delhi Municipal Act, 1957' it has been defined as areas of Delhi which are not rural areas and fact that village Chhawla was part of Delhi Municipal Corporation; therefore, it cannot be characterized as agriculture land. The land under reference was situated in Delhi Municipal Corporation and the population of the village was more than ten thousand. Accordingly, he confirmed the addition made by the Assessing Officer.

4. After hearing both the parties and on perusal of the relevant finding given in the impugned orders as well as material referred to before us at the time of hearing, I find that the only issue on merits is that, whether the land situated in village Chhawla sold by the assessee was an agricultural land situated in rural area or in the urban area. One very important fact which was brought to the notice before the ld. CIT(A) by the assessee was that, the village Chhawla was notified as urban area vide notification dated 17th May, 2017 by Gazette Notification passed by Government of National Capital Territory of Delhi. From the perusal of the said notification, I find that village Chhawla was declared as

urban land only after 16th May, 2017. Ostensibly, prior to this date, land in village Chhawala fell in rural area and was rural land. The notification clearly states that in exercise of the powers contained in 'Delhi Municipal Corporation Act, 1957' the Lieutenant Governor, Government of National Capital Territory of Delhi can declare area of village from rural areas to urban areas, which was declared on 16th May 2017. Without going into various certificates /letters of the Land Revenue authorities filed by the assessee or obtained by the Assessing Officer, as to whether it was beyond the municipal limit of 8 kms, I find that the 'Delhi Municipal Corporation Act, 1957' vide section 507 clause (a) clearly provides as under:

"507. Special provisions as to rural areas – Notwithstanding anything contained in the foregoing provisions of this Act.

(a) The Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas."

5 Thus, the said Act clearly provides that Delhi Municipal Corporation with previous approval of the government by notification can declare any portion of the rural areas to form part of the urban area. Ergo, once the Delhi Municipal Corporation Act, 1957 provides powers to the Government to notify and convert any rural area to Urban area, then the entire observation of the Id. CIT (A) that, since Village Chhawla is governed under Delhi Municipal Act, 1957, and therefore, it is an urban land even 10 years prior to the

notification. Such an inference is wholly untenable. Accordingly, in view of the government notification, I hold that the said land was situated in a rural area, and therefore, sale of such agriculture land falls within the ambit and scope of Section 2(14)(iii) and hence no capital gain can be charged u/s.45. Accordingly, the addition made by the Assessing Officer stands deleted. Since, I have already deleted the addition on merit; therefore, the validity of reopening challenged before us is kept upon as it has been rendered academic.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 31st January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 21st January, 2019

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