

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA Nos. 1213 & 1214/Del/2016  
Assessment Years: 2006-07 & 2007-08**

Dolly Batra, 17/6, Canal Road, Dehradun <b>PAN No. AKIPB4695E</b>	vs	Pr. CIT Dehradun.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri Rohit Tiwari, Adv.</b>
<b>Revenue by</b>	<b>Smt. Paramita M Biswas, CIT(DR)</b>

<b>Date of Hearing</b>	<b>18.03.2019</b>
<b>Date of Pronouncement</b>	<b>27.03.2019</b>

**ORDER**

**PER SHRI BHAVNESH SAINI, J.M.**

Both the appeals by the same assessee are directed against the different orders of Pr. CIT-Dehradun dated 31/12/2015 u/s 263 of the I.T. Act for Assessment Years 2006-07 & 2007-08.

2. We have heard Ld. Representatives of both the parties and perused the material on record. Ld. Representatives of both the

parties submitted that issue is same in both the appeals and they have argued in AY 2006-07 and have submitted that order in this year may be followed in subsequent assessment year 2007-08. In order to dispose of both the appeals, we decide the appeal for AY 2006-07 as under:

ITA No. 1213/Del/2016 (A.Y. 2006-07):

3. The AO passed the assessment order u/s 143(3)/147 of the Act dated 30/01/2014. The AO noted in the assessment order that on the basis of Information received from ADIT(Inv.), Dehradun regarding the interest income earned by the assessee on different fixed deposit receipts, proceedings u/s 148 were initiated in this case as the assessee was not filing her return of income, whereas, her interest income was reported at Rs. 4,71,064/- during the year under consideration. Accordingly, notice u/s 148 was issued. In response thereto assessee filed the return of income declaring income of Rs. 3,95,870/-. The AO issued statutory notices. The assessee filed a written submission. The AO accepted the return of income and completed the assessment vide order dated 30.01.2014.

4. The Ld. Pr. CIT initiated the proceedings u/s 263 of the Act vide show cause notice dated 06/11/2015 to examine the issue of taxability of sale proceeds of the lands sold on various dates. The details are mentioned at page 1 of the impugned order in 6 Sl. No., mentioning date of sale, the name of the seller (one of them is assessee), names of purchasers, sale consideration and share

received by the assessee. The assessee filed replies before Pr. CIT in which it was explained that assessee inherited the land from her father Late Shri Chaman Lal Kapoor after his death along with two co-owners namely Smt. Lalita Kapoor (sister) and Shri D.D. Kapoor (Brother). The land in question is more than 8 kms away from the Nagar Nigam or cantonment Board and is situated in rural area. Therefore, the gain arose on sale of such land is exempt u/s 2(14)(iii) because it does not fall under the definition capital asset. It was further stated that land in question was purchased by her father in pieces in the years 1985 to 1996 and has been used for agricultural operations till the date of sale. Father of the assessee with the consent of all co-owners entered into an agreement with M/s City Developers to sale the said land in the year 2002. In the agreement, it was mentioned that the total land alongwith a house built thereon, tin shed standing thereon, two tube wells and presently crops standing on the said land alongwith all agricultural accessories present on the land situated in Mauza, Central Hope Town, Dehradun. Later on both the parties could not perform their parts of the agreement. At the same time Shri Chaman Lal Kapoor father of the assessee died on 22<sup>nd</sup> August, 2004 without executing the terms of the contract. But the agreement to sale was honored by his successor. In support of his claim, the copies of the purchase deeds and agreement to sale between Shri Chaman Lal Kapoor and M/s City Developers were furnished. Copy of Khasra and intimation u/s 143(1) for AY 2004-05 of Sh. Chaman Lal Kapoor showing the

agricultural income was also filed. The Ld. Pr. CIT on perusal of the agreement noticed that vide para 3 of the agreement, the second party M/s City Developers has been given option to have the sale deed executed in his name or in the name of his nominee by way of one or more sale deeds and Sh. Chaman Lal Kapoor shall have no objection to the same. In para 9 of this agreement, it was mentioned that the amount of Rs. 1.20 crores i.e. proposed sale consideration also includes development charges of land in question. The proportionate payment of these charges shall be made by party no. 2 i.e. M/s City Developers to party no. 1 i.e. Sh. Chaman Lal Kapoor. During the course of assessment proceedings, the assessee has furnished copies of the different sale deeds made by her along with co-owners of the land. On going through the sale deeds placed on record, it was found that land in question were sold in piece meal to different purchasers and M/s City Developers has no objection to the sales made. Lands were sold in sq. mtrs. The sale deeds were executed in F.Y. 2005-06 and 2006-07. It was further noticed that land sold is situated within an industrial notified area Uttaranchal and was being purchased for an industrial purposes. Thus, land in question sold in assessment year under appeal by the assessee and the co-owners were not remained agricultural land. The Ld. Pr. CIT thus, noted that the issue of taxability of sale proceeds of the above referred sale deeds made were not examined by the ITO at the time of making the assessment on dated 30/01/2014, therefore, it was

cancelled with the direction to make fresh assessment to examine the taxability of the above sale proceeds.

5. Ld. Counsel for the assessee referred to notices issued by AO at the assessment stage and replies filed by the assessee in which the assessee explained that land in question is agricultural land and is exempt from tax. The assessee furnished copies of the sale deed and other Revenue records before AO which have been examined by AO at assessment stage. Copy of one of the sale deed is also filed in the paper book in which it is mentioned that land thereby sold is situated within an Industrial notified area of Uttaranchal is being purchased for an industrial purposes. Ld. Counsel for the assessee submitted that assessee produced sufficient evidences and material on record before AO to explain land in question was away from 8 kms from municipality/cantonment and the AO has taken one of the possible view and in case the Pr. CIT does not agree with the same, such assessment order could not be treated as erroneous or prejudicial to the interest of the Revenue. In support of this submission, Ld. Counsel for assessee relied upon judgment of the Supreme Court in the case of CIT vs. Kwalitiy Steel Suppliers Complex 395 ITR 1 and judgment of Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. 332 ITR 167. Ld. Counsel for assessee also relied upon order of ITAT Hyderabad Bench in the case of Smt. T. Urmila Vs. ITO 57 SOT 90 in which it was held as under:

*“IT: Where Hyderabad Airport Development Authority had been constituted under provisions of Andhra Pradesh Urban Areas (Development) Act, 1975 as a Special Area Development Authority by State Government, it cannot be treated as a municipality for purposes of provisions of section 2(14).”*

5.1 He has referred to page 7 of the Paper Book which is order sheet for AY 2006-07 of the AO. On 06/01/2014 the AO required the assessee to explain how the lands sold are covered under agricultural land and also explain sale proceeds. Ld. Counsel for assessee submitted that assessee filed the reply on 20/01/2014 and the AO passed the order on 30/01/2014, therefore, the AO examined all the material before him. He has also referred to the order sheet for subsequent assessment year 2007-08, copies of which are filed at page 80 of the Paper Book. He has, therefore, submitted that the order of the Pr. CIT is liable to be set aside.

6. On the other hand, Ld. DR relied upon impugned order and submitted that Explanation 2 has been inserted in section 263 of the Act by Finance Act, 2015 w.e.f. 01.06.2015. According to which if the assessment order is passed without making queries or verification which should have been made by the AO, the assessment order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue. Ld. DR submitted that AO without examining the sale deeds and material on record accepted the returned income. No details or facts have been mentioned in the assessment order, therefore, Ld. Pr. CIT correctly cancel the same and restore the issue to AO for passing the order

afresh. Ld. DR submitted that since AO did not make any enquiry while making the assessment and accepted the explanation of the assessee without examination, therefore, assessment order is rightly held to be erroneous in so far as prejudicial to the interest of the Revenue. In support of this proposition, Ld. DR relied upon the following decisions:

1. *Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017 (SC);*
2. *BSES Rajdhani Power Ltd. vs. PCIT (2017) 399 ITR 228 (Del.);*
3. *Surya Financial Services Ltd. vs. PCIT (ITA No. 2158/Del/2017);*
4. *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)*
5. *Rajmandir Estates (P) Ltd. vs. PCIT 240 Taxman 306 (Calcutta);*
6. *Rajmandir Estates (P) Ltd. vs. PCIT 245 Taxman 127 (SC)*
7. *Commissioner of Income Tax Mumbai vs. Amitabh Bachan Civil Appeal 5009 of 2016 dated 11.05.2016 (SC).*

7. Ld. Counsel for assessee in the rejoinder admitted that the AO in pursuance to the order passed u/s 263 of the Act has made an addition against the assessee against which assessee is in appeal before Ld. CIT(A) on merits.

8. We have considered the rival submissions and perused the material on record. Ld. Counsel for assessee referred to one of the sale deed in question, PB 38 in which it is specifically mentioned that the land sold is situated within the industrial notified area of Uttaranchal is being purchased for industrial purposes. There is no legal implication to purchase the said land. The Ld. Pr. CIT while examining the sale deeds in question found that lands in

question were sold in piece meal to different purchasers and M/s City Developers has no objection to the sale made. Lands were sold in sq. mtrs. The sale deeds were executed in assessment year under appeal. The Ld. PCIT also found that the land sold is situated within the industrial notified area of Uttaranchal and have been purchased for an industrial purposes. These facts have also not been disputed by Ld. Counsel for assessee. Ld. Counsel for assessee referred to order sheet of the AO PB 7 for AY 2006-07 in which the AO vide order sheet dated 06.01.2014 required the assessee to explain how the land sold are covered under agricultural land the case was adjourned to 20.01.2014. On 20.01.2014 assessee filed reply which is accepted as it is and AO passed the assessment order on 30.01.2014. The AO in the order sheet as well as in the assessment order did not mention as to how the land in question was agricultural land particularly when in the sale deed it is specifically mentioned that the land sold is situated within the industrial notified area of Uttaranchal and the land is purchased for industrial purposes. The lands falling in Industrial notified area could never be considered as agricultural land. Thus, the AO did not enquire or examine into the issue of taxability of the sale proceeds of the above referred sale deeds. The AO did not examine as to under what circumstances and how the land remained agricultural land. The Explanation 2 to section 263 of the Act is inserted into the Act w.e.f. 01.06.2015 reads as under:

*“Explanation 2. – For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if, in the opinion of the Principal Commissioner or Commissioner, -*

- a) The order is passed without making inquiries or verification which should have been made;*
- b) The order is passed allowing any relief without inquiring into the claim;*
- c) The order has not been made in accordance with any order, direction or instruction issued by the Board u/s 119; or*
- d) The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”*

9. The above explanation is application to assessment year under appeal because the order is passed by the Pr. CIT on 31/12/2015. According to this explanation the assessment order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue, if the assessment order is passed without making enquiries or verification which should have been made by the AO and that orders have been passed allowing any relief without enquiry into the claim. The above facts clearly show that though the AO asked for the explanation of the assessee but the AO never made any enquiry or verification of such a claim and allowed the relief to the assessee without passing any order thereon and without enquiry into the claim of the assessee. Therefore, Explanation 2 to section 263 of the Act is clearly attracted in the case of the assessee. Ld. Counsel for

assessee submitted that since AO has taken one of the possible view, therefore, Pr. CIT has no jurisdiction to take a different view. However, the facts and circumstances noted above clearly show that AO has not taken any view on the matter in issue about taxability of sale proceeds under the provisions of Income Tax Act, therefore, there is no question of taking the AO one of the possible view into the matter. Therefore, the decisions relied upon by the Ld. Counsel for assessee would not support the claim of the assessee. It may also be noted here that during the course of arguments, Ld. Counsel for assessee admitted that AO after making enquiry into the matter in issue i.e. issue of taxability of sale proceeds on the above referred sale deeds has rejected the claim of the assessee and made the addition against the assessee which is subject matter in appeal before Ld.CIT(A). This fact would strengthen the findings of the Ld. Pr. CIT that AO did not examine the issue as per law. Therefore, Ld. Pr. CIT correctly considered the assessment order to be erroneous in so far as prejudicial to the interest of the Revenue. We do not find any infirmity in the impugned order. We confirm the same and dismissed the appeal of the assessee.

10. In the result, appeal of assessee is dismissed.

ITA No. 1214/Del/2016 (A.Y. 2007-08):

11. The issue is same in this appeal as is considered in AY 2006-07. Following the reasons for decisions for AY 2006-07 (supra), we dismiss the appeal of the assessee.

12. In the result, appeal of assessee is dismissed.

13. In the result, both the appeals of assessee are dismissed.

Order pronounced in the open court.

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 27.03.2019

\*Kavita Arora

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	19/03/2019 25/03/19
Date on which the typed draft is placed before the dictating Member	22/03/19 25/03/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	27/03
Date on which the fair order is placed before the Dictating Member for pronouncement	27/03
Date on which the fair order comes back to the Sr. PS/PS	27/03
Date on which the final order is uploaded on the website of ITAT	27/03
Date on which the file goes to the Bench Clerk	27/03
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

