

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.3909/Del/2015
Assessment Year: 2009-10**

Income-tax Officer,
Ward-3(2), Bulandshahr.

vs

Shri Jitender Kumar,
Village Ibrahimpur Junedpur Ur
Mauzpur, Khurja,
Bulandshahr, UP.
PAN: BJSPK0731L
Respondent

Appellant

Assessee by: None

Department by: Shri N.K. Bansal, Sr. DR

Date of Hearing: 28.02.2019

Date of Pronouncement: 10.04.2019

ORDER

PER NARASIMHA K. CHARY, JM

Aggrieved by the order dated 30.03.2015 in Appeal No. 110/2013-14 passed by the Learned Commissioner of Income-tax(Appeals), Ghaziabad {"CIT(A)"} for Assessment Years 2009-10, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual. The assessee and the co-owners of their ancestral agricultural land situated away from the notified area at Village Ibrahimpur Junedpur urf Mauzpur,

Tehsil Khurja wherein the assessee had 1/3rd share thereof, sold the same on 20.6.2008 and received a sum of Rs.4,10,500/- as a part of the sale consideration through cheque drawn on HDFC Bank, Branch Khurja.

3. On AIR information about the cash deposit of Rs.20,07,000/- in SB A/c No.08652151003922 in Oriental Bank of India, Khurja Distt. During the Finance Year 2008-09, ld. AO issued notice u/s 148. Subsequently, further information was received by the learned AO through AIR that the assessee had sold land and received Rs.3,93,97,000/- .

4. Assessee submitted that he had been earning income from property dealing and agriculture and he owns 11 bighas of land. Regarding the cash deposit of Rs.20,07,000/-, the assessee stated that such amount was deposited out of sale proceeds of agricultural land sold jointly and property dealing. According to the assessee, ancestral land was sold to one M/s Arshia Northern Logistics Infrastructure Ltd. and the amount was deposited in the account of his mother. Assessee produced the copies of sale deed, bank pass book of his mother and also of one Subhash etc. Learned AO completed the order dated 22.3.2013 by making an addition of Rs.5,34,000/-.

5. Assessee preferred appeal. During the appeal, learned CIT(A) called for the remand report and the learned AO by letter dated 18.2.2015 stated that the assessee had field a copy of Jot Chakbandii.e. 'Jot Chakbandikhatauni' and 'Jot Chakbandikhasra' showing that the land was transferred to the buyer on 5.8.2009 and as per the khasra, there

was a yield of wheat and jwar crop on the land. Ld. CIT(A) sought remand report.

6. Learned AO vide report dated 10.3.2015 stated that the assessee had produced the copy of Jot Chakbandikhasra before the learned AO during the course of assessment proceedings, which was placed on record to show that the land was transferred to the buyer on 5.8.2009 and as per khasra, there was a yield of wheat and jwar at the time of transfer on the land. Learned AO further stated that the assessee filed revised return on 5.3.2013 declaring income at Rs.1,52,742/- also an agricultural income of Rs.41,000/- and the agricultural income of Rs.41,000/- was accepted by the learned AO by order dated 22.3.2013 u/s 143(3) of the Income-tax Act, 1961 (“the Act”).

7. Learned AO in the remand report, however, further stated that in order to ascertain the nature of land, he deputed an inspector for verification and the report of the inspector is to the effect that the said land was not an agricultural land on the date of inspection and as per the sale deed, the same was sold by the assessee in the shape of industrial plot to M/s Arshia Northern Logistics Infrastructure Ltd. and along with Shri Joginder Singh and Mrs. Saraswati Devi.

8. Assessee filed a rejoinder dated 26.3.2015 reiterating that the land that was sold was an agricultural land at the time of the execution of the sale deed on 24.3.2009 and the mutation took place in the Revenue record like Jot Chakbandi and Jot Khasra. Such mutation takes place only when the agricultural land is sold otherwise it was not possible for the mutation in the Revenue record. Assessee further submitted that he produced the Jot Chakbandi Khasra and Khatauni before the ld. AO to

establish the fact that there was yield of wheat and jwar at the time of transfer.

9. Learned CIT(A) considered all the facts and circumstances of the case in the light of the documents and the remand report available before him and recorded the findings of fact as to the nature of land being agricultural land as per the land records; that the agricultural activities were being carried out as is evidenced by the Revenue documents like khasra/khatauni, which was very much available before the Id. AO during the assessment proceedings; that such documents establish that as on the date of transfer, the use of land was not converted; that the mutation of the transfer in the Revenue record establish that the land was an agricultural land lest mutation was not possible and that the agricultural crops were standing as on the date of the sale. Considering all these aspects which are not controverted coupled with the fact that the learned AO accepted the agricultural income of the assessee during the year, Id. CIT(A) reached a conclusion that the land sold was an agricultural land and was not liable for capital gains.

10. Revenue is, therefore, in this appeal before us stating that the Sub Registrar in the sale deed at pages 93 to 97 had mentioned that the plot is in the vicinity of industrial area as per Master Plan of Khurja Development Authority. It is further stated that no agricultural activity on the land was taking place and the entire area inclusive of the assessee's land was notified under the industrial area of the Master Plan of Khurja Development Authority as notified area. According to the Revenue, there is no basis for the learned CIT(A) to treat the land as an agricultural land inasmuch as the land is in the notified area and as per

Section 2(14)(iii)(a) of the Act, the provisions of Section 54B of the Act are applicable to the facts of the case. Further since the assessee had not purchased any agricultural land out of the sale proceeds of the agricultural land within two years from the sale, the long term capital gain is chargeable.

11. It is the submission of the assessee by way of written submission that the learned AO did not consider the documents produced before him and Sub Registrar, Sale deed at page nos. 92 to 97 only mentioned that the plot is in the vicinity of industrial area as per the Master Plan of Khurja Development Authority and, therefore, the assessee had accepted in the sale deed and signed but the Khurja Master Plan 2-021 is a plan map only which represents the comprehensive long term strategy for achieving planned development of the area of Khurja District by 2021 and it is not a notification with any legal status. The agricultural area declared as industrial in Khurja Master Plan 2021 has only a meaning that the installation of industrial units would be preferred in the said area after such an area being acquired for such purpose. The agricultural land declared as industrial in Khurja Master Plan 2021 has never been notified as 'industrial area' by any Government authority and because of master plan this land does not lose its character and status of being 'agricultural land'.

12. It is further submitted that the land that was sold was put to agricultural use even as on the date of sale which fact is established by the khasra and, therefore, ld. AO is not justified in treating the land as urban land and bring the long term capital gains to tax.

13. We have gone through the record in the light of the submissions made on either side. In so far as the location of the land or the standing crops thereon is concerned, absolutely there is no dispute. Khasra revealed that there was standing crop of wheat and jwar on the land at the time of transfer. Further, as a matter of fact, Id. AO in the order dated 22.3.2013 u/s 143(3)/148 of the Act had accepted the agricultural income of the assessee to the tune of Rs.41,000/-. Further, there is no explanation as to how the mutation could have taken place in the Revenue record if the land was put to commercial use as on the date of sale. Merely because the land was near the area said to be developed as industrial by 2021, without any notification from the competent authority, it cannot be said that the land in question loses its character and status of being an agricultural land. It is not the case of the Revenue that any competent government had issued any notice changing the nature of land from rural agricultural land in order to apply the provisions u/s 54B of the Act.

14. Having accepted the agricultural income of the assessee and having possession of the record at the time of passing the order u/s 147/143(3) of the Act, it seems that the learned AO failed to appreciate the fact that unless and until a competent Government issues a notification or the conversion of the use of land takes place, land with standing crop whose mutation had taken place in the Revenue record, cannot be said to be a non agricultural land. On a careful consideration of the findings of the learned CIT(A) in the light of the record that was made available before the learned AO as well as the learned CIT(A) and also the remand report, we are of the considered opinion that the approach of the learned CIT(A) is not questionable and it does not suffer

from any illegality or irregularity warranting interference by this Tribunal. We, therefore, while upholding the findings of the learned CIT(A) find the grounds of appeal as devoid of merit. Appeal is accordingly dismissed.

15. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 10th April, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 10th April, 2019

VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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