

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.:-309/Del/2018
Assessment Year: 2013-14

Alka Sharma 279, Ground Floor, Lane No. 5, Kailash Hills, New Delhi Pin 110 065 PAN BXFPS7743P	vs.	ITO, Ward-69 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Vishal Chandra Gupta, CA
Department by :	Shri S.L. Anuragi, Sr. DR
Date of Hearing	28/01/2019
Date of pronouncement	22/04/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 3.10.2017, passed by Ld. CIT (Appeals) 21 for the quantum of assessment passed u/s 143(3) for the Asstt. Year 2013-14. In the grounds of appeal assessee has mainly challenged the addition of Rs. 20,57,958/- on account of long-term capital gain after invoking provision of section 50C.

2. The facts in brief are that the assessee has sold land at village Sarna, Chhindwara, MP for sum of Rs. 53,65,000/-; and out of said sale, assessee had claimed exemption of Rs. 52,15,000/- u/s 54, on

account of amount deposited in the 'Long Term Capital Account'; and u/s 54F on the purchase of flat at Gurgaon. The value of property for the stamp duty purpose was determined at Rs. 78,00,000/-. The Ld. AO required the assessee to explain, as to why the long-term capital gain should not be determined at Rs. 74,13,898, considering the fact that stamp duty valuation of the property has been determined at Rs. 78,00,000/-. The assessee's main contention was that the land was an agricultural land situated in village, Sarana, district Chindwara which was having population of 3000; and was beyond the distance of 8 KM from nearest municipality. This fact was also confirmed by the Tehsildar, vide copy of Khastra and Khatauni dated 28.8.2012 and 2.2.2016, that it was an agricultural land. Thus, no capital gain was leviable, because agricultural land is not treated as 'capital asset' in terms of section 2(14). AO then issued notice to the Tehsildar of Chindwara, vide letter dated 1.2.2016, requiring him to convey the distance of the agriculture land from the municipality of Chindwara. In response, Tehsildar, vide letter dated 11.3.2016 informed the AO that the distance of property sold from the local limit of Chhindwara was approximately of 2 Km and population of Chindwara as per census 2011 was 20,90,922. As per the AO, the assessee's case was falls under the provision of section 2(14)(iii)(b). AO further observed that Khasra and Khatauni reveals that no agricultural activity was carried out by the assessee; and the land presently stands in the

name of M/s. Adani Pench Power Limited. Accordingly, the AO treated the land to be a capital asset and determined the long-term capital gain at Rs. 74,22,958/- as per section 50C; and only allowed deduction u/s 54F amounting to Rs. 53,65,000/- and the difference amount of Rs. 20,57,958 was taxed as long-term capital gain.

3. Before the Ld. CIT (A), assessee submitted that the nature of land sold, was an agricultural land at the time of sale deed and it was classified as agricultural land in land revenue's record. There is no change of land till that time. AO in fact has admitted in para 3.3 of his order that assessee's case falls under the provision of section 2(14)(iii)(b), which is only applicable for the agricultural land. Here the land is not situated in a particular notified area. Further, one of the earlier letters of Tehsildar was never provided to the assessee and the same has been obtained under the RTI Act. In the said letter, it was clearly stated that the land mentioned was agricultural land in the year 2012, which is now lying vacant and the said land was outside the limits of **Chhindwara Municipal Council** at the time of sale and also, the present population of the village is around 3000. Thereafter, AO has sent another letter to the Tehsildar, wherein it was stated that land is situated at about 2 Kms from the **Municipal Corporation** and the population of Chhindwara District was more than 20 lacs. The first letter was never confronted to the assessee nor has been taken into

cognizance by the AO. It was further submitted that earlier Chhindwara was a Municipal Council and was notified as Municipal Corporation only in the year 2014, vide Gazzette Notification No. 408 dated 5th September, 2014; and therefore, subsequent notification cannot be the basis for drawing adverse inference. At the time of sale not only the land was agricultural land but was situated at a distance of about 9.5 KMs from the limits of nearest Municipality, i.e 'Chhindwara Municipal Council'. In support, a certificate dated 6.5.2016 from the Land Revenue Office was also filed. The assessee's detailed submission in this regard has been noted and incorporated in the impugned appellate order in detail. The assessee had also filed application for additional evidence which was mainly the distance certificate which was obtained from revenue authorities of the concerned Tehsildar Chhindwara.

4. Ld. CIT (A) had sent the additional evidence along with the submission of the assessee to the AO to submit the remand report. Ld. AO in his remand report has stated that the additional evidence submitted by the assessee a distance certificate and the distance mentioned is 9.5 KMs which is by road, whereas the distance should be taken aerially and the Khasra and Khatauni mentioned that no agricultural activities was carried out by the assessee in the period financial year 2010-11 and 2011-12. Assessee in response has also

given a detailed rebuttal which has been incorporated in the impugned order. Ld. CIT (A) first of all, after detailed reasoning has rejected the admission of additional evidence and has mainly referred and relied upon the observation of the Ld. AO made in the assessment order.

5. After hearing both the parties and on perusal of the relevant finding in the impugned order as well as material referred to before me, I find that assessee is an individual who is working as a teacher in 'Amity International School', New Delhi. She owned agricultural land at Village Sarna, District Chindwara which was purchased by her late husband who had died in the year 1997; and after the demise of her husband the said property was devolved upon the assessee. The assessee sold the said land for a consideration of Rs. 53,65,000/- in the financial year 2012-13, relevant to assessment year 2013-14. However, in the sale deed, the value of agricultural land for the purpose of stamp duty was determined at Rs. 78,00,000/-. The core issue is, whether the said land falls within the ambit of 'capital asset' as defined in section 2(14)(iii)(b). It transpires from the record that, in order to ascertain whether the land was sold by the assessee was agricultural land or not; and whether it falls within one of the conditions given in section 2(14)(iii)(b), AO had sought to make an inquiry from Tehsildar. In response, Tehsildar had initially written a letter to the AO vide letter dated 1.2.2016 stating that: -

- a) the said land was agricultural land in the year 2012, but in present, the same is recorded as non- agricultural land and is lying vacant;
- b) it was also stated in Point No. 2 of the Letter that the said land was outside the limit of Municipal Corporation at the time of Sale and also at present;
- c) Land is not cultivated;
- d) In point no. 5 it was stated that the population of the Village is around 3000.

5.1 Thereafter, another letter was sent by the AO, in response to which the Tehsildar in his letter has stated that: -

- (a) The said Land is situated at about 2 KMs from the limits of Municipal Corporation; and
- (b) The Population of Chhindwara District as per 2011 Census was 20,90,922.

6. From the perusal of the second letter of Tehsildar, it is seen that, firstly, it states that the said land is 2 KM away from '**Nagar Palika Parishad**', i.e., **Municipal Corporation of Chhindwara**. The Municipal Corporation of Chhindwara has been notified by Gazette Notification issued by Govt. Of Madhya Pradesh on 5th September 2014, that is, much after the event of sale; and within the limits of the said Municipal Corporation, the area of the land is also covered. The earlier letter of the Tehsildar on the other hand mentions that the said land is away at a distance of 9.5 KM from '**Nagar Palika Parishad**' i.e., **Municipal Council**. The area of Chhindwara Municipal Council was later on enlarged by the notification letter dated 28th August, 2014. Thus, it appears that at the time of sale, the agricultural land was more than 8 kms from the then Municipal Council and population

of the village was less than 3000. It was in the year 2014 that area of municipality was enlarged. Hence there seems to be no contradiction. The assessee during the course of the first appellate proceedings, further corroborated this fact in the form of Distance Certificate from the Land Revenue authorities on the ground that same could not be obtained due to paucity of time. Hence same was filed as an additional evidence. The copy of said certificate is appearing at page 25 of the paper book, which certifies that the distance of the said land was 9.5 Km's away from **Nagar Palika Parishad' i.e., Chhindwara Municipal Corporation** in the year 2012. This certificate coupled with earlier certificates of Tehsildar obtained by the AO, goes to corroborate the case of the assessee that, at the time of sale, firstly, the land was at the distance of 9.5 KMs from Chhindwara Municipal Council and it was later on after the Gazette Notification by the Govt. Of Madhya Pradesh in the year 2014, that area of Chhindwara Municipal Council has been enlarged and thereafter the said land has come within the purview of Chhindwara Municipal Corporation. It is from such enlarged area that the agricultural land is now 2 KM away from the said limit. What is required to be seen is, whether the distance of the land from local municipal limit falls within the ambit of capital asset u/s 2((14) and the conditions laid down in clause (iii) or not. Here in this case it is evident from the record that at the time of sale the assessee's land was more than 8 KMs away from the local limits of Municipal Council. Ld. CIT(A) was thus not correct in rejecting the additional evidence which was merely corroborative in nature as supported the earlier two letters from Tehsildar obtained by the AO in his inquiry; and in order to reconcile the same, assessee has filed a certificate from the revenue authorities. To adjudicate the issue and in the interest of justice same should have been admitted by the Ld.

CIT(A). And more so, once AO was confronted with the said certificate and remand report was called for.

7. Accordingly, I am of the opinion that based on these records, it is held that assessee's land cannot be treated as a capital asset in terms of section 2(14), because it was an agricultural land and was more than 8 KMs away from the local limit of the municipality and population was also less. Hence the chargeability of capital gain on sale of such agricultural land does not arise. The addition thus made is deleted.

8. In the result appeal of the assessee is allowed.

Order was pronounced in the Open Court on 22nd April, 2019.

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 22/04/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi