

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 746/JP/2018
निर्धारण वर्ष / Assessment Year : 2013-14.

Shri Rahul Bhandari 18, Golimar Garden, Sahkar Marg, Bais Godam, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACGPB 4996 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (CA)

राजस्व की ओर से / Revenue by: Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 18.09.2019.

घोषणा की तारीख / Date of Pronouncement : 30/09/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 01.03.2018 of Id. CIT (Appeals)-2, Udaipur for the assessment year 2013-14. The assessee has raised the following grounds of appeal :-

- " 1(a) In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO in reopening the assessment under section 147 of the Income Tax Act, 1961. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the assessment proceedings being illegal and without any basis.

- (b) In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO in issuing notice u/s 148 of Income Tax Act, 1961, without obtaining proper sanction u/s 151 of the Income Tax Act, 1961. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without jurisdiction.
- 2(a) In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO in making an addition of Rs. 2,18,564/- as alleged long term capital gain on sale of a land, being agricultural land, not offered for taxation. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 2,18,564/-.
- (b) In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO in not providing the opportunity of cross examination of the persons, whose statements have been used against the assessee for making addition of Rs. 2,18,564/-. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the principles of natural justice. Relief may please be granted by quashing the action of Id. CIT (A) and deleting the addition of Rs. 2,18,564/-.
3. In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO in considering the report of Inspector of Income Tax/Village Patwari, Natata dated 03.12.2016 for assessing the location of the said agricultural land and, thereby, not considering the reports issued by Tehsildar/village Patwari, Natata dated 25.03.2014 in respect of the land sold in August 2012. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by accepting report issued by Tehsildar/village Patwari, Natata dated 25.03.2014 for assessing the location of land.
4. The assessee craves his right to add, amend or alter any of the grounds on or before the hearing."

2. At the time of hearing, the Id. A/R of the assessee has submitted that the assessee does not press ground no. 1(b) of the appeal and the same may be

dismissed as not pressed. The Id. D/R has raised no objection if the ground no. 1(b) of the assessee's appeal is dismissed as not pressed. Accordingly, ground no. 1(b) of the assessee's appeal is dismissed being not pressed.

Ground No. 1(a) is regarding validity of reopening of the assessment.

3. The Id. A/R of the assessee submitted that the AO has reopened the assessment by recording the reasons that the agricultural land sold by the assessee is not excluded from the definition of capital asset due to the reason that it is situated within 5 KM from the boundary of Nagar Nigam, Jaipur. He has pointed out that prior to the reopening of the assessment, the AO conducted an enquiry and the assessee has submitted a report of the concerned Tehsildar showing the agricultural land in question beyond 8 km from the Municipal Limit of Jaipur and, therefore, it was not a capital asset. Once the assessee has furnished the evidence to show that the land is situated beyond 8 km from the Municipal limit, then the AO was not supposed to form the belief that the land is situated within 5 km from the boundary of the Nagar Nigam Jaipur. He has further contended that the AO has referred to the physical verification in the reasons recorded. However, no such report is placed on record or confronted with the assessee. Therefore, there was no matter with the AO at the time of recording the reasons that the land in question is situated within 8 km from the Municipal limit and consequently the income assessable to tax has escaped assessment. The Id. A/R further submitted that the AO has reproduced the report of the Inspector dated 3rd December, 2016 in the assessment order which shows that prior to that report nothing was available with the AO. Hence the Id. A/R has

submitted that the reopening not based on any tangible material which has direct nexus to the reason to believe that the income assessable to tax has escaped assessment. The reopening was pre-mature as the AO has not confronted with so called physical verification report with the assessee to arrive at the final opinion and belief of escapement of income.

4. On the other hand, the Id. D/R has submitted that the AO has recorded the reasons which revealed the fact of sale of land by the assessee along with other persons. This fact is not in dispute. Further, the AO has conducted enquiry and also issued notice under section 133(6) of the Act to the assessee. Thus the reasons were recorded after due verification of the fact regarding the actual distance of the land from the Municipal limits. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as the relevant material on record. The AO has reopened the assessment by recording the reasons as under :-

" On the basis of information brought on record, it was noticed that the assessee has jointly with two persons sold a land of 11 bigha 4 biswa situated at village-Natata, Patwar, Halka-Natata, Tehsil-Jamwaramgarh, Dist. Jaipur for sale consideration of Rs. 2,80,00,000/-, out of which the assessee's part was Rs. 70,00,000/-.

Enquiry was conducted by the ITO (Intelligence)-I, Jaipur u/s 133(6) of the I.T. Act, 1961 and in response to the notices issued, the assessee produced computation of total income and submitted that the alleged agriculture land is situated beyond 8 KM from the municipal

limits of Jaipur and therefore, it was not a capital asset. From computation of income submitted by the assessee it was found that the assessee has shown Rs. 70,00,000/- as exempted income being received from sale of agricultural land.

On physical verification it was found that the alleged land i.e. Khasra no. 179/862 at Natata village is situated within 5 KMs from the boundary of Nagar Nigam Jaipur hence the land is a capital asset and issue of capital gain is involved in this transaction.

The assessee has e-filed his ITR for A.Y. 2013-14 on 30.03.2014. On perusal of Income-tax return it is noted that the assessee has not shown any capital gain on the above transaction. The land under consideration is a capital asset for which the assessee was liable to pay capital gain tax but he did not pay any tax. Therefore, in view of the above facts, I have reason to believe that income of Rs. 70,00,000/- has escaped assessment and it is a fit case to issue notice u/s 148 of the I.T. Act, 1961."

Thus the AO has duly recorded the facts regarding sale of land by the assessee along with two other persons out of which the assessee's share in the sale consideration is Rs.70,00,000/-. This fact is not in dispute. Further, the assessee has not declared any income on account of sale of property in the return of income. The AO has also conducted an enquiry by issuing notice under section 133(6) to the assessee as well as physical verification of the land in question. Thus, prima facie the reasons recorded by the AO led to the formation of belief that the income assessable to tax in the shape of capital gains has escaped assessment. This is not a case of formation of belief on assumption of facts but the AO has conducted a proper enquiry to form the belief that the land in question does not fall in the

exclusion clause of section 2(14) being capital asset. Therefore, at the stage of recording the reasons, the AO is not required to establish the sufficiency and correctness of the reasons to believe that the income has escaped assessment. It is only a prima facie reasonable belief based on the reasons recorded that the income assessable to tax has escaped assessment. Once the belief of the AO is based on some facts recorded in the reasons and these facts are not in dispute, then the issue whether the land in question is capital asset or not cannot be finally determined in the reasons recorded but it is a subject matter of assessment. Accordingly, I do not find any substance and merit in ground no. 1(a) of the assessee's appeal to challenge the validity of reopening. The same is rejected.

Ground No. 2 and 3 are regarding addition of Rs. 2,18,564/- sustained by the Id. CIT (A) being long term capital gain on sale of land.

6. The Id. A/R of the assessee has referred to the submissions made before the AO and reproduced at page 7 of the assessment order as under :-

" The agricultural land I possessed had no access from Siawad Road. We had to come via Kukas as it was the only motorable road during the year 2012.

Right in front of my land there was a stone quarry where mining use to happen they would cross through my land and then a government land to reach Saiwad road/Natata. Then on my left and right were niji Khatadari land. So one could access my land only from Kukas area and not Natata.

I sold this land to Manglam Developers in 2012 who then in 2014 developed an entire Township/Plotting Scheme and did all the land development. To make this scheme saleable they made some road network. Some passes through this land. Further they with the help of panchayat

Natata developed one more access road though the government land and got the access via Saiwad road. Which today is the access to my land and it didn't existed in 2012. Thus the distance measured through the newly developed roads is not acceptable to me and I strongly oppose the same.

So the patwari report submitted by me in year 2014 states the distance to my land from Jaipur Nagar Nigam boundary in year 2012.

To clarify the same I did come to your office with my Laptop and measured the distance via road on Google Earth as per position in 2012 and it was around 8.7 kms.

I am also enclosing the Super imposed maps of Google Earth and then JNN (Jaipur Nagar Nigam) map which will help you understand the clear distance of my land from JNN boundary. I am also enclosing the map of Jaipur Nagar Nigam.

I would request you to allow me to cross examine Tehsildar and Natata patwari in your presence since their report matters the most in this case and department is relying on one of the reports issued by them where as I have submitted other contradictory reports issued by them.

I would also like to bring to your notice that reporting from patwari and Tehasildar Jamwaramgarh should not be considered as Final document because the maps and record of land they have are confined only to their Tehsil. In my case the JNN boundary ends in Amer Tehsil, for which they don't have any land record and maps, so I have all the doubts about their reporting. A major part of their report is based on assumptions of JNN boundry.

They should have consulted JNN and, Amer Tehsil before submitting the report. Else there should be a committee where in you have members from all the concern departments you can give a conclusive and accurate report.

Most important point which I have been raising every time is that everything has to be seen in reference to 2012 and the situation and road network existed then."

Thus the Id. A/R has submitted that once there was no direct access to the land, then the distance of the land has to be measured only from the road which connects the land. He has contended that the land is situated beyond 8 kms from the municipal limits.

7. On the other hand, the Id. D/R has relied upon the orders of the authorities below.

8. I have considered the rival submissions as well as the relevant material on record. Undisputedly the land was sold by the assessee to M/s. Manglam Developers who has developed the entire township and plotting scheme on this land. The land was transferred for non agricultural purpose and, therefore, it was no more an agricultural land even at the time of transfer when the intention of the parties was undisputedly to use the land for non agricultural purpose. Secondly, as per the provisions of section 2(14)(iii)(b) it is clear that the distance has to be measured from Municipal limits to the area in which the land is situated and not to a particular piece of land sold by the assessee. Once the area is within 8 kms from the Municipal limits, then even if the particular land is beyond that distance of 8 kms, it will not be excluded from the definition of capital asset being an agricultural land. Therefore, all these contentions of the assessee are only with respect to the particular land in question and no such dispute has been raised that the area in which the land is situated is beyond 8 kms from the Municipal limits. Accordingly, in

the facts and circumstances of the case, I do not find any merit or substance in the ground nos. 2 and 3 of the assessee's appeal.

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

Order is pronounced in the open court on 30/09/2019.

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 30/09/2019.

Das/

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

1. The Appellant- Shri Rahul Bhandari, Jaipur.
2. The Respondent – The ITO Ward 6(2), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 746/JP/2018).

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar