

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA**

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.743/Kol/2017
Assessment Year :2012-13

Shri Kapil Shroff 9 th Floor, Aakashdeep, 5, Lower Rowdon Street, Kolkata-700 020 PAN No.AKOPS 6739 A]	V/s.	Income Tax Officer Ward-5(1), 8 th Floor, Aayakar Bhawan,P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Sankar Kumar Halder, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	22-08-2019
घोषणा की तारीख/Date of Pronouncement	15-11-2019

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-2 Kolkata's order dated 10.01.2017 passed in case No.1328/CIT(A)-2/15-16 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appears at assessee's behest. The registry has already sent an RPAD notice dated 09.07.2019. He is accordingly posted *ex parte*.

2. The assessee's former two substantive grounds challeng correctness of both the lower authorities action treating his income from sale of alleged

agricultural land amounting to ₹93,29,222/- as capital gains resulting in addition of ₹51,50,550/- after invoking sec. 50C of the Act.

3. The CIT(A)'s detailed discussion *qua* this former issue reads as under:-

“Grounds-1&2,

These grounds of appeal as raised by the assessee against the order of the Assessing Officer are as under:-

- *‘That the: Learned assessing officer was not justified in adding the income of Rs.9329222/- claimed as exempt income from sale of agricultural land without proper examination and verification of the details furnished.*
- *That the; Learned Assessing Officer was not justified in adding the additional amount of Rs.4150550 under section 50C without proper examination and verification of the details furnished.’*

The AR of the appellant during the appellate proceedings furnished written submissions as under:-

“A. The assessee was having an agricultural land in Maheshpur Gram Panchyat area bearing khatiyaan no.197, 154,1651, 234 and 257 having an area of 219.25 decimals as per Memo of Mahespur Gram panchyat dated 12/03/2012 (copy enclosed). The said agriculture land is not an capital asset u/s. 2(14)(iii) of the Income Tax Act (said section 2(14) is attached herewith . Furthermore the said land was never used by the assessee for any industrial purpose and was used for doing agricultural activity.

*From the Land records of Maheshpur Gram Panchayat as per letter dated 12/03/2012, which was obtained by the assessee before the sale of such land executed on 29/03/2012, it is clear that said land was SALI or AGRICULTURAL LAND at the time of sale of such land. Further in view of specific provisions of section 2(14) of the Income tax Act, the said land is not a capital asset and as such no capital gain tax will be payable on sale of such land and entire sale consideration will be **“Capital Receipt”** in the hands of the assessee. Furthermore as sale of such agricultural land will be out of the purview for Capital Gain tax and thus section 50C will not be applicable on such sale of land.*

*In a recent appellate tribunal decision, Income tax tribunal Hyderabad vide order dated 30/08/2013 in **ITA No.1715** between RAJENDRA PERSHAD TEJPRAKASH VS ITC WARD 9(2) HYDERABAD held that sale of agricultural and will not be taxable as capital gain under the Income tax Act.*

In view of the above, the additions of Rs.9329222, being profit on sale of agricultural land, and Rs.5150550, being capital gain under provisions of section 50C added by the assessing office be deleted, as the profit from such sale of agricultural land is Capital receipt and not taxable under any provisions of the Income Tax Act, 1961.”

*I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the Assessing Officer during the assessment proceedings. The AO has verified the claim of the assessee from the office of the additional District Sub-Registrar of Uluberia to know the status of such lands sold by the assessee. The reply from the office of the additional District Sub-Registrar received on 06.01.2015 and in such letter the purpose of the land was clearly mentioned as '**industrial use**'. During the assessment proceedings, the assessee, vide his letter dated 23.02.2015 admitted that during any portion of the tenure throughout which the aforesaid lands were in the occupation of the assessee, any process of cultivation was not initiated in the said land. The relevant portion of his letter is quoted:-"**no agricultural activities have been carried out by the assessee in the last 5 years**". As regards to applicability of section 50C, the AR during the appellate proceeding did not file any argument in the matter. Keeping in view of above, the order of the AO is upheld on both the ground and these grounds of appeal are **dismissed.**"*

Learned vehemently contends during the course of hearing that both the lower authorities have rightly held that the assessee's land to be a capital asset u/s 2(14) of the Act in view of the above extracted detailed discussion. He buttresses the point that the sub-registrar's letter before the Assessing Officer (supra) made it clear that the land in issue had been not been put agricultural but industrial use. We find no merit in the Revenue's instant arguments. The assessee's detailed paper book running into 216 pages and more particularly up to pages 1 to 132 reveals that the land in issue in sale had been shown as agricultural as per the relevant records as on 26.02.2019 (**pages 88 to 97**). Coupled with this, we find that this is not also the Revenue's case that the land itself during assessee's possession had ever been converted to industrial use. Hon'ble Bombay high court's decision in *CIT vs. Debbie Alemao and 2. Joaquim Alemao* (2011) 331 ITR 59 (Bom) holds that it is nowhere necessary for an assessee to prove carrying out actual agricultural activity of the land in issue is agricultural. We take into account all these facts as well as foregoing jurisdictional precedent to hold that both the lower authorities have erred in law and on facts in treating the assessee's agricultural land sold as industrial giving rise to capital gains in issue. We therefore accept assessee's former twin substantive grounds to this effect.

4. Next comes ses.2(22)(e) dividend addition amounting to ₹60,00,000/- made in both the lower proceedings. The CIT(A)'s detailed discussion qua the instant latter issue reads as under:-

“Ground No.-3.

This ground of appeal as raised by the assessee against the order of the assessing office is as under:-

- *That the: Learned Assessing Officer was not justified in making addition of Rs.6000000 as deemed dividend u/s. 2(22)(e) without proper examination.*

The AR of the appellant during the appellate proceedings furnished written submissions as under:-

*I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the Assessing Officer during the assessment proceedings. The AO has stated that the assessee is a substantial shareholder as well as having more than 10% voting right in the company M/s Space Matrix Pvt. Ltd. from which, during the year, he has received a loan of Rs.60 lacs. As per individual balance sheet of the assessee, he has been shown under the head unsecured loan. The AR of the assessee has submitted that the assessee has received temporary advance of Rs.60 Lacs from M/s space Martix Pvt Ltd to meet short term cash requirements. The assessee has admitted that amount was given to director and it was not for business purpose. It was a loan and if it was advance than the purpose has not been explained either during the assessment proceeding or appellate proceeding. In view of above, the order of the AO is upheld and this ground of appeal is **dismissed.**”*

Mr. Halder's argument in support of the impugned addition is that the assessee could not prove any arrangement in support of the impugned temporary advance of ₹60,00,000/- from M/s Space Martix Pvt. Ltd. to meet short term cash requirements and therefore, both the lower authorities have rightly made the impugned addition.

5. We find no reason to agree with the impugned addition. Page 153 in the case file indicates that the assessee had executed an “MoU” with M/s Spac Martix Pvt. Ltd. on 07.10.2009 agreeing for extending security in the form of assignment or hypothecation of personal assets for securing loan for the company and the latter in turn had to give mutual financial accommodation to the former. The assessee thereafter pleas on record all the relevant details

regarding its personal guarantee and collateral security provided to the bank in favour of M/s Space Martix Pvt. Ltd. Page 158 of the paper book reveals that the latter entity had deficient figures of ₹43,87,70,364/- and ₹47,36,60,894/- as on 27.03.2012 and 31.03.2012; respectively. Be that as it may, hon'ble jurisdictional high court's judgment in *Pradip Kumar Malhotra vs. Commissioner of Income Tax, West Bengal-V* (2011) 338 ITR 538 (Cal) hold long back that such a case does not attract the deeming fiction of dividend u/s 2(22)(e). We therefore direct the Assessing Officer to delete the instant latter addition as well.

6. This assessee's appeal is allowed.

Order pronounced in the open court 15/11/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,
*Dkp

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 15/11/2019 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Shri Kapil Shroff, 9th Fl. Aakashdeep, 5, Lower Rowdon St. Kol-20
2. प्रत्यर्थी/Respondent-ITO Ward-5(1), 8th Fl. Aayakar Bhawa, P-7, Chowringhee Sq. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।