INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4728/Del/2016
(Assessment Year: 2013-14)

Mala Dhingra, 85 – Golf Links, New Delhi – 110 003. **PAN : AADPD6808Q**	Vs.	ACIT, Central Circle – 8, New Delhi.
(Appellant)		(Respondent)

Revenue by :	Ms. Pramita M. Biswas [CIT]–DR;
Assessee by:	Shri Arun Kishore, C. A.;
Date of Hearing	**17/02/2020**
Date of pronouncement	**19/02/2020**

O R D E R

PER PRASHANT MAHARISHI, A. M. :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-24, New Delhi, dated 30.06.2016 for assessment year 2013-14 wherein appeal filed by the assessee against the order passed under Section 143(3) of the Income Tax Act, 1961 (the Act) by the Assistant Commissioner of Income Tax, Central Circle 8, New Delhi, was partly allowed.

2. The only issue involved in this appeal is with respect to the addition of Rs.1,61,25,000/- made by the learned Assessing Officer towards capital gain earned on sale of agricultural land at Bandhwari Tehsil, Sohna, Distt. Gurgaon.

2.1 The assessee is an individual. There was a search on Harman Singh Dhingra Group on 16.01.2013. The case of the assessee was covered in search. The notice under Section 143(2) of the Act was issued to the assessee. In response to notice, return showing income of Rs.2,93,860/- on 03.12.2014 was furnished. The assessment under Section 143(3) of the Act was passed at a total income of Rs.2,40,75,468/-. In the assessment order the Assessing Officer made an addition of Rs.1,61,25,000/-, which is the subject matter of appeal before us on account of capital gain. It was found that assessee has sold land at Bandhwari for Rs.1,61,25,000/-. Assessing Officer was of the view that the above land is in the vicinity of National Capital Region of Delhi and accordingly it is a 'capital asset' and capital gain is chargeable to tax. The assessee treated it as an agricultural land, hence no tax was payable on that. Assessing Officer after examining the claim of the assessee rejected it holding that the above land is a 'capital asset' for the reason that above land is in the heart of National Capital Territory. Further assessee has not earned any agricultural income in this year or in past. Therefore, it is not an 'agricultural land'. He further noted that above land comes within the urban limit as it is in an area heavily surrounded by population of Sectors 55, 58, 59 and 60 of Gurgaon. The above land was also found located 11.80 Kms. from district main city of Gurgaon and it is found to be within the Municipal limits of Gurgaon. Accordingly Assessing Officer charged the above sum as capital gain.

2.2 Assessee aggrieved with the order preferred an appeal before the learned CIT (Appeals). The learned CIT (Appeals) vide para No. 4.3 while deciding ground Nos. 2 to 4 of the appeal analyzed the whole issue and confirmed the addition. The learned CIT (Appeals) at page Nos. 19 to 27 held as under:

"4.3 Ground nos. 2 to 4 :

4.3.1 The A.O. observed that during the previous year relevant to the A.Y. 2013-14 the appellant has sold piece of land at Bandhwari (Gurgaon) for sum of Rs. 1,61,25,000/-. The

A.O. noticed that Bandhwari, which lies in Sohna, District Gurgaon area was village in earlier years which has been thoroughly urbanized and densely populated now. The A.O. further noticed that the appellant has not earned in agricultural income either in this year or in the earlier years which alone proves that the land is not an agricultural land. Therefore, following the decision of the Hon'ble Supreme Court in G.M. Omer Khan v. CIT (1992) 196 ITR 269 (SC), this land can otherwise also not to be considered as agricultural income (within the meaning of section 2(14) of the Income Tax Act, 1961) Accordingly it treated the proceeds of agricultural sale as liable for capital gains and treated the sum of Rs.1,61,25,000/- as capital gains.

4.3.2 In the grounds of appeal, the appeal states that the land is an agricultural land at village Bandhwari, Tehsil Sohna in Gurgaon Revenue Authority. The A.O. erred in holding that the land was not used for agricultural purposes and also erred in relying in the case of G.M. Omer Khan vs. CIT (Supra). It was also submitted that the A.O. did not reduced the cost of the land from the consideration amount of Rs.1,61,25,000/-. It is seen while grounds of appeal are quite argumentative, containing the details as in the preceding sentences "statements of facts" filed in the appeal in this regard are quite bare and do not provide any further details, except to say that copies of sale deeds of the inherited agricultural land filed by the appellant.

4.3.3 During the course of the appellate proceedings various opportunities were given to the appellant to represent either orally or in writing its submissions in support of its grounds of appeals however as per the records it is seen that the appellant has not made any submissions on this account, apart from seeking numerous adjournments vide his letters dated 04.06.2015, 26.10.2015, 17.11.2015, 18.12.2015, 09.05.2016, 23.05.2016 and 24.06.2016. It is repeatedly being submitted in the adjournment letters it will submit evidence that Bandhwari village is beyond the specified 8 knrs from the Gurgaon Municipal limits. Even vide his letter dated 23rd May, 2016 it was submitted by the A.R. that it will provide full data with government notifications and maps within four weeks. Accordingly time was granted up to 07.06.2016. However none attended on that date. When another opportunity was given to furnish the details, the appellant sought for more time. It does appear that the appellant has nothing further to state in this matter and accordingly I am disposing of the appeal.

4.3.4 As per section 48 of the Income Tax Act, the assessee is liable for capital gains as a result of transfer of "capital asset". Being itself between the consideration received on

transfer of the asset of the cost of the acquisition of the asset along with the cost of improvement. Section 2(14) { as it stood for the A.Y. 2013-14} defines capital asset as below:-

2. In this Act, unless the context otherwise requires,—

…..

(14) "capital assef'means —

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

but does not include —

(iii) agricultural land in India, not being land situate —

(a) in any area which is comprised within *the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand;*

or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

(for Gurgaon municipality, the specified distance was 8 kms)

Therefore, as per a conjoint reading of section 48 and section 2(14) (iii), transfer of any land would normally be subjected to capital gains unless the land is "agricultural land" is defined in section 2(14)(iii) which defines the exemption with respect to the location of the land.

4.3.5 At the outset it is necessary that for a land to be considered as agricultural land, agricultural processes have to be carried out on the land. The term 'agriculture' and 'agricultural purpose' was not defined in the Income Tax Act and that we must

necessarily fall back upon the general sense in which they have been understood in common parlance. What constitutes agriculture has long since been settled in CIT v. Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466 (SC) and in CWT v. Officer-in-charge (Court of wards) [1976] 105 ITR 133 (SC). The term 'agriculture' is understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the lands of products which have some utility either for consumption for trade and commerce, it will be seen that the term 'agriculture' receives a wider interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea that there must be at its bottom cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non *of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting, the subsequent operations do not acquire the characteristic of agricultural operations.*

4.3.6 It is only when the land is established to have been used for agriculture, then only the location of the land as defined under section 2(14)(iii) requires to be examined. Thus reading these two requirements together, following scenarios emerges as regards exemption from capital gain tax on sale of the land:-

a)	*Land used for agriculture, located inside in a municipality/Contonment Board.*	*Not exempt.*
b)	*Land used for agriculture, located outside in a municipality/Contonment Board limits but within specified distance from the limits of municipality/cantonment board.*	*Not exempt.*
c)	*Agricultural land situated more than the specified distance from the limits of the municipality/ cantonment board.*	*Not exempt.*
d)	*Land not used for agriculture, regardless of locationwith respect to limits of municipality / Contonment Board.*	*Not exempt.*

(The specified distance limits have been prescribed with respect to the population of the municipality/cantonment board)

4.3.7 In this case, the A.O. has very rightly pointed out that the appellant has never shown in agricultural income from this land in her returns of income for the A.Y. 2012-13 or in the earlier assessment years. The appellant has not been able to adduce any evidence either before the A.O, or in the course of the appellate proceedings to rebut this finding. The burden to prove while claiming exemption on receipt of income which is otherwise taxable is no longer res integra. *The Hon'blc Supreme Court in the case of Parimisetti C. Sitharamamma vs. CIT 1965 AIR 1905 / 1966 SCB (1)8 delivered on 21.04.1965 has held "*where, receipt is in the nature of the income burden to prove that it is not taxable because it is falls in exemption provided in the act lies on the assessee". *As per the scheme of the Income Tax Act, transfer of any capital asset such as land is normally subject to tax under section 48, but would stand exempted if it is proved to be exempt by virtue of being agricultural land. The onus therefore lies squarely on the appellant to adduce evidence to prove that the receipt is not taxable, which the appellant that completely failed to do. Therefore the action of the A.O. in bringing this land to tax has to be upheld.*

4.3.8 It can also be seen that the appellant has failed to prove even the location test. Whereas the burden was on the appellant to bring forth evidence to prove that the land lies outside the prescribed (8 kms.) limit from the border of Gurgaon Municipality. The appellant has miserably failed to discharge this burden. On the contrary the A.O..has scientifically determined that Bandhwari land is within the prescribed distance from limits of the Gurgaon municipality, using the reliable technology tools Google Maps, which the probably the most used map resource in the world today. (Actually at that time, Bandhwari village lay adjacent to the Gurgaon Municipal limits; since the year 2015, it is within the municipal limits. Even the A.O.'s finding based on the Google map is not rebutted by the appellant. The appellant has not even being able to clarify why it objects to the use of Google Maps. The appellant's claim that the sale deed is registered with the Gurgaon district revenue authorities does not assist her case. The Gurgaon municipality (which pertains to a local self government) limits are entirely different from the Gurgaon district revenue authority (which is a state government office) limits. Therefore 1 hold that even on this ground of the appellant fails.

4.3.9 The only issue that remains to be same is regarding the quantum of deduction to be allowed to the appellant by way of cost of acquisition. Here too, the appellant did not submit any evidence before me in support of its claim that a land belonging to her was sold, which lead to the receipt of Rs. 1,61,25,000/- in her hands. The appellant claims in "Statement of Facts" that it has made some submissions in this regard before the A.O. In the absence of any evidence made by the appellant in support of this claim, I have called for the assessment record to verify this claim. I find that there is no details in the assessment record about the purchase value of land or the cost of acquisition of land, much less a copy of deed evidencing purchase of the land by the appellant. The only thing mentioned about this is found in the appellant's letter dated 22.12.2014 to the Assessing Officer wherein following has been stated:-

> *9. There is no immovable property let out, as such there is no income from house property. However, she owns following property:-*
>
> *250 sq. yards plot at Dwarka New Delhi Cost Rs.13,67,518/-*

During the year share of joint inherited agricultural land at village Bandwari was sold for Rs.1,61,25,000/-. Payment received on 17.10.2012. Copy enclosed. This being a sale of agricultural land beyond lO Kms. from the nearest nagar palika, this land is out of ambit of capital asset, as such no capital gain tax is applicable on this sale.

10. During the year long term capital gain of Rs. was earned on sale of agricultural land for Rs. 1,61,25,000 which is exempt as explained under Para 9 herein above.

From the sale deed, the property seems to have been held in the joint names of the appellant along with other persons namely Mandeep Singh Anana, Mandeep Singh Anand, Inderpreet Singh Jhelumi, Smt. Sanjam Khurana, etc. There is no evidence to show how all these persons became joint owners of the property or how the property was inherited by the appellant. Even the purchase value / cost of acquisition in the appellant's hands is not been submitted before the Assessing Officer. Since exemption has been claimed by the appellant, the onus lies squarely on the appellant to lead evidence in this regard. In the absence of this evidence, I am constrained to lead entire amount of Rs.1,61,25,000/- has to be held as short term capital gains arisen to the appellant on account of sale of this property."

Thus, assessee is in appeal before us.

3. The learned Authorized Representative referred to ground No. 2 of the appeal stating that proper opportunity of hearing was not given. He also referred to an Affidavit dated 02nd September, 2016. He submitted that the group appeals of Dhingra Group were heard by the learned CIT (Appeals)-24. The appeal of the assessee along with the group appeals was last adjourned to 07th June, 2016. A phone call from the office of the CIT (Appeals) was received stating that the appeals would not be taken up for hearing on 07th June, 2016 by the CIT (Appeals), but on 24th June, 2016. On 24th June, 2016 the Authorized Representative of the assessee could not attend the hearing because of personal family matters and applied for adjournment. However, on 30th June, 2016 the learned CIT (Appeals) passed the order. Therefore, it was stated that proper opportunity of hearing was not granted. On the merits of the case the learned Authorized Representative submitted before us the copy of sale deed, showing that it is an agricultural land sold by the assessee. He further submitted a certificate of the Tehsildar to show the distance beyond the specified kilometers. He also referred to the relevant Notification as well as the 'Girdawari and Fasal Janch Pustak' to show that assessee sold an agricultural land and, therefore, no capital gain is chargeable to tax. Thus, he challenged the issue on the principles of natural justice as well as on the merits of the addition.

3.1 The learned Departmental Representative vehemently objected and referred to para 4.3.3 of the order of the learned CIT (Appeals) wherein ample opportunities were provided to the assessee. However, assessee did not comply with them and, therefore, the appeal of the assessee was decided ex-parte. It was stated that the proper opportunity of hearing was given to the assessee.

4. We have carefully considered the rival contentions and perused the orders of the lower authorities. Apparently, in this case the last hearing scheduled before the learned CIT (Appeals) was on 07.06.2016. For this date the learned Authorized Representative have submitted an Affidavit stating that as he received a phone call from the office of the CIT (Appeals) for re-fixing the case for hearing on 24th June, 2016 he did not attend on that date. In the order of the learned CIT (Appeals) also the above date is mentioned. Therefore, it is apparent that the hearing of the case was fixed on 07.06.2016. Be that the case may be, even otherwise there is no benefit to the assessee in not attending the hearing before the learned CIT (Appeals). It is also the fact that prior to 07.06.2016 six hearings took place. However, on the appointed date of 07.06.2016 there was some communication error which is supported by the affidavit of the learned Authorized Representative. In the interest of justice, we direct the assessee to remain present before the learned CIT (Appeals) by seeking the fresh date and putting the contentions before him and also meeting the findings already given by him in the order within three months from the date of this order. The learned CIT (Appeals) after submission of the assessee shall decide the issue on the merits of the case. Accordingly ground No. 2 of the appeal is allowed. As only ground No. 2 is allowed leaving all other issues open before the learned CIT (Appeals) for the adjudication, those grounds are disposed off un-adjudicated.

5. In the result, the appeal of the assessee is allowed, for statistical purposes.

Order pronounced in the open court on : 19/02//2020.

Sd/-	**Sd/-**
(BHAVNESH SAINI)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 19/02/2020.

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