

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.579/Del/2015

Urmilla Ghanshyam Dass Ghiraiya A-21, First Floor, Lok Vihar, Pitampura Delhi- 110 034 PAN ABUPG5671N	Vs.	ACIT Central Circle, Karnal
(Appellant)		(Respondent)

Asstt. Year: 2012-13

ITA No. 578/Del/2015

Asstt. Year 2012-13

Usha Devi A-3/705, Mohan Pride, Kharak Pada, Kalyana Maharashtra 421301 PAN AHYPD0723C	Vs.	ACIT Central Circle Karnal
(Appellant)		(Respondent)

ITA No. 580/Del/2015

Asstt. Year 2012-13

Ghanshyam Dass Ghiraiya, A-21, First Floor, Lok Vihar, Pitampura Delhi – 110 034 PAN ABUPG5670P	Vs.	Asstt. Commissioner of Income Tax, Central Circle, Karnal
(Appellant)		(Respondent)

Assessee by:	Shri Sameer Kapoor, CA
Department by :	Shri Anupam Kant Garg, CIT(DR)
Date of Hearing	19/05/2020
Date of pronouncement	26/05/2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

All these three appeals have been preferred by the assessee and challenge the three separate orders passed by the Ld. Commissioner of Income Tax (Appeals)-3, Hisar {CIT (A)} pertaining to Assessment Year 2012-13. A common issue is involved in all these three appeals, and, therefore they were heard together through the virtual hearing set-up of the Tribunal on an application by the assessee and no-objection from the Department. They are being disposed of by this common order for the sake of convenience.

2.0 The brief facts of the case are that a Maruti-Zen car bearing registration No. HR-20N-3810 *en route* from Hisar to Delhi was apprehended by the police in Rohtak on 6.8.2011. It was found that one of the assessees, Shri Ghanshyam Dass

Ghirayia and his brother, travelling in the vehicle were in possession of Rs. 85 lacs in cash. The police confiscated the cash of Rs. 85 lacs which was thereafter seized by the Directorate of Income Tax (Investigation) u/s 132A of the Income Tax Act 1961 (hereinafter called the Act) after pursuing the case with the police and the Ld. Chief Judicial Magistrate, Rohtak. It was the assessee's contention before the tax authorities that the cash related to sale proceeds of an agricultural land which was in the joint names of Smt. Urmila Ghanshyam Dass Ghirayia (second of the assesseees in this appeal and wife of Shri Ghanshyam Dass Ghirayia) and Smt. Usha Devi (the third assessee in this appeal and cousin of Shri Ghanshyam Dass Ghirayia). The Assessing Officer (AO) completed the assessment of Shri Ghanshyam Dass Ghiraiya by adding Rs. 85 lacs to his income as protective addition. Apart from this, the AO made an addition of Rs. 20 lacs per acre by considering the sale consideration at Rs. 35 lacs per acre instead of the declared sale value of Rs. 15 lacs per acre. Accordingly, in the case of the other two assesseees, the sale consideration was increased by Rs. 131 lacs and was added in the ratio of 66.33:33.67 in the hands of Smt. Usha Devi and Smt. Urmilla Ghiraiya being Rs. 86,30,274/- and Rs. 45,19,786/-

respectively. Aggrieved, all the three assesses approached the Ld. First Appellate Authority and the Ld. CIT (A) deleted the amount of Rs. 85 lacs from an income of Shri Ghanshyam Dass Ghirayia, the land in question was considered as non-agricultural land and the AO was directed to tax the consideration received on sale of land as long term capital gains in the hands of Smt. Usha Devi and Smt. Urmilla Ghanshyam Dass Ghiraiya. Now the three assesseees have approached this Tribunal challenging the action of the Ld. CIT (A).

3.0 Numerous grounds have been raised by the assesseees in all the three appeals but at the outset the Ld. AR has submitted that ground No. 2 in all the three appeals was identical and was germane to the entire issue and that if relief was allowed to the assessee/s by allowing this ground, all other grounds would become academic in nature. The Ld. CIT (DR) agreed to the prayer of the Ld. AR and, therefore, with the consent of both the authorities, we are taking up ground No. 2 in the appeal of Shri Ghanshyam Dass Ghirayia first for our consideration. Ground No. 2 reads as under:-

“Whether the Ld. CIT (A) has erred in law and facts of the case in denying the relief u/s 2(14) of the Income Tax Act, 1961 by treating the gain on sale of Agriculture Property as taxable and giving a direction to the AO to tax the sale consideration as long term capital gain.”

4.0 The Ld. AR submitted that if the land sold treated as agricultural land then it will fall outside the definition of ‘capital asset’ as defined in section 2(14) of the Income Tax Act, 1961 (hereinafter called ‘the Act’). It was submitted that the land in question was agricultural land situated at village Talwandi, Hisar, Haryana. It was submitted that 65 acres of land was sold to a partnership firm @ 15 lacs per acre for a total sale value of Rs. 96 lacs. It was further submitted that on 6.8.2011, Shri Ghanshyam Dass Ghirayia received an amount of Rs. 85 lacs as advance payment for the total sale proceeds which was received on behalf of his wife Smt. Urmila Ghiraiya and Smt. Usha Devi (his cousin). The Ld AR submitted that this cash wholly belonged to Smt. Usha Devi and Smt. Urmila Ghiraiya, the other two assesseees and Shri Ghanshyam Dass Ghiraiya had no role except for being the carrier of cash and, thus, the Ld. CIT (A) had rightly deleted the protective addition in the hands of Shri Ghanshyam

Dass Ghirayia. It was submitted by the Ld. AR that the sale of land is not in dispute, the fact of seizure of cash is not in dispute and neither is the ownership of land in dispute. It was further submitted that what is in dispute is whether the land in question was agricultural land or not. It was submitted that while holding that the land in question was not an agricultural land, the lower authorities, especially the Ld. CIT (A), have acted on mere surmises and conjectures. It was submitted that the Ld. CIT (A) has stated that the land in question was not mentioned as 'agricultural land' in the purchase deed dated 15.4.2008 but it has been ignored that the tax authorities were duly accepting the agricultural income as shown by the two assesseees i.e. Smt. Usha Devi and Smt. Urmilla Ghiraiya in their returns of income. It was submitted that, therefore, if the agricultural income had been accepted in earlier years, the department cannot take a contradictory stand and say that this land was not agricultural in nature. It was further submitted that there has been some confusion in the mind of Ld. CIT (A) in as much as Ld. CIT (A) has stated that the land in question was situated in village 'Mauza' while as per the sale deed it was in village 'Talwandi'. The Ld. AR submitted that the term 'Mauza' is the term used for

‘village’ in the local dialect in Haryana and therefore the Ld. CIT (A) has misdirected himself in reaching a conclusion by a wrong understanding of the term ‘Mauza’. It was further submitted that the Ld. CIT (A) as well as the AO have doubted the genuineness of the purchaser firm by stating that this partnership firm was formed only three days before the date of sale. It was submitted that the assessee cannot be put to any hardship on this count because the seller of land cannot be expected to investigate into the genuineness or otherwise of the purchaser or the source of its funds while making a sale transaction. It was further submitted that the Ld. CIT (A) has also made an incorrect observation that the instructions of the CBDT this regard were not filed by the assessee which was incorrect in as much as the Ld. CIT (A) himself has reproduced the assessee’s submissions at page 24 of the impugned order wherein it has been stated that the assessee has filed copy of CBDT notification No. 164/3/87 along with the submissions dated 26.9.2013. It was submitted that the Ld. CIT (A) was, thus, factually wrong in mentioning that the notification has not been filed. Apart from this, the Ld. AR also submitted that there was a certificate of the *Tehsildar* on record which showed that the land in question was outside 8 kms from the

municipal limits. It was also submitted that the copy of *Khasra* and *Khatauni*, already on record, also showed that the land in question was agricultural land. It was submitted that, thus, the land was shown as agricultural land in the revenue records and that even if the land used was changed by the purchaser/s at a later date, the same was not done at the behest of the assessee. The Ld. AR reiterated that all these documents had been duly filed before the lower authorities and that the Ld. CIT (A) had completely overlooked these documents and had held that the land in question was not an agricultural land in spite of so many documents having been filed in support of the assessee's contention. The Ld. AR reiterated that if this ground is allowed, the other grounds would become academic in nature.

5.0 In response, the Ld. CIT (DR) vehemently supported the orders of the lower authorities and submitted that there were contradictory statements by the assessees which would hint that the assessees were not disclosing all the material facts before the tax authorities. It was submitted that the assessees have shown only meagre amount as agricultural income and this was not enough proof that the land in question

was agricultural in nature. It was also submitted that it is pertinent to note that when the assessee had purchased the land, the sale consideration had been paid through cheques but at the time of sale the entire consideration has been received in cash although the assessee had bank accounts. It was submitted that from the conduct of the assessee, it was apparent that the cash seized was only the undisclosed sale proceeds and the total sale proceeds agreed upon were more but for the fact of the cash having been intercepted and seized. It was submitted that, thus, the entire explanation of the assessee was an afterthought. The Ld. CIT (DR) submitted that the AO should be directed to verify the nature of land before the same is accepted as agricultural land.

6.0 On a query from the Bench, both the parties agreed that they have been heard satisfactorily and that the hearing may be closed.

7.0 We have heard the rival submissions and have also perused the material on record. The sole question for our consideration is whether the land in question is agricultural land or not. In this regard it is seen that the assessee has filed

certificate from the *Tehsildar* and copies of *Khasra* and *Khatauni* in support of their claim that the land in question was agricultural. The certificate of the *Tehsildar* shows that the land under consideration was outside 8 kms of the municipal limit. Copy of the *Khasra* and *Khatauni* shows that the land in question is agricultural in nature. The sale deed also mentions that the land sold is agricultural in nature. However, the lower authorities have chosen to not consider these documents at all while arriving at the conclusion that the land was not an agricultural land. Apart from this, the fact remains that the assesseees have been regularly showing agricultural incomes in their returns of income which the authorities have duly accepted in the earlier assessment years and it is now not open for the department to go back on what they have accepted in earlier assessment years and make a U-turn by saying that no proof of agricultural operations was provided. We also note that the Ld. CIT (A) has misdirected himself while adjudicating the issue by placing heavy reliance on his suspicion that since the partnership firm purchasing the said land was formed only three days before the execution of the sale deed, the same was not genuine. Also the Ld. CIT (A) seems to have confused himself by the term 'Mauza' which is just another

term used for a village in the local dialect. We also not that the Ld. CIT (A) has stated that the assessee has not placed the CBDT notification on record but the fact remains that he himself has reproduced the assessee's submissions in the impugned order wherein a reference to the notification has been made. It is also apparent from the documents on record that agricultural operations were being carried out on the said land and even if the purchasers would have changed the land-use, the land remained agricultural till the time of sale. The Hon'ble Madras High Court in the case of M.S. Srinivasa Naicker vs. ITO reported in 292 ITR 481 (Madras) has held that where the agricultural operations were carried out on land till the date of sale and the land was registered as agricultural land in revenue records, the fact that the purchaser was going to use land for non-agricultural purposes was not relevant and, therefore, the gains on the sale of land would be exempt from capital gains tax. On the other hand, the Department has not brought on record any document which would controvert the certificate of the *Tehsildar* and moreover the copies of *Khasra* and *Khatuani* being part of the Revenue records of the State have an over-riding evidentiary value which cannot be simply ignored without there being any evidence to the

contrary. Thus, in view of the various documents filed by the assesseees in support of their claim of the land being agricultural in nature, which were totally ignored by the lower authorities, and the fact that the two assesses i.e. Mrs. Urmila Ghanshyam Dass Ghiraiya and Smt. Usha Devi have been regularly showing agricultural income in their returns of income, we are unable to subscribe to the conclusion arrived at by the Ld. CIT (A) that the land in question was not agricultural land. Accordingly, while holding that the land in question was agricultural land, we allow ground No. 2, which is common in ITA Nos. 578/Del/2015 and 579/Del/2015. Since ground No. 2 stands allowed in these two appeals, all other grounds raised in these two appeals become academic in nature since the very foundation the addition goes. Since, the other grounds in all these two appeals have become academic, they are not being adjudicated.

7.1 As far as the appeal of Shri Ghanshyam Dass Ghiraiya (ITA No. 580/Del/2015) is concerned, it is seen that the Ld. CIT (A) has already deleted the protective assessment made in his hands and the assessee is not aggrieved by such order. The reference to the assessment and first appellate proceedings has

been made during the course of the proceedings before us and in this order only for the sake of completeness and factual accuracy. Since, this assessee is not aggrieved by the order of the Ld. CIT (A), the grounds raised by him are redundant and are dismissed.

8.0 In the final result, ITA Nos. 578/Del/2015 579/Del/2015 stand allowed while ITA No. 580/Del/2015 is dismissed as *in fructuous*.

Order pronounced on 26th May, 2020.

**sd/-
(G.S. PANNU)
VICE PRESIDENT**

**sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 26/05/2020

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Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi