

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'E', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.6675/Del/2016
Assessment Year : 2012-13

ACIT, Circle – 51(1). New Delhi PAN : AAJPP 3937 E	Vs.	Sh. Maxwell Pereira Kamath, 6/22, WEA Karol Bagh, New Delhi-110 005
(APPELLANT)		(RESPONDENT)

Assessee by	Ms. Rakhi Vimal Sr. DR
Revenue by	Sh. K Sampath, Adv.

Date of hearing:	21/09/2020
Date of Pronouncement:	28/09/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 04.10.2016 of the Commission of Income Tax (A)-17, New Delhi relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual having income from consultancy and other sources. Assessee filed his return of income for A.Y. 2012-13 on 28.07.2012 declaring total income of Rs.68,17,744/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 27.02.2015 and the total income was determined at Rs.4,75,06,096/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 04.10.2016 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now before us and has raised following grounds of appeal:

- “1. On the fact and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.4,06,20,818/-, Which was made by AO as a long term capital gain on sale of agriculture land.*
- 2. On facts and circumstances of the case, CIT (A) has ignoring the fact that how a single piece of land (i.e. HEMWATI FIRM) will be agriculture land and non agriculture land, while the whole land is either surrounded by NH-48 or converted into non agricultural land.*
- 3. On facts and circumstances of the case, The Ld.CIT (A) has erred in deleting the addition of Rs. 67534/- made by the AO u/s 14A of the I.T.Act,1961.*
- 4. Appellant craves right to add, delete, amend any ground at any time during the appellate proceedings.”*

4. Ground No.1 and 2 are interconnected and are considered together.

5. During the course of assessment proceedings, AO noticed that assessee had sold land (known as Hemavathy farms) situated at Sakaleshpur Village, Saklesh Taluk, Hassan District, Karnataka State. He also noticed that the land that was sold was bequeathed land from his mother under the name of "HEMAVATHY FARM" in three parts i.e. Schedule 'A', Schedule 'B' and Schedule 'C'. Tax on long term Capital Gains with respect to sale in land mentioned in Part 'B' and 'C' was offered by the assessee but capital gains on the portion of land in Part 'A' was not offered to tax. The reason according to the Assessee for not offering the land in part "A" liable to tax was that the land was an agricultural land being covered u/s 2(14)(iii) of the Income tax Act. The submissions of the assessee about the land being an agricultural land was not found acceptable to AO. According to AO, the land was covered under the purview of s.2(14)(iii)(a) and therefore the land was not agricultural land and accordingly the assessee was liable to capital gains on sale of such land. The AO thereafter computed the long term Capital Gain at Rs.4,66,56,100/- and after considering the long term Capital Gain of Rs.60,35,282/- which was offered by the assessee, made addition of balance amount of Rs.4,06,20,818/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who

after considering the submission of the assessee, the remand report received from the AO and the rejoinder to the remand report held that the assessee was not liable to capital gains on the sale of such land. For arriving at the aforesaid conclusion he was guided by the fact that the report of Talsildar, State Revenue authority of Sakaleshpur had stated that the land sold by the assessee did not belong to the jurisdiction of Town Municipal Authority Sakaleshpur. He also noted that inquiry/investigation carried out with the Chief Officer, Town Municipal Authority, Sakaleshpur also revealed that the land was an agricultural land and outside the limit of Salaleshwar Town. The CIT(A) accordingly came to the conclusion that the land sold by the assessee to be an agricultural land, outside the jurisdiction of the Sakleshpur Town and it did not come within the purview of provision of Section 2(14)(iii)(a) of Income Tax Act and therefore, the provision were not applicable. He has also noted that Sakleshpur village is separated from Sakleshpur Town. He thus directed the AO to treat the land as agriculture land. Aggrieved by the order of CIT(A), Revenue is now before us.

6. Before us, Learned DR pointed to the findings of AO and relying on the findings of AO submitted that CIT(A) has erred in granting relief to the assessee. Learned AR on the other hand reiterated the submissions made before the CIT(A) and supported the order of CIT(A).

7. We have heard the rival contentions and perused the relevant materials available on record. The issue in the present ground is with respect to the taxability of the profits received on sale of land. It is Revenue's contention that the land sold by the assessee is not an agriculture land and therefore the profits earned on its sale is taxable as capital gains. We find that CIT(A) after considering the submission of the assessee, remand report received from the AO has given a finding that the land sold by the assessee was in Sakleshpur village, Sakleshpur Village is separate from Sakleshpur Town, land sold by the assessee is not within the limit of Sakleshpur Town and the population of Sakleshpur Village is less than the numbers specified u/s 2(14)(iii)(b) of the Act. Before us, no fallacy in the findings of CIT(A) has been pointed out by the Revenue. Considering the totality of the aforesaid facts, we find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

8. Next Ground is with respect to disallowance under section 14A of the Act.

9. During the course of assessment proceedings, AO noticed that assessee had claimed exempt income of Rs.4,11,221/-. He also noted that no disallowance u/s 14A r.w.r 8D has been made by the assessee. The AO, therefore following the method prescribed under Rule 8D of the Income tax Rules, worked out

the disallowance of Rs.67,534/-. Aggrieved by the order of AO assessee carried the matter before the CIT(A) who deleted the addition made by the AO. Aggrieved by the order of CIT(A), revenue is now before us.

10. Before us, Learned DR supported the order of AO. The learned AR on the other hand submitted that the onus is on the Revenue to show that assessee has incurred expenses to earn the income. He submitted that onus has not been discharged by Revenue. He thus supported the order of CIT(A).

11. We have heard the rival contentions and perused the relevant materials available on record. The issue in the present ground is with respect to disallowance made by the AO u/s 14A read with Rule 8D of the Income tax Rules. We find that AO has proceeded to disallow the expenditure under Rule 8D(2) r.w.s 14A of Rs. 67,534/-.

12. It is a settled law that before invoking Rule 8D, the Assessing Officer is obliged to indicate that having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of the total income under the Act.). It is only on being dissatisfied with the

above, does rule 8D can be invoked to compute the disallowance. In the present case we find that no satisfaction as mandated u/s 14A has been recorded by AO. In such situation, we find no reason to interfere with the order of CIT(A). **Thus ground of appeal of the Revenue is dismissed.**

13. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 28.09.2020.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Priti Yadav, Sr.PS

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 28.09.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI