

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
ITA.No.3999/Del./2019
Assessment Year 2010-2011

Smt. Raj Devi, Village Khanda, Kharkhoda, Sonipat. Haryana-131001 PAN ADZPD6105F	vs.	The Income Tax Officer, Ward – 5, Sonapat.
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain, Advocate Shri Pranshu Singhal, C.A. & Ms. Mansi Jain, C.A.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	20.10.2020
Date of Pronouncement :	21.10.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Rohtak, Dated 19.03.2019, for the A.Y. 2010-2011, challenging the reopening of the assessment under section 147/148 of the

I.T. Act, 1961 and addition of Rs.7,67,500/- on account of property purchased during the year.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that A.O. had information that assessee purchased immovable property for Rs.50 lakhs during the assessment year under appeal. Notice under section 148 was issued, however, no return of income was filed in response to the said notice. The A.O. issued other statutory notices also and directed the assessee to explain the source of investment made in purchase of immovable property amounting to Rs.25 lakhs being her half share in the property + registration expenses. The A.O, therefore, noted that assessee was directed that in case no plausible explanation is filed the amount of Rs.25 lakhs + registration expenses will be treated as income earned from the source not disclosed to the Department. The assessee subsequently attended the proceedings before

A.O. and filed written submissions and copy of Nakal Jamabandi in token of having agricultural land in the name of family members. It was stated that assessee is house wife and her husband is retired from Education Department and he owns 30 Killa 15 Marla of agricultural land and grow two crops per year which is sold by them in open market during each crop season. It was submitted that assessee family got sufficient agricultural land, out of which, property was purchased for Rs.25 lakhs. The assessee was directed to produce Form-J and bills of seeds, fertilizer etc., and was required to produce evidence regarding crops grown on this agricultural land from Government agency. The assessee ultimately filed Khasra Girdhwari as well as written submissions which is considered by the A.O. The A.O, however, found that sufficient evidence is not produced on record, but, A.O. accepted the earning of the agricultural income by family of the assessee. The A.O. estimated the source of income from agriculture and taken the yield per Kila at Rs.60,000/- after meeting-out all expenses. The A.O, thus, accepted the investment for purchase of land out of

such income at Rs.18 lakhs and balance of Rs.7,67,500/- [Rs.25 lakhs cost of land + Rs.67,500/- registration expenses] and after reducing Rs.18 lakhs as agricultural income, treated the balance amount of Rs.7,67,500/- as unexplained investment and made the addition accordingly.

3.1. The assessee challenged the reopening of the assessment as well as addition before the Ld. CIT(A), however, the appeal of assessee were dismissed.

4. Learned Counsel for the Assessee referred to copy of the sale deed of agricultural land Dated 11.06.2009, copy of which is filed in the paper book along with English transaction in which it is mentioned that the land purchased by the assessee jointly with Smt. Ram Rati was mortgaged by the owner of the property till 14.11.2012. Thus, the total consideration of Rs.50 lakhs should have been paid at Rs.30 lakhs because the mortgage amount of Rs.20 lakhs was to be paid later on for redeeming the mortgage agricultural land from the mortgagee. It is also mentioned in the sale deed that assessee along with other

co-owner Smt. Ram Rati would liable to pay Rs.20 lakhs on account of mortgage amount by 14.11.2012. It is also mentioned in the sale deed that the vendor has received Rs.30 lakhs from the assessee and the co-owner. Learned Counsel for the Assessee also referred to receipt of the mortgagee in which it is mentioned that the mortgage amount of Rs.20 lakhs have been received by the mortgagee on 20.11.2012. Learned Counsel for the Assessee, therefore, submitted that since all the facts are clearly mentioned in the sale deed and the receipt executed later on would clearly reveal that though the sale consideration of Rs.50 lakhs is mentioned in the registered sale deed, but, actually sale consideration of Rs.30 lakhs was paid by the assessee and the co-owner to the vendor of the agricultural land at the time of execution of the sale deed and since the agricultural land was mortgaged and amount of Rs.20 lakhs was to be paid to the mortgagee which was later on paid to the mortgagee on 20.11.2012, therefore, in assessment year under appeal assessee and the co-owner have made investment in agricultural land in a sum of Rs.30 lakhs +

registration charges. Thus the share of the assessee for investment in agricultural land in assessment year under appeal comes to Rs.15 lakhs + stamp charges of Rs.67,500/-. The total amount invested by the assessee in agricultural land was Rs.15,67,500/- only in assessment year under appeal as against the benefit allowed by the A.O. for Rs.18 lakhs. Thus, no addition could be made in assessment year under appeal.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that A.O. has already given sufficient benefit to the assessee, therefore, addition is justified.

6. After considering the rival submissions and the facts stated in the sale deed as explained above and the receipt executed later on, on behalf of the mortgagee would clearly show that the agricultural land purchased by the assessee was for a consideration of Rs.50 lakhs, however, at the time of execution of the sale deed, Rs.30 lakhs was paid by assessee and other co-owner. The remaining

consideration of Rs.20 lakhs was to be paid by assessee and the co-owner to the mortgagee for redeeming the mortgage agricultural land under consideration. The amount of Rs.20 lakhs is paid to the mortgagee on 20.11.2012. Thus the assessee and the co-owner have paid Rs.30 lakhs only in assessment year under appeal. The share of the assessee comes to Rs.15 lakhs only and if the stamp charges are also added, it would make a total of Rs.15,67,500/- which is below the amount of Rs.18 lakhs accepted as source of income from agricultural activity by the A.O. for the purpose of making the above investment. Thus, there were no justification by the A.O. to make any addition against the assessee. In view of the above, we set aside the Orders of the authorities below and delete the addition of Rs.7,67,500/-. The issue of reopening of the assessment is left with academic discussion only and as such no need to decide on account of deletion of entire addition. Appeal of assessee is allowed.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 21st October, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.