

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. AMIT SHUKLA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.1443/Del/2018
Assessment Year: 2009-10

Sarwati Urf Sarvati Devi C/o Shri Jai Kishan, Advocate, 86, Nai Basti, Khurja, Khurja UP-203131	Vs	ITO Ward – 3 (2) Bulandshar
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Sh. Kumar Pranav, Sr. DR

Date of hearing:	24/11/2021
Date of Pronouncement:	24/11/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A), Aligarh dated 14.11.2017 pertaining to A.Y. 2009-10.

2. The grievance of the assessee read as under :-

- (1) That the Ld. CIT(A) has erred in sustaining the addition of Rs. 1,07,18,779/- made towards the long term capital gain, since the land sold was an agricultural land and the same does not fall within the definition of capital asset u/s 2(14) of the I. T. Act, 1961, at the time of the agreement to sell dated 20.06.2008. The use of land sold was changed and treated as industrial land for the purpose of sale-deed executed on 24.03.2009 only on the intention of the purchaser, since the purchaser had purchased the agricultural land for the use of non-agricultural i.e. industrial purposes.
- (2) That the Ld. CIT(A) has erred in law and on facts that there is a extinguishment of some rights in the land sold by the assessee in favour of the purchaser vide the agreement to sell dated 20.06.2008. The extinguishment of any rights also amounts to the transfer as per the definition of 'Transfer' vide section 2(47) of the I. T. Act, 1961.
- (3) That the Ld. CIT(A) has erred in ignoring the decision of **Hon'ble Supreme Court** in case of **Sh. Sanjeev Lal Etc. vs. CIT [(2014) 365 ITR 389]** in which it has been held that an agreement to sell creates some rights in favour of transferee and it is a transfer within section 2(47) of the I. T. Act, 1961.
- (4) For these and other grounds, which may be urged at the time of the hearing, the appeal may be allowed and justice rendered.

3. None appeared on behalf of the assessee though a written submission has been filed. We heard the DR at length. Case record carefully perused.

4. Briefly stated the facts of the case are that on the basis of information received through AIR the Assessing Officer came to know that the assessee has sold an immovable property valued at Rs.39397000/- in which the share of the assessee is 1/3rd of the total value i.e.13132333/-. The assessee was asked to explain the

nature of transaction and why capital gain on the sale of impugned property was not shown.

4. Assessee filed a reply but the Assessing Officer was not satisfied with the reply and concluded assessment proceedings as under :-

Reply filed by the assessee is not complete and unsatisfactory. The assessee was specifically asked that "On perusal of sale deed enclosed the your submission it is noticed that you have sold Industrial plot in the name of Smt. Sarswati Devi, Shri Jitendra Kumar, Shri Jogendra Singh measuring 20735 Sq.M. situated at Ibrahim pur in the sale consideration Rs. 3,93,97,000/-. Your share in this property was 1/3. It means your share was 1,31,32,333/- (1/3 of 3,93,97,000/-). In this connection it is brought to your notice that you have not declared/worked out capital gain on hits industrial plot. In absence of any explanation/working with evidence, this amount of 1,31,32,333/- remain unexplained capital gain".

The assessee has not given explanation regarding capital gain. No evidence/proof and working of capital gain has been furnished by the assessee. On going through the sale deed it is evident that the land was sold in the shape of Industrial Plot and was measured in Square Meters. In view of these facts long term capital gain arises on the sale proceeds of the land under the provisions of section 45 of the IT Act, 1961. In view of the above, calculation of LTC Gain is made as under:

Sale consideration as per stamp duty	Rs.1,31,32,333/-
Rs.1,31,32,333/- i.e. (1/3 of Rs.3,93,97,000/-)	
Less Index cost of acquisition:	
Rs.60/- per sq. M X20735 sq.m.=1244100/-	
Cost of acquisition= $\frac{1244100 \times 582}{100}$ =72,40,662/-	
Rs.2413554 i.e. (1/3 of 72,40,662/-)	Rs. 24,13,554/-
	Rs.1,07,18,779/-

(Addition as LTCG Rs.1,07,18,779/-)

5. Assessee carried the matter before the CIT(A) but without any success.

6. We find that in one of the co-owners i.e. Jitender Kumar, this Tribunal in ITA No.3909/Del/2015 for A.Y.2009-10 held as under :-

13. We have gone through the record in the light of the submissions made on either side. In so far as the location of the land or the standing crops thereon is concerned, absolutely there is no dispute. Khasra revealed that there was standing crop of wheat and jwar on the land at the time of transfer. Further, as a matter of fact, Id. AO in the order dated 22.3.2013 u/s 143(3)/148 of the Act had accepted the agricultural income of the assessee to the tune of Rs.41,000/-. Further, there is no explanation as to how the mutation could have taken place in the Revenue record if the land was put to commercial use as on the date of sale. Merely because the land was near the area said to be developed as industrial by 2021, without any notification from the competent authority, it cannot be said that the land in question loses its character and status of being an agricultural land. It is not the case of the Revenue that any competent government had issued any notice changing the nature of land from rural agricultural land in order to apply the provisions u/s 54B of the Act.

14. Having accepted the agricultural income of the assessee and having possession of the record at the time of passing the order u/s 147/143(3) of the Act, it seems that the learned AO failed to appreciate the fact that unless and until a competent Government issues a notification or the conversion of the use of land takes place, land with standing crop whose mutation had taken place in the Revenue record, cannot be said to be a non agricultural land. On a careful consideration of the findings of the learned CIT(A) in the light of the record that was made available before the learned AO as well as the learned CIT(A) and also the remand report, we are of the considered opinion that the approach of the learned CIT(A) is not questionable and it does not suffer

from any illegality or irregularity warranting interference by this Tribunal. We, therefore, while upholding the findings of the learned CIT(A) find the grounds of appeal as devoid of merit. Appeal is accordingly dismissed.

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

7. Respectfully following the findings of this Tribunal (supra) we direct the AO to delete the impugned addition.

8. In the result, the appeal filed by the assessee is accordingly allowed.

9. Decision announced in the open court in the presence of Sr. DR on 24.11.2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

NEHA

Date:-24.11.2021

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	24.11.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	