

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष

BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No. 1217/Chd/2019

निर्धारण वर्ष / Assessment Year : 2016-17

Shri Gurinderpal Singh Zaildara Farm House, Opp. Kar Sewa Gurdwara, Patiala Road, Bhawanigarh- Patiala, Punjab	बनाम	The ITO, Ward, Sangrur Punjab
स्थायी लेखा सं./PAN NO: BANPS2858A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Nikhil Goyal, Adovcate
Shri Ashok Goyal, C.A

राजस्व की ओर से/ Revenue by : Smt. Geetinder Mann, Sr. DR

सुनवाई की तारीख/Date of Hearing : 10/03/2022

उद्घोषणा की तारीख/Date of Pronouncement : 10/03/2022

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 24/06/2019 of the Ld. CIT(A), Patiala.

2. Following grounds have been raised in this appeal.

1. That the order of Ld. Commissioner of Income tax (Appeals), Patiala and Income Tax Officer, Sangrur is against law and facts.
2. That the Commissioner of Income Tax (Appeals) was not justified to sustain the order of Income Tax Officer, to assess the compensation as "Long Term Capital Gain" amounting to Rs.5,31,194/-. The compensation received on account of compulsory acquisition of land on National Highway-64 covered under RFCTLARR Act is totally exempted as per circular issued by Central Board of Direct Taxes & as per provision of law under RFCTLARR Act.
3. That the Ld. Commissioner of Income Tax (Appeals) was not justified to sustain the finding of Income Tax Officer to assess additional compensation as interest u/s 56 amounting to Rs. 1,20,654/-.
4. That the appellant craves leave to add or amend any ground of appeal before the appeal is heard or dispose off.

From the aforesaid grounds it is gathered that the only grievance of the assessee relates to the sustenance of action of the A.O. in assessing the compensation and interest thereon on account of compulsory acquisition of land as taxable income.

3. During the course of hearing the Ld. Counsel for the Assessee at the very outset stated that this issue is squarely covered by the order dt. 31/08/2021 of the ITAT, Chandigarh 'B' Bench in the case of Shri Satish Kumar and other, Sangrur Vs. ITO, Sangrur in ITA No. 1182 & 1183/Chd/2019, copy of the said order was furnished which is placed on record.

4. In her rival submissions the Ld. Sr. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

5. After considering the submissions of both the parties it is noticed that an identical issue having similar facts has already been adjudicated by aforesaid referred to order dt. 31/08/2021 in ITA No. 1182 & 1183/Chd/2019 for the A.Y. 2015-16 in the case of Shri Satish Kumar, Sangrur and other Vs. ITO, Sangrur. The relevant findings has been given in para 10 to 10.4 which read as under;

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the assessee received the compensation on account of land acquired by NHAI. The assessee moved an application before the A.O. for rectification of the mistake and also filed the revised computation of income wherein the Short Term Capital Gain to the tune of Rs. 2,09,108/- and Long Term Capital Gain of Rs. 1,54,29,120/- was claimed as exempt on the basis of CBDT Circular No. 36/2016 dt. 25/12/2016 wherein it had been specifically stated that all the compensation received on account of compulsory acquisition after 01/01/2014 would be exempt from income tax as per section 96 of the RFCTLARR Act. The assessee moved the application under section 154 of the Act through his counsel on 03/01/2018 and the A.O. passed the order rejecting the application under section 154 of the Act on 14/11/2018 i.e; after 9 months 11 days.

10.1 In the present case it is not in dispute that the assessee received compensation on account of land acquired by NHAI. As per the provisions of section 96 of the RFCTLARR Act, the exemption from Income Tax and Stamp Duty would apply to an award or agreement made under the new Act which came

into force on 01/01/2014. In the instant case the assessee filed its return of income on 30/11/2015 as he was waiting for the clarification from the Income Tax Department wherein the subject of exemption from Income Tax on the compensation received on commercial land might get clear and the clarification from the CBDT came vide Circular No. 36/2016 dt. 25/10/2016 which read as under:

Circular No. 36/2016

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

ITA.II division, North Block,
New Delhi, the 25th of October, 2016

Subject: Taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLAAR Act')-reg.-

Under the existing provisions of the income-tax Act, 1961 ('the Act'), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

2. **The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.**

3. **As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.**

4. The above may be brought to the notice of all concerned.

5. Hindi version of the order shall follow.

Sd/-
(Rohit Garg)

Deputy Secretary to the Government of India

(F.No. 225/88/2016-ITA.II)

10.2 From para 3 of the aforesaid Circular it would be clear that no distinction has been made between compensation received for compulsory acquisition of agricultural land and non agricultural land in the matter of providing exemption from income tax under the RFCTLARR Act, 2013. Now question arises as to whether the provisions of RFCTLARR Act, 2013 are applicable to the NH Act 1956

or not. In this regard the Hon'ble Rajasthan High Court in the case of Gopa Ram Vs. Union of India & Ors. (supra) referred by the Ld. CIT(A), observed as under:

However, the Central Government vide Ordinance (N0.9 of 2014) dated 31.12.2014 has substituted Sub-section (3) of Section 105 of the Acquisition Act of 2013, which reads as under:-

"(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January 2015."

The provisions of Ordinance (No.9 of 2014) dated 31.12.2014 were continued further vide Ordinance (N0.4 of 2015) dated 03.04.2015 and Second Ordinance dated 30.05.2015 (N0.5 of 2015) and the same were valid up to 31.08.2015.

Subsequently, the Department of Land Resources, Ministry of Rural Development, Government of India issued the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015 vide Notification dated 28.08.2015. The said Order is reproduced below: -

"(1) This Order maybe called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1 st day of September, 2015.

(12 of 15) (3) The provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act."

From the above, it is clear that the applicability of the Acquisition Act of 2013 has been given effect in respect of the enactment specified in Fourth Schedule including the NH Act of 1956 with effect from 01.01.2015.

It is therefore clear that the applicability of the Acquisition Act 2013 has been given effect to the NH Act 1956 w.e.f 01/01/2015 and the assessee received the compensation on 05/11/2014 & 23/11/2015. In the present case also the land was compulsorily acquired by NHA therefore the compensation received by the assessee was exempted under the Income Tax Act. Since the clarificatory Circular was issued by the CBDT on 25/10/2016 i.e; after the date of filing the return by the assessee on 30/11/2015 that is why an application under section 154 of the Act was moved by the assessee.

10.3 As regards to the applicability of the Circular issued by CBDT on the Income Tax Authorities, the Hon'ble Jurisdiction High Court in the case of B.S Bajaj And Sons Vs. CIT [1996] 222 ITR 418 held as under:

" The circulars issued by the Central Board of Direct Taxes are binding on the officers of the Department of Income-tax. Benevolent circulars providing administrative relief to the assessee, even if they are issued subsequent to the decision by an authority under the Act, have to be taken notice of, and given effect to, if found applicable in the given facts. A circular, even if produced in the High Court for the first time during the course of hearing, has to be taken note of and the assessee will be entitled to the benefit of the circular, if found entitled, irrespective of the fact that it was not produced before the authorities below or was issued by the Central Board of Direct Taxes subsequent to the decision given by the Tribunal, Circular No. 329. Dated February 22, 1982, issued by the Board does not override the provisions of the Act. It is clarificatory in nature. It is a benevolent circular issued in favour of the assessee providing administrative relief and says that if the process involved is not merely conversion of standing trees into firewood but also manufacture of new saleable commodities, the benefit of deduction under section 80J and 80HH would be available."

10.4 In the present case also the CBDT vide Circular No. 36/2016 dt. 25/10/2016 clarified that the compensation received in respect of award or agreement which has been exempt from levy of Income Tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income Tax Act, 1961 even if there is no specific provisions of exemption for such compensation in the Income Tax Act, 1961. In the said Circular it is also clarified that no distinction had been made towards compensation received for compulsory acquisition of agricultural land and non agricultural land in the matter of providing exemption from Income Tax under the RFCTLARR Act. In the instant case the assessee received compensation for compulsory acquisition of commercial land during the F.Y. 2014-15 which was exempted under section 96 of the RFCTLARR Act, as clarified by the CBDT Circular No. 36/2016 dt. 25/10/2016. We therefore considering the totality of the fact as discussed hereinabove are of the view that the Ld. CIT(A) was not justified in confirming the action of the A.O. in not accepting the claim of the assessee for exemption of the compensation received on compulsory acquisition of land acquired by the Land Acquisition Officer from Income Tax. Accordingly the appeal of the assessee is allowed.

Since the facts involved in the case of the assessee are identical to the facts involved in aforesaid referred to case of Shri Satish Kumar, Sangrur and other Vs. ITO, Sangrur in ITA No. 1182 & 1183/Chd/2019 for the A.Y. 2015-16, so respectfully following the aforesaid referred to order dt. 31/08/2021, the appeal of the assessee is allowed.

6. In the result, appeal of the Assessee is allowed.

(Order pronounced in the open Court on 10/03/2022)

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG

Date: 10/03/2022

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File