

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH: DEHRADUN**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

[THROUGH VIDEO CONFERENCING AT NEW DELHI]

**ITA No.5224/Del/2018
[Assessment Year : 2014-15]**

Lakhme Chand Aswani, Gajajoli, Uttar Bareilly Road, Haldwani, Utarakhand. PAN-AGNPA7702N	vs	ITO, Ward-1(2), Haldwani.
APPELLANT		RESPONDENT
Appellant by	Shri Prashant Kacker, Adv.	
Respondent by	Smt.Mayank Prabha Tomar, Sr.DR	
Date of Hearing	22.08.2022	
Date of Pronouncement	31.08.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A), Haldwani dated 22.06.2018.

2. The assessee has raised following grounds of appeal:

- “1. The Ld Income Tax Officer (ITO) without going into the facts of the case has made additions aggregating to Rs.32,31,049.00.
2. The Ld ITO has completed the assessment without giving a satisfactory finding for income escaping assessment in spite of objections raised before the commencement of

assessment proceedings.

3. *The Ld ITO missed to note and failed to appreciate that agricultural land had been sold.*
4. *The Ld ITO missed to note and failed to appreciate that Capital Gains Long Term as well as Short Term was not applicable on agricultural land as it was not a capital asset.*
5. *That the order is bad in Law and not in agreement with facts and is against the principles of Natural Justice.*
6. *Besides the above grounds, the appellant craves for any additional ground in the circumstances of the matters.”*

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the assessee filed his return of income through electronic mode, declaring income of Rs.7,83,710/- on 30.11.2014. The return was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”) . Subsequently, the information was received that the assessee had purchased certain immovable properties. Therefore, the case of the assessee was re-opened u/s 147 of the Act and a notice u/s 148 of the Act was issued on 04.07.2016 to the assessee after obtaining the necessary approval from the Competent Authority. Thereafter, notice u/s 143(2) of the Act was issued and duly served upon the assessee. In response to the statutory notices, the Ld.AR of the

assessee attended the proceedings and filed the requisite explanation on behalf of the assessee. However, the explanation offered by the assessee was not acceptable to the Assessing Officer ["AO"]. Therefore, the AO made addition of Rs.4,80,329/- being the Long Term Capital gain ["LTCG"]. Further, the AO made addition of Rs.27,50,720/- in respect of the Short Term Capital gain ["STCG"]. The AO also made addition of Rs.2,260/- being the dividend received by the assessee and treated by the AO not covered u/s 115 of the Act.

4. Aggrieved against this, the assessee carried the matter before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the authorities below failed to consider the objection of the assessee that the immovable properties as transferred was not falling within the definition of 'Capital asset' as per section 2(14) of the Act. He submitted that the authorities below have not carried any inquiry regarding the veracity of the contention that the chargeability to tax u/s 45 of the Act, would arise only if on the date of sale of land in

question retained its character as capital asset. Reliance was placed upon the judgement of Hon'ble Punjab & Haryana High Court in the case of *CIT vs Smt. Savita Rani [2004] 270 ITR 40 [P&H]*. Further, reliance was placed on the judgement of Hon'ble Karnataka High Court in the case of *CIT vs Madhu Kumar N.(HUF) [2012] 23 taxmann.com 341 (Kar.)*. The contention that the population of the town where the land in question was situated, was less than 10,000/- therefore, there would not be application of section 2(14) of the Act and the land in question retained its character of being agriculture.

7. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that before the lower authorities, the objection of the assessee was regarding the applicability of provisions of capital gain as the sale of land in question was claimed to be an agricultural land. It is further seen from the records that the AO has not carried out any inquiry to verify the claim of the assessee that the land in question was not capital asset on the ground that the population of the town was

less than ten thousand and also as per the Notification issued by Government of India, the land was beyond the municipal limit. These issues require examination at the end of the AO. It is evident from the records that the AO had not carried out any inquiry to verify the correctness of the contention that the land in question would not fall within the purview of capital asset. We therefore, set aside the impugned order and restore the issue to the file of AO to decide it afresh. Needless to say that the AO would afford adequate opportunity to the assessee to prove his claim that the immovable properties that were sold by him during the year under consideration did not fall within the definition of capital asset as provided u/s 2(14) of the Act. Thus, grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31st August, 2022.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI