

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1159/Del/2020  
[Assessment Year : 2009-10]**

Harendra Singh, Vill. Nizampur, P.O-Khurja Junction, Tehsil-Khurja, Bulandshahr-203132 (U.P). <b>PAN-AOSPH9924A</b>	vs	ITO, Ward-3(2), Bulandshahr (U.P.).
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Shri Om Prakash, Sr.DR	
<b>Date of Hearing</b>	18.08.2022	
<b>Date of Pronouncement</b>	22.09.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2009-10 is directed against the order of Ld. CIT(A), Aligarh dated 15.12.2017.

2. The assessee has raised following grounds of appeal:-

1. *“That the Ld. CXT(A) has erred in sustaining the assessment order without considering the facts and circumstances of the case.*
2. *That the Ld. CIT(A) has erred in law and on facts in holding that the land sold by the appellant was a capital asset u/s 2(14) of the 1. T. Act, 1961.*
3. *The Ld. CIT(A) has erred in ignoring the fact that the ‘Agreement to Sell’ which is registered, was made on 30.07.2008. Therefore, the date of agreement must be treated as date of transfer under section 2(47) of the Act 1961 which includes relinquishment of any rights. The land use was changed in land revenue record on 05.08.2008 i.e. after the execution of the said registered ‘Agreement to Sell’. Therefore, as on the date of sale of the land on 30.07.2008, the land sold was an agricultural land.*

4. *That the Ld. CIT(A) has erred in not considering the fact that the appellant did not put the land to any other use except agricultural purposes till the sale of land.*
5. *That on the facts and circumstances of the case as well as in law, the both Ld. AO and CIT (A) have erred in completely ignoring the deduction u/s 54F of the Income Tax Act, 1961 towards the investment in the 'Construction of House Property'. The approved Valuation report was also not considered by both the Ld. AO and CIT (A).*
6. *For these and other grounds, which may be urged at the time of the hearing, the appeal may be allowed and justice rendered."*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that there is no representation on behalf of the assessee since 29.04.2021 despite various notices were issued on different dates to the assessee. Lastly, the notice was issued on 22.06.2022 fixing the date of hearing 18.08.2022. On the date fixed for hearing, no one attended the proceedings on behalf of the assessee. Moreover, no application seeking adjournment has been filed on behalf of the assessee. Therefore, the appeal of the assessee is taken up for hearing in the absence of the assessee and being disposed off on the basis of material available on record.

4. It is noticed that the present appeal is barred by 844 days, the assessee has filed an affidavit stating the cause of delay in filing the appeal and praying for condonation of delay. It is stated that the assessee was not in knowledge of the impugned order passed on 15.12.2017. The factum of the order came to be known only on the receipt of penalty notice u/s 271(1)(c) of the Income Tax Act, 1961 ["the Act"]. Thereafter, he contacted to his Authorized Representative ["AR"] and requested him to file the appeal. He further stated that Ld.AR of the assessee made him to believe that the appeal has been filed. However,

subsequently, when he received a demand notice dated 12.02.2020 then he further inquired on the AR and came to know that no appeal has been filed. Thereafter, he approached other Counsel to do the needful who after receiving the requisite papers, filed the present appeal. It is further stated that due to spread of Corona Pandemic, the effective actions could not be taken and hence, the assessee has a reasonable cause for not filing the appeal at time.

5. On the contrary, Ld. Sr. DR opposed these submissions and stated that the assessee has been thoroughly negligent throughout the proceedings. He ought to have been vigilant about his affairs. Now, he cannot take advantage of his own negligence.

6. I have heard Ld. Sr. DR and perused the material available on record. It is not in dispute that the assessee was required to file the present appeal in the year 2018 itself. However, the contention of the assessee is that he did not receive the impugned order which was received by Ld.AR on 19.12.2017. The factum of passing of the impugned order came to be known only when the notice u/s 271(1)(c) of the Act was received. It is also correct that the country has been facing spread of Corona Pandemic since March 2019. There had been lot of panic and loss of lives, people were in grip of fear and uncertainty.

7. Therefore, looking to the material available on record and the statement made on oath by way of an affidavit filed by the assessee and respectfully following the judgement of Hon'ble Supreme Court in the case of *Collector of Land Acquisition vs Mst . Katiji & Ors. 167 ITR 471*, I am of the considered view that the assessee had a reasonable cause for not filing the present appeal within the prescribed time. I hereby, condone the delay and admit the present appeal for hearing.

## **FACTS OF THE CASE**

8. Facts giving rise to the present appeal are that in this case, the Assessing Officer ["AO"] was having an AIR information about the sale of immovable property [M/s. Arshiya Rail Infrastructure Ltd.] for sale consideration of Rs.61,33,650/- and valued by Stamp Valuation Authority at Rs.75,30,000/-. Therefore, the case of the assessee was re-opened u/s 147 of the Act and notice u/s 148 of the Act was issued on 18.03.2016 thereafter, various notices were issued to the assessee. However, in response to the notices dated 28.07.2016, the Ld.AR of the assessee attended the proceedings on 11.08.2016. The AO issued another notice dated 05.09.2016 calling upon the assessee as to why the capital gain should not be charged at the deemed sale consideration of Rs.75,30,000/- under capital gain income. In response to the show cause notice, Ld. AR of the assessee attended the proceedings and filed certain documents. Thereafter, a notice u/s 143(2) of the Act was issued to the assessee. Before the AO, it was stated that the assessee has no other documents to file. The AO thus treating the land as industrial plot computed Long Term Capital Gain ["LTCG"] at Rs.49,00,524/- and assessed income at Rs.49,01,912/-.

9. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal of the assessee. Thereby, narrating by the AO to re-compute the LTCG after taking full consideration 69,81,816/-.

10. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

11. Ld. Sr. DR appearing on behalf of the Revenue, vehemently argued that the assessee failed to prove that the land in question was not a capital asset. On the contrary, it is brought on record that the land sold by the assessee was an industrial plot therefore, the authorities below were justified in charging the capital gain on such transaction.

12. I have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. The assessee before the authorities below had taken twin objections against the computation of capital gain. **Firstly**, that the land so sold was out of purview of capital asset being an agricultural land and **Secondly**, that the authorities below failed to give benefit of section 54F of the Act in respect of construction of residential house and also acquiring agricultural land. For the sake of clarity, the submissions of the assessee before Ld.CIT(A) are reproduced as under:-

4. *"In response to the notices issued for hearing the appeal, Shri Vivek Agrawal, C.A. appeared as the authorised representative of the appellant and filed the following written submission in support of the appellant's case:-*

- *The assessee has sold agriculture land of Rs. 61,33,650/- (Rs. Sixty One Lacs and Thirty Three thousands and Six Hundred Fifty Only.) And title deed executed in favour of Arshiya International Limited dated 23-08-2008 situated at Village Ibrahimpur Junedpur Urf Maujpur. The agreement to sale, was made on 30-07-2008. The consideration was received in cheque of Rs 46,00,000/- and cash of Rs.15,33,650/-. The valuation of the property was made on value adopted by stamp valuation authorities considering section 50C at Rs. 75,30,000/-( Seventy Five Lacs and Thirty Thousand Only) although the assessee has objected the value adopted by A.O.*

- *The whole village was under Chakwandi.*

- *The land was situated approx 5.3 Km from the Khurja Municipality (Distance Certificate is attached.)*
- *The land use was changed in the revenue record dated 05.08.2008 vide order of SDM Khurja.*
- *The assessee is a farmer and his income arises from agriculture produce.*
- *The title deed was executed for the industrial use of the intended buyer only. The assessee is never used the land for the purpose other than agriculture.*
- *The land use was changed solely for intended buyer.*
- *The consideration received is invested in construction of residential house about Rs.30,00,000/- and purchase of agriculture land. Valuation Report from Income Tax Approved Valuer is attached.*
- *The land was used by him and his ancestors for farming only. It was an ancestral land.*
- *The assessee is a farmer and his income arose from agriculture which is clearly mentioned in the return of Income and Khasra Produced.*

### **Grounds of Appeal**

- *During the above financial year the assessee has sold an agricultural land and The asset was used for agriculture purpose till the date of transfer of land and it is situated approx 5.3 Kilometres from the local limits of municipality of Khurja, However the asset was sold to the company for its industrial use and it does not partakes the color of industrial land as it was used by the assessee for agricultural purposes and hence it is not a capital asset.*
- *The assessee had availed Kisan Credit Card ( K.C.C.) from Punjab National Bank, Samaspur Khurja on the sold land which is clearly evident from the search report made in the Sub Registrar Office Khurja. It is the evidence that the said land was used for agriculture since the*

*credit-card cannot be given to the farmer on industrial land and the K.C.C. was closed out of the sales proceeds and later on the surplus was invested in purchase of agriculture land and construction of residential house property.*

- *The learned Assessing Officer is unjustified in treating the agricultural land as industrial as the same is mentioned in revenue records produced before him and the assessee is regular in farming agriculture till the date of transfer.*
- *The agreement to sale was made on 30-07-2008 and as pre condition, the land use was changed on 05-08-2008 while the title deed was executed on 23-08-2008. The land use was changed for the buyer only. The buyer never used the land for purpose other than agriculture till the date of transfer of land.*
- *Mere change in land use in revenue records just before few days the date of transfer cannot be regarded that the land was industrial. The assessee was under bonafide belief sold the land.*
- *The learned A.O. taken Rs. 60/- per meter as cost of acquisition and the base for adopting the same does not provided to us.*
- *The learned Assessing Officer treated the sold land as ancestral industrial plot does not give any meaning as how he treated the ancestral land as ancestral industrial plot as there were no facility developed by the government till today. The learned A.O. did not provided the reason for treating the land as industrial and order of A.O. is against the principal of natural justice and the order is not a speaking order in itself. The proper reason for treating the land as industrial did not provide and mere stating "For Industrial Use" in the title deed cannot partake the color that it was industrial land.*
- *Mere inclusion of land in the industrial zone without any infrastructure development thereon or without establishing and proving that the land was put into use for non-agricultural purposes does not and cannot covert the agricultural land into non-agricultural land. **(Reliance is placed on Haresh V. Milani V JCIT (2008) 114 ITD 428 (Pune).***
- *The assessee has invested the sales consideration received in of residential house property and agricultural land and the same fact also*

- not considered while making assessment. (Copy of title deed enclosed). The submissions were given before the learned A.O. that the assessee has invested the sale proceeds of Rs.30.00 Lakh in construction of residential house and the same was not allowed to the assessee while making the assessment. (However Valuation Reprot of Rs.19,18,000/- Income Tax Approved Valuer of Mr. Mridul Kuamr is hereby attached.*
- *The learned A.O. presumed the land as ancestral and also the title deed mentioned the same fact. How it could be possible that the land was ancestral industrial plot since it was never used for purpose other than agriculture. At the time of sale there was no surroundings wall and no industrial activities found. How can we say that the land was industrial?*
  - *The sold land was mutated in the name of the buyer in revenue records which is clearly evidence that the land was agriculture because industrial land can never mutated in revenue records.*
  - *The assessee was not any way involved in land use change (Conversion process and the buyer tactfully filed the application for land use change and the assessee has not signed the application filed before the land revenue authorities and the same is produced before your honor.(Copy of application is enclosed)*
  - *The village was under chakwandi and noted agriculture land was also covered under chakwandi in revenue records. The chakwandi cannot be possible in Industrial land cases. The Gata No. was also changed before the date when title deed was executed.*
  - *The assessee has objected the stamp duty value adopted by the learned AO as sales consideration as considering Section 50C as the proper valuation of the property were not made by him.*
  - *The learned assessing officer was not justified in disallowing the exemption for agricultural income on such agricultural plot on regular basis and same was shown under income tax return. Further, agricultural plot situated beyond the notified area and covered under definition of agricultural land (Khasra copy enclosed for your ready reference).*

*In view of the aforesaid the learned Assessing officer was totally unjustified in disallowing of a sum of Rs. 49,00,524/- on account of long term capital*

gain, by incorrectly assuming the same to be a capital Asset within the meaning of Section 2(14) of the income tax Act. While sale consideration received by appellant from agriculture plot were not chargeable to tax and as such disallowance made is illegal, invalid, hence untenable.

The conclusion of learned Income Tax Officer that appellant has sold industrial plot and he is not entitled to any exemption is based on fundamental misconception of facts of the appellant, misinterpretation of provision of law.

In view of the aforesaid the learned Assessing Officer was totally unjustified in disallowing the exemption for agricultural land. Therefore, it is prayed that the disallowance so made by the learned Assessing officer be deleted. However, appellant would be too willing to provide any further information which your goodself shall require to dispose off the appeal.”

13. The Ld.CIT(A) has decided the issue by observing as under:-

## **5.2 Decision**

“This ground is against the assessment of capital gain of Rs. 49,00,524/-. In this regard, it has been explained that though in the sale deed the land has been declared to be an industrial plot, it was actually an agricultural land. Therefore, it has been argued that no capital gain can be assessed on the sale of the land. It has also been explained that the land in question is situated at a distance about 5.3 Kms from the municipal limit of Khurja and hence it does not qualify to be declared a capital asset u/s 2(14) of the IT Act. I have considered all the facts as are available on the record. It is seen that the appellant had entered into an ‘Agreement to sell’ with M/s Arshiya International Ltd. for sale of the land in question on 30.07.2008. Thereafter, the land-use was changed on 05.08.2008 and the land was declared to be a non agricultural land, subsequently, the sale deed was executed on 23.08.2008. It is important to note that the possession of the land was not handed over when the aforesaid ‘Agreement to sell’ was made. The possession was given only when the sale deed was executed on 23.08.2008. Thus, it can be concluded that the transfer of the land was completed only when the sale deed was executed and not on the date of

*signing of the 'Agreement to sell'. Therefore, it is reasonable to hold that by the time the land was transferred its land-use had been changed and it was declared to be a non agricultural land. Therefore, what was transferred by the appellant was indeed a non agricultural land which would qualify to be defined as a capital asset u/s 2(14) of the IT Act. That being so, a capital gain would be chargeable on the said transfer of land.”*

14. It is evident from the finding of Ld.CIT(A) that the objection of the assessee regarding purchase of agricultural land and construction of residential house is not adverted. Even the AO has not given any finding regarding investment of sale consideration for acquiring agricultural land and construction of residential property. Therefore, it would sub-serve the interest of justice if both the issues are restored to the file of the AO for decision afresh after verifying the correctness of the claim and if it is found that the sale consideration was invested out of capital gain then the AO would allow deduction to the assessee as available under the law. However, regarding the objection of the assessee that land in question was not a capital asset. It is seen from the records that the assessee had admitted that the Sale Deed was executed and related to the industrial plot. Therefore, I do not see any merit in the submissions of the assessee that the land in question would not fall within the character of capital asset. Thus, grounds raised by the assessee are partly allowed.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 22<sup>nd</sup> September, 2022.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

\* Amit Kumar\*

Copy forwarded to:

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

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