

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, NAGPUR
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.72/NAG/2020

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Sandeep Thanware 262, Misal Layout, Jaripatka, Nagpur – 440014 PAN: ACLPT3830C	Vs.	ITO, Ward 2(2), Nagpur
Appellant		Respondent

Assessee by Ms Veena Agrawal
Revenue by Shri G.J. Ninawe

Date of hearing 11-10-2022
Date of pronouncement 12-10-2022

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee is directed against the order dated 20-01-2020 passed by the Id. CIT(A)-2, Nagpur, in relation to the assessment year 2009-10.

2. The only issue raised in this appeal is against the taxability of capital gain on the transfer of certain land claimed by the assessee as `agricultural land` and hence beyond the scope of `capital asset`.

3. Briefly stated, the facts of the case are that the assessee along with one Shri Dilip Moon sold an agricultural land situated at

Mauza Vedahari, P.H. No.38, Tah. Nagpur (Rural), Dist. Nagpur for total consideration of Rs.26 lacs on 13.06.2008. The Assessing Officer (AO) took cognizance of the stamp value of the property. By taking purchase consideration at Rs.1.60 lacs, he proceeded to compute the amount of capital gain. On being called upon to explain as to why the capital gain was not offered for taxation, the assessee submitted that the land in question was situated at a distance of 10 kms. from the municipal limits of Nagpur and hence out of purview of the term 'capital asset'. In support of the contention, the assessee submitted a certificate from the Secretary of Gram Panchayat. The AO observed that the distance certified by the authority was only taken by road and it was not an aerial distance. He, therefore, computed the long term capital gain and made the addition. The assessee again reiterated before the Id. CIT(A) that the land in question was outside the municipal limits at a distance of 10 kms. In support of this, the assessee furnished the certificate issued by the Secretary, Gram Panchayat of the village. The Id. CIT(A) emphasized on furnishing a certificate to be issued either by Nagpur Municipal Corporation (NMC) or Nagpur Improvement Trust (NIT). In para 5.1.8, he took note of

some letter originally issued by the competent authority i.e. NIT, stating that the distance of the impugned land from municipal limits of Nagpur was well within 8 kms. He, therefore, confirmed the decision of the AO.

4. Having heard the rival contentions and perused the relevant material on record, it is seen that the view point of the AO for considering the aerial distance is not relevant for year under consideration, namely, A.Y. 2009-10. The amendment in this regard has been carried out by altering the definition of the term 'capital asset' w.e.f. A.Y. 2014-15. The CBDT has issued a circular dated 06.10.2015 instructing the Officers to consider the amendment prospectively from A.Y. 2014-15. In that view of the matter, the view of the AO for taking aerial distance is not tenable, which has rightly not been proceeded with by the Id. CIT(A).

5. Coming to the impugned order, it is seen that the Id. CIT(A) has referred to certain letter issued by the Nagpur Improvement Trust stating that the distance between the impugned land and municipal limits was well within 8 kms of the municipal limits. However, there is no mention in the impugned order either of the date or any reference number of such letter. The Id. AR submitted

that the ld. CIT(A) did not confront the assessee with such alleged letter, contrary to the certificate of the Secretary, Gram Panchayat of the village, nor was it discussed in the assessment order as well. On the contrary, she relied on certificate issued by the Secretary, Gram Panchayat to highlight that the land in question was at a distance of 10 kms from the municipal limits of Nagpur. On a specific query, the ld. DR also could not throw any light on the letter referred to by the ld. CIT(A) in para 5.1.8 of the impugned order which has been taken cognizance for rejecting the assessee's contention. Under such circumstances, I am of the considered opinion that it would be in the fitness of things, if the impugned order is set aside and the matter is remitted to the file of the ld. CIT(A). I order accordingly and direct him to confront the assessee with such letter referred to in para 5.1.8 of his order and then decide the issue accordingly.

6. In the result, appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 12th October, 2022.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 12th October, 2022
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Nagpur
4. The Pr.CIT-1/2/3, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
Nagpur / DR, Nagpur
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	11-10-2022	Sr.PS
2.	Draft placed before author	12-10-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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