

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.101/Pat/2020
Assessment Year: 2014-15**

Income Tax Officer, Wd-4(1), Patna	Vs.	Ashok Kumar, Ground Floor, D. N. Market, Jagdeo Path, Bailey Road, Patna-800014, Bihar (PAN: AEMPK5743G)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Rupesh Agrawal, Sr. DR
Respondent by : Shri Rakesh Kumar, Advocate

Date of Hearing : 13.12.2022
Date of Pronouncement : 16.12.2022

ORDER

PER GIRISH AGRAWAL, Accountant Member:

This appeal filed by the revenue is against the order of Ld. CIT(A)-2, Patna vide Order No. ITBA/APL/S/250/2020-21/1027413338(1) dated 30.06.2020 u/s 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") passed against the assessment order by the ITO, Ward-4(1), Patna u/s. 143(3) of the Act dated 29.11.2016.

2. At the outset, Ld. Sr. DR pointed to ground no. 3 that the present appeal is covered in the exceptions listed in the Circular issued by CBDT in File No.279/MISC.142/2007-ITJ(PT) dated 20.08.2018 issued pursuant to CBDT Circular No. 3 of 2018 dated 11.07.2018 which

prescribed for monetary limits for filing of appeals by the department before Income Tax Appellate Tribunal, High Courts and SLPs/Appeals before Supreme Court for reducing litigation. He submitted that the present appeal is covered by the exceptions noted in para 10(e) of the said circular which states that “*where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI)*” since in the present case, addition was based on the basis of information received from District Land Acquisition Officer, who is a law enforcement agency/department.

3. Ld. Counsel for the assessee objected on the assertion made by the Ld. Sr. DR.

4. Before adverting on this issue, we take note of the facts in the case. From perusal of the assessment order, we note that Ld. AO has made an addition on account of Long Term Capital Gain arising on receipt of compensation for the acquisition of agricultural land of the assessee. In the impugned assessment order, Ld. AO observed that an enquiry letter was sent to the Land Acquisition Officer, in reply to which it was reported that the nature of land is residential. Based on the report of Land Acquisition Officer, Ld. AO treated the nature of land as residential and thus, completed the assessment by making an addition in this respect. The amount of addition made by the Ld. AO in this respect is of Rs.72,37,908/-. The total tax payable in this respect amounts to Rs.15,05,006/-.

4.1 Aggrieved, assessee went in appeal before the Ld. CIT(A). Ld. CIT(A) deleted the addition so made by holding that capital gain arising on transfer of land by way of acquisition by the Govt. of India is not taxable. Aggrieved, Revenue is in appeal before the Tribunal.

5. We have perused the letter issued by CBDT bearing F. No. 279/MISC.142/2007-ITJ(PT) dated 20.08.2018. We note that monetary limits for filing of appeal by the Department have been revised by CBDT vide its circular No. 3 of 2018 dated 11.07.2018. Para 10 of the said circular has carved out certain exceptions on the issues which should be contested on merits notwithstanding that the tax effect entailed is less than the specified monetary limits or where there is no tax effect. The issues enumerated as exceptions in para 10 are as under:

"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).

(f) Cases where prosecution has been filed by the Department and is pending in the Court."

6. From the perusal of assessment order, it is evident that Ld. AO had made an enquiry from the Land Acquisition Officer who had supplied the relevant information, based on which a view was taken by the Ld. AO to complete the assessment. It is not a case where the Land Acquisition Officer was conducting any investigation or enquiry as a law enforcement agency within the meaning of exception noted in para 10(e) of the CBDT Circular (supra). It is a case where an information was sought by the Ld. AO from the Land Acquisition Officer who

supplied the information which was used for the purpose of making an assessment. In fact, the ground taken by the Revenue in this respect is not in conformity with the stated exceptions in the CBDT circular. Thus, in our considered view, the present appeal by the Revenue does not fall in the exception noted in para 10(e) of the said circular. Accordingly, the appeal by the Revenue is dismissed at the threshold in terms of the CBDT circular since the tax effect is below the monetary limit of Rs.50 lakh as prescribed in the said circular. Accordingly, appeal of the Revenue is dismissed.

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

Order pronounced in the open Court on 16th December, 2022.

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 16th December, 2022.

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-2, Patna
 4. ITO, Ward-4(1), Patna
 5. DR, ITAT, Patna Bench, Patna
 6. Guard file.
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata