

आयकर अपीलीय अधिकरण, PATNA पीठ, कोलकाता  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH**

आभासी माध्यम से सुनवाई  
Hearing Through Virtual Medium  
**At ITAT, Kolkata**

समक्ष :

श्री मनीष बोरड, लेखा एवं

श्री संजय शर्मा न्यायिक सदस्य

Before:

**Shri Manish Borad, Accountant Member and  
Shri Sonjoy Sarma, Judicial Member**

आयकर अपील सं.य/  
**ITA No.102/Pat/20**  
Assessment Year: 2014-15

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| <b>I.T.O, Ward 4(1), Patna</b><br>4 <sup>th</sup> Fl.,LNJP Bhawan, Fraser<br>Road, Patna-800 001.<br>(APPELLANT/DEPARTMENT) | <u>बनाम</u><br>V/s. | <b>Jagdish Ray S/o Late</b><br>Bhagwan Das Ray, Nawada<br>P.O Mubarakhpur, Patna-<br>801505.<br>(RESPONDENT/ASSESSEE) |
|---|---------------------|---|

And

**CO No. 01/Pat/2021**  
(Arising out of ITA No.102/Pat/20)  
Assessment Year: 2014-15

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|---|--------------------------------|---|
| <b>Jagdish Ray S/o Late Bhagwan</b><br>Das Ray, Nawada P.O<br>Mubarakhpur, Patna-801505.<br>(CROSSOBJECTORT/ASSESSEE) | <u>बनाम</u><br>V/s.            | <b>I.T.O, Ward 4(1), Patna</b><br>4 <sup>th</sup> Fl.,LNJP Bhawan, Fraser<br>Road, Patna-800 001.<br>(APPELLANT/DEPARTMENT) |
| अपीलार्थी की ओर से/By Appellant   | Shri Narendra Kumar, Ld.AR     |   |
| प्रत्यर्थी की ओर से/By Respondent   | Shri Rupesh Agrawal, Ld. Sr.DR |   |
| सुनवाई की तारीख/Date of Hearing   | 12-10-2022                     |   |
| घोषणा की तारीख/<br>Date of Pronouncement  | 04-01-2023                     |   |

**आदेश / O R D E R**

1.

ITA No.102/Pat/20  
AY 2014-15 &  
CO No.01/Pat/2021  
(ITA No. 102/Pat/20)  
AY 2014-15  
Jagdish Ray

**PER MANISH BORAD, AM.**

This captioned appeal and corresponding cross objection of the revenue and assessee for the assessment year 2014-15 are directed against the order dt. 30.06.2020 passed u/s. 250 of the Income-tax Act, 1961 [ hereinafter, referred to as 'the Act'] by the Id. Commissioner of Income-tax, Appeals [ in short, hereafter referred to as 'the 'Id. CIT(A), Patna-2.

2. Both the revenue and assessee has raised the following grounds for the AY 2014-15 :-

Grounds raised by the revenue in the appeal:-

*(i) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in law by referring to the RFCTLARR Act, 2013 and granting relief to the assessee assuming hypothetically that the said Act is applicable in the case of the assessee without there being an' supporting evidence or claim made by the assessee during the appellate proceeding or in the assessment proceedings before the AO.*

*(ii) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in law by granting relief of Rs. 1,04,58,374/- on account of long term capital gain arising out of compensation against the land acquisition. The addition was based on the basis of information received from District Land Acquisition Officer which is a land enforcing agency / department and as such the case is covered under exceptions clause specified in Board's letter bearing F. No.279/Misc. 142/2007-ITJ (Pt) dated 20.08.2018.*

*(iii) Any other grounds that may be urged at the time of hearing.*

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Grounds raised by the assessee in the Cross Objection:

1. For that the instant appeal is completely bar by the Notification No. 17/2019 Dt.08<sup>th</sup> August 2019 issued by the Central Board of Direct Taxes as Tax effect is below of monetary limit of Rs.50.00 Lacs and on this ground alone instant appeal is liable for dismiss in limine.

2. For that the first ground of appeal taken by the Appellant is based on wrongly appreciation of the facts and hypothetically without going through the records it has been alleged, in fact Ld. Commissioner (Appeals) has well referred the evidences much appreciated the evidences available on records as well as produced by the Respondent-Assessee, the Ld. C.I.T (A) has well referred Circular No. 36 Dt.2S.10.2016 of CBDT and decided -that the case of the Appellant/Assessee is covered under Section 10(37) of the Income Tax Act, 1961 as acquired landed property was agriculture land besides application of Section 96 of the RFCTLAAR Act, 2013 as referred in the said Circular No.36.

3. For that the Second ground of appeal is contrary in itself, the Appellant has taken the ground on the basis of Board's Letter bearing F.No. 279/Misc.142/2007-ITJ (pt) Dt.20.08.2018, in fact in the Ld. C.I.T(A) has not passed the order appealed contrary to the any context to the said letter. The order Dt. 3.06.2020 passed by the Ld. C.I.T (A) does not come under purview or contrary or against the constitutional validity of the provisions of the Act or Rule and against any orders, notification, instruction or circular issued by the Board as enumerated in the Clause (a) and (b) in the said letter and other Clauses of letter are irrelevant, as such present appeal is liable to be rejected on this ground also.

4. For that the Respondent-Assessee craves his right to submit more ground and any other required documents at the time of hearing with due permission from Hon'ble Tribunal

3. Registry has informed that the appeal is time barred by 95 days. We find that there is a delay of 95 days during the period of covid-19 scenario, which was beyond control due to such panic and unnatural pandemic situation. Due to said reason the impugned appeal could not be filed in time. We therefore, condone the said delay and admit the appeal for adjudication of the issues raised before us on merits.

4. First we take up the revenue's appeal-ITA No. 102/Pat/20 for the AY 2015-15.

5. The only issue for our consideration is that whether the Id. CIT(A) erred in granting relief of Rs. 1,04,58,374/- on account of long term capital gain (LTCG) arising out of compensation against the land acquisition treating as exempt from tax.

6. Before us the Ld. Counsel for the assessee referred to following written submissions which were filed before the Id. CIT(A):-:

*1. That the above appeal is directed against the demand notice issued by Income Tax Officer Ward 4(4), Patna dated 27.12.2016 in which the following disputes arise for adjudication which are as under:-*

*“whether compensation received on account of compulsory acquisition of land by the Government is taxable or not in the hands of appellant assessee.”*

*2. That the appellant assessee is an agriculturist and filed his return of income on 26-06-2014 showing total income*

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at @ Rs. 92,350 only. The source of Income was income from other source only.

3. That the appellant assessee has agricultural land which was ancestral and the only sources of income was cultivation of land.

4. That the Government of Bihar vide its notification no. 3043 dated 30-12-2013 has acquired the said land for construction of building for ITBP Department and paid compensation to the tune of Rs. 1,04,58,374/- only @ 3,25,000/- per decimal.

5. That Government of Bihar has paid the compensation amount under the category "Agricultural progressive land" whenever the commercial and residential rate are much higher than agricultural progressive land. Therefore, it is crystal clear that Government of Bihar has given rate for agricultural purposes.

6. That the L.d. A.O. has made an enquiry through office inspector and he has submitted his report vide letter no. 2587 dated 30-11-2016 wherein it was stated that land acquired by the Government Measuring 3.845 acre was at the status of dhanahar. The Ld. AO. himself accepted that the **"ITI while-quoting/writing the above seems not only very keen in favour of revenue"** ,

7. That in this regards i want to draw your kind attention towards CBDT Circular no. 36/2016 dated 25-10-2016 wherein it has been mentioned that compensation received in respect of award or agreement is exempt from levy of income tax. The respective para are as under: "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

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*land. The matter has been examined by the Board and it is hereby clarified the 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. A copy of circular is attached herewith and marked annex-1.*

*8. That in view of the above addition made by the Id A.O. is liable to quashed.*

*In this case, the assessee derives income from other sources. The return of Income for AY 2014-15 filed on 26-06.2014 and declaring total income of Rs. 92,350/-. The case was selected for scrutiny assessment through CASS and appropriate notices were issued. Thereafter, assessment was completed on 27.12.2016 u/s. 143(3) of I.T Act on an income of Rs. 1,05,50,720/-.*

*On going through the assessment order it is observed that the Assessing Officer has assessed the assessee on the income shown by the assessee and has added back being long term capital amounting to Rs. 1,04,58,374/- on the compensation of Rs. 10458374/- being received by the assessee against compulsory acquisition of agricultural land by Department of Government of India which was claimed exemption.*

*The Assessing Officer has stated that information was received from I & CI which the land acquisition officer has shown the land as a residential land and the assessee has been paid .a sum of Rs.10468374/- as compensation for land acquisition during the F.Y. 2013-14. The A.O under misconception of fact has stated that as per the information given by the land acquisition -- officer the ' land is questioned is "Residential". On the*

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*facts and circumstances of the A.O has erred in computed the alleged LTCG under misconception of the provision. of relating to LTCG has determined the LTCG at Rs. 1,04,58,374/-.*

7. On the other hand the Id. DR supported the order of the Id. AO and placed reliance on the documents enclosed in the paper book.

8. We have heard the rival contentions and perused the records placed before us. We notice that Office of Directorate of Land Acquisition, Department of Revenue & Land Reforms, Government of Bihar, Patna sanctioned a fund for acquisition of Dhanhar Progressive (Agricultural) land measuring about 3.98 acres @ Rs. 20 lakhs per acre at village-Nawada, Thana No. 39, District-Patna vide letter no. 3043 dt. 30-12-2013. Since the assessee held land in the said village, the same was acquired by the District Land Acquisition Officer and the sum of Rs.10458374/- was paid the Id. AO treated the same as taxable income beng earned from sale of non-agricultural land and when the same was challenged by the assessee, relief was granted by the Id. CIT(A) observing as under:-

*“The fact and circumstances of the case is that the A.O has presumed the land question as non-agricultural land. The A.O denied the claim of benefit of the land in question to be non-agricultural for which compensation has been received by the appellant. The AR of the*

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appellant has submitted copy of District Land Acquisition Officer, Patna that land was compulsorily acquired for construction of building ITBP department by order of Government of Bihar vide Notification no. 3043 dated 30.12.2013 and paid compensation of Rs. 1,04,58,374/- for 325000 per decimal for Agricultural Progressive land while commercial and residential rate are much higher than agricultural progressive land. It is clear that Government of Bihar has given rate for agricultural land. On the direction of the AO the ITI made an enquiry and submitted the report as reproduced as under:

“the land was being cultivated before its acquisition but in the first para of the report of the inspector he has pointed out that in the letter sent to this office vide letter no. 2857 on 30.11.2016 by the LAO” wherein it was stated that the land acquired by the Government measuring 3.845 acre was at the status of Dhanahar (pragatishil bhumi).”

The Assessing Officer has failed to appreciate that the tax deductor has paid the compensation amounting to Rs. 1,04,58,374/- against compulsory acquisition of land which has been done by a District Land Acquisition Officer, Patna vide letter No. 4006 dated 11.12.2012. The land in question is part of Survey Khata No. 210, Khesra No. 737 and Raqwa 0.29 total area 3.96 acre. Further, in the similiary issue of appellant’s brother case, for the same land the ITO ward 5(1) Patna has accepted his Returned Income.

In this regard, the CBDT inserted “RFCTILLAR Act” vide circular no. 36/2016 dated 25.10.2016 has expressed as under:-

*Under the existing provisions of the Income Tax Act, 1961 an agricultural land which is not situated in specified urban area is not regarded as a capital asset. Hence, capital gain 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 HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfillment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is no taxable under the Act (Subject to fulfillment of certain conditions for specified urban land.*

*The RFCTLAAR 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 u/s 46) under RFCTLAAR Act'. Therefore, compensation received for compulsory acquisition of land under the RFCTLAAR-Act (except those made u/s 46 of RFCTLAAR Act) is exempted from the levy of income tax.*

*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 RFCTLAAR Act, the exemption provided u/s 96 of the RFCTLAAR 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 Central Board of Direct Taxes 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 RFCTLAAR Act shall also not be taxable under the provision of Income Tax Act, 1961 even if there is no specific provision of exemption for-such compensation in the Income Tax Act, 1961*

*Hence, the Assessing Officer has erred in denying the benefit of the provisions of section 10(37) of the I T Act, 1961 and therefore the treatment of long term capital gains in the hands of the assessee is unjustified.*

*In the present case there is clear provision of the RFCTILAAR Act, clarified that compensation received in respect of award or agreement which has been exempted from levy of income tax vide section 96 of the RFCTLAAR Act shall also not be taxable under the provision of Income Tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income Tax Act, 1961.*

*I have considered the submissions made by the appellant and also going through documents such as Gazette Notification CBDT circular and District Land Acquisition Officer, Patna. I am of the opinion that the whole of the capital gain arising on transfer of land by way of acquisition by the Government of India is not taxable. I accordingly hold that the additions of Rs. 1,04,58,374/- made by computing LTCG is not sustainable. Hence, the same is deleted.*

*In the result, the appeal of appellant is allowed.*

9. From perusal of the above findings of the Id. CIT(A), we find that the Id. CIT(A) held in favour of the assessee, firstly observing that case of the assessee is covered by the

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provisions of section 10(37) of the Act and secondly, the alleged compensation is not taxable in view of section 96 of the RFCTLAAR Act.

10. Regarding the observation of the Id. CIT(A) that the said sum is not taxable in view of the RFCTLAAR Act, we do not find any merit because the said Act i.e Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Settlement Act 2013 came into force w.e.f 1.1.2014 whereas alleged compensation was received by the appellant as mentioned in Form 16A showing deduction of tax at source on 24-10-2013 which clearly shows that alleged compensation was received prior to the effective date of RFCTLAAR Act and therefore, the relief granted by the Id.CIT(A) based on the application of section 96 of the RFCTLAAR Act has no merit and deserves to be set aside. Our view is further supported by the decision of the co-ordinate bench (ITAT Agra) in the case of *Shri Krishna Kumar Sharma Vs. DCIT, ITA No. 173 of 2019 dt. 14-06-2021* which has been relied on by the Id. Departmental Representative.

11. Now as far as first observation of Id. CIT(A) and contended by the Ld. Counsel for the assessee that the alleged compensation is an exempt income u/s. 10(37) of the

Act, we will first go through the relevant provisions of Section 10(37) of the Act, which reads as under:-

*10(37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where—*

- (i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of [section 2](#);*
- (ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;*
- (iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;*
- (iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.*

*Explanation.—For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, Tribunal or other authority;*

12. Now on perusal of the above section, we find that the assessee in order to avail the exemption under the said section needs to fulfill the four ((i) to (iv) conditions. So far as (iii) & (iv) conditions are concerned, which speaks about compulsory acquisition under any law as determined or approved by the Central Government or the Reserve Bank of India, if the *consideration* is received by such assessee on or after the 1<sup>st</sup> day of

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April, 2004, the same are duly fulfilled in the case of assessee as there is no dispute to this fact at the end of Revenue. Now as far as first two ( i & ii ) conditions are concerned, which provides that the land in question is an agricultural land and it has been used for the purpose of agriculture for the immediately two years, we observe that during the course of assessment proceedings Id.AO deputed an inspector to enquire as to whether the said land is agricultural land and cultivated before its acquisition. From the assessment order, we notice that the inspector's vide letter no. 2857 dt. 30-11-2006 stated that the land acquired by the Government measuring 3.845 acre was of the status of “ *Dhanahar (pragatishil bhumi)*”.

13. Before us the Ld. Counsel for the assessee has filed various documents explaining the meaning of “*Dhanahar land*” to be an agricultural land. Dhanahar land is said to be low land during rainy season. Reference was made to Bihar Visesh Survey page 5 in Chapter XVli page 211 defining “*dhanhar fasal land*” having three categories, A,B & C i.e Dhanhar I, Dhanhar II and Dhanhar III. Reference was further made to Bihar Tenancy Act, 1885, wherein Dhanhar has been defined as land cropped in winter. Reference also made through documents filed in paper book defining “*Dhanahar*” as irrigated land where rice is cultivated for kheti. Above discussion on *Dhanhar land* brings us to the conclusion that the said land owned by the assessee is an agricultural land and was used for the purpose of agriculture in the past. Therefore, since all the conditions mentioned in section 10(37) of the Act are fulfilled, we are of the opinion that the

alleged land for which compensation has been received by the assessee qualifies for exemption u/s. 10(37) of the Act. To this extent the finding of the Id. CIT(A) is confirmed. Thus, the revenue fails to succeed in this appeal.

14. Now coming to Cross Objection ( 01/Pat/2021 arising out of ITA No. 102/Pat/20 for the AY 2014-15)

15. As far as grounds raised by the assessee in his cross objection are concerned, the same are merely in support of the findings of the Id. CIT(A). Since we have already held the compensation received by assessee for acquisition of land is exempt from tax, the cross objection of assessee is held to be infructuous and thus dismissed.

16. In the result, the appeal of revenue-ITA No. 102/Pat/20 for the AY 2014-15 and the cross objection 01/Pat/2021 for the AY 2014-15 by assessee both are dismissed as per terms indicated above.

देश खुले न्यायपीठ में दिनांक 04 01-2023 को उद्घोषित।

The order pronounced in the open Court on 04-01-2023

Sd/-  
( SONJOY SARMA)  
JUDICIAL MEMBER

(MANISH BORAD)  
ACCOUNTANT MEMBER

Dated : 04-01-2023

14.

ITA No.102/Pat/20  
AY 2014-15 &  
CO No.01/Pat/2021  
(ITA No. 102/Pat/20)  
AY 2014-15  
Jagdish Ray

\*PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1.अपीलार्थी/Appellant/:**I.T.O, Ward 4(1), Patna**

4<sup>th</sup> Fl.,LNJP Bhawan, Fraser Road, Patna-800 001.

2. प्रत्यर्थी/Respondent/: **Jagdish Ray** S/o Late Bhagwan Das Ray, Nawada P.O Mubarakhpur, Patna-801505.

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Patna

6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar  
ITAT, Kolkata