

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH 'DB', DEHRADUN**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

**ITA Nos. 6374 & 6375/Del/2017
Asstt. Years : 2007-08 and 2009-10**

Rao Farmood, Sikanderpur Bhainswal, Pargana Bhagwanpur, Roorkee, Distt. Hardwar -247667	Vs	ACIT, Haridwar, Uttarakhand-249401
(APPELLANT)		(RESPONDENT)
PAN No. AAIPF8905D		

**Assessee by : Sh. Himanshu Sharma, CA
Revenue by : Smt. Mayank Prabha Tomar, Sr. DR**

Date of Hearing: 14.12.2022	Date of Pronouncement: 05.01.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

These appeals are filed by the assessee against the order of the Id. CIT(A)-Dehradun dated 03.07.2017 for A.Y. 2007-08 and A.Y. 2009-10. Since, the issues involved in both the appeals are similar, they were heard together and being adjudicated by a common order.

2. The assessee has raised the following grounds of appeal in ITA No. 6374/Del/2017 for Assessment Year 2007-08:

"1. That in the facts and the circumstances of the case and in law the impugned order passed under section 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals), Dehradun is based on conjectures, surmises, assuming incorrect facts and incorrect application of Law.

2. That the Ld. CIT(A), Dehradun has mainly relied on his own findings in the case of Sh. Ramesh Chand in Appeal No. 180/CIT(A)/DDN/2014-15 for A.Y 2007-08 & 209-10. However in the case of referred case of Sh. Ramesh Chand in AY 2006-07 in the Appeal No. 1/CIT(A)-I/DDN/14-15 order dated 30.03.2016 the Ld. CIT(A), Muzaffarnagar held that "There from the facts as disused above, it is held that the land sold by the appellant was not a capital asset as defined u/s 2(14) of the Act on the date of Sale and therefore, the gain from the sale of the same was not chargeable to tax. Therefore, the addition made by the AO of Rs. 54,51,665/- on this account is hereby deleted. Grounds of Appeal Nos. 1 to 5 are allowed." which has not been taken into consideration and therefore needs to be adjudicated upon.

3. That the Ld. CIT(A), Dehradun has also not considered actual cost of land purchased at the time of determining the profit.

4. That the Ld. CIT(A), Dehradun has taken the view that this agricultural land was purchased for the motive of profit without assigning any basis relating thereto and the said gain was converted into business income without there being any business activity which is against facts & law."

3. This appeal pertains to the assessee who is the co-owner of the agricultural land with share of 20%, sale of which has been treated as business income by the Ld. CIT(A).

4. The similar issue in the case of the other co-owner Sh. Ramesh Chand has been adjudicated by this Tribunal and hence the same ratio applies. For the sake of ready reference and completeness, the said order is reproduced as under:

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN
Before Sh. Amit Shukla, Judicial Member
Dr. B. R. R. Kumar, Accountant Member
ITA No. 5234/Del/2017 : Asstt. Year : 2007-08**

<i>Shri Ramesh Chand, Near Mandir Lane, Main Bazar, Bhagwanpur, Roorkee, Distt. Haridwar, Roorkee</i>	<i>Vs</i>	<i>DCIT, Circle, Haridwar</i>
<i>(APPELLANT)</i>		<i>(RESPONDENT)</i>
PAN No. AABAR9603A		

ITA No. 5235/Del/2017 : Asstt. Year : 2009-10

<i>Shri Ramesh Chand, S/o Shri Prakash Agarwal, 12/1, Main Bazar (New Mandir), Bhagwanpur, Roorkee, Distt. Haridwar, Roorkee</i>	<i>Vs</i>	<i>DCIT, Circle, Haridwar</i>
<i>(APPELLANT)</i>		<i>(RESPONDENT)</i>
PAN No. AUAPC2368R		

**Assessee by : Sh. Hemant Arora, CA
Revenue by : Sh. N. S. Jangpangi, CIT DR**

Date of Hearing: 10.11.2021	Date of Pronouncement: 10.02.2022
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ORDER

"Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A), Dehradun dated 08.05.2017.

2. Since, the issues involved in both the appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 5235/Del/2017, following grounds have been raised by the assessee:

"1. That in the facts and the circumstances of the case and in law the impugned order passed under section 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals), Dehradun is based on conjectures, surmises, assuming incorrect facts and incorrect application of Law.

2. That the assessing authority has erred on law & facts for non accepting the written submission as well as the necessary evidence filed by the appellant to support the claim during the course of assessment proceedings.

3. That the assessing authority has not considered actual cost of lands purchased at the time of determining the profit.

4. That the assessing authority has erred law & facts for not follow the findings produces as adjudicated upon by the honorable High Court / Supreme Court as provided by the appellant.

5. That the assessing authority has taken the view that this agricultural land was purchased for the motive of profit without assigning any basis relating thereto and the said gain was converted into business income without there being any business activity which is against facts & law."

4. Apropos the issue before us, the AO received information that industrial land measuring 10490 sq. mtrs. situated at village Lakeshwari, Bhagwanpur, Roorkee was sold by the assessee Sh. Ramesh Chand along with two co-owners namely Sh. Rao Farmood & Sh. Rao Mohd. Akram for a consideration of Rs. 2,30,62,500/- on 27.08.2008 to M/s Trading Engineers International Ltd., New Delhi. Out of total land sold, the assessee owned 14 share i.e. 5245 sq. mtrs. The said land measuring 5245 sq. mtr. was purchased by the assessee from Smt. Muniba W/o Late Sh. Majid R/o Village Sikandarpur Bhaishwal, Bhagwanpur on 02.09.2006, for a total consideration of Rs. 33,36,000/-. The AO was also informed that this land was declared as part of notified industrial area by the Central Excise vide notification no. 50 dated 10.06.2003. He observed that in the transfer deed dated 02.09.2006, the nature of the land sold had been mentioned as industrial land and at page No.3 of this purchase deed, it was clearly mentioned that this land was situated in the area which has been declared as notified area by the Central Excise Department. The AO also noticed that in the sale deed dated 30.08.2008, by which the assessee had sold the above land to M/s Trading Engineers International Ltd., the nature of land had been mentioned as 'industrial open land' situated in village Lakeshwari, Pargana Bhagwanpur, Tehsil Roorkee. The AO noted that it was mentioned in the sale deed, that the land sold by the assessee had been declared for industrial use as per industrial policy of State Government of Uttrakhand. From the same, he concluded that the land sold was not an agricultural but industrial land and he rejected the argument of the assessee that the land was agricultural land and brought the share of profit on the sale of land of Rs. 81,95,250/- to tax in the hand of assessee as his business income.

5. The Id. CIT(A) confirmed the addition holding that it is not the issue of capital gains but the assessee has indulged in an "adventure in the nature of trade" in the purchase and sale of agriculture land that is likely to be notified as part of the industrial zone.

6. At the outset, it was brought to our notice that the similar matter in the case of the same assessee in ITA No.

2014/Del/2008 order dated 17.09.2021 for the A.Y.2007-2008 stands adjudicated by the Co-ordinate Bench of ITAT Delhi.

7. We have perused the said order wherein it was held that,

"6. We find from the record that the land continued to be used for agricultural during the period of position by the assessee. The area has been notified as industrial estate by Department of Industrial Development, Government of Uttarakhand vide order dated 15.12.2005. The notification would not alter the character of the land and doesn't immediately renders it into a capital asset. The land was never converted into non-agricultural by resorting to specific provisions of conversion of land used by the appropriate authorities. The asset has not lost its character of being an agricultural land at the time of purchase as well as at the time of sale. The only reason revenue brought the transaction for taxation is that the assessee has earned huge profits as spelled out in the order of Id. CIT (A) disregarding the evidence decipherable from the revenue records filed before them."

8. Since, there is no material change in the facts of the case and the legal proposition of the issue, we hereby allow the appeal of the assessee on this ground.

9. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 10/02/2022.

Sd/-
(Amit Shukla)
Judicial Member
Dated: 10/02/2022

Subodh Kumar, Sr. PS

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

5. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 05/01/2023.

Sd/-
(Yogesh Kumar US)
Judicial Member

Dated: 05/01/2023

Subodh Kumar/AK, Sr. PS

Copy forwarded to:

Appellant

1. Respondent

2. CIT

3. CIT(Appeals)

4. DR: ITAT

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR