

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 8981/DEL/2019 [A.Y. 2016-17]

Shri Sobhi Lal Saini
House No. 14-D, Pocket -B
Sidhartha Extension
New Delhi

Vs.

The A.C.I.T
Circle - 61(1)
New Delhi

PAN: ATOPS 5864 R

(Applicant)

(Respondent)

Assessee By : Shri Somil Agarwal, Adv
Shri Rakesh Gupta, Adv

Department By : Ms. Kajal Singh, Sr. DR

Date of Hearing : 11.01.2023

Date of Pronouncement : 13.01.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 20, New Delhi dated 30.10.2019 pertaining to Assessment
Year 2016-17.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in law and on facts in confirming the action of the Assessing Officer in not allowing benefit of exemption claimed u/s 10(37) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] on the compulsory acquisition of agricultural land of the assessee under the Land Acquisition Act.

3. In the alternative, the assessee is aggrieved by the cost of acquisition of land taken at Rs. 400/- per sq. yard instead of Rs. 2,240/- per sq yard as on 01.04.1981, without affording adequate opportunity of hearing.

4. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer found that the assessee was in possession of a piece of land measuring 325 sq. yards in in Khasra No. 52/2 (G-09) at village Jasola which was acquired by Land Acquisition Collector in F.Y. 1995-96 vide compulsory acquisition under the provisions of the Land Acquisition Act, 1894 vide Award No. 10/95-96 Village Jasola. The assessee was holding 1/20th share in this land for which he received Rs. 23,01,667/- as compensation and Rs. 70,13,234/- as interest in F.Y. 2015-16 in lieu of compulsory

acquisition. The assessee had claimed proceeds out of compulsory acquisition of land under consideration as exempt u/s 10(37) of the Act.

5. The Assessing Officer was of the opinion that in order to claim exemption u/s 10(37) of the Act, the land must be situated in any area specified in section 2(14) (iii) of the Act. Referring to the provisions of section 2(14) (iii) of the Act, the Assessing Officer was of the opinion that the said land bearing address at Village Jasola, Delhi was situated within the jurisdiction of municipality. Therefore, as per section 2(14) (iii) of the Act, exemption u/s 10(37) of the Act is not applicable in this case.

6. The assessee was asked to show cause as to why Rs. 93,14,901/- should not be added back to the total income.

7. The assessee filed a detailed reply in support of its claim of exemption stating that the population of Village Jasola is more than 10,000 and in support, filed certificate and referred to the findings of the Land Acquisition Collector, wherein, while announcing the award, has certified that the said land under acquisition was urbanized in the

year 1966 and was declared for development area in the year 1974. It was strongly contended that the land still continued to be used as agricultural land prior to the notification. Therefore, the same being agricultural land, is eligible for exemption u/s 10(37) of the Act.

8. The Assessing Officer was not convinced with the reply of the assessee and treated the total consideration received against compulsory acquisition as income of the assessee and took sale consideration at Rs. 79,09,601/- and made addition accordingly.

9. The assessee carried the matter before the ld. CIT(A) but without any success.

10. Before us, the ld. counsel for the assessee vehemently argued that the Assessing Officer and the ld. CIT(A) have wrongly interpreted the provisions of section 2(14) (iii) of the Act and have erred in not understanding the language “not less than 10,000”. It is the say of the ld. counsel for the assessee that the Assessing Officer/CIT(A) has understood the phrase as population should be less than 10,000 whereas the actual meaning is population should be more than 10,000.

11. The ld. counsel for the assessee, referred to the provisions of section 10(37) of the Act and stated that the assessee is eligible for exemption mentioned therein.

12. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and stated that even if the Revenue Officers have misinterpreted the phrase “not less than 10,000”, then also, agricultural land should not be a land situated in an area mentioned in the provisions of section 2(14) (iii)(a) of the Act.

13. We have given thoughtful consideration to the orders of the authorities below. The relevant provisions of the Act read as under:

Section 10(37) of the Act

“10. in computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(37) in the case of an assessee, being an individual ora 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, fb) 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”

Section 2(14) (iii)(a) of the Act

“Agricultural land in India, not being land situated -

(iii)(a) In any area which is comprised within the jurisdiction of a municipality (whether known as municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand, or”

14. It is true that what is mentioned in the provisions of section 2(14) (iii) of the Act is that the population of the municipality should be more than 10,000. But what is important is the context in which clause (a) is inserted. Provisions define 'agricultural land' in India as not being a land situated in any Municipality/Cantonment having population of 10,000 and above.

15. Since the land of the assessee is situated in the municipality as per the certificate and population is more than 10,000, then it is not an agricultural land referred to in Section 10(37) of the Act for the simple reason that it is situated in a municipality/cantonment where it is not considered as agricultural land as per provisions of section 2(14) (iiia) of the Act.

16. In our considered opinion, interpretation given by the ld. counsel for the assessee is erroneous and not acceptable.

17. In the result, the appeal of the assessee in ITA No. 8981/DEL/2019 is dismissed on the ground argued before us.

The order is pronounced in the open court on 13.01.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 13th January, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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