

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No.8 & 9/Ind/2020**  
**Assessment Year: 2008-09**

ITO-2(2), Bhopal	<b>बनम/</b> Vs.	Shri Munshiram Balkishan Verma, 1, Village Nabibag, Berasia Road Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
<b>PAN: AGAPV 1694 B</b>		
Revenue by	Shri P.K. Mishra, CIT-DR	
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Date of Hearing	15.03.2023	
Date of Pronouncement	31.03.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

These are two appeals filed by revenue for Assessment-Year **["AY"]** 2008-09. ITA No. 9/Ind/2020 is a quantum-appeal filed against appeal-order dated 11.11.2019 passed by learned Commissioner of Income Tax (Appeals)-1, Bhopal **["Ld. CIT(A)"]**, which in turn arises out of assessment-order dated 30.03.2016 passed by learned ITO-2(2), Bhopal **["Ld. AO"]** u/s 147/143(3) of the Income Tax Act, 1961 **["the Act"]**. ITA No. 8/Ind/2020 is a penalty-appeal against the appeal-order dated 11.11.2019 passed by same CIT(A), which in turn arises out of penalty-order dated 30.09.2016 passed by same AO.

2. Heard the learned Representatives of both sides at length and case record perused.

3. Briefly stated facts are such that the revenue-authorities initiated an action u/s 147 by issuing a notice dated 25.03.2015 u/s 148. In response, the assessee filed return declaring a taxable income of Rs. 78,441/- and agricultural income of Rs. 50,000/-. In the return so filed, the assessee also declared long-term capital gain of Rs. 3,29,84,651/- arising from transfer of agricultural lands and claimed exemption of 3,29,84,651/- u/s 54B on the basis of new investment in another agricultural land; effectively the assessee declared taxable gain at Rs. Nil. During assessment-proceeding, when the Ld. AO confronted the assessee about capital-gain, the assessee submitted that the land sold by him was a "rural" land; the land was cultivated by him prior to sale and being used for agricultural purposes; therefore the resultant capital gain was not taxable. The assessee also emphasized the claim of exemption u/s 54B. The Ld. AO did not accept first submission of assessee i.e. the land was "rural". But, however, he allowed exemption u/s 54B but that too to the extent of Rs. 19,63,310/- only as against the exemption of Rs. 3,29,84,651/- claimed by assessee. Ultimately, Ld. AO made an addition of the capital-gain of Rs. 3,10,21,341/- [3,29,84,651 (-) 19,63,310] vide assessment-order dated 30.03.2016. Subsequently, vide penalty-order dated 30.09.2016, the Ld. AO also imposed penalty of Rs. 62,04,270/- u/s 27(1)(c) *qua* the addition so made. Being aggrieved by addition as well as penalty, the assessee filed separate appeals to the first appellate authority and succeeded. Now, the revenue has come in these appeals assailing the orders of first appellate authority.

***ITA No. 9/Ind/2020 - Quantum-appeal:***

4. We first take up this appeal. The ground raised in this appeal reads as under:

*“Whether on the facts and the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,10,21,341/- made by the AO on account of long-term capital gain”.*

5. Ld. DR representing the revenue referred to the assessment-order and argued that the AO has turned down the claim of assessee that the impugned land was “rural” since there is no evidence or proof filed by assessee to support his claim. Further, Ld. AO has also restricted the quantum of exemption u/s 54B to the investment made by assessee in new land within the prescribed time-limit of section 54B, which is very much legal in accordance with the mandate of section 54B. Ld. DR submitted that the AO has perfectly dealt with both of these aspects and thereafter taxed the capital-gain which remained taxable as per provisions of Income-tax Act. Ld. DR submitted that there is no fallacy in the action of AO; therefore his action must be upheld.

6. Replying to above, Ld. AR representing the assessee carried us to the order of first-appellate authority and read over the findings/conclusions made by Ld. CIT(A) line by line. Therefore, at first, we would like to extract the order of Ld. CIT(A) for a ready reference:

*“10.4 The appellant and the remaining coparceners carried the agricultural operations on the same land till date and the same land is identified by the revenue authorities as an agricultural land. The appellant has filed the copy of the order passed by the Tehsildar.*

*10.5 The appellant executed only the agreement for sale for the above mentioned land which is the subject matter of the present appeal and submitted the copy of the agreement to sale dated 18.04.2007 which was effective upto 31.12.07 which was subsequently extended with the supplementary agreement dated 04.12.2007 up to 31.03.2008 wherein the consideration is also increased by Rs. 16,24,000/- resulted the total consideration of Rs. 3,89,90,000/- out of which Rs. 15,00,000/- was to be paid by the purchaser on or before 31.03.2008.*

*10.6 In spite of extending the period of payment by supplementary agreement the purchaser have failed to make the payment of sale consideration within a stipulated period as the cheques amounting Rs. 1,06,55,000/- were bounced due to insufficient fund and due to this reason the value to capital gain determined on the same amount which is not yet received, however the payment in time schedule was the main condition for sale, copy of the bank*

*statement has been filed. Due to this reason it is established that during the period under consideration neither the possession of the land is transferred nor the sale deed is executed as appellant did not receive the sale consideration and the conditions mentioned in the agreement is not fulfilled and the same is cancelled and due to litigation the matter is referred to arbitration for the refund of amount.*

*10.7 As per the provisions contained in section 45(1) of the of the I.T. Act 1961 which is reproduced here for reference and kind perusal accordingly:*

*"any profit or gain arising from the transfer of a capital asset in the previous year shall save as otherwise provided in the section 54, 54B, 54D, 54E (54EA, 54EB 54F, 54G, 54H) be charged to income tax under the head Capital gain and shall be deemed to be the income of the previous year in which the transfer took place."*

*10.8 In the present case during the period under consideration, the appellant neither received the full consideration of land nor handed over the actual physical possession of the same at the same time the sale deed for the transfer land has also not executed as the buyer failed to fulfill the obligation to make the payment of balance consideration in time schedule as decided in the agreement and violated the terms accordingly there is no transfer in terms of Sec 2(47) (v) R/W Sec. 53A Transfer of Property Act 1982. This view is supported in the decision in case of General Glass Co. (P) Ltd. Vs. DCIT (2007) 108 ITJ 854 (Mum) therefore it is not justified to hold that appellant transferred the land and due to this reason appellant is not liable for any gain as there is no transfer of capital assets which is an essential condition prescribed in Sec 45(1) of the IT Act 1961. As per the land record i.e. Khasra Khatauni, B-I and P-II, the land is still in the name of the appellant in the Revenue record. As on date the land is in the possession of the appellant and he is carrying out the agriculture activity on that land.*

*10.9 The appellant is carrying out agricultural activity, therefore, the said land is an agricultural land for all purpose. Therefore, the A.O. is not justified in determining the capital gain when the said land has not transferred. Therefore, the addition made by the A.O. amounting to Rs. 3,10,21,341/- is Deleted. Therefore, appeal on these grounds are Allowed."*

7. Ld. AR submitted that the assessee entered into an agreement dated 18.04.2007 for sale of impugned land for Rs. 3,73,66,000/- (Paper Book Page No. 37 to 39) and received a sum of Rs. 1,00,000 + 36,00,000 totaling to Rs. 37,00,000 by 02.05.2007 and the buyer agreed to pay balance consideration by 31.12.2007. But, however, the buyer expressed inability to comply with terms of agreement; therefore another document dated 04.12.2007 was made by which the term was extended upto 31.03.2008 with the rider that the consideration was also increased to Rs.

3,89,90,0000/- and a revised schedule of payment was agreed. In terms of such revised schedule, though the buyer paid another sum of Rs. 5,00,000/- in cash on the very same day i.e. 04.12.2007 but however the cheque No. 098036 for Rs. 10,00,000/-, No. 612827 for Rs. 5,00,000/- and No. 612828 for Rs. 5,00,000/-, all dated 31.12.2007, given by buyer to assessee, were bounced on 07.01.2208 which is clearly evident from the entries made by bank in the pass-book with the caption "FUNDS INSUFFICIENT" and the bank has also charged Rs. 80 + 80 + 80 with the caption "OUT.CLG.RTN.CHGS.", copy of pass-book is filed before us and also supplied by Ld. AR to the office of Ld. DR on 12.12.2022 as per direction of bench. Ld. AR thus submitted that the buyer paid a miniscule amount against the consideration agreed upon and the substantial part was not paid. Ld. AR submitted that the assessee made all efforts including extending the time-limit for carrying out the agreement and effectuate the transaction of sale but it is the buyer who could not comply with the terms and ultimately the deal could not be carried out. Ld. AR emphasized several vital facts during hearing, namely (i) the assessee has not received full consideration as agreed, (ii) the possession of land is still held by assessee and not given to the buyer; (iii) the assessee is still carrying on agricultural operations over the land, (iv) the sale-deed of land is not executed uptill now, (v) the land is still in the name of assessee which is evident from statutory documents "B-I" and "P-II" issued by Revenue Department of Madhya Pradesh (Paper-Book Page No. 25 to 33). Ld. AR submitted that the CIT(A) has well-examined all these factual aspects and thereafter arrived at a reasoned conclusion that the impugned land is not transferred; hence capital gain is not taxable. There is no infirmity in the decision of Ld. CIT(A).

8. Then, for the sake of completeness, Ld. AR also submitted that though the assessee has declared the transaction of sale in the return of income but since the transfer/sale of asset could not materialize, there is no income or taxable income in the eyes of income-tax law. Ld. AR submitted that in terms of section 2(24) read with section 45(1) of the Income-tax Act, 1961,

capital gain is taxable only if “transfer” takes place. Ld. AR submitted that in the present case the taxable event is not triggered due to deficit of the element of “transfer”. On a query by bench as to why the assessee has himself offered capital gain in the return, the Ld. AR submitted that it was due to lack of technical knowledge of law. Ld. AR added that wrong declaration of income, which is not taxable at all, cannot create a tax liability on the shoulders of assessee.

9. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the facts culled out from those orders and documents placed in the Paper-Book in the light of applicable provisions of law. After a careful consideration, we find that the assessee has given several documentary evidences to prove that though there was an agreement to sell the impugned land and the assessee received part consideration, but ultimately the agreement could not be carried out for the defaults made by buyer and the assessee is still holding the title and possession of land. As submitted by Ld. AR standing at the Bar, the sale-deed is still not executed and the assessee is cultivating the land. Therefore, in these circumstances it is well proved by assessee that the impugned land has not been “transferred” and this conclusion is also accepted by Ld. CIT(A). We agree that section 2(24) read with section 45(1) of the act creates a tax liability only if there is a “transfer” of asset and not otherwise. It is also an accepted principle that tax can be levied only on real income and not on notional income. We are also conscious of the aspect that non-declaration of taxable income by an assessee, still makes the assessee liable to tax. Similarly, wrong declaration of taxable-income by an assessee, which is not taxable in the eyes of law, cannot make the assessee liable to taxation. Therefore, we find merit in the submission of Ld. AR that mere declaration of transaction/income in the return of income cannot make the assessee liable to taxation.

10. In view of above discussions and for the reasons stated therein, we are of the considered view that the Ld. CIT(A) has rightly held that the capital gain taxed by Ld. AO was in fact not taxable under the provisions of Income-tax Act, 1961 as the underlying land could not have been transferred. Therefore, we approve the decision of Ld. CIT(A). The revenue fails in this appeal.

**ITA No. 8/Ind/2020 - Penalty-appeal:**

11. Now we take up penalty-appeal. The ground raised in this appeal reads as under:

*“Whether on the facts and the circumstances of the case, the Ld. CIT(A) was justified in deleting the penalty u/s 271(1)(c) of Rs. 62,04,270/- made by the AO on concealment of long term capital gain.”*

12. We find that the Ld. CIT(A) has deleted the penalty imposed by AO for the reason that the quantum-addition itself, which was the very basis of penalty, got deleted; hence the penalty can't survive. As can be seen from foregoing discussion that we have approved the action of Ld. CIT(A) in deleting the quantum-addition. Therefore, the penalty can't survive even as of now. Being so, we approve the order of Ld. CIT(A) whereby he has deleted the penalty. The revenue fails in this appeal too.

**13. Resultantly, both of these appeals of Revenue are dismissed.**

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 31/03/2023.</i>
<i>Order pronounced in the open court on ...../...../2023.</i>

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 31.03.2023  
Patel/Sr. PS

- Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	