

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T.A.No.81/NAG./2020
Assessment Year 2012-2013

The Income Tax Officer, Ward-3(4), Room No.6, Ground Floor, Saraf Chambers, Sadar, Nagpur. PIN – 440 001 Maharashtra.	vs.	Shri Dadarao Govindrao Dhabre, 139, Near Hanuman Mandir, Hudkeshwar Road, Nagpur – 440 024 PAN ANEPD6559N
(Appellant)		(Respondent)

For Revenue :	Shri Vijay Kumar Subrahmanyam, Sr. DR
For Assessee :	Smt. Veena Agarwal

Date of Hearing :	26.12.2023
Date of Pronouncement :	27.12.2023

ORDER

PER SATBEER SINGH GODARA, J.M.

This Revenue's appeal for assessment year 2012-2013, arise against the CIT(A)-2, Nagpur, Nagpur's order in Appeal No.CIT(A)-2/10048/2018-19, dated 20.03.2020, involving proceedings u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue raises the following substantive grounds in the instant appeal :

“1. *Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the impugned addition made by the A.O. on account of long term capital gain.*

2. *Any other ground that may be raised during the proceedings.”*

3. Suffice to say, the sole substantive issue that arises for our apt adjudication in the instant appeal is that of correctness of the CIT(A)'s impugned action reversing the assessment findings adding the alleged long term capital gains in assessee's hands to the tune of Rs.3,48,85,210/-. We make it clear that there is no dispute about the assessee having sold/transferred the relevant capital asset i.e., “parcel of agricultural land” in Bhogwatdarkshetra 1, Patwari Halka no.38A, admeasuring 2.38 Hecter Mouza-Vela Hari, Taluka and Dist. Nagpur on 20.12.2011. The Revenue's case before us in light of the assessment discussion is that the assessee's above stated land indeed formed as “capital asset” within the meaning of sec.2(14) of the Act attracting assessment of consequential capital gains on account of its sale/transfer.

4. The assessee on the other hand relies on its alleged explanation before the Assessing Officer that the land in question was very well beyond the statutory distance of 8 KM from the nearest municipal limits. Learned counsel has also

reiterated the very fact on the ground that the assessee had duly placed on record the revenue authorities' certificate contesting the Assessing Officer's proposal.

5. We have given our thoughtful consideration to the above stated sole issue and note that the CIT(A) has reversed the Assessing Officer's action as under :

5.1.2 Brief facts of the case as they emanate from the impugned Assessment Order dated 27-12-2017 and the 'Statement of Facts' & Grounds filed along with the Appeal Memo in Form no.. 35 as well as the written submission in 5 pages (as referred in para no. 4 *supra* are as under:

- (i) The appellant is a Senior Citizen and even during the year he was a retired Government employee (an employee of CPWD) enjoying pension income from its ex employer. He was also having some (during the year shown Rs. 1,28,588) interest income assessable under the head '**Income from Other Sources**'
- (ii) During the year, the Appellant had sold agricultural land at his Village called Velahari vide sale deed dated 20/12/2011 for Rs. 2,03,27,500/-.
- (iii) Notices u/s 148 & u/s 142(1) of the Act were issued to the Appellant and the impugned Assessment Order dated 27-12-2017 was passed u/s 143(3) r.w.s. 147 of the Act treating the sold land as **Capital Asset** and the gain out of the sale consideration as Taxable Income assessable under the head '**Capital Gain**' in the hands of the Appellant raising a demand of Rs. 1,21,43,700.
- (iv) Agreement for the sale of land was executed in the year 2007 and the sale deed was executed in 2011. (In fact, out of total consideration of Rs. 2,03,27,500, major part i.e. Rs. 1,86,27,500 was received from the purchaser, one Shri Noor Mohammad Zafar Ali Gilani on different dates in same F.Y. i.e. F.Y. 2007-08.
- (v) Therefore, the transfer [as defined in Section 2(47) of the Act] of the capital asset (if any) took place only in A.Y. 2008-09 and not in the year under consideration i.e. A.Y. 2012-13 as was assessed in the impugned order by the Ld. A.O.
- (vi) The land sold being agricultural in nature and at a distance more than 8 kilometres, it was argued that, the

impugned land was not at all a Capital Asset. the impugned addition should not have been made.

5.1.3 In the light of the above discussion and after duly considering the facts and circumstances of the case (as enumerated above in para 5.1 of this order) it is found that the impugned addition is not at all sustainable in the facts of the case itself. More so, the following facts, as flowing from the written submission dated 13-03-2020 and the related arguments made by the Ld. Counsel of the appellant are also in favour of the appellant. These are quoted in para no. 5.1.4 below.

5.1.4 From the written submission dated 13-03-2020, following is quoted for ready reference:-

“Distance from city Nagpur to Vela Harish Chandra is 14.9 km, attached map for more clarity of things. W.E.F. from 14-05-2013 Hudkeshwar-Narsala villages now part of city limits of Nagpur, A total of 972.82 hectare, including 465.79 hectare of Narsala and 456.69 hectare of Hudkeshwar have been included NMC's limit.”

“U/s 2(14) at the outset, it is submitted that the Assessing Officer is not considering the fact that the nature sold of land is totally agriculture, as it is situated at distance more than 8 km from the city limits by road. That on facts and in circumstances of the case, the learned Assessing Officer erred in treating agriculture land as capital asset, sale of which is taxed as long term capital asset.”

“U/s 50C Assessing Officer in considering the valuation of the property at Rs. 35116000/- stamp duty valuation of the year 2011, whereas the agreement to sale the land was done in the year 2007 when substantial amount was received. The AO should have considered the valuation of 2007 for taxability purpose.”

“u/s 2(14) That on facts and in circumstances of the case, it is clear that the land is situated at a distance of more than 8 km by road in the year 2007 when the agreement to sale was executed. The certificate as obtained by the AO from NMRDA giving a distance of 3 km is itself disputed considering the fact that NMRDA was itself non existant in 2007, and the rapid development of the region in last 10 years since 2007, Even the khasara number was wrongly considered.”

5.1.5 Thus in view of the entire discussion made as above from Para No 5.1 to 5.14 ,it is clear that the appellant is entitled to get relief . Therefore, Ld. A.O. is directed to delete the entire addition i.e. Rs 3,48,85,210 assessed as Long Term Capital Gain and thus Ground no. 1 to 4 are allowed.

5.1. It is in this factual backdrop we note that neither the Assessing Officer has been able to exactly calculate the distance of the assessee's land sold going by road distance from the nearest municipal limits nor the latter himself could file any evidence apart from some patwari's certificate which cannot be taken as authentic in absence of any such statutory authority vested in him. Faced with the situation, we are of the

view that the instant issue deserves to be re-decided by the learned CIT(A) after getting the necessary remand report from the field authorities clarifying the exact distance between assessee's land sold vis-à-vis the nearest municipal limits, as they existed on the date of the transfer of capital asset i.e., parcel of agricultural land, as per law. Needful may be done within three effective opportunities of hearing. We order accordingly.

All other pleadings stand render academic at this stage.

6. This Revenue's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 27.12.2023.

Sd/-
[INTURI RAMA RAO]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 27th December, 2023

VBP/-
Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-2, 215, Aayakar Bhavan, Telangkhedi Road, Civil Lines, Nagpur – 440 001.
4.	The CIT, Nagpur concerned.
4.	D.R. ITAT, Nagpur Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.