

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1717/DEL/2023
Assessment year: 2021-22**

DCIT, Central Circle-2, Noida.	<u>Vs</u>	Alok Vatsa, C-32, Sector-33, Noida-201301 PAN: ABZPV 9570 C
APPELLANT		RESPONDENT
Assessee represented by	Shri Vineet Garg, Adv.	
Department represented by	Shri Kanv Bali, Sr. DR	
Date of hearing	29.07.2024	
Date of pronouncement	29.07.2024	

ORDER

PER SAKTIJIT DEY, VP:

This is an appeal by the Revenue against order dated 21.03.2023 of learned Commissioner of Income-tax (Appeals), Kanpur, pertaining to assessment year 2021-22.

2. In ground no. 1 Department has challenged deletion of addition of Rs. 99,07,105/- as short term capital gain. Briefly, the facts are, the assessee is a

resident individual. For the assessment year under dispute, the assessee had filed his return of income on 19.10.2021 declaring income of Rs. 2,91,570/-. A search and seizure operation u/s 132A of the Act was conducted in case of the assessee on 18.02.2022. Due to such search & seizure operation, assessee's case was picked up for complete scrutiny. In course of assessment proceedings the Assessing Officer called upon the assessee to justify his claim of non-taxability of capital gain from alleged sale of agricultural land amounting to Rs. 99,07,105/-. In response to the query raised by the Assessing Officer the assessee furnished ledger copy, bank statement etc. After verifying the evidences furnished by the assessee the assessing Officer observed that all the receipts appearing in the ledger are not reflected in the bank account. He further noticed that the assessee had not declared sale of land and corresponding capital gain in his return of income. Therefore, he issued a show cause notice to the assessee seeking explanation as to why the amount received towards sale of land should not be treated as income from capital gain. Though, the assessee furnished his explanation, opposing the proposed addition, however, rejecting assessee's explanation the Assessing Officer added back the amount of Rs. 99,07,105/- as short term capital gain. Assessee contested the aforesaid addition before learned First Appellate Authority. On appreciation of submissions made and evidences furnished, learned First Appellate Authority, being satisfied that the land sold being a rural agricultural land does not fall under the definition of

capital asset, held that the sale consideration received by the assessee is not subject to capital gain. Accordingly, he deleted the addition made by the Assessing Officer.

3. Before us, learned Departmental Representative submitted that before the Assessing Officer the assessee did not furnish any evidence to demonstrate that the land sold is an agricultural land. He submitted, before the learned First Appellate Authority the assessee furnished additional evidences, which were taken on record by him and based on such evidence addition was deleted. He submitted, since the Assessing Officer never had an opportunity to examine such evidences, the issue may be restored back to the Assessing Officer.

4. Learned counsel appearing for the assessee strongly relied upon the observations of the First Appellate Authority.

5. Having considered rival submissions we find, the assessee had claimed before the Assessing Officer that the capital gain derived from sale of land is not taxable as the land in question is an agricultural land, hence cannot be treated as capital asset u/s 2(14) of the Act. To establish such fact, the assessee had furnished ledger copy, bank account statement, copies of sale-deed etc. Even before learned First Appellate Authority the assessee had furnished a certificate issued by Aanchal Adhikari, Dumra, certifying the land sold to be an agricultural land. From

the said certificate it is observed that the land is situated in mouja Punaura, thana and district Sitamarhi, Bihar. It is also appearing from the certificate that location of areal distance of the land is beyond 8 kms. from the nearest municipality. It is evident, appreciating the evidences brought on record, learned First Appellate Authority has recorded a factual finding that the land sold satisfies the conditions of agricultural land in terms of section 2(14) of the Act. No contrary evidence has been brought on record by the Department to controvert the finding of learned First Appellate Authority.

5.1 As far as the contention of learned Departmental Representative that the Assessing Officer should have been given an opportunity to verify the evidence himself, we observe, powers of learned First Appellate Authority is co-terminus with the Assessing Officer. Learned First Appellate Authority can not only examine what the Assessing Officer can examine but he can even make fresh inquiries. Therefore, there is no necessity for him to restore the matter to the Assessing Officer. In any case of the matter, Department has not raised any specific ground alleging violation of Rule 46A. In these circumstances, we do not find any deficiency in the decision of learned First Appellate Authority. Ground is dismissed.

6. In ground no. 2 the Revenue has challenged the deletion of addition of Rs. 42,04,985/- u/s 68 of the Act. Briefly, the facts are, in course of assessment proceedings, while verifying the ledger account of the assessee, the Assessing Officer noticed that the assessee has shown receipt of Rs. 42,04,985/- as advance towards sale of agricultural land, whereas, the assessee could not furnish copy of any agreement or confirmation of the party to establish the source of such receipt. Accordingly, the Assessing Officer added back the amount of Rs. 42,04,985/- to the income of the assessee. Assessee contested the aforesaid addition before learned First Appellate Authority. On appreciation of submissions made and evidences furnished, learned First Appellate Authority deleted the addition.

7. We have considered rival submissions and perused materials on record. Undoubtedly, before the Assessing Officer the assessee had categorically stated that the amount in dispute was received as advance for sale of land. Before the First Appellate Authority the assessee had furnished details of persons from whom the amount in dispute was received. The assessee had further stated that the sale transaction got fructified in the subsequent assessment year and he also furnished a copy of the sale-deed and bank statement in support. Upon factual verification of assessee's claim, learned First Appellate Authority was convinced with the assessee's claim. No contrary evidence has been brought on record by the Department to controvert the factual finding of learned First Appellate Authority.

8. Though, learned Departmental Representative has submitted before us that learned Commissioner (Appeals) should not have deleted the addition entertaining fresh evidence without providing opportunity of being heard to the Assessing Officer, however, we are not impressed due to following reasons -firstly, the powers of learned First Appellate Authority are co-terminus with the Assessing Officer. Therefore, he can very well examine the evidence furnished by the assessee; and, secondly the Department has not raised any specific ground alleging violation of Rule 46A. Under these circumstances, we uphold the decision of learned First Appellate Authority by dismissing the ground.

9. In the result, appeal is dismissed.

Order pronounced in open court on 29.07.2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Dated:29.07.2024.

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR,
ITAT NEW DELHI

