

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI
BEFORE MS MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 2161/DEL/2024

Assessment Year: 2020-21

SHRI PRABHAKAR CHAUDHARY, C/O C S ANAND, ADVOCATE, 104, PANKAJ TOWER,10, LSC, SAVITA VIHAR, DELHI-110092	Vs.	ITO, GHAZIABAD WARD-2(2)(1),
PAN :AVLPC0568P		
(Appellant)		(Respondent)

Appellant by	Shri C S Anand, Advocate and Shri Sarthak Upadhyay, Advocate
Department by	Shri Sanjay Kumar, Sr. DR

Date of hearing	23.10.2024
Date of pronouncement	30.10.2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

1. The instant appeal filed by the appellant is directed against the order dated 30.03.2024 passed by the CIT(A) National Faceless Appeal Centre(NFAC), New Delhi arising out of the order dated 27.09.2022 passed by the Income Tax Officer, Ward-2(2)(1),

Ghaziabad, under Section 143(3) of the Income Tax Act, 1961 for Assessment Year 2020-21.

2. The appellant, an individual, filed its return of income for the year under consideration on 11.11.2020 declaring income of Rs.3,33,430/- and Agricultural income of Rs.36,78,000/-. The gross agricultural income declared was Rs.12,23,002/-, and claimed expenditure of Rs.5,42,500/- shown net agricultural income of Rs.6,80,502/-. In the revised computation of total income, the appellant declared Agricultural income of Rs.14,52,000/- and also declared capital gain on transfer of Agricultural land of Rs.43,94,924/- and claimed exemption under Section 10(37) of the Act. Show cause notice dated 13.09.2022 proposing addition of Rs. 43,94,924/- treating the same as income from other sources. In reply thereto the details of sale of six Agricultural land along with copy of sale deeds were duly submitted. The appellant claimed those land as ancestral land. The details of ancestral Agricultural land since were not matching with the land records prepared by the Revenue and Land Reform Department, Bihar, the Learned AO came to a finding that the sale value received of Rs.41,65,000/- is nothing but income derived from the other sources and accordingly

exemption claimed on Agricultural land in the original return of income is Rs.36,78,000/- and the expenses of Rs.4,87,000/- were added to the total income of the appellant treating the same as income from other sources. In fact, the Assessing Officer came to a finding that the land sold by the appellant is not his ancestral land as claimed and considered the receipt on sale of six pieces of land as income from other sources.

3. As contended by the Ld. Assessing Officer that he failed to find the respective Khasra Nos. 2617, 2696, 2792 and 2734 in the record of rights issued by the Revenue and Land Reforms Department, Bihar as placed by the appellant is a wrong finding of fact as brought to the notice of Ld. CIT(A) by the appellant which was also accepted. Further that, upon careful consideration of the evidences submitted by the appellant it was held by the Ld. CIT(A) that the land sold by the appellant was owned by him.

4. However, the Learned CIT(A) was of the opinion that the said consideration received by the appellant should be taxed under the head “long term capital gain” and not as “income from other sources”.

5. Heard the rival submissions made by the respective parties and further perused the relevant materials available on record.

6. The case of the appellant before us is this that the property in question situated in Village Kaudia Raipur, population whereof as per last population census 2011 is 13859 i.e. more than 10,000 but not exceeding one lakh, the aerial distance is 11.19 km from the local limit from the municipality, documents in support of the same has been annexed to the Paper Book at page 1 & 2. Similarly, the other rural agricultural land located at Village-Gauri, the population whereof is 6773 as per last population census 2011 i.e. less than ten thousand; the aerial distance from the local municipality is 10.15 km. Documents in support of the same is annexed at page 3 & 4 of the Paper Book filed by the appellant before us.

7. In terms of the definition of “Capital Asset” as per Section 2(14) of the Act, these lands are admittedly rural agricultural land particularly in view of Section 2(14)(b)(iii) of the Act and not a capital asset and thus cannot be considered for capital gains, as the case made out by the appellant. Further that, the sale deeds executed by the appellant in respect of the land in question for the year under consideration were ancestral property which is

evident from the certificate issued by Mukhia of Gram Panchayat Raj-Kaudia, Raipur, Thana-Nanpur, District-Sitamarhi, Bihar being Annexure-7 appearing at page 31 of the Paper Book, the certificate issued by the Sarpanch Gram-Kutchari, Kauria, Raipur, Nanpur, District-Sitamarhi, Bihar appearing being Annexure-8 of page-32 of the paper book filed by the appellant before us specifying *Vansh Vivrani*. The appellant have relied upon by the documents issued by the Revenue Department prior in February, 1968 showing the land owner as Shri Amiri Lal Choudhary in respect of various Khasra number including the Khasra number specifically mentioned in the sale deeds executed by the appellant during the year under consideration particularly appearing at page 5-6 of the Paper Book filed before us. Relevant to mention that those documents have been filed before us as additional evidences, for the sake of adjudication of the matter are being admitted by the Bench. Moreso, the Learned DR has not raised any objection to such admission of additional evidences filed before us by the appellant.

8. We further find that the Ld. CIT(A) referred the report dated 24.09.2022 issued by the Circle Officer , Nanpur, District Sitamarhi, Bihar, stating the land sold were for residential

purposes. As such report was prepared on spot verification only in the year 2022. However, by issuing further two letters dated 10.06.2024 one in respect of Raipur land and the other of Gauri land, the Circle Officer clarified that those land was previously used for agricultural purposes and were cultivable. Further that the distance between the disputed land and the nearest Nagar Panchayat “Janakpur” was 12 kms. The mutation record of those lands clearly specifies the current status as Krishi. All the series of documents mentioned hereinabove are annexed to the paper book filed before us contents whereof have not been able to be controverted by the Ld. DR. Relying upon these documents the Ld. AR argued that since the agricultural land mentioned hereinabove which was sold during the year under consideration were admittedly ancestral, the taxability of the same could not have been considered in the hands of the appellant in his individual capacity, if, at all, the same could have been taxed in the hands of HUF. Having regard to this particular aspect of the matter the impugned addition in the hands of the appellant in his individual capacity is liable to be deleted as was his ultimate argument advanced before us.

9. Considering the details of the land sold by the appellant as mentioned hereinabove which is also supported by the documentary evidence appearing at pages 1,2,3, and 4 of the Paper Book filed before us since coming under the purview of rural agricultural land under Section 2(14) of the Act, this cannot be said to be a capital asset. Further that having regard to the status of property being a joint agricultural land as it is evident from the documents annexed at page 5 & 6 of the Paper Book filed before us which seems to be genuine, alternatively taxability of the same cannot be made solely in the hands of the appellant in his individual capacity as argued by the Learned Counsel is found to be acceptable. Further that the case made out by the Learned AR since that the land is coming under the purview of rural agricultural land under Section2(14) of the Act being not a capital asset, question of levying tax on account of capital gain does not and cannot arise at all which is also found to be acceptable has not been able to be objected by the Learned DR.

10. Thus, having heard the Learned Counsels appearing for the parties and having regard to the facts and circumstances of the matter particularly the land since coming under the purview of Section 2(14) of the Act not being a capital asset the order

passed by the Learned CIT(A) confirming the addition by changing the head from “income from other sources” to “Capital Gain” is found to be devoid of any merit, not sustainable in the eyes of law and thus quashed. In the result, the addition made by the authorities below is deleted.

11. The next relevant ground of appeal relating to income from fisheries addition whereof to the tune of Rs. 7,78,000/- has been challenged before us.

12. During the course of hearing through video conferencing, the learned Commissioner Appeals had asked the appellant as to why the income from sale of fisheries pond shown at Rs.7,78,000/- be not added to the total income.

13. In response to such query the appellant had agreed to offer income of Rs.1,55,600/- (being 20% OF Rs.7,78,000/- but the CIT(A) added the entire income of the appellant.

14. At the time of hearing of the instant appeal, the Ld. AR further agreed to the said proposition as already made before the Ld. CIT(A) and having regard to the business of the appellant the same has not been controverted by the Ld. DR.

15. Hence, the addition is restricted to 20% of the total income from fisheries pond of Rs.7,78,000/-. The Ld. AO is directed to grant relief accordingly.

16. The appellant's appeal is thus, allowed.

Order pronounced in the open court on 30th October, 2024.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

Dated: 30th October,2024

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Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi