

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

**BEFORE SH.M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.9864/Del/2019
Assessment Year: 2013-14

Samsher Singh House No.11, Garhi Alawalpur, Dharuhera, Rewari PAN No.EOPPS5450P	Vs.	ITO Ward-3 Haryana
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Rajiv Saxena, Advocate Ms. Sumangla Saxena, Advocate
Respondent by	Sh. V.K. Dubey, Sr. DR.

Date of hearing:	15/10/2024
Date of Pronouncement:	28/11/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Rohtak [hereinafter referred to as "CIT(A)"] vide order dated 16.10.2019 pertaining to A.Y. 2013-14 pertaining to arises out of the assessment order dated 30.12.2016 under section 147/143(3) of the Income Tax Act 1961 [hereinafter referred as 'the Act'].

2. The assessee has raised following grounds of appeal :-
1. *That the Learned Assessing Authority / CIT(A) grossly erred by addition on account of disallowance of deduction U/s. 54B by making re-investment by assessee in his wife and daughter and daughter-in-law's name by following the judgment of decision of Punjab and Haryana High Court, in the case of CIT vs. Dinesh Verma and kamal Kant Kambooj V/s. ITO the contention of the assessee regarding claim of exemption U/s. 54B is rejected.*
 2. *That the Learned Assessing Authority/ CIT(A) further erred by framing assessment on basis of conjectures and surmises.*
 3. *That the Learned Assessing Authority / CIT(A) further erred by charging interest wrongly U/s. 234A and 234B of IT Act, 1961.*
 4. *That the Learned Assessing Authority/ CIT(A) further erred by initiating penalty proceedings u/s. 271 (1)(c) of the Act.*
3. The assessee has raised the additional grounds of appeal :-
5. *That notice u/s. 148 viz a viz assessment made u/s. 147 of IT Act are bad in law and so assessment made is required to be quashed. In proceedings for such assessment the assessing officer has neither made any enquiry himself nor from the respective government*

authorities to treat such sale of agriculture land as taxable ignoring notification dated 06.01.1994 quoted by him in the reasons recorded in which reference of Daruhera of District Mahendergarh was mentioned but not Dharuhera under District Rewari.

6. That agriculture land owned by the assessee in municipality Rewari is outside the purview of Income-tax Act 1961 as per notification brought by CBDT dated 06.01.1994 bearing F.No.164/3/87/ITAT being more than 22 kms from it falling in the state mentioned in column 2 and municipality as mentioned in columns 3 i.e. Rewari at Sr. No.49.

4. The brief facts of the case are that the assessee is an agriculturalist and has ancestral land at village Garhi Alawarpur, Tehsil Dharuhera, District Rewari. The assessee has not filed his return of income for A.Y.2013-14. A notice u/s 148 of the Act was issued on 21-03-2016 after taking the approval of the JCIT Rewari. In response of the notice the assessee has filed his return of income on 10-06-2016 declaring income nil and agricultural income Rs. 30210/-. A notice u/s 143(2) of the Act was issued and served upon the assessee. Again notice u/s 142(2) of the Act was issued with questionnaire. The assessment proceeding was attended by the ld AR. According to

Assessing Officer it was noticed that assessee with other co-sharers had sold out a land situated at Garhi Alwalpur Dharuhera Rewari for Rs 7,18,03,125/- vide sale deed no 2145 dated 12-02-2013 where in the assessee has 0.333 share which worked out to Rs.2,39,34,375/-. The land in question is situated within 5 KM from the municipality limits of Dharuhera municipality thus the land covered in the definition of capital assets. The assessing officer after giving the deduction u/s 54 F of the Act has made the addition of Rs 1,87,59,375/-.

5. Aggrieved by the order of the assessing officer the assessee has filed the appeal before the Ld CIT(A) who vide his order dated 16-10-2019 partly allowed the appeal against which the assessee is in appeal before the Tribunal.

6. The ld counsel has submitted that the agriculture land being state subject was always outside the purview of any tax by central government and so the legislature brought notification dated 06-01-1994 only to such land which have changed the nature of agriculture on account of proximity with the urban development. The land in question was sold in the FY 2012-13 relevant A.Y.2013-14 so the notification dated 06-01-1994 is applicable in the instant case. He has further submitted that the sold land by the assessee is situated in village

GarhiAlawalpur, Tehsil Dearuhera, District Rewari is outside the scope of Capital Asset because the same was more than 22 KMS from the Municipality Rewardi. He has further submitted that the case of the assessee is squarely covered of judgment of the coordinate Delhi Bench in the case ITA No 115/Del/2019 Amar Singh vs ITO. In the aforesaid judgment the coordinate bench held us under :-

14. The provisions relating to taxability of the receipts on agriculture land are as under:

Section 2 (14)

"(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

[(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—

(a) jewellery;

(b) archaeological collections;

(c) drawings;

(d) paintings;

(e) sculptures; or

(f) any work of art.

Explanation.—For the purposes of this sub-clause, "jewellery" includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;]

[(iii) agricultural land in India, not being land situate—

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a 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 according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette47;]”

15. In accordance with the provisions of Section 2(14), the notification dated 06.01.1994 has been issued wherein the Municipalities and Cantonment Boards have been notified. The said notification is reproduced as under:

*INCOME-TAX ACT, 1961: NOTIFICATION UNDER SECTION 2(1A)(C),
PROVISO, CLAUSE (II)(B) AND SECTION 2(14)(III)(B) : URBANISATION
OF AREAS*

Notification No. [SO 9447] (File No. 164/3/87-ITA.I)], dated 6-1-1994

*Whereas a draft notification was published by the Central Government in exercise of the powers conferred by **item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A), and item (b) of sub-clause (iii) of clause (14), of section 2 of the Income-tax Act, 1961 (43 of 1961)**, in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii), dated February 13, 1991, under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. S.O. 91(E), dated February 8, 1991, for specifying certain areas for the purposes of the said clauses and objections and suggestions were invited from the public within a period of 45 days from the date the copies of the Gazette of India containing such notification became available to the public;*

And whereas copies of the said Gazette were made available to the public on February 13, 1991;

And whereas the objections and suggestions received from the public on the said draft notification have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) of sub-clause (iii) of clause (14) of section 2 of the Income-tax Act, 1961 (43 of 1961), and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) No. S.O. 77(E), dated February 6, 1973, the Central Government having regard to the extent of, and scope for urbanization of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the schedule hereto annexed

and falling outside the local limits of municipality or cantonment board, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above mentioned provision of the Income-tax Act, 1961 (43 of 1961).

9.	Haryana	1.Ambala Cantonment Board/Municipal Committee	Areas up to a distance of 8 kms from the outer limits in all directions.
		2. Ambala City	Areas up to a distance of 8 kms from the municipal limits in all directions.
		3. Assandh (Distt. Karnal)	Areas up to a distance of 2 kms from the municipal limits in all directions.
		4. Bahadurgarh (Distt. Rohtak)	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		5. Ballabhgarh (Distt. Faridabad)	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		6. Banvala (Distt. Hissar)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		7. Bawani Khera (Distt. Bhiwani)	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		8. Bhiwani	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		9. Charkhi Dadri (Distt. Bhiwani)	Areas up to a distance of 2 kms. from the municipal limits in all directions
		10. Chika (Gulla) (Distt. Kurukshetra)	Areas up to a distance of 2 Kms. from the municipal limits in all directions.
		11. Debawali (Distt. Mohindergarh)	Areas up to a distance of 5 kms. from the municipal limits in all directions
		12. Daruhera (Distt. Mohindergarh)	Areas up to a distance of 5 kms. from the municipal committee in all directions
		13. Ellanbad (Distt. Sirsa)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		14. Faridabad	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		15. Fatehabad (Distt. Hissar)	Areas up to a distance of 5 kms. from the municipal limits in all directions.

		16. Ferozpur Jhirka (Distt. Gurgaon)	Areas up to a distance of 2 kms, from the municipal limits in all directions.
		17. Ganaur (Distt. Sonapat)	Areas up to a distance of 2 from the municipal limits in all directions.
		18. Gharaunda (Distt. Karnal)	Areas up so a distance of 2 kms. from the municipal limits in all directions.
		19. Gohana (Distt. Sonapat)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		20. Gurgaon	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		21. Hansi (Distt. Hissar)	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		22. Hissar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		23. Hodal (Distt. Faridabad)	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		24. Indri (DisU. Karnal)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		25. Jhajjar (Distt. Rohtak)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		26. Jind	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		27. Julaha (Distt. Jind)	Areas up to a distance of 2 kms. from the municipal limits in all directions
		28. Kaithal (Distt. Kurukshetra)	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		29. Kalanaur (Distt. Rohtak)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		30. Kalka (Distt. Ambala)	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		31. Kallanwali (Distt. Sirsa)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		32. Karnal	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		33. Kharkhauoda (Distt. Sonapat)	Areas up to a distance of 2 kms. from the municipal limits in all directions.

		34. Thanesar (Distt. Kurukshetra)	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		35. Ladwa (Distt.	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		36. Meham (Distt. Rohtak)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		37 Mohindergarh	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		38. Naraingarh (Distt. Ambala)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		39. Narnaul (Distt. Mohindergarh)	Areas upto a distance of 2 kms. from the municipal limits in all directions.
		40. Narnaund (Distt. Hissar)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		41. Narvana (Distt. Jind)	Areas up to a distance of 2. kms from the municipal limits in all directions.
		42. Nilokheri (Distt. Karnal)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		43. Palwal (Distt. Faridabad)	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		44. Panchkula	Areas up to a distance of 5 kms. (Distt. Ambala) from the municipal limits in all directions.
		45. Panjpal (Distt. Karnal)	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		46. Pataudi (Distt. Gurgaon)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		47. Pehowa (Distt. Kurukshetra)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		48. Padaur (Distt. Yamunanagar)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		49. Rewadi	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		50. Rohtak	Areas up to a distance of 8 kms. From the municipal limits in all directions.
		51. Sidhaure (Distt. Ambala)	Areas tip to a distance of 2 kms. from the municipal limit's in all directions.

		52. Safidon (Distt. Jind)	(a) Areas falling within 2 kms. on either side of Safidon Jind Road up to a distance of 5 kms. from the municipal limits on that road. (b) Areas (other than in (a) above) up to a distance of 2 kms. from the municipal limits in all directions.
		53. Samalkha (Distt. Karnal)	Areas up to a distance of 5 kms from the municipal limits in all directions.
		54. Shahabad Markanda (Distt. Kurukshetra)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		55. Sirsa	Areas up to a distance of 5 kms. from the municipal limits in nil directions.
		56. Sohana (Distt. Gurgaon)	Areas up to a distance of 5 kms. from the municipal limits in all directions.
		57. Sonapat	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		58. Taraori (Distt. Karnal)	Areas up to a distance of 2 kms. from the municipal limits in directions.
		59. Tauru (Distt. Gurgaon)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		60. Tohana (Distt. Hissar)	Areas up to a distance of 2 kms. from the municipal limits in all directions.
		61. Yamunanagar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		62. Jagadhari (Distt. Yamunanagar)	Areas tip to a distance of 8 kms. from the municipal limits in all directions.

.....

2. This notification shall have effect on and from the date of its publication in the Official Gazette.

Explanation 1. (1) In this notification, "Municipality" shall mean any areas which is comprised within the jurisdiction of a municipality, (whether known as a municipality, municipal corporation, notified areas committee, town areas committee, town committee or by any other name) which has a population of not less than ten thousand according to the last preceding

census of which the relevant figures have been published before the first day of the previous year.

(2) The reference to municipal limits or the limit of Cantonment Board in the schedule to this notification is to the limits as existing on the date on which the limits as existing on the date on which the notification is published in the Official Gazette."

16. On going through the notification, we find that in the State of Haryana mentioned at Serial No. 9 in the Column 1, the Municipality of "Daruhera" of District Mohindergarh has been mentioned at Serial No. 12 in Column 3.

17. The land in question is undisputedly situated in the village "Garhi Alawalpur" situated in the District Rewari which is within 5 KMs of the present Municipality "Dharuhera". We find that this Municipality has not been mentioned in the said notification. The Revenue could not bring to our notice any other notification issued wherein the Municipality "Dharuhera" situated in District Rewari is mentioned for the purpose of provisions of Section 2(14) of the Income Tax Act, 1961.

18. Further, we have also gone through the details from the Government of Haryana with regard to Municipalities situated in the District Rewari and we find that the District Rewari has three Municipalities namely, Dharuhera, Bawal and Rewari as notified Municipalities as on today (Annexure-A). We have also gone through the Municipalities situated in District

"Mahendragarh" (which was typed as "Mohindergarh" in the said notification) (Annexure-B). The Municipalities are Ateli, Kanina, Nangal Choudhary, Narnaul and Mahendragarh. We have also gone through the entire list of Municipal Committees/Municipal Council in the State of Haryana and we could not find "Daruhara" as notified Municipal Committee in the District Mahendragarh (Annexure-C). We have gone further to verify whether there is any village/municipality by name "Daruhara" in the entire district of Mahendragarh from the Government of Haryana public document (Annexure-D). We could find none. We have also gone through the list of PIOs as per the Directorate of Urban Local Bodies to verify whether any local body in the name of "Daruhara" (Annexure-E). We could find none. Hence, we apprehend that an error might have crept in the notification dated 06.01.1994. The concerned authorities may look into this issue. Since, the Tribunal cannot venture to alter/modify the notification, the issue is being adjudicated as per the notification in force.

19. On going through the entire facts, it can be held that "Dharuhara" of District Rewari do not find place in the notification issued consequence to the provisions of Section 2(14) of the Income Tax Act, 1961. Hence, the land which is situated at Garhi Alawalpur cannot be treated as the capital asset, ergo the proceeds are not liable to tax under the head "Long Term Capital Gains".

20. We are conscious of the fact that the amendment in the said Section has been brought w.e.f. 01.04.2014 and the land in question before us was sold on 21.03.2013 pertaining to A.Y. 2013-14. Hence, the provisions applicable to that period has been taken into consideration. Since, the proceeds cannot be treated as taxable in the hands of assessee any adjudication on the issue of deduction u/s 54F and u/s 54B becomes only academic in nature and hence not resorted to.

21. In the result, the appeal of the assessee is allowed.

7. The Ld DR has submitted that the village -Gahri, Alawalpur to 2.3 KM from the Municipal limit of Dharuhera and hence it should be considered as a capital asset. He has submitted that the google map depicting the distance. Further he relied on the orders of the lower authorities in support of his arguments.

8. In the instant case the land in question is undisputedly situated in the village Garhi Alawalpur situated in the District Rewari which is within 5 Kms of the present Municipality "Dharuhera". We find that this Municipality has not been mentioned in the said notification. The revenue could not bring to our notice any other notification issued wherein the Municipality "Dharuhera" situated in District Rewari is

mentioned for the purpose of provisions of section 2(14) of the Act. The coordinate Bench held that the land which is situated at Garhi Alawalpur Municipality “Dharuhera” of District Rewari cannot be treated as the capital asset and not liable to tax under the head “Long Term Capital Gains”. The amendment in the said section has been brought w.e.f 01-04-2014 and the land in question was sold on 21-03-2013 pertaining to A.Y. 2013-14. Since the proceeds cannot be treated as taxable in the hands of assessee. The issues of deduction u/s 54F and u/s 54B becomes academic in nature and need not to be adjudicate. The appeal of the assessee is liable to be allowed.

9. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 28.11.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:-.11.2024

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI