

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

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 3095/Del/2011
Assessment Year: 2006-07

ACIT, Circle-38(1), New Delhi	Vs.	M/s. Kailash Nath and Associates, 1006 . Kanchanjinga Building, 18, Barakhamba Road, New Delhi
PAN : AAAFK0110H		
(Appellant)		(Respondent)

Appellant by	Sh. Umesh Chand Dubey, Sr.DR
Respondent by	S/sh. Rohit Jain & Tejaswani, Advocates

Date of hearing	22.05.2017
Date of pronouncement	29.05.2017

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against the order dated 28/03/2011 of learned Commissioner of Income-tax (Appeals)-XXVIII, New Delhi, for assessment year 2006-07, raising following ground:

- i. On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs.4,02,08,850/- made on account of Long Term Capital Gain arising on transferring of land which was a capital assets as per provision of Section 2(14)(iii)(b) of the Act ignoring the facts highlighted in the assessment order.*

ii. The appellant craves to add, amend or modify the grounds of appeal at any time.

2. The facts in brief of the case are that the assessee sold its agriculture land located at village Kundli, Sonapat, district Sonapat (Haryana) for the sale consideration of Rs.5,25,98,130/- and in the return of income filed, the assessee claimed exemption from tax on sale of agricultural land in terms of section 2(14)(iii) of the Income Tax Act, 1961 (in short ~~the~~ Act). During the scrutiny assessment proceedings, the Assessing Officer observed that land in question was located within 3 km from the limits of the Municipal Corporation, Delhi, and, therefore, according to the Assessing Officer, the land in question was a capital asset within the meaning of section 2(14)(iii) of the Act. The assessee, on the other hand, submitted that land in question was located in the Revenue district of Sonapat (Haryana) and is beyond 8 km from the limits of municipal committee, Sonapat and, thus, it was not a capital asset in terms of section 2(14)(iii) of the Act. According to the Assessing Officer, as per section 2(14)(iii) of the Act land located not more than 8 kms. from the local limits any municipality should be treated as capital asset, and the land being within 8 kms from municipal limit of the Delhi, it did not qualify for exemption.

3. On appeal before the learned CIT(A), the assessee raised contention that land in question was used for agriculture purpose and sold to an educational and charitable society engaged in the provision of education was not relevant for section 2(14)(iii) of the Act. It was also contended that land is beyond 8 km from the municipal limit of Sonapat, which is the jurisdictional municipality. The Ld. CIT-A accepted the first contention of the assessee. Regarding the second contention, the learned CIT-A followed the decision of the Tribunal, Amritsar bench in

the case of DCIT Vs. Capital Local Area Bank (2009) TTJ 918(ASR), and allowed the contention of the assessee.

4. Before us, the learned Senior DR relied on the decision of the Tribunal, ~~₹~~qBench, Delhi in the case of ACIT Vs. Shree Vijay Singh Kadam (2014)(12) TMI, 599, ITA T Delhi in ITA No. 4733/Del/2011 (AY: 2006-07) dated 12/12/2014 and decision of the Hon~~o~~ble Punjab and Haryana High Court in the case of Smt. Anjana Sehgal in ITA 276 of 2004, reported in (2013) 40 taxmann.com 485 (Punjab and Haryana) and submitted that issue in dispute is covered against the assessee.

5. The learned counsel though relied on the finding of the Ld. CIT-A, but fairly conceded that issue in dispute was covered against the assessee by the decision of the Hon~~o~~ble High Court of Punjab and Haryana in the case of Smt. Anjana Sehgal (supra).

6. We have heard the rival submission and perused the relevant material on record. The relevant provisions of section 2(14) of the Act is reproduced as under:

“(14) "capital asset" means—

(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; or

(b) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

7. The fact that land in question was situated within 8 kms from local limits of Municipal Corporation of Delhi has not been disputed by the assessee. The contention of the assessee is that land is situated beyond 8 km from the local limits of municipal Corporation of Sonapat, which is the jurisdictional municipality.

7. We find that the Tribunal Bench, Delhi, in the case of Sh. Vijay Singh Kadam (supra) has followed the decision of the Honble High Court of Punjab and Haryana in the case of Smt. Anjana Sehgal (supra). The Honble High Court in the case of Smt. Anjana Sehgal (supra) has held as under:

"9. A perusal of the above provisions makes it clear that what is intended to be covered in the term "capital asset" is agricultural land comprised within the jurisdiction of a municipality and within the specified distance from the local limits of municipality or other local bodies mentioned therein as specified in the notification. It is undisputed that the land in question is within the specified distance from the Panchkula municipality which falls in the State of Haryana while the land is in the State of Punjab. Thus, the land is urban land for the purpose of definition of "capital asset" under section 2(14). The concept of municipality as a unit of State or the fact that a State has no jurisdiction to make law beyond its territory have no relevance for the purpose of determining whether a particular land was "capital asset" or not for the purpose of taxing capital gains. If the land is adjacent to a municipality and is urban land covered under section 2(14), even if municipality and the land fall in different States, the land will continue to be urban land. If such land is excluded from the definition of "capital asset", the purpose of the statutory scheme will not be achieved.

10. The judgments relied upon to submit that all words of a statute should be assigned meaning do not support the contention of the assessee, including the land in dispute in "capital asset" does not ignore any word in the definition as assumed by the learned counsel. The speech of the Finance Minister also does not help the assessee. The relevant extract thereof is as under (see [1970] 75 ITR (St.) 17, 69):

"Sub-clause (a) seeks to amend clause (14) of section 2 of the Income-tax Act which defines the term 'capital asset'. The amendment seeks to bring within the term 'capital asset' agricultural land situated within the limits of any 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 having a population of 10,000 or more

according to the last census for which the figures have been published before the first day of the previous year. Further, agricultural land situated in areas lying within a distance not exceeding 8 kilometers from the local limits of such municipalities or cantonment boards will also be covered by the amended definition of 'capital asset', if such areas are, having regard to the extent of and scope for their urbanization and other relevant considerations, notified by the Central Government in this behalf. The effect of the proposed amendment will be that capital gains arising from the transfer of agricultural land situated in municipal or other urban areas or notified adjoining areas will be liable to income-tax for the assessment year 1970-71 and subsequent years."

11. We are unable to accept that the above speech leads to any other interpretation. Accordingly, we answer substantial questions in favour of the Revenue and against the assessee."

8. Thus, respectfully following the above decision of the Hon'ble Punjab and Haryana High Court, we hold that for claiming the agriculture land as not a capital asset, the land in question should be beyond 8 kms from any municipality and not only from the jurisdictional municipality. Accordingly, the order of the Ld. CIT-A on the issue in dispute is set aside and ground of the appeal of the Revenue is allowed.

9. In the result, appeal of the Revenue is allowed.

The decision is pronounced in the open court on 29th May, 2017.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 29th May, 2017.
RK/(D.T.D)

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi