

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 3806/DEL/2013	
	A.Y. : 2009-10	
ACIT, CIRCLE 33(1), ROOM NO. 1505, 15 TH FLOOR, E-2 BLOCK, DR. SHYAMA PRASAND MUKHERJEE MARG, CIVIC CENTRE, NEW DELHI -11000 2	VS	SMT. ALKA JAIN, 3-C/46, NEW ROHTAK ROAD, NEW DELHI -110 005
(APPELLANT)		(RESPONDENT)

Department by : Sh. S.K. Jain DR
Assessee by : Sh. Ved Jain, Adv.

ORDER

PER H.S. SIDHU : JM

This Appeal filed by the Revenue is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-XXVI, New Delhi for the assessment year 2009-10.

2. The grounds raised in the Revenue's Appeal read as under:-

- “1. The Ld. CIT(A) has erred in deleting the addition of Rs. 4,88,38,251/- made by the AO on account of Long Term Capital Gain.
2. The CIT(A) has erred in admitting additional evidence in the form of distance certificate issued by the Tehsildar without appreciating the

fact that as per the General Clause Act, 1897, the distance is always required to be measured in straight line manner and the certificate does not mention the method adopted by the Patwari to calculate the distance of the said land.

3. The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal.

3. The brief facts of the case are that assessee is an individual and derived her income under the head income from house property and income from other sources. The assessee filed its return for the assessment year under consideration on 29.3.2010 declaring a total income of Rs. 35,62,070/-. The case was selected for scrutiny and accordingly, notice u/s. 143(2) of the I.T. Act, 1961 dated 25.8.2010 was issued and served upon the assessee. In response to the same, the A.R. of the assessee attended the assessment proceedings from time to time and filed all the documents as called for in respect of sources of income disclosed in the return of income. After examining and verifying the same, the AO passed an order u/s.143/(3) of the I.T. Act, 1961 dated 19.12.2010 assessing the total income at Rs. 5,24,16,940/- within the following additions as against the returned income of Rs. 35,62,070/-.

- i) On account of Long Term Capital Gain on sale of agricultural land Rs. 4,88,38,251/-
- ii) Disallowance of expenses incurred on earning commission and interest income Rs. 24,872/-

4. Aggrieved with the aforesaid order of the AO, the assessee filed appeal before the Ld. CIT(A) who vide impugned order dated 25.3.2013 has deleted part additions and partly allowed the appeal of the assessee.

5. Against the order of the learned CIT(A) the Revenue is in appeal before the Tribunal.

6. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal. It was submitted by the learned DR that Ld.CIT(A) has erred in deleting the addition of Rs.4,88,38,251/- made by the AO on account of Long Term Capital Gain.

7. On the contrary, the Ld. Counsel of the Assessee contended that the action of the AO was not justified and relied upon the order of the Ld. CIT(A). He filed a small Paper Book containing pages 1 to 89 having the copy of the acknowledgement of return of income alongwith computation for the AY 2009-10; copy of notice u/s.143(2) of the Act dated 29.8.2011; copy of reply dated 28.11.2011 filed by the assessee; copy of reply dated 7.12.2011 filed by the assessee; copy of reply dated 15.12.2011 to alongwith copy of letter to Tehsildar dated 18.2.2008; copy of letter from Joint Commissioner, Municipal Corporation Gurgaon dated 2.12.2011; copy of letter from Sub-Divisional Engineer, PWD B&R Br. Sohna dated 14.12.2011; copy of agreement to sell b/w the assessee and M/s Samarthal Promoters and Developers Pvt. Ltd. dated 7.5.2033 alongwith payment schedule; copy of purchase deeds; copy of ITR of AY

2005-06 to 2007-08; copy of written submission filed before the CIT(A); copy of application under Rule 46A; copy of remand report to CIT(A) dated 4.1.2013 alongwith enquiry report from Inspector; copy of remand report to CIT(A) dated 8.3.2013 alongwith confirmation certificate from Tehsildar and copy of rejoinder filed before CIT(A).

7.1 Ld. Counsel of the assessee has submitted that during the year under consideration, assessee has sold agricultural land bearing khasra NO.204 (1-10),205(0-12),134/2(2-7),135/1(2-1) measuring 6 bigha 10 biswas situated within the revenue estate of village Haiderpur, Viran, Tehsil and District Gurgaon Haryana on the basis of jamabandi and mutation No. 3471. Out of the said land, the assessee was registered owner of two bigha and two biswa on the basis of jamabandi for the year 2002-03 and remaining land measuring 4 bigha and 8 biswa was recorded in the name of Sh. Swatantar Kumar husband of the assessee. It was further submitted that after the death of Sh. Swatantar Kumar on 14.05.1995, his share was inherited by Alka Jain and her son Sourabh Jain legal heir of the deceased of Sh. Swatantar Kumar. Thus, after the inheritance, Smt. Alka Jain become the owner of 4 bigha and 6 Biswa and Sourabh Jain becomes the owner of remaining 2 bigha 4 Biswa. It was further submitted that the total land of 6bigha and 10 biswa was sold to for the total sales consideration of Rs. 7,50,00,000/- vide agreement to sell dated 07th May, 2008 and assessee's share out of the proceeds is Rs. 4,96,15,384/-. Since the land sold by the assessee was agricultural land

beyond 8 kms from Municipal limits, no capital gain tax was offered by the assessee. Ld. Counsel of the assessee further submitted that the AO had issued a show cause notice to the assessee on 23.11.2011 which was replied by the assessee vide letter dt.. 29.11.2011 and it was submitted that the said land is an agricultural land as defined u/s 2(14) of the Income Tax Act and therefore it does not fall within the meaning of capital asset and hence not liable for capital gain under section 45 of the Income Tax Act. In this regard, the assessee also submitted a copy of application dt 18.02.2008 addressed to Tehsildar, Gurgaon. On the back side of that application it was certified that the distance of the said land from local limit of Nagar Palika is 8km (PB Pg16). Thereafter, the AO objected to the certificate on the back side of the application by stating that the certificate was signed by some unknown person as no name or designation or office address is written. Further, distance of 8KM is mentioned on that document as against more than 8Kms required under the Act. In response to the objection raised by the AO assessee submitted his reply dt. 15.12.2011 in which it was stated that assessee has submitted an application for distance certificate to PWD Gurgaon, Haryana and in response to the same Sub Divisional Engineer PWD has issued a certificate of distance of Village Haiderpur Viran, Gurgaon, Haryana on 14.12.2011. The certificate confirmed that the agricultural land in Haider Pur Viran is 9.5 Kms from Old Municipal office, Gurgaon Haryana. The copy of certificate is at PB Pg 18. In addition to the above, a certificate from Joint commissioner, Municipal Corporation, Gurgaon was

also submitted which clarified that the land was not under the Municipal limit of Haryana at PB Pg.17. To clarify the issue again, an application dated 18.02.2008 was also filed before Tehsildar Gurgaon regarding the certificate for confirmation of municipal limit and population of the village HaiderPur and the said application was marked to Patwari on 02.05.2008. The Patwari submitted his report enclosed at PB Pgs 8 and it was clarified that the land is situated more than 8KMs from the municipal limit of Gurgaon. In addition to the same, assessee also asked the Ld. AO in case still there is any doubt to verify the same from the Tehsildar by making independent inquiry u/s 131 of the Act. It was submitted that AO ignored all the above evidences and certificates made addition of Long Term capital gain Rs. 4,88,38,251/- (Rs. 4,96,15,384/- - 7,77,133/-) and passed the assessment order u/s 143(3) of the Act. It was further submitted that the Ld. Counsel of the assessee that aggrieved by the assessment order, assessee preferred an appeal before the Ld. CIT (A) and submitted all the facts and evidences produced before the Ld.AO. The Assessee also filed application under Rule 46A (PB Pg. 74-78) and submitted the copy of certificate (PB Pg. 78) from the Tehsildar, Gurgaon in which it was certified that land is situated more than 8.5 Kms away from the nearest municipal limit. The Ld. CIT(A) sent the application under Rule 46A as well as evidences to the Ld.AO for comments and verification and called for a remand report. The AO during the remand proceedings sent his inspector three times on 4.3.2013, 5.3.2013 and 8.3.2013 to visit the Tehsildar office for confirmation of certificate issued

by him and it was confirmed by Tehsildar that the certificate was issued by his office only. However, Ld. AO in remand report reiterated its stand of denying exemption. The assessee filed a rejoinder (PB page no. 85) to the remand report clarifying each of the issues raised by the AO. The Ld. CIT(A) admitted the additional evidences filed by the assessee and gave a categorical finding in para 10.1 onwards of its order and deleted the addition made by the AO wherein the CIT(A) has categorically held that:

i.) Appellant had declared agricultural income in earlier years and the same has been accepted by the department also. (PB Pg. 58-62)

ii.) Sale deed produced by the assessee clearly shows that the land sold is an agricultural land.(PB Pgs. 19-25)

iii.) Tehsildar Certificate was also produced by the assessee. (Pg. 78) confirming the fact that land is beyond 8 kms from the outer limit of Municipal Corporation.

7.2. Ld. Counsel of the assessee stated that it is a case where assessee has submitted all the information and evidences in support of its contention. These evidences also stand confirmed by independent Enquiry. In view of the above, Ld. Counsel of the assessee stated that there is nothing adverse and therefore, CIT(A) has rightly deleted the addition which needs to be upheld.

8. We have heard both the parties and perused the paper book, written synopsis, assessment order and the order of the Ld. CIT(A). We find that the Ld. CIT(A) has elaborately discussed the issues in dispute

and gave his finding vide para nos. 10 to 10.4 at page no. 12 to 14 of his impugned order. For the sake of convenience, the relevant finding of the Ld. CIT(A) is reproduced below:-

10. *I have gone through the paper book, remand report and rejoinder to the report carefully and considered them. During the proceedings before me the AR has filed a certificate issued by the Tehsildar of Gurgaon alongwith application under Rule 46A wherein the Tehsildar has stated that land sold by the appellant is situated more than 8.5 kilometers away from the nearest municipal limit. I find the said certificate goes to the roots of the ground of appeal raised by the appellant and is important to decide the matter before me. A detailed inquiry has been conducted by the AO for this certificate and the same has been found to be genuine. From the facts narrated by the appellant it is clear that she was prevented by sufficient cause to produce the same before the assessing officer during the assessment proceedings. On these grounds, I find no hesitation in admitting the same as additional evidence. The same is admitted and adjudicated in the order hereunder.*

10.1 *The main issue to be decided in this case is whether the land sold by the appellant falls under the definition of Capital Asset under the provisions of section 45 read with section 2(14) of the Act or not. The appellant has stated that the land sold by her is an agricultural land. The fact that the land sold by her is agricultural in nature is evident from the sale deed wherein the nature of the land is specifically mentioned. Also the appellant in the return of income filed by her for the year's preceding the year of sale of land has shown agricultural income as part of her gross total income. Section 2(14)(iii) deals with the issue of classification of agricultural land as a capital asset. The same reads as under:*

"(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-

[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, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;*

A plain reading of the above stated provision reveals that any agricultural land which is situated more than 8 kilometers away from the nearest municipal/cantonment limit shall not be deemed to be a capital asset.

- 10.2 In the present case, the AR has brought a certificate issued by Tehsildar Gurgaon which specifically states that the distance of the land of the appellant from the nearest municipal limits is more than 8 kilometers. The said certificate has been verified by the Inspector of the*

Circle of the AO. Thus the fact that the land sold by the appellant is situated more than 8 kilometers away from the nearest municipal limits is undisputed. The AR of the appellant has also brought forward the registered sale deed of the property sold by her along with return of income tax filed by the appellant for the preceding 4 assessment years.

A perusal of these details reveal, that the appellant has declared agricultural income in past which has been duly accepted by the departmental authorities. Further, the sale deed specifically states that the land sold is agricultural in nature.

10.3 On the basis of above stated facts I find that the land sold by the appellant does not fall within the ambit of section 45 of the Act and cannot be classified as a Capital Asset. The capital gain on the sale of same being exempted, is liable to be allowed. The assessing officer is directed to delete the addition on account of income under the head long term capital gains made by him and delete the addition made by him to the gross total income of the appellant in this respect.

10.4 I find that the AO in his remand report has stated that the land sold by the appellant is not agricultural in nature and the Tehsildar Gurgaon has not specifically stated the method of calculating the distance of the land from the nearest municipal limit. As regards his claim the same is not agricultural in nature the same gets negated from the fact that it has been specifically stated in the sale deed that the land is agricultural in nature. Also the appellant has been regularly showing.

agricultural income from the said land in the preceding years. As regard the fact that the method of measuring the distance is riot stated by the Tehsildar in tne certificate issued by him. I am of a view that the distance provided by the Tehsildar is direct distance only as nowhere in his certificate it has written that the same is either through road etc. Thus having got anything adverse in this respect it has to be presumed that it is the direct distance only. Further the inspector of his Circle visited the office of Tehsildar three times. Had there been such a doubt the department could have enquired from the Tehsildar. The AO having failed to do so cannot allege the appellant of having not specified anything when she has got a specific certificate from the Tehsildar. As a result this ground of appeal is allowed and the addition made by the AO of Rs. 4,88,38,251/- is deleted.

8.1 From the above, we find that assessee has sold agricultural land bearing khasra NO.204 (1-10),205(0-12),134/2(2-7),135/1(2-1) measuring 6 bigha 10 biswas situated within the revenue estate of village Haiderpur, Viran, Tehsil and District Gurgaon Haryana on the basis of jamabandi and mutation No. 3471. Out of the said land, the assessee was registered owner of two bigha and two biswa on the basis of jamabandi for the year 2002-03 and remaining land measuring 4 bighaand 8 biswa was recorded in the name of Sh. Swatantar Kumar husband of the assessee. After the death of Sh. Swatantar Kumar on 14.05.1995, his share was inherited by Alka Jain and her son Sourabh Jain legal heir of the deceased of Sh. Swatantar Kumar. Thus, after the inheritance, Smt. Alka Jain become the owner of 4 bigha and 6 Biswa and Sourabh Jain becomes the owner of remaining 2 bigha 4 Biswa. The total land of 6 bigha and 10 biswa was sold to for the total sales consideration of

Rs. 7,50,00,000/- vide agreement to sell dated 07th May, 2008 and assessee's share out of the proceeds is Rs. 4,96,15,384/-. Since the land sold by the assessee was agricultural land beyond 8 kms from Municipal limits, no capital gain tax was offered by the assessee. The AO had issued a show cause notice to the assessee on 23.11.2011 which was replied by the assessee vide letter dt.. 29.11.2011 and it was submitted that the said land is an agricultural land as defined u/s 2(14) of the Income Tax Act and therefore it does not fall within the meaning of capital asset and hence not liable for capital gain under section 45 of the Income Tax Act. In this regard, the assessee also submitted a copy of application dt 18.02.2008 addressed to Tehsildar, Gurgaon. On the back side of that application it was certified that the distance of the said land from local limit of Nagar Palika is 8km. Thereafter, the AO objected to the certificate on the back side of the application by stating that the certificate was signed by some unknown person as no name or designation or office address is written. Further, distance of 8KM is mentioned on that document as against more than 8Kms required under the Act. In response to the objection raised by the AO assessee submitted his reply dt. 15.12.2011 in which it was stated that assessee has submitted an application for distance certificate to PWD Gurgaon, Haryana and in response to the same Sub Divisional Engineer PWD has issued a certificate of distance of Village Haiderpur Viran, Gurgaon, Haryana on 14.12.2011. The certificate confirmed that the agricultural land in Haider Pur Viran is 9.5 Kms from Old Municipal office, Gurgaon Haryana. The copy of certificate is at PB Pg 18. In addition to the above, a certificate from Joint commissioner, Municipal Corporation, Gurgaon was also submitted which clarified that the land was not under the Municipal limit of Haryana at PB Pg.17. To clarify the issue again, an application dated 18.02.2008 was also filed before Tehsildar Gurgaon regarding the certificate for confirmation of municipal limit and population of the village HaiderPur and the said application was marked to Patwari on 02.05.2008. The Patwari submitted his report enclosed at PB Pg. 8 and it

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even in the remand proceedings and there is nothing adverse, hence, the action of the Id. CIT(A) in deleting the addition in dispute is correct one which does not need any interference on our part. Therefore, in the background of the aforesaid detailed discussions, we are of the view that Ld. CIT(A) has passed a well reasoned order, hence, we uphold the same. Accordingly, the grounds raised by the Revenue stands dismissed.

9. In the result, the appeal filed by the Revenue stand dismissed.

Order pronounced in the Open Court on 22/03/2017.

SD/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

SD/-
[H.S. SIDHU]
JUDICIAL MEMBER

“SRBHATNAGAR”

Date: 22-03-2017

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches