

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

ITA No.2635/Del/2014
(Assessment Year: 2010-11)

DCIT, Circle, Rewari	Vs.	Rakesh Bhargava, 859, Sector-3, Part-1, Rewari PAN:AAXPB5064G
(Appellant)		(Respondent)

Revenue by :	Sh. FR Meena, Sr. DR
Assessee by:	Sh. Ved Jain, Adv Sh. Ashish Chadha, CA
Date of Hearing	05/04/2017
Date of pronouncement	10/04/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed revenue against the order of the Id CIT(A), Rohtak dated 20.02.2014 for the Assessment Year 2010-11.
2. The revenue has raised the following grounds of appeal:-
 - “1. On the facts and circumstances of the case, the Id CIT(A) has erred in law in allowing the exemption the exemption claimed by the assessee u/s 10(37) and deleting the addition of Rs. 8031704/- made under the head long term capital gain without appreciating the facts of the case.
 2. On the facts and circumstances of the case, the Id CIT(A) has erred in law treating the Gair Mumkin land as agricultural land without appreciating the facts of the case.”
3. The assessee is an individual who filed his return of income on 13/10/2010 declaring total income of Rs. 1 027 9530/- showing income under the head profits and gains from business and income from other sources. Subsequently return of income was revised declaring income of Rs. 1 842 7950/- on 24/03/2011 which was subsequently further revised on 20 firsts June 2012 declaring taxable income of Rs. 1 027 9530/-. In 1993 Haryana urban development authority acquired the land of the assessee admeasuring 51 Kanal and 10 Marla of agricultural land. Out of this land 15 Kanal 9 Marla are categorised by the revenue authorities as ‘ gair Mumkin” and 36 Kanal and 1 Marla categorised by the revenue authorities

authorities as Chahi. The assessee was awarded compensation which was subsequently further enhanced. During the year the assessee has received a further enhanced compensation on land of Rs. 8 081704/- and interest of Rs. 1 917 3010. The assessee submitted that the claim received by him is exempt under section 10 ((37) of the income tax act. The Ld. assessing officer denied the claim of the deduction under section 10 (37) for the reason that w.e.f. 01/04/2005 the capital gain arising from the compensation received for transfer of an agricultural land which is deemed to be capital asset within the meaning of the provisions of section 2 (14) on or after 1st day of April 2004. As the land in the question was acquired by the Haryana urban development authority in case of the assessee before the state that is in 1993 the assessee is not entitled for exemption. Consequently assessment order under section 143 (3) of the income tax act was passed on 28th of March 2013 determining the total taxable income of the assessee at Rs. 18461240/- against the returned income of 1027 9530/-. Against the order of the Ld. assessing officer assessee preferred an appeal before the Ld. CIT (A) who held that that subsection inserted w.e.f. 01/04/2005 under section 10 (37) was to provide relief in respect of compulsory acquisition of agricultural land, being capital asset is defined in section 2 (14) wherein the compensation or evidence compensation has been received on or after 01/04/2004. The section does not stipulate that the exemption is available only when the agricultural land is compulsorily acquired on or after 01/04/2004. He further held that even the gair Mumkin land has also been certified by the revenue authorities as agricultural land and therefore it will get the benefit of the provisions of section 10 (37) of the. Consequently the claim of the assessee was allowed by the Ld. CIT appeal. Therefore revenue aggrieved with the order of the Ld. CIT (A) is in appeal before us.

4. The Ld. departmental representative relied upon the order of the Ld. assessing officer.
5. The Ld. authorised representative submitted that the issue is now squarely covered in favour of the assessee in view of the decision of the coordinate bench in case of Chura Ram versus ITO (2011) (10 Taxmann.com 34) (Chd).
6. We have carefully considered the rival contentions and also per used the orders of the lower authorities. The only reason the Ld. assessing officer is not allowed the claim of the assessee for exemption under section 10 (37) of

the income tax act for the reason that amendment to the income tax act has been made w.e.f. 01/04/2004 and whereas the land has been transferred by the assessee prior to that date. The above issue has been covered by the decision of the coordinate bench in case of Chura ram V ITO (Supra) vide para No. 11 as under

“11. Clause (iv) of section 10(37) provides that the compensation or consideration considered exempt should be received by the assessee on or after first day of April, 2004. The impugned compensation has been clearly received by the assessee after the aforesaid date and is therefore, eligible for exemption. In this connection, as per the CIT (Appeals), the said condition is not satisfied by the assessee because the provisions of section 10(37) are applicable to cases where the agricultural land has been compulsorily acquired after 1-4-2004 and in the case of the assessee, the land has been acquired on an earlier date. In our considered opinion, the reasoning put forth by the CIT (Appeals) is not consistent with the provisions of section 10(37)(iv). The said clause merely provides that the income ought to have been received by the assessee on or after 1-4-2004, which is not in dispute in the present case. Therefore, the condition prescribed in clause (iv) of section 10(37) is satisfied in this case.”

7. Therefore it is apparent that the issue involved in the present appeal is squarely covered by the decision of the coordinate bench. The Ld. departmental representative could not point out any other contrary decision on the issue and hence, respectfully following the decision of the coordinate bench we hold that the provisions of section 10 (37) are applicable to the impugned amount received by the assessee during the year and thereby such sums received by the assessee is exempt. Accordingly we do not find any infirmity in the order of the Ld. CIT (A) in granting exemption to the assessee under the provisions of section 10 (37) to the impugned sum of Rs. 8081704/- hence we confirm the same.
8. 2nd ground of appeal is that the Ld. CIT appeal has granted exemption with respect of the gair Mumkin land as agricultural land without appreciating the facts of the case. In the present case the gair Mumkin land has been certified by the revenue authorities as agricultural land. It has been certified by the Patwari concerned that the Gair mumKin land is an agricultural land is where there were Wells, water channels and water storage tank. These land abuts the land where cultivation is carried out and is contiguous on it. No cultivation can be carried out without having these necessities.

Hence the gair Mumkin land also falls within the ambit of 'agricultural land' and therefore entitled to the benefit of section 10 (37) of the act. The learned DR could not controvert the findings of the Ld. CIT appeal . In view of this we do not find any infirmity in the order of the Ld. CIT appeal. Therefore ground No. 2 of the appeal of the revenue is also dismissed.

9. In the result appeal filed by the revenue is dismissed.

Order pronounced in the open court on 10/04/2017.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:10/04/2017

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi