

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' NEW DELHI)
BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No. 4377 & 4378/Del/2011
Assessment year : 2008-09 & 2009-10

ACIT,
Central Circle-1,
New Delhi.

Smt. Ashi Agarwal,
12/22, East Punjabi Bagh,
New Delhi.

(Appellant)

(Respondent)

PAN /GIR/No.AGSPA-7394-P

Appellant by : Shri Dev Jyoti Das, CIT-DR.
Respondent by : Mrs. Rano Jain &
Shri A.K. Agarwal, C.A.

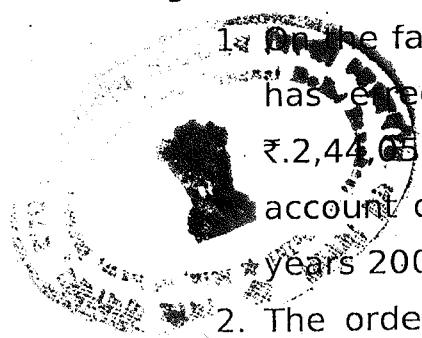
ORDER

PER TS KAPOOR, AM:

These are two appeals filed by the revenue against the orders of Ld CIT(A)-III, New Delhi dated 12.7.2011 for assessment year 2008-09 & 2009-10. These appeals were heard together and for the sake of convenience are disposed off by this common order. The common grounds of appeal are as under:-

1. On the facts and in the circumstances of the case, the Ld CIT(A) has erred in law and on facts in deleting the addition of ₹.2,44,05,529/- & 2,98,13,166/- made by the Assessing Officer on account of short term capital gain in the respective assessment years 2008-09 & 2009-10

2. The order of the Ld CIT(A) is erroneous and is not tenable on facts and in law.



2. The Brief facts of the case are that assessee is an individual and for the years under consideration filed return declaring income of ₹.5,43,747/- & ₹.8,54,488/-. Assessment proceedings were initiated and during the course thereof, it came to the notice of the Assessing Officer that assessee had sold co-owned agricultural land at Village Hyattpur, District Gurgaon in both years. The assessee claimed that short term capital gains from the sale proceeds of agricultural lands were exempt because the land was situated at a distance of more than 8 kms, from the outer municipal limit of Gurgaon. In support of this contention, assessee furnished a certificate of Tehsildar of Gurgaon, mentioning that the land in question was at a distance of 9 kms. The Assessing Officer made further enquiry from the District Town Planner, Gurgaon with request to specify the distance of the said land from the outer limit of Gurgaon Municipal Committee. The District Town Planner, Gurgaon vide letter No.70949 dated 21.12.2010 also informed the Assessing Officer that the distance of land from outer limit of Municipal Committee Gurgaon was 8.5 kms on the date of sale. However, the Assessing Officer made the addition on the basis of possibility of any other shortest distance from the outer limit of Gurgaon with the land in question (being less than 8 kms.). Thus the land was held to be capital asset & consequently the surplus earned was liable for short term capital gains tax.

3. Aggrieved against the assessment order, the assessee preferred an appeal before the Ld CIT(A).

4. The Ld counsel for the assessee raised following contentions before the Ld CIT(A):

1. That agricultural lands were not a capital asset in terms of section 2(14) because of the fact that the said agricultural land was situated at more than 8 kms. from outer municipal limits of

Gurgaon. This fact was supported by a certificate issued by Tehsildar of Gurgaon certifying that the said land was situated at 9 kms. away from local limit of municipality of Gurgaon.

2. That Assessing Officer had himself made independent enquiries from District Town Planner, Gurgaon who vide his letter Memo No.70954 dated 21.12.2010 has intimated that the distance of the said land from the outer limits of Municipal Committee of Gurgaon was 8.5 kms. on the date of sale.

3. That Ld Assessing Officer however erroneously made addition on account of short term capital gain on sale of agricultural land, treating the said agricultural land as capital asset u/s 2 (14) of the Income Tax Act, 1961 disbelieving the distance given by the District Town Planner, Gurgaon.

5. The Ld CIT(A) on the basis of contentions and material available on record and statement made by the Ld counsel deleted the additions in the both assessment years under question. Orders in respect of the relevant portion of CIT(A) is reproduced below:-

"The District Town Planner, Gurgaon vide letter Memo 70954 dated 21.12.2010 has intimated that the distance of the land from the outer limit of the Municipal Committee of Gurgaon was 8.5 kms on the date of sale. Thus two Competent Authorities viz. Tehsildar, Gurgaon and District Town Planner, Gurgaon both have independently certified that the said land is situated beyond 8 kms. of municipal limits of Gurgaon. Therefore, the apprehension of the Assessing Officer that the distance given by DTP, Gurgaon is very narrow as compared to the distance mentioned in the Act and therefore the possibility of any other

shortest distance cannot be ruled out is not based on any hard evidence. Such apprehension and possibility cannot form basis for denial of the claim of the assessee that the land in question is not a capital asset within the meaning of section 2(14) of the Act. In fact the distance of 8 kms. as outer limit from the local limits of the Municipal Committee has been envisaged under the IT Act for the purpose of a cut off distance and therefore is an objective criteria fixed by the Act and any agricultural land falling outside the said limit would be entitled to exemption from capital gains being not a capital asset. Hence, addition of ₹.2,44,05,529/- & ₹.2,98,13,166/- on account of capital gains in both years is not justified and is accordingly directed to be deleted."

6. Aggrieved, the revenue is in appeal before the Tribunal.
7. Ld DR relied on the order of Assessing Officer.
8. Ld Counsel contended that assessee is one of the co-owners in the impugned land and in the case of other co-owners the Hon'ble Tribunal had decided this issue in favour of the assessee. In support he submitted copies of sale & purchase agreements of agricultural land and copy of the Tribunal decision of Bench 'E' in the case of Smt. Manju Bansal & Smt. Nirmal Bansal in I.T.A. No.5304 & 5305/Del/10 for assessment year 2008-09 & 2009-10. He further contended that the assessee was joint holder of the same land along with the co-owners/ appellants appeals No.5304 & 5305/Del/2010 and the land was jointly sold on the same day and through single agreement of sale. He, therefore, pleaded that the case of the assessee is covered by ITAT order in the case of co-owners.
9. We have gone through the above Tribunal order dated 31.1.2012 in the case of Smt. Manju Bansal and Smt. Nirmal Bansal. We have also noted from the contents of sale and purchase agreements that the assessee was co-owner along with Smt. Manju Bansal & Smt. Nirmal

Bansal, Smt. Ashi Agarwal and Smt. Charu Goel. After going through these documents, we are of the considered view that the facts of the present case are similar to the facts of appeal no. in I.T.A. No.5304 & 5305/Del/2010 (supra). The Tribunal vide its order dated 31.1.2012 had observed as under:-

"We have heard both the parties and gone through material available on record. The Assessing Officer had made disallowance merely on the ground that possibility of shortest distance less than 8 kms. from outer limits of Municipal Corporation could not be ruled out. The assessee had filed certificate from Tehsildar of Gurgaon that the lands sold by both the assessees were situated 9 kms. away from Municipal Corporation limits of Gurgaon. The Assessing Officer had also obtained a certificate from the District Town Planner, who had also certified that the lands were situated at 8.5 kms. on the date of sale. No other evidence was brought on record by the Assessing Officer to prove that the impugned lands were situated within 8 kms. from outer limits of Municipal Corporation of Gurgaon. The Assessing Officer has not doubted the nature of agricultural lands. Before the CIT(A) the assessee in the grounds of appeal has specifically mentioned that both the assessees have sold agricultural lands and therefore, the said lands did not constitute capital asset within the meaning of section 2 (14) of the Income Tax Act, 1961. Since no material has been brought on record by the Assessing Officer to support his contention that the impugned lands were situated within the 8 kms. from the outer limits of Municipal Corporation of Gurgaon, in our considered opinion, the profits arising on sale of such lands would not constitute capital asset. Since the nature of land was

not doubted by the Assessing Officer, we are unable to accept the contention of the Ld CIT-DR that the matter should be restored to the file of the Ld CIT(A) for verification of the fact whether the lands were agricultural in nature or not. In view of the above facts, we do not find any infirmity in the order passed by the Ld CIT(A) allowing the relief to both the assesseees in both the assessment years."

Respectfully following this order of the Hon'ble Tribunal, we decide the matter in favour of the assessee and hold that the land in question being situated beyond 8 kms. of Gurgaon limits, the same does not constitute capital asset in terms of section 2(14) of the Act. Consequently the appeals filed by the revenue are dismissed.

10. In the result, both the appeals filed by the revenue are dismissed.

11. Order pronounced in the open court on the 30 day of March, 2012.

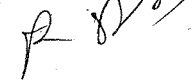

(R.P. TOLANI)
JUDICIAL MEMBER


(T.S. KAPOOR)
ACCOUNTANT MEMBER

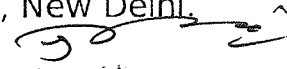
Dt. 30.3.2012.

HMS

Copy forwarded to:-

1. The appellant
2. The respondent 
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.

True copy.


सहायक पंजीकार
Assistant Registrar (New Delhi).
आयकर अपील विभाग
Income Tax Appellate Tribunal
नई दिल्ली / New Delhi

