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IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "G" NEW DELHI)
BEFORE SHRI RAJPAL YADAV AND SHRI R.C. SHARMA

I.T.(SS) A. No. 25/Del/2009
Assessment Year: 01.04.87 to 18.02.1997

Mangal Singh (HUF), : Appellant
GM-61, Gulmohar Marg, DLF PH-II,
Gurgaon.

Vs.

Assistant Commissioner of Income-tax, : Respondent
Gurgaon Circle, Gurgaon.

I.T.(SS) A. No. 26/Del/2009
Block Period: 1987-88 to 18.02.1997

Assistant Commissioner of Income-tax, : Respondent
Gurgaon Circle, Gurgaon.

Vs.

Mangal Singh (HUF), : Appellant
GM-61, Gulmohar Marg, DLF PH-II,
Gurgaon.

I.T.A. No.576/Del/2009
Assessment Year: 1977-98

Mangal Singh (HUF), : Appellant
GM-61, Gulmohar Marg, DLF PH-II,
Gurgaon.

Vs.

Dy. Commissioner of Income-tax, : Respondent
Gurgaon Circle, Gurgaon.

I.T.A. No.591/Del/2009
Assessment Year: 1997-98

Assistant Commissioner of Income-tax, : Respondent
Gurgaon Circle, Gurgaon.

Vs.

Smt. Shanti Devi, Through Mangal Singh & : Appellant
Ajit Singh, GM-61, Gulmohar Marg,
DLF PH-II, Gurgaon.

W.T.A. Nos. 01/Del/2009
Assessment Year: 1998-99

Mangal Singh (HUF), L/H Late Smt. Shanti Devi, : Appellant
GM-61, Gulmohar Marg, DLF City, PH-II,
Gurgaon.

Vs.

Assistant Commissioner of Wealth-tax, : Respondent
Gurgaon Circle, Gurgaon.

W.T.A. Nos. 02 & 3/Del/2009
Asst. Years: 1998-99 & 1999-00

Mangal Singh (HUF), : Appellant
GM-61, Gulmohar Marg, DLF City, PH-II,
Gurgaon.

Vs.

Assistant Commissioner of Wealth-tax, : Respondent
Gurgaon Circle, Gurgaon.

W.T.A. Nos. 04 & 05/Del/2009
Assessment Years: 1998-99 & 1999-00

Ajit Singh (HUF), : Appellant
H.No. 973, Sector 17-B,
Gurgaon.

Vs.

Assistant Commissioner of Wealth-tax, : Respondent
Gurgaon Circle, Gurgaon.

Appellant by: Shri Ved Jain, CA
Respondent by: Shri Gajanand Meena, CIT(DR)

ORDER

PER RAJPAL YADAV: JUDICIAL MEMBER

In this bunch of nine appeals, common issues are involved, we heard them together and deem it appropriate to dispose of them by this common order. For the facility of reference of certain details i.e. ITA Number, assessment year, name of the appellant, date of CIT(Appeals)'s orders and date of Assessing Officer's order in more convenient and scientific way, we deem it appropriate to note them in the following tabular form:

Sr. No.	ITA Nos/W.T.As.	Appellants	Assessment years	Date of CIT(Appeals)'s order	Date of A.O. order
1.	W.T.A. 01/09	Mangal Singh (HUF)	1998-99	29.11.2008	30.03.2006
2.	W.T.A. 02/09	-do-	-do-	28.11.2008	-do-
3.	W.T.A. 03/09	-do-	1999-00	-do-	-do-
4.	W.T.A. 04/09	Ajit Singh(HUF)	1998-99	28.11.08	-do-
5.	W.T.A. 05/09	-do-	1999-00	-do-	-do-
6.	IT(SS) 25/09	Mangal Singh (HUF)	01.04.87 to 18.02.97	-do-	26.2.1999
7.	IT(SS) 26/09	Department	1987-88 to 10.02.97	-do-	15.3.2005

8.	ITA 576/09	Mangal Singh	1997-98	-do-	15.3.2005
9.	ITA 591/09	Department	1997-98	-do-	-do-

2. First we take IT(SS) A.No.25/Del/2009. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of the ITAT's Rules, they are descriptive and argumentative in nature. In brief, the grievance of assessee relates to taxability of income on account of capital gain as a result of transfer of agricultural land.

3. The brief facts of the case are that a search and seizure operation under sec.132 of the Act was carried out at the residence of the assessee GN-61, Gulmohar Marg, DLF, PH-II, Gurgaon on 18.2.1997. During the course of search, a cash of Rs. 2 lacs and jewellery of Rs.4,09,814 were found but nothing was seized. A notice under sec. 158-BC dated 10.10.1997 was served upon the assessee inviting him to file block return for the period of 1.4.1987 to 18.2.1997. In response to the notice, Shri Mangal Singh, assessee has filed his return of income on 9.11.1998 declaring undisclosed income of Rs.8,04,892. As per the original assessment order dated 26.2.1999, a notice under sec. 143(2) read with sec. 142 of the Act was served and in response to the notice Shri Rakesh Girotra, advocate appeared on behalf of the assessee and submitted written submissions on 17.2.1999

and 23.2.1999. It emerges out from the assessment order that assessee was owner and in possession of agricultural land to the extent of 1/4th share comprised in Kila No.13

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measuring 17 canals 15 marlas situated in Village Shahpur. Similarly, 24 canals 19 marls situated in Village Sirhaul. According to the Assessing Officer, assessee along with co-owner had entered into a Memorandum of Agreement of Exchange on 8.2.1993 with M/s. Bhagirathi Investment (P) Ltd. which is an associate company of DLF Universal Ltd. M/s. Bhagirathi Investment (P) Ltd. was agreed to pay a sum of Rs.60 lacs and plotted area of 1600 sq.yds. per acre. The assessee being co-owner to the extent of 1/4th share was entitled to 15 lacs of rupees plus plotted area @ 1600 sq. yds. per acre of land given by him in exchange of his land. Assessing Officer in the original assessment order has observed that after this agreement it appears that assessee had received a sum of Rs. 1 crore on 27.6.96. The sale deeds have been effected in financial year 1996-97. According to the Assessing Officer, the stand of assessee in the original assessment proceeding was that land owned by him is an agricultural land. It is situated at a distance of more

than 2 kms abutting to national high way No.8 leading from Delhi to Gurgaon. The notification dated 6.2.1973 exempt the agricultural land being capitalized from levy of capital gain tax on transfer if it is situated at a distance of more than 2 kms on either side of NH-8. The land of the assessee was situated beyond the limit of 2 kms. It was also pointed out by the assessee that land was transferred on 9.2.1993 by way of a consent decree passed in civil suit No.51 of 1992. The mutation of change of ownership has been effected in the revenue record maintained under the Punjab Land Revenue Act in pursuance of this court decree. The Assessing Officer did not find merit in these contentions of the assessee. He determined the capital gain of Rs.1,10,58,943 and ultimately determined the income of assessee at Rs.1,18,63,830.

4. Dissatisfied with the addition, assessee carried the matter in appeal before the learned CIT(Appeals). Assessee reiterated his contentions as were raised before the Assessing Officer. He has also challenged that Assessing Officer has erroneously observed that the distance of the Village Shahpur is about 3 kms from old Delhi Road and the straight distance of these pieces of land from municipal limit of Gurgaon is 5 kms. Only. Learned CIT(Appeals) has reappreciated the facts and circumstances of the case and held that

capital gain on sale of agricultural land is not taxable because the land sold by assessee is not covered under the definition of capital assets in terms of sec. 2(14) of the Act and secondly the possession of the land was handed over under the agreement to sell dated 8.2.1993. The notification dated 6.2.1973 is applicable. The findings of the learned CIT(Appeals) recorded in paragraph No.6.6 and 6.7 read as under:

> "6.6 According to the assessee's counsel, the land falling within the panchayet area is not covered by any of the definitions given above. The assessee has filed evidence as to the situation of lands in Panchayat Area. For this purpose, he has relied on various judgments of the Income-tax Appellate Tribunal, especially of ITAT Delhi Bench "A" in the case of ITO vs. Sujan Singh 3 ITD page 438. ITAT Madras Bench in the case of Parameshwaran Vs. ITO page 371, ITAT Hyderabad Bench in the case of ITO vs. Uppala Bhaktavatala 12 Taxman page 40, and ITAT Hyderabad Bench in the case of ITO vs. P. Venkataramana 47 ITD page 484. In support of these he has also filed a certificate from Surpanch Gram Panchayat Sirhaul Gurgaon dated 10.2.99 in which it has been stated that land situated at Sirhaul and Shapur fall within the boundaries of Panchayat. In view of this also, I would hold that the said agricultural land is not a capital asset on this account also. The other point which has been raised by the Assessing Officer is that there are two agreements, one relating to the sale on 8.2.93 under which the assessee received Rs.15.00 lacs and the other of Rs.1.00 crore which was received on27.6.96. It has been

explained that under agreement dated 8.2.93 the assessee was to receive Rs.60.00 lacs out of which the assessee share was Rs.15.00 lacs. Besides that the assessee was to receive certain developed lands but in view of that the assessee received Rs.1.00 crore by means of compromise decree between the buyers and the assessee. As the whole of the transaction related to the sale of land which took place in 8.2.93 I would hold that Rs.1,15,00,000 received for the sale of agricultural land is not taxable because firstly it is not covered under the definition of capital asset in terms of section 2(14) of the IT Act and secondly the possession of the land having been handed over under the agreement to sell dated 8.2.93, the earlier circular of 6.2.1973 is applicable and therefore, on facts it is not covered by the definition of capital assets u/s.2(14) of the Income-tax Act.

6.7 As I have already held that the said land is not covered by the definition of capital asset u/s.2(14) of the Income-tax Act, I am not dealing with the other grounds of appeal urged by the assessee."

5. Dissatisfied with the order of the Assessing Officer, revenue filed an appeal bearing No.IT(SS)A No.12/Del/00 before the ITAT. The revenue argued before the ITAT that assessee had received some payment in 1996. Learned CIT(Appeals) failed to look into these evidence while holding that the land transferred by the assessee is not a capital asset for charging the assessee to capital gain tax. The ITAT has set aside the issue to the file of

the Assessing Officer. The findings of the ITAT recorded in paragraph 6 read as under:

> "6. We have heard the parties and have perused the records of the case. The issue involved is whether the agricultural land in question which has been sold/transferred by the assessee, to the DLF Universal Ltd. are covered under the definition of "Capital Assets" as provided u/s.2(14) of the Income-tax Act, 1961. According to the assessee the said lands do not fall within the definition of capital assets as the lands in question are situated beyond the municipal limits and have been falling under the Panchayat. The A.O. has applied the notification of 1996 for ascertaining whether the property in question falls within the municipal limits or not and not the notification of 1993 when the transaction was made. The perusal of memorandum of agreement of exchange dated on 8.2.93 entered into between the assessee and M/s. Bhagirthi Investments P. Ltd. on behalf of DLF Universal Limited, shows that the assessee was the owner of agricultural land totaling to 7 kanals 18 marla situated in the relevant Panchayats of Village Shahpur Tehsil and Dist. Gurgaon whereas the 2nd party M/s. Bhagirthi Investments P. Ltd. was only in possession of land measuring 19 kanals and 15 marla situated in the revenue estate of Village Barola The. & Dist. Gurgaon. Under the said agreement of exchange both the parties agreed to transfer their respective lands to each other by way of exchange. It was also agreed that Rs.25 lakhs was to be paid in equal share to the Ist party by the 2nd party at the time of sanctioning of mutation and exchange of two respective lands

by way of difference in market value of the lands of two villages. It has also been recorded that the possession of land exchange had taken place between the parties. It has been agreed between the parties to obtain license of the colony by the 2nd party namely DLF in respect of above village Shahpur from Haryana Govt. and Ist party will be entitled to obtain plotted area duly licensed from M/s. Bhagirthi Investment Pvt. Ltd. @ 1600 sq.yard/acre by way of exchange of land of Village Balula from the 2nd party and the second party will be bound to allot plotted area to the first party at the above ratio in the land situated at Shahpur. Since the dispute arose between the parties, the assessee went to the civil court by filing a suit for permanent injunctions against the DLF Universal Pvt. Ltd. However, the parties arrived at a compromise under which original terms of deal were modified and the assessee has been given residential plot @ 1850 sq. yard/acre instead of 1600 sq.yard per acre and have been paid an additional amount of Rs. 1 crores 75 lakhs in addition to the previous amount already paid to the assessee. It seems that these fact has not been taken into consideration by the authorities below while deciding the main issue. In the facts and circumstances of the case, we are of the view that in the interest of justice, the matter needs so be set aside and restore to the file of the A.O. who may examine the matter afresh in accordance with law keeping in view both the agreements, the original agreement dated 8.2.93 and the settlement made in 1997. Needless to mention that's the assessee may be given reasonable opportunity of being heard.

In the result, the appeal of the revenue is allowed for statistical purposes".

6. It emerges out from the record that when dispute was pending before the ITAT, the Assessing Officer has reopened the block assessment on 19th September, 2003 by issuing a notice under sec.148 of the Act. He passed a reassessment order on 15.3.2005 and determined the undisclosed income of the assessee at Rs.4,57,87,892. In this order, the Assessing Officer has added the value of plot allotted to the assessee by DLF at the asking of M/s. Bhagirthi Investment (P) Ltd. in lieu of original agreement. This reassessment order was passed by the Assessing Officer under sec.158-BC read with sec.147 of the Act on 15.3.2005.

7. The Assessing Officer thereafter framed the assessment under sec.158-BC/143(3)/254 of the Income-tax Act, 1961 as per the directions of the ITAT on 31.3.2006. In this assessment order, Assessing Officer has observed that the directions given by the ITAT has been considered while framing the reassessment under sec. 158-BC read with sec.147 of the Act. He reproduced the observations made in the reassessment order in the fresh assessment order and determined the undisclosed income of the assessee at Rs.5,68,46,830.

8. Learned First Appellate Authority in principle concur with the findings of the Assessing Officer. He has observed that assessee failed to produce any documentary evidence exhibiting the change of mutation in respect of land in dispute in favour of the vendee. In his opinion, the alleged agreement dated 8.2.1993 does not demonstrate the change of ownership of the land. Learned CIT(Appeals) further observed that assessee along with co-owner had received a sum of Rs. 3 crores on 27.6.96. Thus, the dispute was formerly dissolved on this date and 22 plots were allotted. The trial court disposed of the litigation by way of a compromise decree on 19.12.1998. It only refers to formally acceptance of compromise by the court. In this way, learned CIT(Appeals) has held that transfer has taken place on 27.6.1996 during the period relevant to assessment year 1997-98 and accordingly notification of 1994 is applicable. The learned CIT(Appeals) has further upheld the inclusion of value of assessee's share in the 22 plots for determining the capital gain arisen on transfer of the agricultural land.

9. The learned counsel for the assessee while impugning the order of learned CIT(Appeals) contended that agricultural land situated in Village Sarhaul and Shahpur was owned and possessed by Shri Ram Mehar F/o

assessee, Ajit Singh S/o Ram Mehar B/o assessee, Smt. Shanti Devi, mother and assessee himself in equal share. The government has issued a notification on 29.3.1973 whereby it has provided the land excluded from the definition of "capital assets" in terms of sec.2(14) sub-clause (3) clause (b). It is provided in this notification that land abutting beyond distance of 2 kms. on either side of Delhi Gurgaon Road up to six kms. from the corporation limit of Delhi would be excluded. According to the learned counsel, the distance for determining the status of agricultural land whether capital assets or not, it has to be seen that such a land should be situated beyond a distance of 2 kms. on either side of the Delhi Gurgaon Road up to 6 kms. from Delhi to Gurgaon on High Way. He submitted that undisputedly the land of assessee was situated within the limit of 6 kms. from Delhi on NH-8 but it is not abutting within the 2 kms. distance of this road. Explaining this, further he pointed out that after a distance of 6 kms., it is meaningless where the land is situated even if it is situated adjacent to the national highway, it will not be a capital assets. Thus, According to this notification, land of assessee does not fall within the ambit of expression "capital assets" employed in sec. 2(14) of the Act. For buttressing his contention, he took us through the copy of the notification available at pages

99 and 103 of the paper book. Referring to the original assessment order dated 26.2.1999 he pointed out that Assessing Officer has agreed to the fact that land of assessee is situated beyond a distance of 2 kms. from the national highway, however, he did not apply the notification of 1973 rather he applied the notification of 1994 whereby this limit of 2 kms. has been increased to 6 kms. Thus, according to the learned counsel for the assessee, the core issue for adjudication before the ITAT is when agricultural land of assessee was transferred. If it is held to be transferred on 9.2.1993 as claimed by the assessee then notification of 1973 would be applicable and no capital gain tax would be leviable because assessee has not transferred any capital assets. If it is held that land was not transferred on 9.2.1993 then notification of 1994 would be applicable. According to that notification, the alleged agricultural land transferred by the assessee would be treated as a capital assets.

10. The learned counsel for the assessee thereafter took us through the copy of the agreement dated 8.2.1993 available at page 67 of the paper book. He pointed out that as far as genuineness of this agreement is concerned, the Assessing Officer has not disputed. In pursuance of this agreement, assessee along with co-owner has filed two civil suits bearing No.51/92 in the court

of Sub-Judge-II Class, Gurgaon. The defendant M/s. Bhagirathi Investment (P) LTd. has admitted the claim of assessee. The learned Sub-Judge II Class decreed the suit. The copy of the judgment and decree sheet in both the civil suits are available at page Nos. 72 to 78 of the paper book. Learned counsel for the assessee took us through the decrees. In execution of the decree, the revenue authorities under the Punjab Land Revenue Act has sanctioned the mutation. The copy of the mutation register has been placed on record at pages 79 and 80 of the paper book. Thus, as far as the assessee is concerned, in pursuance of the agreement he has transferred the land on 9.2.1993 possession was handed over to M/s. Bhagirathi Investment (P) Ltd. The change of ownership and off possession has duly been reflected in the Land Revenue document prepared under the Punjab Land Revenue Act. The cash component also exchanged hands. As per the agreement, M/s. Bhagirathi Investment (P) Ltd. in association with DLF was required to give developed plot of measuring 1600 sq. yds. per acre. It failed to give those plots within the stipulated period and a dispute arose between the parties. The assessee had filed civil suit for possession etc. whereas M/s. Bhagirathi Investment (P) Ltd. has filed suit for permanent injunction. These litigations have been resolved by way of a compromise decree dated 19.12.1998. The assessee in

between no doubt received a sum of Rs.1 crore on 27.6.1996. He pointed out that as far as accrual of capital gain on transfer of a capital assets is concerned, it is to be construed as accrued on the day when the transfer has taken place. The date of the transfer is the decisive factor of accrual of capital gain. It is immaterial when the consideration for the transfer of capital asset was received by an assessee. For buttressing his proposition, he relied upon the judgment of the Hon'ble Andhra Pradesh High Court in the case of Additional CIT vs. G.M. Omarkhan 116 ITR 950. CIT vs. Rohtak Textiles Mills 138 ITR 195 (Delhi). He further contended that what the parties did subsequently is not relevant. In support of his contentions, he relied upon 37 ITR 26 (Mad) rendered in the case of T.V. Sundaram Iyer & Sons Ltd. vs. CIT 37 CTR 26, all the Contollers of Estate-duty Vs. Smt. Chanderkala Garg. and Shah Vyas Lal Madhav Ji Vs. CIT 95 ITR 614 (Kerala). He also relied upon the judgment of the Hon'ble Gujarat High Court in the case of B.N. Vyas Vs. CIT 159 ITR 141 and the decision of Hon'ble Madras High Court in the case of M. Venkateshan Vs. CIT 144 ITR 886.

11. In his next fold of submissions, he pointed out that in case it is considered that transfer did not took place on 9.2.1993 then all disputes

between assessee and M/s. Bhagirathi Investment (P) Ltd. were resolved on 9.12.1998 when a compromise was reached whereby the vendee agreed to give plotted area @ 1850 sq. yd. Per acre instead of originally agreed of 1600 sq. yds. per acre. This date does not fall within the block period and the alleged capital gain income cannot be assessed in the block period. He emphasized that in pursuance of the agreement dated 8.2.1993, the vendee made the payment of Rs. 60 lacs to all the co-sharers and assessee received Rs.15 lacs. The dispute was not for the transfer of the agricultural land owned and possessed by the assessee. The dispute was relating to the balance consideration i.e. plotted area @ Rs.1600 per sq. yd per acre. Referring to the order of the learned CIT(Appeals), he pointed out that how Learned First Appellate Authority failed to construe certain factual aspects. Specifically he drew our attention towards findings of learned CIT(Appeals) in paragraph 7.4. According to the learned counsel for the assessee, the learned CIT(Appeals) has observed that assessee has furnished no evidence to prove that the lands were actually exchanged and mutation was sanctioned. The learned counsel for the assessee emphasized that mutation was sanctioned and copies available at page Nos.245, 246 as well as page Nos.79 and 80 of the paper book. Similarly, learned CIT(Appeals) again

observed in paragraph No.7.5 that agreement dated 8.2.1993 is only an agreement and no transfer had taken place. The court decree demonstrating the exchange of possession coupled with the sanction of mutation are the documentary evidence, learned CIT(Appeals) failed to take cognizance of these documents and to appreciate them.

12. Learned DR on the other hand relied upon the order of the learned CIT(Appeals). He contended that after the agreement on 8.2.1993, no active steps were taken by the parties for transferring the land. There were disputes pending in between vendor and vendee. The dispute was resolved on 27.6.1996 when vendee agreed to make the payment of R. 3 crores over and above the already paid one. This Rs. 3 crores was paid through account payee chcque to the assessee along with co-owner. Subsequent to this a formal decree has been drawn by compromising the dispute before the trial court. The actual transfer has taken place on the day when this Rs.3 crores was paid to the assessee along with other co-owners. In this way, he relied upon the orders of the revenue authorities below.

13. We have considered the rival contentions and gone through the record carefully. Section 45 of the Act provides that any profit or gain arising from the transfer of a capital assets, effected in the previous year shall, save as

otherwise provided in sec. 54, 54-B, D, E, EA, EB, F, G and H of the Act shall be chargeable to income-tax under the head "capital gains" and shall be deemed to be the income of the previous year in which the transfer took place. The expression 'capital asset' has been defined in sec. 2 sub-section (14) of the Act. Similarly, the expression 'transfer' has been defined in sec. 2(47) of the Act. Both these sections have a direct bearing on the controversy in hand, therefore, it is salutary upon us to take note of these clauses.

Section 2(47):

(47) ["transfer", in relation to a capital asset, includes,-

(i) the sale, exchange or relinquishment of the asset; or

(ii) the extinguishment of any rights therein; or

(iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation.- For the purposes of sub-clauses(v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA;

(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-

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(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~~ 8[2] 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 Gazettee;]"

14. Thus from the bare reading of the above provisions, it would reveal that in order to determine the capital gain as arisen to an assessee, there are basically three ingredients:

i) there must be a capital assets;

ii) it must have been transferred during the accounting period relevant to the assessment year;

iii) capital gain must have arisen to an assessee on transfer of such assets.

15. At the cost of repetition, we would like to observe that status of assessee's agricultural land, whether a capital asset or not could be determined only after the determination of the date of its transfer. If it is held that the transfer has taken place on 9.2.1993 then it would be excluded from the ambit of capital assets as per the exception provided in clause (b) of sec. 2(14) sub-section(iii) of the Act. If it is held that transfer has taken place thereafter then according to the notification of 1994 the agricultural land of

the assessee would be included in the definition of capital assets because of its geographical location. In the notification of 1994, the area abutting to national highway No.8 leading from Delhi to Gurgaon has been enhanced and the land of assessee comes within the extended area of this notification. According to the assessee, the land in dispute was transferred on 9.2.1993 when the decree in civil suit Nos. 51 & 52 of 1992 were passed. This decree has been executed and mutation has also been sanctioned. These documents are available on the record. No one has challenged these decrees. A compromise decree arrived at by the parties before the court has same binding force as any other decree. Hon'ble Bombay High Court has considered this issue in the case of Anant Chunni Lal Kate Vs. ITO reported in 267 ITR 482. Hon'ble High Court has held that a decree in terms of settlement arrived at by the parties before the court has same binding force as any other decree. Thus, according to these decrees coupled with their execution the land in dispute was transferred by the assessee within the meaning of sec.2(47) of the Act. The land owners have handed over the possession in performance of an agreement to the vendees. They have received consideration in cash amounting to Rs.60 lacs out of which assessee has 1/4th shares. This indicates that assessee has completed all the

requisite conditions required to be performed by him for transferring his agricultural land as a vendor to the vendee.

15. The department is negating the claim of the assessee on the ground that a dispute arose between the vendor and vendee with regard to the consideration and, therefore, it should not be considered that the land was transferred on 9.2.1993. This issue has fallen for consideration on various occasions before the Hon'ble High Court. The Hon'ble High Court in authoritative pronouncement has held that when actually consideration was received by an assessee is immaterial for bringing any capital gains to tax, it is necessary that capital assets should have been transferred in the accounting year relevant to the assessment year and a right to receive the sales consideration on account of such transfer had accrued to the assessee. A reference can be made to the authoritative pronouncement of the Hon'ble Madras High Court in the case of TV Sundaram Iyengar & Sons Ltd. vs. CIT (supra). In this case, assessee carried on business in purchase and sale of motor vehicle. In the assessment year 1947-48 assessee had sold its lorries, taxies and vans to a company for a certain sums. The assessee was maintaining its books of account on mercantile basis. It had shown sale price of assets as receipt. Subsequent to its year of accounting, assessee agreed to

accept in lieu of cash fully paid up shares in purchaser company for the amount representing written down value of said vehicle which was much lower then the price at which assets were sold. The assessee was assessed to capital gains tax on sum representing selling price less written down value of assets. The issue arose before the honourable court was whether without any understating that price was to be paid to any future time, price become payable forthwith in the relevant accounting period and assessee obtained a right to receive price in that year and its profit, therefore, capital gains has arisen in that assessment year. The Hon'ble Court has held that right to receive the price had accrued to the assessee in the accounting year relevant to the assessment year 1947-48. The Hon'ble Court further held that in the subsequent years what parties did would not have any bearing on their tax liability for that year. Similarly, Hon'ble Andhara Pradesh High Court has also considered this issue in the case of ACIT Vs. G.M. Omarkhan (supra). The Hon'ble Court has considered four questions of law in this judgment. Question No.3 is relevant for our proposition. It reads as under:

> "Whether the profits or gains arising from the transfer of a capital assets can be chargeable to income-tax if the transfer is effected in the previous year and if no amount is received?"

16. The Hon'ble Court has considered the judgment of Hon'ble Madras High Court in the case of T.V. Sundaram (supra) has also the judgment of Hon'ble Supreme Court in the case of Alapati Venkataramiah Vs. CIT 57 ITR 185. The Hon'ble Court has observed that to attract the liability to tax under sec. 45, it is sufficient if in the accounting year, profits have arisen out of the transfer of capital assets, in other words, the assessee had a right to receive the profit. Actual receipt of profit is not a relevant consideration. When once profit have arisen in the accounting year out of the transfer of the capital assets, that would be sufficient to attract liability under sec.45 of the Act. Thus, it is immaterial whether the assessee had received full consideration or not as per agreement dated 8.2.1993. The incidence of transfer of agricultural land by virtue of a decree and sanction of mutation cannot be postponed or linked to the actual receipt of sales consideration. This incidence cannot be postponed to a subsequent date only for the reason that full consideration was not received by the assessee. Thus, right to receive the consideration has accrued to the assessee when he performed his part of contract by filing civil suit and getting the decree in favour of the vendee and when this decree was given effect in the land revenue record maintained under the Punjab Land Revenue Act. The possession was also

handed over to the vendees simultaneously. The dispute between the assessee and the vendee with regard to plots required to be given by the vendee to the assessee cannot defer the incidence of transfer to a subsequent date. The assessee is disputing his right accrued to him by virtue of such transfer. In order to avoid that litigation if something excess has been given by the vendee after a long drawn litigation would not entitle the Assessing Officer to say that transfer has taken place on a subsequent date.

17. The next issue is about the physical location of the agricultural land whether it is beyond a distance of 2 kms. from the NH-8 or not. The Assessing Officer in the original o assessment order passed on 26.2.1999 has held that lands of the assessee are at a distance of three and half kms. and four and half kms. This finding of the Assessing Officer reads as under:

> "Therefore, capital gains tax in this transaction is leviable on this assessee in the A.Y. 1997-98 in the block period ending on 17.2.1997. Therefore, earlier notification dated 6.2:1973 is not applicable in this case. As per distance certificate filed by the assessee on 23.2.99 village Sirhaul is at a distance of three and half KM from Delhi Gurgaon Road and village Shahpur is at a distane of four and half KM from Delhi Gurgaon Road. This distance has been physically verified and is about 3 KM from Old Delhi Raod and it has also been verified that straight distance of these pieces of lands from Municipal Limits

of Gurgaon is 5 KM only and these pieces of lands are situated within 8 KMs of Municipal Limits of Gurgaon.

18. Apart from the above, the assessee has applied to the Tehsildar, Gurgaon under Right to Information Act and obtained a report which is placed on record at pages 243 and 244 of the paper book. According to this report of Asstt. Information Officer-cum-Tehsildar, Gurgaon, the lands of the assessee are situated at a distance of 2 kms. and 950 meters and 2 kms. and 500 meters. The Assessing Officer in the original assessment proceeding has held that notification of 1994 is applicable whereby this limit of 2 kms. has been extended otherwise he was convinced that the land of the assessee is situated more than 2 kms. from the bank of NII-8. In the frcsh assessment order, the Assessing Officer has not referred any scientific mode for working out distance contrary to the stand taken out in the original assessment. He does not want to rely upon the report of Tehsildar who is a revenue official under the Punjab Land Revenue Act and maintaining the records of right relating to the agricultural land in performance of his public duties. The Assessing Officer no doubt can differ with all these things but there should be some sound and logical evidence for differing with the stand taken in the original assessment order. Therefore, we do not find any evidence which

suggests that land in dispute is situated at a distance of less than 2 kms from the bank of NH-8.

19. Before arriving at any conclusion, let us consider the finding recorded by the revenue authorities below for rejecting the claim of assessee that transfer has taken place on 9.2.1993. Learned CIT(Appeals) in paragraph Nos. 7.4 and 7.5 has made the following observations:

> "7.4. It appears that certain disputes had arisen between the parties and the Memorandum of Agreement of Exchange was not implemented. The appellant has furnished no evidence to prove that the lands were actually exchanged and mutation was sanctioned. The matter dragged on for some time and ultimately a compromise was made. Subsequently, court has passed a decree to the compromise made between the parties which shows that the assessee and other co-owners were allotted 11 plots of different sizes and were also paid an amount of Rs.1.25 crores, in addition to Rs. 25 lacs paid earlier, in exchange of 17K-15M of agricultural lands in village Shahpur owned by the assessee and other co-owners. Similarly, compromise and court decree for another 11 plots and an amount of Rs.1.75 crores, in addition to Rs. 35 lacs originally paid was also received in exchange of agricultural lands measuring 24K-19M in village Sarhaul. Thus, as per the deed the appellant alongwith other co-owners received Rs.3.60 crores besides 22 developed plots in exchange for the land in question.

7.5 It is clear from the above that the transfer did not take place as per Memorandum of Agreement of Exchange dated 8.2.93. It was only an agreement. No documents relating to mutation of respective lands have been produced to prove that the land at village Shahpur and village Sarhaul was actually exchanged with land and village Balula".

20. These findings are factually incorrect. The assessee has produced copies of the decrees passed in civil suit Nos. 51 and 52 of 1992. He also produced copy of the mutation. The findings of the learned CIT(Appeals) that 'no evidence to prove that lands were actually exchanged and mutation was sanctioned' recorded in paragraph nos. 7.4 and 7.5 are to our mind factually incorrect.

21. Learned CIT(Appeals) while affirming the action of the Assessing Officer for holding that transfer has taken place in assessment year 1997-98 has considered one aspect i.e. receipt of Rs. 3 crores by the assessee along with other two co-owners from the vendee. In the opinion of the Learned First Appellate Authority, receipt of this amount is a decisive factor for determining the date on which agricultural land of the assessee was transferred. On due consideration of this finding of the Learned First Appellate Authority in paragraph No.7.7, we are of the opinion that Learned

First Appellate Authority has failed to construe the facts and circumstances in right perspective because as per the agreement dated 8.2.1993, the vendee was supposed to handover the plots to the assessee within six months from the date of agreement. The assessee has performed his part of contract handed over the possession of his land to the vendee got sanctioned the mutation in favour of the vendee and thus in the land revenue record ownership has been changed. The assessee received part consideration i.e. cash components. The part consideration was left for a future date. This was not paid by the vendee and thus a litigation started. The litigation was not with regard to transfer of the land but it was relating to the rights accrued to the assessee to receive consideration for the transfer of his land and, therefore, in view of the judgment of the Hon'ble Madras High Court as well as of Hon'ble Andhara Pradesh High Court, this deferment of part consideration could not be held responsible for holding that transfer has not taken place. The other reasoning given by the learned CIT(Appeals) is that payment of Rs.3 crores was received on 27.6.1996 and the ultimate decree disposing of all the litigation relating to this consideration for transfer of the land passed on 19.12.1998 is mere formal acceptance of the compromise by the court. Again, in our opinion, Learned First Appellate Authority failed to

appreciate the concept of compromise as well as a court's decree. The executionable order concluding the litigation between the parties was passed on 19.12.1998, in between in order to resolve the dispute if any part payment was made then that would not be sufficient to say that transfer has taken place on that day. Both these issues can be explained by this simple example, namely, 'A' person entered into an agreement with 'B for sale of agricultural land for a consideration of Rs.100. At the time of registration of sale deed, say Rs.60 are paid by the vendee to the vendor and Rs.40 were agreed to be paid within two months. Vendor handed over the possession of the land and got registered the sale deed. Thereafter vendee refused to pay and vendor filed a suit for recovery of Rs.40. In between to avoid that litigation if vendee paid Rs. 45, can it be held that transfer has taken place on the date when vendee agreed to pay Rs.45. Certainly not. The transfer for the purpose of income-tax act, would be considered as taken place on the date when sale deed was executed and possessed on acceptance of part consideration was handed over to the vendee. Similarly, the payment of consideration in between pending of litigation would not be the conclusive date on which litigation has come to an end. The litigation would be considered as come to an end on the day when order is passed by the

competent court resolving the dispute or rejecting the suit of the plaintiff i.e. the date when judgment was pronounced. Thus, the inferences drawn by the Learned First Appellate Authority are not illogical but on misconstruction and misinterpretation of the facts and circumstances. This date when litigation has come to an end is 19.12.1998. Again it does not fall within the block period and assessee cannot be taxed on account of arisen of capital gains in a block assessment. In view of the above discussion, we hold that the land of assessee was transferred on 9.2.1993. It is not a capital assets in view of the 1973's notification and no capital gains has arisen to the assessee. We delete the additions made by the Assessing Officer in this regard.

22. The learned counsel for the assessee at the time of hearing has pointed out that search was carried out in the individual capacity of the assessee whereas assessment order has been framed in the status of Mangal Singh, HUF. Thus, according to the learned counsel for the assessee the assessment order is without jurisdiction and not tenable. He made a reference to the punchnama available at page 1 of the paper book. It appears that this issue was not raised by the assessee before the learned revenue authorities below. We have gone through the grounds of appeal filed by the assessee before the

learned CIT(Appeals) in the original round of litigation. The grounds are reproduced by the learned CIT(Appeals) in its order dated Ist December 1999 at page 2 but no such ground was taken by the assessee. The assessee has neither taken any objection before the Assessing Officer in the original assessment proceeding. This litigation has been emanated from the order of the ITAT whereby Assessing Officer was directed to examine the subsequent development i.e. subsequent litigation, receipt of Rs. 3 crores on 26.9.1996 etc. Assessing Officer is required to consider these limited issues. The photocopy of the punchnama placed before us is illegible. Neither any copy of the notice issued under sec.158-BC has been placed on record. It emerges out at all along in the past this issue was not raised and there is no finding of the revenue authorities on this issue. Since we have already held that land in dispute was transferred on 9.2.1993, calling of any remand report on this issue or setting aside this issue would only increase multiplicity of litigation, therefore, we reject this argument raised by the learned counsel for the assessee at the time of hearing.

23. In the result, the appeal filed by the assessee is partly allowed.

24. Now we take IT(SS)A.No.26/Del/09. In this appeal, revenue has pleaded that learned CIT(Appeals) has erred in quashing the assessment

order framed under sec.158-BC read with sec.147 of the Act. The learned counsel for the assessee at the very outset submitted that learned CIT(Appeals) has held that block assessment cannot be reopened by issuance of a notice under sec.148 of the Act. Learned CIT(Appeals) while holding so has followed the decision of Hon'ble Gujarat High Court rendered in the case of Cargo Clearing Agency vs. Joint CIT 218 CTR 541 and the order of the ITAT in the case of Western India Backers (P) Ltd. vs. DCIT reported in 82 TTJ 223. He prayed that in view of the above, appeal of the revenue be dismissed.

25. Learned DR on the other hand was unable to controvert the contentions of the learned counsel for the assessee.

26. We have considered the rival contentions and gone through the record carefully. Learned CIT(Appeals) while holding that a block assessment cannot be reopened by issuance of notice under sec. 148 of the Act has followed the decision of Hon'ble Gujarat High Court as well as the order of the ITAT. In these decisions, it has been held that provisions contained in Chapter XIV-B are special provisions and override general provisions of the Act. Special procedure has been prescribed for block assessment under Chapter XIV-B and there is no mention of sec.147 or sec. 148 in that

chapter. Therefore, the block assessment cannot be reopened. We do not see any error in the order of the learned CIT(Appeals). Learned First Appellate Authority has rightly placed its multiplicity reliance upon the two authoritative pronouncements. Learned DR was unable to point out any circumstance which can suggest that Learned First Appellate Authority has erred in following the proposition laid down in these two decisions. Apart from this, while dealing with the appeal of the assessee we have already held that agricultural land of assessee was transferred on 9.2.93 and it was not a capital asset in view of 1973's notification. Therefore, even on merit, there will be no addition on account of capital gain arisen to the assessee. Accordingly, this appeal of the revenue is dismissed.

ITA No.576/Del/09:

27. In this appeal, the grounds taken by the assessee are not in consonance with Rule 8 of the ITAT's Rules, they are argumentative and descriptive in nature. The assessee has challenged reopening of assessment by issuance of a notice under sec.148 of the Act in assessment year 1997-98 whereby Assessing Officer has reopened the regular assessment proceeding of the assessee pertaining to assessment year 1997-98 for assessing the alleged

capital gain arising to the assessee on account of transfer of his agricultural land.

28. With the assistance of learned representatives, we have gone through the records carefully. Assessing Officer has sought to tax the capital gains arisen to the assessee on transfer of his agricultural land on the ground that such transfer has taken place on 27.6.1996 which falls in assessment year 1997-98. While dealing with this issue in the assessee's appeal i.e. IT(SS)A.No.25/Del/09, we have held that land in question was transferred on 9.2.1993. No capital gain has arisen to the assessee in assessment year 1997-98. Therefore, there are no reason for the Assessing Officer to reopen this assessment year and no income can be taxed in this assessment year. In view of our detailed discussion made in the preceding paragraphs on the issue, we allow the appeal of the assessee and quash the assessment order.

WTA Nos. 01, 02 & 04/Del/09:

29. In these three wealth-tax appeals at the instance of the assessee Shri Mangal Singh, late Smt. Shanti Devi through her legal heir and Shri Ajit Singh, the common issue relates to taxability of value of 22 plots received by the assessees in lieu of their agricultural land. According to the Assessing Officer, a compromise has taken place and assessee had received a sum of

Rs. 3 crores on 27.6.1996. They have received 22 plots also in lieu of transfer of their agricultural land. The contention of the assessee before the revenue authorities below was that dispute in respect of allotment of plot by the vendee to the assessee was resolved on 19.12.1998 when the court has passed a decree on the basis of compromise decree arrived at between the parties. As per this compromise, plots were allotted on 16.1.1999 and, therefore, the value of these plots cannot be brought to tax for the purpose of wealth tax in assessment year 1998-99.

30. With the assistance of learned representatives, we have gone through the records carefully. On perusal of learned CWT(Appeals)'s order it reveal that for holding the taxability of the value of these plots in assessment year 1998-99, learned CIT(Appeals) has referred his findings recorded in paragraph No. 7.7 in the block assessment order dated 28.11.08. We have dealt with this finding of the learned CIT(Appeals) in paragraph No.21 of this order and held that no transfer of agricultural land has taken place on 27.6.1996. The litigation in between the parties came to an end on 19.12.1998. There were not plots in question owned and possessed by the assessee as on 31.3.1998. The plots in dispute were allotted on 16.1.1999 and, therefore, their value cannot be brought to tax for the purpose of

wealth-tax in assessment year 1998-99. We allow all these three appeals and direct the Assessing Officer to exclude the value of alleged 22 plots from the net assets of the assessee for the purpose of wealth-tax act.

W.T.A.Nos.03 & 05/Del/09:

31. The present two appeals are at the instance of Shri Ajit Singh and Shri Mangal Singh, assessees against the separate orders of even date of learned CWT(Appeals) i.e. 28.11.1998. The learned counsel for the assessee at the time of hearing did not press ground Nos.1 and 2, challenging the reopening of assessment. He challenged the determination of value of 22 plots for the purpose of W.T. Act in this assessment year. According to the learned counsel for the assessee the plots in dispute have been allotted to the assessees and they are amenable to W.T. Act. However, the Assessing Officer has not computed the wealth as per the procedure provided in the W.T. Act rather he has computed the net wealth on the basis of the valuation report obtained by the bank for considering the loan application of the assessee for construction of the house. According to the learned counsel for the assessee such valuation report cannot be made the sole basis for determining the value of these plots. Learned DR on the other hand relied

upon the orders of the revenue authorities below. He submitted that such valuation report was got prepared by the assessees themselves. They cannot be allowed to take a different stand then the one they have taken before the bank authorities.

32. We have considered the rival contentions and gone through the record carefully. As far as taxability of the value of 22 plots under the W.T.Act is concerned, is not disputed in this assessment year. The assessee did not file the wealth-tax returns at their own and the Assessing Officer had sufficient information exhibiting the escapement of income for the purpose of wealth-tax. Such information is in the shape of valuation report submitted to the bank for availing credit facility. Thus, he has rightly reopened the assessment. The learned counsel for the assessee did not press this issue at the time of hearing. Therefore, ground Nos. 1 and 2 are rejected.

33. Ground Nos. 5 & 6 are general in nature and they do not require any adjudication.

34. As far as the determination of value of these plots on the basis of the valuation report gathered from the bank is concerned, we are of the opinion that this document is one of the corroborative piece of evidence in determining the value of the plots but solely on the basis of this document

valuation of the plots for the purpose of W.T. Act cannot be determined. The mechanism to determine the value of a asset for the purpose of the W.T. Act has been provided in Section 7 and Schedule III Part-B of Schedule-III provides the valuation of immoveable properties. Assessing Officer has to work out the value of the properties according to this schedule. He has not made this exercise and solely worked out the value of these plots on the basis of the bank's certificates. Therefore, we set aside the issue to the file of the Assessing Officer for readjudication. Both these wealth-tax appeals are allowed for statistical purposes.

35. We summarize the result as under:

i) IT(SS) A No.25/Del/09, the appeal of the assessee is partly allowed;

ii) IT(SS) A. No.26/Del/09, the appeal of the revenue is dismissed.

iii) ITA No. 576/Del/09, the appeal of the assessee is allowed.;

iv) ITA No. 591/Del/09, the appeal of the revenue is dismissed;

v) W.T.A. Nos. 01,02 & 04/Del/09 for assessment year 1998-99, all these appeals of the assessee are allowed; and

vi) W.T.A. Nos. 03 & 05/Del/09, both these appeals filed by the assessee are allowed for statistical purposes.

Decision pronounced in the open court on 27.11.2009

(R.C. SHARMA)
ACCOUNTANT MEMBER

(RAJPAL YADAV)
JUDICIAL MEMBER

Dated: 27 /11/2009
Mohan Lal

Copy forwarded to:

1. Appellant By Hand No-3
2. Respondent
3. CIT
4. CIT(A)
5. DR:ITAT

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