

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 822 & 823/Del/2018
Assessment Years: 2013-14 & 2014-15**

ACIT, Central Circle-16,
New Delhi.

(Appellant)

Versus Kamlesh Kumar Rathi,
6, Sadhna Enclave,
Malviya Nagar, New Delhi.

PAN: AFFPR5799K

(Respondent)

Revenue by: Shri J.S. Minhas, CIT/DR
Assessee by: Dr. Rakesh Gupta, Advocate &
Sh. Deepesh Garg, Advocate

Date of hearing : 03.05.2023

Date of pronouncement : 16.05.2023

ORDER

PER SAKTIJIT DEY, J.M.:

These are appeals by the Revenue against two separate orders, both dated 28.11.2017, of learned Commissioner of Income-tax (Appeals)-XXVI, New Delhi, pertaining to assessment years 2013-14 and 2014-15.

2. The grounds raised in both the appeals are identical except variation in figures. Therefore, for the sake of brevity, we reproduce the grounds raised in ITA No. 822/Del/2018 :

(1) Whether Ld. CIT(A) is erred in law and on facts in allowing the claim of the assessee that the case does not fall under section 68 of the I.T.Act,1961 whereas the addition of Rs. 1,82,90,000/- was made as undisclosed income received on sale of land.

(2) Whether Ld. CIT(A) is erred in law and on facts in allowing the claim of the assessee of filing revised return after getting final show cause incorporating the undisclosed income to the extent of Rs. 62,60,000/- and claiming the same as exempt.

(3) Whether Ld. CIT(A) is erred in law and on facts in holding that the addition was made on estimates only whereas sufficient evidences, statement of the employee dealing with the properties and also the assessee himself accepting the same by filing revised return.

(4) Whether Ld. CIT(A) is erred in law and on facts in holding that the assessee was not confronted with the statement of his employee whereas the assessment order itself contains the relevant portion of show cause issued to the assessee confronting with the relevant statement.

(5) Whether the employee of the assessee whose statement was recorded in the premises of the assessee during the course of search & seizure can be termed as third party vis-a-vis affairs of the assessee.

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

3. As can be seen from the grounds raised, the common dispute in both the appeals relates to deletion of addition made on account of undisclosed income, arising out of sale of land.

4. Briefly, the facts are, the assessee was a resident individual. A search and seizure operation u/s. 132 of the Income-tax Act was conducted in case of the assessee on 20.01.2015. Consequent to search and seizure operation, proceedings u/s. 153A of the Act were initiated against the assessee. In response to notices issued u/s. 153A of the Act, assessee filed his return of income on 05.04.2016, declaring income of Rs.54,93,260/- for assessment year 2013-14 and Rs.79,20,750/- for the assessment year 2014-15. Subsequently, on 20.12.2016, assessee filed revised returns of income for both the assessment years under dispute, by enhancing the sale consideration received on sale of land for Rs.1,36,20,000/- and Rs.3,18,31,000/- for the assessment years 2013-14 and 2014-15, respectively. In course of assessment proceedings, Assessing Officer, referring to statement recorded u/s. 132(4) of the Act from the assessee and a valuation report of 2004, called upon him to explain why the on- money received in cash on sale of land should not be treated as his undisclosed income. In response to the show cause notice issued, the assessee submitted that the valuation report found at the

time of search and seizure operation, showing the value of land in 2004 at higher rate cannot be relied upon as said valuation report was obtained for the purpose of obtaining bank loan hence, cannot be considered to be representing the fair market value of the land.

5. Without prejudice, the assessee submitted that the lands sold are in the nature of agricultural land located at Surajpur, Uttar Pradesh, situated beyond 8 Kilometres from the limits of Nagar Panchayat, Dadri and the population of the area is below the limit of 10 lacs. Thus, it was submitted by the assessee that the land sold is not in nature of capital asset as defined under section 2(14) of the Act. It was submitted by the assessee that since the land sold, being an agricultural land, is not in the nature of capital asset, even assuming that the assessee had received on-money on sale of such land, such income will also be exempt from taxation, as it will partake the character of agricultural income. Assessing Officer, however, was not convinced with the submissions of assessee and proceeded to tax the additional consideration received on sale of land as undisclosed income of the assessee and brought it to tax. Assessee contested aforesaid additions before learned Commissioner (Appeals). After considering the submissions of assessee in the context of facts and materials on record and ratio laid down in judicial precedents

cited before him, Id. Commissioner (Appeals) was of the view that since the alleged on-money, sated to have been received by the assessee, has not been credited to the books of account, provisions of section 68 of the Act cannot be invoked. He further held that even assuming that the assessee had received on-money in cash on sale of land, however, since the land sold is agricultural land, hence, is not capital asset in terms of section 2(14)(iii) of the Act, the capital gain derived from sale of land is fully exempt from taxation. Therefore, on-money received will also partake the character of long-term capital gains derived from sale of agricultural land, which is not capital asset, hence, will not be taxable. Finally, he held that the addition is not based on any incriminating material found as a result of search and seizure operation. Therefore, the assessment not being a abated assessment, addition could not have been made in absence of any incriminating material.

6. Before us, learned Departmental Representative strongly relied upon the observations of the Assessing Officer and submitted that in course of search and seizure operation, a valuation report of the year 2004 was found, wherein the value of land was determined at a much higher value than the declared sale consideration of such land in the years 2012 to 2014. He submitted, in statement recorded u/s. 132(4) of

the Act, the assessee has also accepted receipt of on-money. He submitted, the addition is based on incriminating material. Thus, he submitted, when there are clear evidences on record to indicate that the declared sale consideration is much below the fair market value, the fact that the assessee has received on-money is proved. He submitted, since the on-money received is undisclosed income, it has to be taxed differently.

7. Per contra, learned counsel appearing for the assessee submitted that in the first place, no incriminating material was found as a result of search and seizure operation to demonstrate that the assessee had received on-money in cash. He submitted, the only piece of evidence available with the Assessing Officer is a valuation report of the year 2004. He submitted, the valuation report was for the specific purpose of obtaining bank loan, hence, cannot be considered to be reflecting the fair market value of the land sold. In any case of the matter, he submitted, once the land sold, being agricultural land, is not coming within the purview of capital asset as defined u/s. 2(14)(iii) of the Act, any income arising out of sale of such land – whether as declared sale consideration or alleged on-money, would partake the same character, hence, would be

exempt from taxation. For such proposition, Id. Counsel relied upon the following decisions :

- (i). DCIT vs. Sh. Tarun Lamba (ITA No. 5079/Del/2012-order dated 15.06.2017 – ITAT, New Delhi)
- (ii). ITO vs. Shri P.V. Abraham (ITA No. 508/Coch/2018 – order dated 06.02.2019 – ITAT Cochin Bench)
- (iii). ITO vs. Shri Abraham Varghese Charuvil (ITA No. 30/Coch/2017 – order dated 26.04.2017 – ITAT Cochin Bench)
- (iv). ITO vs. Dr. Koshy George (2010) 190 Taxman 4 (Cochin)(MAG)

8. We have considered rival submissions and perused the materials on record. The dispute in the present appeals is with regard to the taxability of the amount received by the assessee towards sale of agricultural land – whether as declared sale consideration or on-money. As far as the location of the land sold is concerned, there is no dispute that it is in the nature of agricultural land, situated at Gata No. 44, 102, 107, 108 and 109 at Surajpur in the State of Uttar Pradesh. It is the claim of the assessee that the land is in the nature of agricultural land, as it is situated beyond 8 kilometres from the limits of Nagar Panchayat, Dadri, having a population of less than 10 lacs, hence, not coming within the purview of capital asset.

9. On a careful reading of the assessment orders, we are unable to find any observation of the Assessing Officer controverting assessee's claim regarding the nature and character of land sold. In fact, there is absolutely no observation of Assessing Officer regarding the nature and character of land sold. Thus, in a way, he has accepted assessee's claim that the nature and character of the land sold is agricultural land, hence, not coming within the purview of capital asset u/s. 2(14)(iii) of the Act. The only reason, on which Assessing Officer has added back the sale consideration as undisclosed income of the assessee is because, the assessee has not disclosed the sale proceeds of the land sold in the original return of income. Whereas, in the revised return of income filed in pursuance to the notice issued u/s. 153A of the Act, the assessee has offered the amount received from sale of land. This, in our view, cannot be a finding which is sustainable either on facts or in law. Firstly, Assessing Officer has not controverted the nature and character of land sold. Once, nature and character of land sold is established as agricultural land not to be treated as capital asset u/s. 2(14)(iii) of the Act, any income arising out of sale of such land – whether by way of declared sale consideration or on account of on-money, would partake the character of exempt income, as the source of both the declared sale

consideration and the on-money received is the same, viz., sale of agricultural land. That being the factual position, the income derived from sale of agricultural land, which is not a capital asset, cannot be made taxable. The decisions relied upon by Id. Counsel for the assessee fully supports this view. In view of the aforesaid, we do not find any infirmity in the decision of Id. Commissioner (Appeals) in deleting the additions made. Grounds are dismissed.

10. In the result, both the appeals are dismissed.

Order pronounced in the open court on 16/05/2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated:16/05/2023

*aks/-