



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Income Tax Appeal No.38/2020.

Pooja Agarwal, D- 5A, Meera Marg, Bani Park, Jaipur.

----Appellant

Versus

Commissioner of Income Tax-1, New Central Revenue Building,
Statue Circle, Jaipur (Raj.)

----Respondent



For Appellant (s) : Mr. Archit Bohra
For Respondent(s) : Mr. Anuroop Singhi with
Mr. N.S. Bhati

**HON'BLE THE CHIEF JUSTICE MR. PANKAJ MITHAL
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

Judgment

02/11/2022

1. Heard learned counsel for the parties.
2. The appeal pertains to the assessment year 2008-09. One of the issues which arose before the authorities was with regard to the capital gains on the sale of a particular land allegedly situate outside the municipal limits of Jaipur, which is said to be an agricultural land and was sold to Quality Resorts and Hospitality Limited, Mumbai. The department contended that it was within municipal limits and was not an agricultural land. Therefore, its sale proceeds are amenable to the capital gains. The matter travelled up to the High Court by means of Income Tax Appeal No.28/2014 : Commissioner of Income Tax-I, Jaipur Vs. Ms. Pooja Agarwal. The High Court vide judgment and order dated 08.11.2017 disposed of the appeal with the direction that the Income Tax Appellate Authority (ITAT) will consider the distance of



the land in question from the outskirts of the Jaipur City in the light of the notification dated 06/01/1994 issued by the Income Tax Department and if necessary, make a request to the Revenue Authority not below the Deputy Collector to verify the distance of the land from the outskirts of the Jaipur City. The matter was accordingly remanded to the ITAT.

3. In pursuance of the aforesaid order, the ITAT vide order dated 02.12.2019 instead of itself deciding the distance of the land from the outskirts of the Jaipur, remanded the matter to the Assessing Officer for the reason that the adjudication of the said issue requires proper verification and supporting evidence which was not before it. It is against the aforesaid order that the present appeal has been preferred and it has been admitted on the following two substantial questions of law:-

- "i) Whether in the facts and circumstances of the case the ITAT was justified in law in directing the Assessing Officer to measure the distance from the limits of municipality i.e. Jaipur to the area in which the land in question is situated being contrary to the directions of this Hon'ble Court?
- ii) Whether in the facts and circumstances of the case the ITAT has failed to act under realms of the specific remand and accordingly acted perversely and beyond its jurisdiction?"

A reading of the above two substantial questions of law on which the appeal has been admitted would reveal that the sole controversy which arise in this appeal is whether the ITAT was justified in remanding the matter to the assessing officer for measuring/re-verifying the distance of the land from the outskirts of the Jaipur when the directions of the High Court were strictly to



the ITAT itself to do the needful and if necessary, to take the help of the revenue authority.

4. The judgment and order of the High Court dated 08.11.2017 as spelled out from paragraph 4 thereof is very clear and explicit. It clearly directs the ITAT to re-verify and to get the land in question measured from the outskirts of the Jaipur taking into consideration the notification dated 06.01.1994 issued by the Income Tax Department and the judgment of the Court in Income Tax Appeal No.75/2014 and if necessary, to take help of the Revenue Authority for the purpose of verifying the aforesaid distance. Paragraph 4 of the aforesaid judgment and order of the High Court is reproduced hereinbelow:-

"4. In that view of the matter, with a view to verify whether the distance of the land in question is more than 8 kilometer on the outskirts of Jaipur city is required to be re-verified by the Tribunal taking into consideration, the notification dt. 6th January, 1994 issued by the Income Tax Department and judgment of this Court in Tax Appeal No.75/2014. The Tribunal will consider both the notification and judgment and if required make a request to Revenue Authority not below Deputy Collector to verify the distance from the outskirts of Jaipur to the land in question."

5. The High Court in issuing the above directions specifically remitted the matter to the Tribunal only for the purposes of verifying the distance.

6. In view of the above, the submission is that the verification of the distance was to be done by the Tribunal itself and it could not have relegated the matter to the assessing authority.

7. The Tribunal has remanded the matter to the assessing authority for the simple reason that the verification of the distance required proper and supporting evidence, which was not provided



to it. If that be so, the Tribunal could have requested the revenue authority as directed by the High Court to make the measurement and to submit the report and acting upon such report could have recorded its finding rather than remanding the matter to the assessing officer.

8. It may be pertinent to note that the ITAT is the last fact finding authority and its power in recording finding of fact is akin to that of Assessing Officer/CIT (Appeals). Therefore, the Tribunal itself could have recorded the finding with regard to the distance of the land from the outskirts of the Jaipur City itself rather than, remanding the matter the Assessing Authority or in the alternative may have requested the Assessing Authority or the Revenue Authority to make the measurements and to submit a report for the purposes of recording finding thereof.

9. It is also to be noted that when there is a direction issued by the High Court, the Tribunal is expected to follow the same in pith and substance. The direction of the High Court in remanding the matter to the Tribunal was to verify the distance of the land from the outskirts of the City and for that purpose, if necessary to take the help of the Revenue Authority. The ITAT without taking help of the Revenue Authority simply remanded the matter to the Assessing Authority for the purposes of recording finding with regard to the distance of the land in question from the outskirts of the city of Jaipur. This is completely in derogation of the spirit of the order of the High Court.

10. In view of the aforesaid facts and circumstances and the reasons recorded above, we are of the opinion that the ITAT manifestly erred in remanding the matter to the Assessing Authority instead of recording the finding with regard to the



distance of the land itself, which is contrary to the directions of the Hon'ble High Court.

11. Accordingly, the substantial questions of law are answered in favour of the Assessee and against the Revenue.

12. The order of the ITAT dated 02.12.2019 is set-aside with direction to it to record finding with regard to the distance of the land from the outskirts of the city of Jaipur as directed by the judgment and order of the High Court dated 08.11.2017 within a period of two months from the date, a copy of this order is produced before it, if necessary after taking help of the Revenue Authorities.

13. The appeal is allowed.

(ANOOP KUMAR DHAND),J

(PANKAJ MITHAL),CJ

Anil Goyal/HEENA GANDHI/31

