

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C/SMC', NEW DELHI)**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No:- 264/Del/2018
(Assessment Year: 2009-10)**

Virvati Devi, Bulandshahr. PAN No.-AYXPD4884A	Vs.	Commissioner of Income Tax (Appeals), GZB/Aligarh.
APPELLANT		RESPONDENT

Assessee by : Sh. Sandeep Saraf, Adv.
Revenue by : Sh. Vijay Kumar Jiwani, Sr. DR

Date of Hearing : 07.08.2018.
Date of Pronouncement : 10/08/2018.

ORDER

PER: BHAVNESH SAINI, JM

This appeal by the Assessee has been directed against the order of Ld. CIT(A) Aligarh, dated 19.09.2017 for Assessment Year 2009-10.

2. Briefly the facts of the case are that the AO had information that the assessee had sold an immovable property during the relevant previous year. After making preliminary inquiry in this regard, proceedings were initiated by issuing a Notice u/s 148

of the Act on 17.03.2016. In response, the assessee filed return of income on 30.05.2016 declaring NIL income and agriculture income of Rs. 50,000/-. The AO initiated the scrutiny proceedings and after discussing the matter with the Ld. Counsel for the assessee, the AO computed long-term capital gain of Rs. 49,45,757/- and allowed exemption u/s 54F amounting to Rs. 13,48,432/-. Thus, the assessment was completed by determining net capital gain of Rs. 35,97,325/-.

2.1 The assessee challenged the assessment order and the additions before the Ld. CIT(A). The assessee submitted that she is an agriculturist and sold agriculture land and agriculture activity was done on the land at the time of transfer of agricultural land. It was also submitted that at the time of hearing before the AO, the assessee submitted all the documents relating to agricultural land i.e. Jot Chankbandi, Khasra and Khatauni and other documents which proved that when land was sold, agricultural activities were done on the same land. The purchaser has purchased the land for industrial purpose but assessee has not sold the land as industrial plot. In the agreement, it was not recorded as industrial plot. The Ld. CIT(A), however, did not accept the contention of the assessee and rejected the claim of the assessee of transfer of agriculture land. The assessee made an alternate claim that she purchased agricultural land out of the consideration of transfer of land, therefore, such benefit may be allowed. The Ld. CIT(A) directed the AO to verify the claim of the assessee and allow as per law. The findings of Ld. CIT(A) in para 5.2 of the impugned order are reproduced as under:-

“5.2 **Decision**”

The appellant is claiming that the land sold by her was an agricultural land which is not a capital assets as per the definition given section 2(14). However, the AO has charged capital gain tax without verifying this claim of the appellant. I have considered all the documents that are available before me. It is seen that initially on 09.01.2009, the appellant had signed an agreement to sell with the purchaser namely M/s Arshiya International Ltd. and received part consideration of Rs. 44,62,500/- out of the total consideration of Rs. 51,00,000/-. It is to be noted that this agreement to sell was made without transferring the possession. On page 11 of the agreement the following is recorded:-

“कब्जा मुहायदाकृत भूमि पर फरीक दोयम को बेनामा के समय दिया जायेगा”

From the above, it is clear that the possession was not transferred at the time of agreement to sell. After that vide order dated 26.02.2009, the SDM changed the land use and declared the land as non agricultural. Thereafter, the sale deed was registered on 24.03.2009. Therefore, it can be seen that when the sale deed was signed and the transaction of sale of land was completed, the land had acquired the character of non agricultural land. Hence, on the date of sale the land in question was not an agricultural land. Therefore, the same would qualify to be considered as capital assets u/s 2(14) of the IT Act. Capital gain on transfer of such capital assets should necessarily be charged under the Income Tax Act. Therefore, in my opinion, the AO was fully justified in charging the capital gain on sale of the land in question. The AO has computed LTCG of Rs. 49,45,757/- and the appellant has not indicated any mistake in the calculation. Therefore, the capital gain computation is taken to be correct. The appellant has claimed that she had purchased agricultural land out of the consideration she received for selling the land on which capital gain has been determined. She is claiming that due benefit for purchase of such agricultural land should be allowed. The appellant has furnished copy of the purchase deed which shows that she purchased agricultural land of Rs. 27,00,000/- on 29.08.2009. The AO is being directed to verify the claim of the purchase and allow benefit of such purchase in accordance with the provisions of the Income Tax Act. To this extent, these grounds of appeal may be considered as partly allowed.”

3. We have heard the Ld. Representatives of both the parties and perused the material available on record. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and refers to **PB 22** which is copy of the sale deed and **PB 45** which is copy of Jotchakbandi Aakar (Khatauni) Certificate

and submitted that agricultural activities were done at the time of sale of property in question.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. After considering the rival submissions and material available on record, we do not find any merit in the appeal of the assessee. The assessee claimed to have sold the agricultural land. The Ld. CIT(A) noted that initially the assessee had entered into the agriculture to sell with the purchaser namely M/s Arshiya International Ltd. and received part consideration. It was noted in the agreement to sell the same is executed without transferring the possession. The copy of the sale deed dated 24.03.2009 shows that the properties in question have been referred as "industrial plot" for industrial purposes. In the sale deed, it is also mentioned that the plot under sale have been declared as industrial area by Khurja Development Authority as per master plan.

5.1 The Ld. CIT(A) correctly noted that possession of the property in question was not transferred at the time of Agreement to Sale. After the Agreement to Sale the SDM vide order dated 26.02.2009 changed the land use and declared the land as non-agricultural. The sale deed dated 24.03.2009 was registered thereafter. It is therefore clear that the sale transaction was completed on execution of the sale deed and at that time the land had acquired the character of non-agricultural land. Thus, on the date of sale, the land in question was not an agricultural land. The same would qualify to be considered as capital assets u/s 2(14) of the IT Act. The Ld. Counsel for the assessee

did not dispute the findings of the fact recorded by the Ld. CIT(A) and reproduced above. He has merely contended that the Jot chankbandi document shows it was an agricultural land. This document is not relevant on the face of the findings of fact recorded above. The sale deed in question is executed by the assessee and is document produced by the assessee. The assessee is therefore bound by the contents of the registered sale deed. The Agreement to Sale has no relevance to the matter in issue on execution of the registered sale deeds. Since prior to sale of the property in question, it was declared as industrial plot by the competent authority, therefore, it could not assume the character of agriculture land. Since industrial plot was sold by the assessee, therefore, it was correctly considered as capital assets for the purpose of computing long-term capital gain. In the absence of any serious challenge to the findings of the facts recorded by the Ld. CIT(A), no interference is called for in the matter. We confirm the findings of fact recorded by the Ld. CIT(A) and dismiss the appeal of the assessee.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 10/8/2018

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 10.08.2018
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	07/8/2018
Date on which the typed draft is placed before the dictating Member	09/8/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	10/8/2018
Date on which the fair order is placed before the Dictating Member for pronouncement	10/8/2018
Date on which the fair order comes back to the Sr. PS/PS	10 /8/2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

