IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.17 of 2013(O&M)
Date of decision: 25.08.2015

The Commissioner of Income Tax II, Amritsar

……Appellant

M/s Ranjit Rattan Mehra, HUF

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Denesh Goyal, Advocate for the appellant.

Mr. S.K.Mukhi, Advocate for the respondent-HUF.

Ramendra Jain,J.

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 18.7.2012, Annexure-A.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No.442(Asr) of 2011 for the assessment year 2008-09, claiming following substantial questions of law:-

> "i) Whether the Hon'ble ITAT has applied legal principles correctly by considering inadmissible evidence and not

considering admissible and relevant evidence?

ii) Whether on the facts and in law the Hon'ble, ITAT was right in not adjudicating the issue regarding assessment of the profit from the sale of land treating as adventure in the nature of trade and assessable as business income under sections 2(13) and 45 (2) of the Income Tax Act, 1961?

iii) Whether on the facts and in the circumstances of the case the, Hon'ble ITAT was right in deleting the addition of ₹ 40,000/- made by the Assessing Officer as income from undisclosed sources instead of agricultural income claimed by the assessee since no agricultural activities were carried out by the assessee?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee filed its return of income on 31.3.2009 as HUF showing an income of ₹ 3,80,179/- and agricultural income of ₹ 5,27,08,750/-, which was processed under Section 143(1) of the Act on 24.3.2010. Assessment under Section 143(3) of the Act was made vide order dated 31.12.2010 and income was determined at ₹ 4,82,32,179/-. During the course of assessment proceedings, it was noticed that the assessee HUF had sold agricultural land measuring 15 kanals 18 marlas situated at Village Fazilpur-Jharsa, Gurgaon for ₹ 5,26,68,750/- on 24.1.2008 and the sale proceeds were clubbed into agricultural income declared by the assessee. The assessee had also shown ₹ 40,000/- income from the sale of agricultural products. Information was sought from the District Town Planner (Planning) Gurgaon regarding Arrow Fly distance of Village Fazilpur Jharsa from the municipal limits of Gurgaon as on 24.1.2008 i.e. on the date of sale of land and whether the said village had been covered under any development plan. In reply, it was informed

that the Arrow fly distance and motorable distance from the outer limit of Gurgaon was 3.28 km and 5 km respectively. It was also informed that the agricultural land in question fell in Sector 72 of Gurgaon. Consequently, the Assessing Officer treated the sale of agricultural land as business income and after allowing the benefit of cost price and stamp duty paid, made an addition of ₹ 4,78,02,000/-. With regard to agricultural income of ₹ 40,000/-, the respondent was required to explain the nature of the agricultural product being sold. The assessee replied that it was growing *sarson* (mustard). It also stated that the agricultural produce was sold to M/s Sat Pal Bhagwan Dass and produced J Forms in support thereof. On enquiry, no such firm was found in existence. The Assessing Officer treated the income of ₹ 40,000/- as undisclosed income. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] During the proceedings, the assessee furnished additional evidence which was admitted by the CIT(A). Vide order dated 25.5.2011, Annexure A.2, the CIT(A) accepted the version of the assessee by treating the sale of agricultural land in accordance with the provisions of section 2 (14)(iii)(a)/(b) of the Act. The alternative claim of the assessee under Section 54F of the Act was also accepted as the assessee had made investment of ₹ 7.18 crores within the short period of six months by acquiring a residential property at Delhi. Not satisfied with the order, the department filed appeal before the Tribunal. Vide order dated 18.7.2012, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant-revenue submitted that the impugned order passed by the Tribunal confirming the findings recorded by the CIT(A) is based on surmises and conjectures. There was sufficient evidence on the record that no agricultural activity was even done for the last two-three years on the land sold by the respondent assessee. Thus, the finding of the Assessing Officer that income from sale of agricultural produce was not agricultural income in the hands of the respondent assessee, was not liable to be set aside when the assessee had failed to legally prove Form J qua sale of agricultural produce on the record. Further, the land sold by the assessee had lost its agricultural character being situated within the radius of 8 kms from Municipal Committee, Gurgaon and thus, the CIT(A) as well as the Tribunal had wrongly set aside the assessment order dated 31.12.2010.

5. On the other hand, learned counsel for the respondent supported the impugned order.

6. Undisputedly, the respondent-assessee HUF had purchased land measuring 49 kanals 10 marlas on 25.11.2003 and had sold some part of it in the year 2008 for a sum of ₹ 5,26,68,750/. The respondent claimed the said sale consideration to be its agricultural income in its return of income for the assessment year in question. The Assessing Officer vide order dated 31.12.2010 assessed the same as its business income inter alia on the ground that no agricultural activity was being done on the land by the respondent prior to its sale; the land had lost its agricultural character being situated within the radius of 8 kms from the Municipal committee, Gurgaon; the firm to whom the respondent had sold the agricultural produce, on

enquiry, was found to be not in existence; the respondent could not legally prove Form J qua sale of agricultural produce with the said firm and the assessee had also entered into sale transaction in the subsequent assessment year 2009-10 in the immovable property amounting to ₹ 4,44,40,469/- and thus the land was purchased by the respondent with the motive to earn profit after its sale. On appeal by the assessee, the CIT(A) reversed the findings recorded by the Assessing Officer which were upheld by the Tribunal. On consideration of the entire evidence and other material on record, the Tribunal upheld the finding recorded by the CIT(A) that under the provisions of section 2(14)(iii)(a)/(b), the assessee's land could be held as agricultural land situated beyond 8 kms outside the Gurgaon municipal limits. They had relied upon certificate bearing No.2152 dated 8.3.2011 issued by the Senior Town Planner, Gurgaon confirming that the land of the assessee was situated beyond 8 kms. from the Gurgaon Municipal Committee limits at the time of execution of sale deed on 24/25.1.2008 as it was converted into Municipal Corporation in July 2008. This certificate was based on the actual measurement taken from the land holdings of the assessee to the limits of the Municipal Corporation, Gurgaon. The finding regarding carrying on of agricultural activity was also rightly reversed as the Assessing Officer had based its conclusion on the basis of report of December 2010 of the Inspector in respect of agricultural activity prior to the sale in January 2008. It was also recorded that the Assessing Officer was not justified in rejecting the assessee's alternative claim of exemption under section 54F of the Act as it had made investment worth ₹ 7.18 crores more than the sale consideration within a short period of six months by acquiring a residential property at New Delhi. The relevant findings recorded by the Tribunal read thus:-

> "9. Therefore, in the facts and circumstances of the case and various decisions relied upon by the assessee before the learned CIT(A) and before us, we concur with the views of the learned CIT(A) that the AO is not justified in treating the assessee's solitary transaction of sale of part of its land holdings on 'as it is and where it is' basis without recording it as its stock in trade as assessee's business income by applying provisions of section 45 (2) of the Act and without establishing that the assessee is actually engaged in making frequent dealings in real estate business during the previous year relevant to the assessment year under consideration. The assessee had rather been able to substantiate that as per latest certificate bearing No.2152 dated 8.3.2011 of the Senior Town Planner, Gurgaon, the assessee's land is situated beyond 8 kms from the Gurgaon Municipal Committee limitation prevalent at the time of its sale executed on 24/25.1.2008 much before its conversion into Municipal corporation in July 2008 and even the Urban Development Plans relied upon by the department speak about the facts of post sale i.e. the land being covered as open space area other than commercial sites, residential site or park site by the Land Development authorities. The learned CIT(A) had perused the assessment records and it was found that the AO had not provided copy of information called for under section 133(6) such as reports of Tehsildar and District Town Planner, Gurgaon, dated 15.10.2010 and 22.12.2010 respectively. The AO has no where rebutted or contradicted assessee's arguments together with evidences, including the additional evidence but repeated the facts as mentioned in the assessment order. Therefore, we find no error in the order of the learned CIT(A) who has held that under the provisions of section 2(14)(iii)(a)/(b), the assessee's land can be held as agricultural land situated

beyond 8 kms outside the Gurgaon Municipal limits and that the area population of residents of the village Fazilpur Jharsa being below 10000, the assessee's asset is outside the purview of capital asset. The AO is not justified in rejecting the assessee's alternative claim of exemption under section 54F as it has made investment worth ₹ 7.18 crores more than the sale consideration within a short period of six months by acquiring a residential property at New Delhi. Therefore, the AO was not justified in making addition of ₹ 4,78,02,000/- treating assessee's agricultural income as business income. The same has rightly been deleted by learned CIT(A).

10. As regards treatment of agricultural income of ₹ 40,000/- as undisclosed income, the assessee had furnished a copy of Girdawri pertaining to the earlier financial years 2005-06 and 2006-07 that crop of sarson was grown and cultivated in the assessee's land holdings and out of the said sarson crops, some crop was retained to be used as sarson seeds in the next years. Ex Sarpanch of Gram Panchayat of Village Fazilpur Jharsa, Form J No.III dated 15.3.2008 duly verified by Shri Jasmeet Singh on 13.12.2010. As per these documentary evidences, the assessee had discharged its onus. These evidences cannot be brushed aside by the AO. The assessee had been using the neighbourer's tube well for water purposes. The statement of original seller for development of land does not hold any significant and evidentiary value against the assessee. Therefore, as per copy of Girdawri and certificate issued by the Sarpanch, the AO was not justified in rejecting assessee's contention with regard to the said agricultural income. In view of the above discussions, we find no infirmity in the order of the learned CIT(A) who has rightly deleted the addition so made by the AO. Thus, grounds No.1 and 2 of the revenue are dismissed."

7. Learned counsel for the appellant has not been able to show

any illegality or perversity in the approach adopted by the CIT(A) as well as the Tribunal warranting interference by this Court. Consequently, no substantial question of law arises in this appeal and the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

(Ramendra Jain)
Judge

25.8.2015
yogesh/gs