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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P. (C) No. 4985/2015**

SURJIT KUMAR CHETAL ..... Petitioner

Through: Mr. M.P. Rastogi with Mr. K.N. Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX-XV ..... Respondent

Through: Mr. Rahul Chaudhary, Senior standing counsel with Mr. Ranjan Kumar, Junior standing counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **11.09.2017**

1. The challenge in this petition under Article 226 of the Constitution of India is to an order dated 4th August 2014 passed by the Commissioner of Income Tax-XV, Delhi ('CIT') rejecting the revision petition of the Petitioner (hereafter 'Assessee') and affirming an order dated 22nd January 2014 passed by the Deputy Commissioner of Income Tax, Circle-43 (1), Delhi (hereafter Assessing Officer -'AO') under Section 154 of the Income Tax Act, 1961 ('Act') for Assessment Year ('AY') 2008-09.

2. The Assessee filed his return of income on 30th July 2008 for the ('AY') 2008-09 disclosing an income of Rs. 66,84,930/-. This included a sum of Rs. 59,63,727/- received as enhanced compensation for land acquired along

with the statutory benefits as provided under Sections 23 (1A), 23 (2) and 28 of the Land Acquisition Act, 1894 ('LA Act').

3. The Assessee's land, situated in the district of Hisar, had been acquired by the Government of Haryana. By an award dated 19th January 1995, the Land Acquisition Collector determined the compensation for the land. On a reference made by the land owners, including the Assessee, the Additional District Judge, by an order dated 29th January 1999, enhanced the compensation. This led to further appeals being filed before the Punjab & Haryana High Court which, by an order dated 12th July 2006, further enhanced the compensation along with the statutory benefits as referred to above.

4. The enhanced compensation along with the statutory benefits was received by the Assessee in the AY in question and offered to tax in the return of income. Subsequently, the Assessee filed a rectification application under Section 154 of the Act before the AO stating that the interest of Rs. 59,63,727/- under Section 28 of the LA Act had to be excluded from the income chargeable, in view of the decision of the Supreme Court in ***Commissioner of Income Tax v. Ghanshyam (HUF) [2009] 315 ITR 1 (SC)***. The AO rejected this application by its order dated 22nd January 2014 holding that the Assessee ought to have filed a revised return of income in order to claim any exemption which was not claimed in the original return. Further, the AO held that the decision in ***Ghanshyam (HUF)*** *(supra)* cannot be given retrospective effect. Further, since there was no mistake apparent on the face of the record, the prayer made was held to be beyond the

purview of Section 154 of the Act.

5. The Assessee then filed a revision petition under Section 264 of the Act before the CIT. By the impugned order, the CIT affirmed the order of the AO on the ground that since the land was situated within the municipal limits of Hisar town, it was non-agricultural land whereas the decision in ***Ghanshyam (HUF)*** *(supra)* was in respect of agricultural land. It was further held that Section 10 (37) of the Act did not apply to the facts of the case.

6. Having heard learned counsel for the parties, the Court is of the view that the CIT was in error in holding that Section 10 (37) of the Act did not apply. There was no dispute that at the time when it was acquired by the Government of Haryana the Assessee's land was both an agricultural land and a 'capital asset' within the meaning of Section 2 (14) (iii) of the Act which defined 'capital asset' to mean, *inter alia*, property of any kind held by the Assessee but did not include agricultural land that was not situated within the jurisdiction of a municipality. In other words, agricultural land situated within a municipality would constitute a 'capital asset' and therefore would be subject to capital gains tax upon the transfer of such asset.

7. In the present case, the agricultural land of the Assessee that was acquired was situated within the Hisar municipality and, in terms of Section 2 (14) (iii) (a), was a capital asset, the transfer of which would attract capital gains tax under Section 45 of the Act. However, in terms of Section 10 (37) (i) income chargeable under the head 'capital gains', arising from transfer of

such agricultural land located within the municipal limits, would not form part of the total income. Consequently, the impugned order of the CIT which holds to the contrary is both factually and legally erroneous.

8. The Court is also unable to accept the stand of the AO that the decision of the Supreme Court in ***Ghanshyam (HUF)*** *(supra)* was prospective and did not apply to the Assessee's case. The said decision is law declared by the Supreme Court which is binding on all authorities under Article 141 of the Constitution. For the purpose of Section 154 of the Act, the AO had to apply the said decision and permit the Assessee to exclude the interest component from the returned income. This was very much within the purview of Section 154 of the Act as this would not require any adjudication of a disputed question on the part of the AO.

9. For the aforesaid reasons, the impugned order dated 4th August 2014 of the CIT and the corresponding order dated 22nd January 2014 passed by the AO are set aside. The Assessee's application under Section 154 of the Act before the AO is held to be allowed. The AO will now pass the consequential order giving effect to the present order in accordance with law. The petition is allowed in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 11, 2017/*Rm*