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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21.11.2017

+ ITA 1022/2017

KAILASH NATH & ASSOCIATES Appellant

Through: None.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J.

1. The assessee is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT, for short), which rejected its appeal. The assessing officer (AO) rejected the assessee's plea that the land sold by it was beyond the municipal limits and therefore not a "capital asset". The Commissioner of Income tax (Appeals) (hereafter "CIT (A)") had granted relief to the assessee; the ITAT restored the order of the AO.

2. The question urged by the assessee is whether in the circumstances of the case, the agricultural land at Kundli village, an area comprised within the jurisdiction of Sonipat Municipality and in an area beyond 8

Kms from local limits thereof can be held a capital asset, on the ground that it was within 3 Kms from another Municipality.

3. The relevant facts are that on 29.12.2008 the assessment was made under section 143(3) by the AO. The assessee's argument for exemption of sale of agriculture receipts was rejected by the AO who ruled that agricultural land was a capital asset under Section 2(14) of the Act, as it was situated within 3 Kms from Delhi Municipal Limits, hence subjected to capital gain under Section 45 of the Act. The CIT(A), on appeal by the assessee cancelled the capital gain and held that the agricultural land was within the jurisdiction of Sonipat Municipality and being situated beyond 8 KM from that municipal limit, it could not be a capital asset within the meaning of section 2(14) of the Act. He held Delhi Municipality was a jurisdictional municipality and had no relevance in this regard. The assessee appealed; the ITAT set aside the order of the CIT(A) and restored the order of the AO, holding that the land should be beyond 8 Kms from any municipality and not only from the jurisdictional municipality. It followed the judgment of the Punjab and Haryana High Court in *Smt Anjana Sehgal* (2013) 40 Taxmann.com 485(P&H).

4. It is argued by Mr. Sampath, that in determining what is capital asset, Section 2(14) of the Act does not warrant the consideration of distance limit from the local limits of a municipality other than the jurisdictional municipality. It was argued that agriculture land beyond 8KM from the local limits jurisdictional municipality cannot be held to be a capital asset under the Act.

5. The revenue argues that the provisions of the Income Tax Act make clear that what is intended to be covered in the term "capital asset" is agricultural land comprised within the local limits of municipality or other local bodies as specified in the notification. The omission of any reference to the city or area covered by the territorial limits of a jurisdictional area, in this regard, is highlighted.

6. The provision in issue, Section 2 (14) reads as follows:

"Section 2(14) " capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include-

(i) any stock- in- trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) For personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him. Explanation.- For the purposes of this sub- clause," jewellery" includes-

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semiprecious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi- precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;]

(iii) agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal

corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;]... ”

7. The assessee's constant argument in support of its appeal is that the lands in question were within 8 kms from local limits of Municipal Corporation of Delhi. It further argues that the lands are beyond 8 kilometres from the limits of jurisdiction of the corporation of Sonipat, which is the jurisdictional municipality; consequently it should not be treated as a capital asset.

8. The court does not agree with the assessee's argument. The words of the statute are not that the limits of jurisdiction of a municipality are to be determined with respect to the jurisdiction of authorities under the Act. The phrase used with respect to location of an area, "*in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a)*", are neutral. The court should only examine whether the lands are in fact situated within or outside *any area within the prescribed distance, i.e. 8*

kilometres. Having regard to this fact, the narrow and constricted interpretation to the statute is unwarranted.

9. For the foregoing reasons, this court is of opinion that the findings of the ITAT were justified in the facts and circumstances; no question of law arises. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 21, 2017



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