

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**ITA No.143 of 2018(O&M)
Date of decision :2.11.2018**

Gurdeep Singh

..... Appellant

Versus

Principal Commissioner of Income Tax

..... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr.Divya Suri, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. The assessee has approached this Court under Section 260A of the Income Tax Act, 1961 (in short, `the Act') against the order dated 10.11.2017, Annexure A3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench A, Chandigarh (in short, `the Tribunal'), in ITA No.694/CHD/2017, for the assessment year 2013-14, claiming the following substantial questions of law:-

A. Whether the Hon'ble Income Tax Appellate Tribunal has erred both in law and on facts in upholding the decision of Commission Income Tax (Appeals) where the Id. Commissioner

Income Tax (Appeals) has treated the sale of agriculture land as long term capital gain tax and made an addition of ₹77,95,760/- to the returned income tax of the assessee.

- B. Whether the Hon'ble Income Tax Appellate Tribunal has erred both in law and on facts in upholding the decision of Commissioner Income Tax (Appeals) and treating the agricultural land situated in rural area approximately 4 kilometres away from outer limits of municipality as capital asset in terms of section 2(14(iii)) of the Income Tax Act, 1961.
- C. Whether the Hon'ble Income Tax Appellate Tribunal, Id. Commissioner Income Tax (Appeals) and the Assessing Officer all have wrongly ignored the report of Naib Tehsildar of Thanesar, District Kurukshetra who has specifically stated that the land in question is rural in nature.

2. The facts as projected by the assessee in the present appeal are that he declared his dividend income of ₹2,000/-, agricultural income of ₹15 lakhs, besides the income of

₹1,92,870/- from other sources for the assessment year 2013-

14. The Assessing Officer found that the property falls within 4 kilometres of the municipal limit and, therefore, vide assessment order dated 24.2.2016, Annexure A.1, he charged the sale of the land to long term capital gains tax and added ₹77,95,760/- to the returned income of the assessee. The aforesaid order was subject matter of challenge before the Commissioner of Income Tax (Appeals) [in short, the CIT(A)] who also dismissed the appeal vide order dated 20.3.2017, Annexure A.2. Even the further appeal before the Tribunal was also dismissed vide order dated 10.11.2017, which is subject matter of challenge before this Court.

3. Learned counsel for the appellant submitted that the property sold on 16.7.2012 for consideration of ₹87,50,000/- situated in village Wazidpur near Thanesar City, District Kurukshetra is agricultural land and falls out of the municipal limit. However, this fact has not been considered by the authorities below while adjudicating the controversy in dispute. Even under the provisions of Section 2(14) of the Act the agricultural land is excluded from the scope of definition of the capital asset.

4. We have heard the learned counsel for the appellant and perused the paper book.

5. A perusal of the records shows that the Assessing Officer found that the agricultural land sold by the assessee was situated within 4 kms of the municipal limits of Thanesar City. According to notification of the Central Government, the agricultural land situated beyond 5 kms of the municipal limits was liable to be excluded from the definition of capital asset chargeable to tax. On that basis, the Assessing Officer came to the conclusion that the land of the assessee was not an agricultural land, rather urban land in nature. Even the argument of the assessee that any kind of rural land is excluded from the scope of definition of the capital asset under Section 2(14) of the Act does not hold water in the light of the notification issued by the Central Government as the provision itself empowers the Central Government to prescribe the agricultural land situated at such a distance, having regard to the extent, and scope of urbanization of that area and other relevant consideration and, therefore, it is apparent that the land of the appellant falls within 5 kms of the municipal limits which included in the definition of capital assets chargeable to tax. The said findings were affirmed by CIT(A) and the Tribunal. No illegality or perversity could be pointed out by the learned counsel for the appellant in the concurrent findings of fact recorded by the authorities below.

6. No question of law, much less any substantial question of law, arises in the present appeal for determination.

7. At this stage, learned counsel for the appellant submitted that vide CM No.23847-CII of 2018, the assessee is claiming the following additional substantial questions of law:-

- I. Whether in the facts and circumstances of the case, pursuant to CBDT Circular No.14 (XL-35) dated 11.4.1955, can the assessee be declined the benefit of claim & allowance of exemption u/s54F of the Income Tax Act, 1961?
- II. Whether in the facts and circumstances of the case, can the legal claim arising out of undisputed fact can be raised at any stage of case proceedings pursuant to the judgment of National Thermal Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC)?”

8. We proceed to decide CM No.23847-CII of 2018 wherein additional substantial questions of law have been claimed. In so far as additional substantial questions of law at Sr.No.(II) is concerned, there is no dispute with regard to the proposition of law enunciated therein. However, the applicability of the legal position is required to be examined in the facts and circumstances of each case. In the present case, the assessee-appellant having lost before the Assessing Officer, CIT(A), and

the Tribunal has now sought to raise an issue that the assessee would be entitled to benefit of provisions of Section 54F of the Act as there was an investment made in the residential house. A perusal of the order of the Assessing Officer, CIT(A) and the Tribunal clearly shows that no such claim was ever made and no facts relating to this issue had been pleaded, proved or established before any of the authorities below. There is no material on record on the basis of which the claim of the assessee under Section 54F of the Act can be entertained, at this stage. Accordingly, we do not find any merit in CM No.23847-CII of 2018 and the same is, therefore, dismissed.

9. In view of the above, the present appeal being devoid of any merit is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

November 02,2018
KD/gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking / reasoned:
Whether Reportable:

Yes / No
Yes / No