(2024) 06 ITAT CK 0002

Income Tax Appellate Tribunal (Delhi E Bench)

Case No: Income Tax Appeal No. 268/DEL/2024

Narayan		APPELLANT
	Vs	
ITO		RESPONDENT

Date of Decision: June 3, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 2(14), 2(14)(iii)(b), 54, 54F, 147, 148

Hon'ble Judges: Dr. B. R. R. Kumar, (AM); Sudhir Kumar, J

Bench: Division Bench

Advocate: Yogesh Yadav, Anshul

Final Decision: Allowed

Judgement

1. This appeal by the assessee is directed against the order of the Commissioner of income Tax (Appeals), [hereinafter referred to as "CIT(A)], Gurgaon vide order dated 29.11.2023 pertaining to A.Y. 2011-12 and arises out of the assessment order dated 10.11.2016 passed by the Ld. Assessing Officer under section 147/148 of the Act, 1961 [hereinafter referred as 'the Act'].

2. Brief fact of the case is that appellant is an individual and is having physically disability by birth as deaf and dumb 100%. He is a senior citizen and unmarried. The agriculture land was sold at Rs. Rs.1,57,46,250/-and failed to pay capital gain tax. Assessee has not filed any income tax return. The AO has issued the notice to the assessee under Section 148 of the Act. The assessee did not appear before the AO and AO has passed the ex-parte assessment order vide dated 10.11.2016 and taxable income was assessed at Rs.1,55,85,250 against which the assessee has filed the appeal before the CIT(A). The Ld. CIT(A) vide his order dated 29.11.2013 partly allowed the appeal of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds :-

1. In facts and circumstances of the case and in law, the Ld. CIT(A) has erred in adjudicating the first and foremost issue at hand which was raised by the appellant in ground No.8 of his additional grounds of appeal before the Ld. CIT(A) pertaining to the nature of the asset which was sold by the assessee. It was contended by the appellant that the Ld. AO has erred in law and on facts in understanding that the agricultural land sold by the appellant is not a capital asset as per section 2 (14) of the act, since it is beyond 8 KM from the municipality limit of Gurgaon as per CBDT notification No.9447/F No. 164/3/87-ITA-I dated 06.01.1994 and the Ld. CIT(A) without giving any different findings and relying on the findings of the Ld. A.O. dismissed the ground taken by the appellant.

2. In the facts and circumstances of the case and in law, the Ld. A.O. and CIT(A) erred in considering and application of the CBDT notification dated 06.01.1994 that the distance of the land in question has to be seen as on 06.01.1994 and not on the date of sale of the agricultural land. The appellant duly submitted the distance certificate in which as per the municipal limit of Gurgaon on 6.01.1994 it was till Rajiv Chowk area and from that particular location the distance has to be measured to assess whether the land is in the radius of 8 KM from the municipal limit or not. To the contrary, the Ld. A.O. and CIT(A) has considered a report given by the concerned tehsildar in which the distance has not been measured by the GPS machine but by their own assessment. The law in this regard has been settled by the Hon'ble Tribunal and the coordinate benches in plethora of orders and in the case of" Dr. Subha Tripathi vs DCIT Jaipur" in ITA No. 1129/JP/2011 vide order dated 24.05.2013.

3. In the facts and circumstances of the case and in law, the Ld. CTT(A) erred in making the addition without considering the evidences produced by the appellant and declared that the land sold by the appellant is a capital asset solely based on their own findings and the wrong reports given by the concerned revenue department officials to which objection was raised in time by the appellant but nonetheless, the submissions of the appellant were discarded and arbitrarily the impugned order was passed by the Ld. CIT(A). It is pertinent to mention herein that the appellant has submitted distance certificate precisely measured by professional engineers and GPS machine along with the evidence of distance by map from the last municipal limit of Gurgaon as on 06.01.1994 i.e., Rajiv Chowk Gurgaon, but it was not considered by the Ld. CIT(A) and arbitrarily without obtaining any report of GPS machine measurements from the municipal limit as on 06.01.1994.

4. In the facts and circumstances of the case and in law, the Ld. CIT(A) has arbitrarily ignored the submissions made by the appellant wherein it was specifically mentioned by the appellant that they have obtained a distance certificate from a private authorized firm Vision Engineering Consultant having GPS machine for measurement of distance but it is not verified by the concerned Patwari even though it has been marked by the Tehsildar for verification and further a request was made to the Ld. Cit (A) to obtain a fresh distance certificate as per CBDT notification 9447 dated 06.01.1994. The Ld. CIT(A) without making any independent enquiry or giving necessary directions, outrightly ignored the submissions made by the appellant and relied on the findings given by the Ld. A.O. in his assessment order and based on the incorrect reports from the Tehsildar office. Solely, on this ground alone the order passed by Ld. CIT(A) is bad in law and deserves to be set aside.

5. The Ld. CIT(A) has totally ignored the decisions of the Hon'ble ITAT Jurisdictional Bench and the decision of the coordinate Bench of ITAT Jaipur which was not only cited but was also part of the written submissions of the appellant before the CIT(A) specifically analyzing the provisions of section 2(14) and notification dated 6.01.1994 issued thereon, which was directly applicable on the facts of the case of the appellant herein and based on the very similar facts to the teeth.

6. The Lad CIT(A) has erred in law as well as on facts in confirming the long-term capital gain of Rs. 1,55,85,251/-computed by the Ld. A.O. by treating the agricultural land as capital asset under section 2(14) of the Income Tax Act, 1961.

7. The Ld. CIT(A) has erred in law as well as on facts in disallowing the exemption to the appellant u/s 54/54F of the act as it was submitted by the appellant before the Ld. CIT(A) that the appellant has made investment in house to the tune of Rs. 30,11,000/- in the name of his nephews namely Sh.Naveen Sethi, Deepak Sethi and Lokesh Sethi (appellant's brother's sons) who are taking care of the appellant as the appellant is unmarried and is 100% physically disabled being deaf and dumb and the appellant is totally dependent on the care of his nephew's and the nephew's of the appellant are his only family members. That it is trite law that to fulfill the conditions of section 54F and exemptions available thereunder, it is not necessary that the residential property should be purchased solely in the name of the assessee or the amount invested has to be in the name of the assessee only. The intent of the legislature is that the investment shall come out of sale proceeds received by assessee.

8. That the Ld. CIT(A) and Ld. A.O. erred in law and has overreached the jurisdiction which was duly objected to by the appellant before the Ld. CIT(A) that

the assessment order passed by the Ld. A.O. is not sustainable and is bad in law as the same has been passed in violation of the mandatory pre- conditions stipulated in the act. The assessment order clearly states that the Notice u/s 148 was issued on 22.04.2015 by ITO ward 3(5) after recording the reasons to believe whereas the assessment order was passed by ITO Ward 3(1), Gurgaon who was having jurisdiction over the case of the appellant. Therefore, the assessment proceedings initiated u/s 148 of the act are in itself bad in law and void ab initio.

9. We crave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

4. The Ld. AO vide his order dated 21.03.2022 assessed the income at Rs.1,55,85,251/- because the land sold by the assessee was within the municipal limit of the Gurgaon and assessee has not been filed the income tax return as per law.

5. Before us at the outset Ld. DR supported the order of the AO and submitted that required details were not furnished by the assessee in the compliance of the notice. The AO, therefore, for the reasons noted in the order made the additions. He submitted that before CIT(A) the assessee has filed the requisite details. The Ld. CIT(A) thereafter for the reasons noted in the order has dismissed the appeal. Therefore, he submitted that the order of CIT(A) be upheld.

6. The Ld. Counsel for the assessee submitted that assessee had sold agricultural land which was situated beyond the 8 KM of the municipal limit of the Gurgaon. The CBDT had notified the circular No. 9447 Dt. 6-1-1994 and no change has been made in this notification after publication. The Ld. Counsel for the assessee also submitted that this is a covered matter by the decision of the Hon'ble ITAT Jaipur Bench in the case of Subha Tripathi (Smt.) (Dr.) v. DCIT (2013) 58 SOT 139 (Jaipur) (Trib.) has held as under :-

"Capital asset – Agricultural land- Municipal limit- Date of notification is relevant for assessing capital gains. Agricultural land, though located beyond 8 kms from municipal limits of Jaipur municipality as on date of impugned CBDT notification No.9447 dated 6-1-1994, but subsequently fell within the distance of 8 kms from municipal limits due to expansion of municipal limits would still be regarded as agricultural land not falling in definition of capitals asset in term of section 2(14)(iii)(b). (A.Y. 2008-09) Copy of order is enclosed."

7. The present appeal is to be decided solely on one point that the agricultural land sold by assessee was within the municipal limit of Gurgaon. The Ld. counsel for the assessee has submitted that as per the notification No. 9447 Dt. 6-1-1994 the land situated within 8 KM will be deemed in Gurgaon municipal area. The land is situated outside the eight kilometer and will not be considered in the municipal limit of Gurgaon. Assessee has also stated that agricultural land sold in question was outside

the municipal limits of eight kilometer which was also mentioned in the sale deed. Perusal of the order of Ld. CIT(A) reveals that the Ld. CIT(A) has not mentioned the date when the municipal limit of Gurgaon was extended. There was no other notification of CBDT after the date of 6-1-1994 by which the limits were extended. Assessee has sold agricultural land which was not situated within the municipal limit of Guargon. Due to the expansion of the municipal limit the area of agricultural land would still as agricultural land not filing definition of the capital assets.

8. The AO and Ld. CIT(A) has wrongly held that sold agricultural land was within the prescribed limit of the municipal area of Gurgaon.

9. The assessee has sold the agricultural land which has not come to the preview of the capital asset in term of section 2(14)(iii)(b) of the Act. Assessment Order made by the AO regarding the income of assessee was not sustainable.

10. From the above discussion the appeal is liable to be allowed and allowed accordingly. The order passed by the CIT(A) and the AO are set aside.

11. In the result, the appeal of the assessee is allowed.