Commissioner of Income Tax Vs Nirmal Bansal

Court: Delhi High Court

Date of Decision: April 30, 2013

Acts Referred: Income Tax Act, 1961 â€" Section 2(14)(iii)

Citation: (2013) 215 TAXMAN 639

Hon'ble Judges: Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Sanjiv Sabharwal, for the Appellant;

Judgement

Badar Durrez Ahmed, J.

CM No. 5523/2013 in ITA No. 198/2013

CM No. 5527/2013 in ITA No. 203/2013

CM No. 5528/2013 in ITA No. 205/2013

1. Exemption is allowed subject to all just exceptions.

ITA Nos. 198/2013, 203/2013, 204/2013 & 205/2013

1.1 These four appeals seek to raise common issues and are directed against the common order passed by the Income Tax Appellate Tribunal,

New Delhi, on 31.01.2012 in ITA Nos. 5304-5307/Del/2011 pertaining to the assessment years 2008-09 and 2009-10. Two appeals are in

respect of the assessee Smt. Manju Bansal and the other two are in respect of the assessee Smt. Nirmal Bansal.

Mr. Sabharwal, the learned counsel appearing on behalf of the appellant/revenue submitted that the Tribunal had misdirected itself in law in not

considering the question as to whether the land was agricultural in nature or not. He submitted that the issue before the Tribunal was with regard to

the addition of Rs. 2,34,70,697/- which had been made by the assessing officer on account of short term capital gain in respect of sale of different

plots of land at village Hayatpur, district Gurgaon, by the respondent/assessee. The Commissioner of income tax (Appeals), had deleted the said

addition. It may be pointed out that in the assessing officer''s order the only reason as to why the assessing officer had not granted the exemption to

the respondents on account of the provisions of section 2(14)(iii) of the income tax Act, 1961, was because the assessing officer had taken the

view that the possibility of there being some other ''shortest distance'' between the area where the plots of land were situated and the municipal

limits of Gurgaon so as to rule out the possibility that the lands were situated beyond 8 kms from the municipal limits. The assessing officer had

arrived at the above conclusion in the following manner:-

3. During the year the assessee has sold land at village Harsaru/Hayatpur, Distt. Gurgaon for a sum of Rs. 2,97,94,502/-. The assessee has

claimed that the capital gain from the sale proceeds of the land is exempt because the land is situated at a distance of more than 08 kms from the

outer municipal limits of Gurgaon. In support of his contention the assessee has furnished from Revenue authorities which is Tehsildar of Gurgaon

wherein he has certified that the land whose particulars are given in the sale deed of the assessee is at a distance of 09 kms. Further inquiries in this

regard was made from the District Town Planner of Gurgaon wherein he was asked to specify the distance of the land from the outer limits of

Gurgaon Municipal Committee. The District Town Planner, Gurgaon vide letter memo No. 70954 dated 21-12-2010 has intimated this office that

the distance of the land from the outer limits of the Municipal Committee of Gurgaon was 8.5 kms on the date of sale. The distance given by

District Town Planner, Gurgaon is very narrow as compared to the distance mentioned in the Act. In these circumstances the possibility of any

other shortest distance cannot be ruled out and the land sold by the assessee during the year is taken as ""Capital Asset"" within the meaning of

2(14) of income tax Act, 1961 and the profit thereof is treated as short term capital gain. Addition of Rs. 2,97,94,502/- is hereby made as short

term capital gain.

2. The Commissioner of income tax (Appeals), after considering the assessment order and the submissions of the respondent''s/assessee''s

observed that the assessees, during the course of assessment proceedings had submitted a certificate issued by the Tehsildar, Gurgaon to the effect

that the plots of land were situated at a distance of about 9 kms from the outer municipal limits of Gurgaon. The district town planner, Gurgaon by

a letter dated 21.12.2010 had also indicated that the distance of the said plots of the land was about 8.5 kms from the outer municipal limits of

Gurgaon. The Commissioner of income tax (Appeals), thus held that two competent authorities, namely, the Tehsildar, Gurgaon and the District

and Town Planner, Gurgaon had both, independently certified that the lands in question were situated beyond 8 kms of the municipal limits of

Gurgaon. Consequently, the Commissioner of income tax (Appeals) held that the observation of the assessing officer that there was a possibility of

some other shorter distance was not based on any hard evidence. It was also concluded by him that such an apprehension on the part of the

assessing officer could not form the basis of denial of the assessees claims. Consequently, the Commissioner of income tax (Appeals) deleted the

addition of Rs. 2,97,94,502/-.

3. The Income Tax Appellate Tribunal dismissed the appeals filed by the revenue and upheld the deletion made by the Commissioner of income

tax (Appeals). The Tribunal held that the view taken by the CIT (Appeals) that the lands in question were situated beyond 8 kms from the outer

limits of the municipal corporation of Gurgaon, could not be faulted.

4. The learned counsel for the revenue contended before us that the departmental representative had also raised the issue that the lands in question

were not agricultural lands at all and that aspect of the matter had not been gone into by the Tribunal. He submitted that in order that the profits

from sale of land are not subjected to capital gains tax, it has to be established that the lands in question were agricultural lands and that such lands

were not situated within 8 kms of the municipal limits. He submitted that question of ascertaining whether the land was situated within 8 kms or

beyond 8 kms was only the second condition. The first condition being that the land should have been agricultural. Mr. Sabharwal submitted that

while the departmental representative had raised the issue with regard to the lands not being agricultural in nature, the Tribunal had not gone into

this aspect of the matter at all and, therefore, to that extent the twin conditions stipulated in section 2(14)(iii) had not been satisfied.

5. We have examined the decision of the Tribunal and we find that while Mr. Sabharwal is right that the departmental representatives had raised

the issue about the nature of the land in question, the Tribunal has correctly dealt with this aspect of the matter. The Tribunal noted that the

assessing officer had made the disallowance merely on the ground that there was the possibility of a shorter distance, which would be less than 8

kms from the outer limits of the municipal corporation. The Tribunal noted that the assessing officer had not doubted the nature of the land being

for agriculture. It is in these circumstances that the Tribunal rejected the plea of the departmental representative that the matter be restored to the

file of the CIT (Appeals) for verification of the fact as to whether the lands were agricultural in nature or not.

6. Mr. Sabharwal had also placed reliance on the Supreme Court decision in the case of National Thermal Power Co. Ltd. Vs. Commissioner of

Income Tax, . He had relied on the said decision to canvas the proposition that the Tribunal could very well have examined the question of nature

of the lands even though it had not been in issue before the lower authority. However, we find that the decision in National Thermal Power Co.

Ltd. (supra) would be of no assistance to the revenue. In the said decision it has been clearly noted that the Tribunal had jurisdiction to examine a

question of law which ""arose from the facts as found by the Income Tax Authorities"" and which had a bearing on the tax liability of the assessee.

The point to be noted is that the question of law which could be raised before the Tribunal would have to arise from the facts as found by the

income tax authorities. In other words, there must be some factual basis on which the question of law is raised before the Tribunal. The relevant

facts must be on record. In the present case the assessing officer had not doubted the fact that the lands in question were agricultural in nature.

There is no foundational fact that the lands were not agricultural in nature. As such the plea raised by the departmental representative before the

Tribunal could not be gone into by the Tribunal as there was no foundational basis for the same. Clearly, the decision in National Thermal Power

Co. Ltd. (supra) would be of no avail to the revenue in the facts of the present case.

7. In view of the foregoing, no interference is called for with the impugned order of the Tribunal. In any event no substantial question of law arises

for the consideration of this court. The appeals are dismissed.