

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SH. N. K. BILLAIYA , ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 1125/Del/2015
(Assessment Year: 2006-07)**

Smt. Poonam Bhalla House No. 1221 Sector 15 Faridabad PAN : ADFPB2080D	Vs.	Assistant Commissioner of Income Tax Circle-II Faridabad
(Appellant)		(Respondent)

Appellant by : Sh. Neeraj Jain, CA
Respondent by : Sh. Ravi Kant Gupta, Sr. DR
Date of hearing : 07.08.2018
Date of pronouncement : 09.08.2018

ORDER

PER BEENA A. PILLAI, J.M :

Present appeal has been filed by assessee against order dated 17/12/14 passed by Ld.CIT(A), Faridabad for assessment year 2006-07 on the following grounds of appeal:

"1. That the order of learned Commissioner of Income Tax (Appeals) is bad in law and on the facts of the case.

2. That the learned Commissioner of Income tax (Appeals) has erred in sustaining the reopening of assessment u/s 147 of the Income Tax Act, 1961.

3. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs.

65,86,835/- made on account of short term capital gain on sale of agricultural land holding that the land was not agricultural land within the meaning of section 2(14) of Income Tax Act, 1961.

4. The above grounds of appeal are without prejudice to each other.”

2. Brief facts of the case are as under :

Assessee filed its return of income declaring income of Rs.43,364/- on 19/03/07, which was processed under section 143 (1) of the Act. Subsequently from assessment order passed in case of Smt.Chaya Sinha wife of Sh. Praveen Kumar, having address at 561, sector 20 1A, Faridabad, it was noticed that Smt.Chaya Sinha and Smt.Poonam Bhalla were co-owners of an agricultural land, holding half equal shares, situated at Village Dudhola, Palwal. From assessment order passed in case of Smt.Chaya Sinha, claim of exemption of capital gains tax was denied as assessing officer therein was of the opinion that alleged agricultural land sold during the year was not capital asset, under the definition in section 2 (14) of the Act.

3. Accordingly notice under section 148 of the Act was issued on 22/03/13 to assessee, in response to which it was submitted by assessee to consider return filed on 19/03/07 u/s.139(9) of the Act, as return filed in response to notice. From the return so filed, Ld. AO observed that assessee sold alleged agricultural land and claimed that it is not a capital asset under section 2 (14) of the Act and therefore profit arising thereon amounting to Rs.62,18,410/- is

not chargeable to tax as capital gain. It was also submitted that the land is situated outside municipal area.

4. Ld.AO thus recorded reasons for reopening assessment in the case of assessee is as under:

“The assessee has filed its return of income declaring of Rs. 43,364/-. During the course of assessment proceedings in the case of Smt. Chhaya Singh W/o. Sh. Pravin Kumar, 561, Sector-21A, Faridabad, it was noticed that Smt Chhaya Sinha & Smt. Poonam Bhalla had sold land at Village Dudhola, Palwal for a consideration of Rs. 1,34,47,500/- vide sale deed 31.10.2005. Assessment has been completed in the case of Smt. Chhaya Sinha by denying exemption u/s 2(14) and short term capital gain has been added back to the total income of Smt. Chhaya Sinha (she has 50% share in the said law).

It is further noticed that the assessee has claimed deduction amounting to Rs. 82,83,292/-. The assessee is not entitled to claim exemption as the land sold during the year was capital assets falling within the meaning of section 2(14)(iii)(b) of the I.T.Act, as the land in question is situated in the adjoining area of Tehsil Palwal, and capital gains tax is liable on the capital gain arising out of this transaction.

Keeping in view of the facts dated above, I have reason to believe that income amounting to Rs. 82,83,292/- has escaped assessment for the A.Y. 2006-07.”

5. Assessee made various submissions before Ld.AO during assessment proceedings, Ld.AO placed reliance upon report of Inspector which was obtained in case of Smt.Chaya Sinha dated 11/11/11. In the report Inspector reported that the entire area is an industrial hub and therefore was not used for agricultural purposes on the date when it was sold by assessee prior to 3 to 4 years.

6. Ld.AO passed assessment order under section 143(3) read with section 147 of the Act, taxing 50% of the capital gain on sale of land as short term capital gain, following assessment order passed in case of Smt.Chaya Sinha.

7. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT (A) challenging issue of reopening, as well as merit of addition. Ld.CIT(A) upheld action of reopening of assessment and dismissed grounds of assessee by holding that no agricultural income has been shown during the period of holding and therefore no agricultural activities were carried out by assessee as per enquiry report submitted by Inspector and sale of land was in a developed industrial hub and therefore could not be considered to be an agricultural land. He upheld action of Ld.AO in considering land to be capital asset.

8. Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

9. Ground No.1 is general in nature and therefore do not require any adjudication.

10. Ground No.2 has been raised by assessee challenging validity of reopening of assessment under section 147 of the Act.

11. Ld.AR submitted that there is no material that has come to the possession of Ld.AO and reopening is based on returns filed by assessee. He submitted that assessee had filed its original return under section 139 (1) of the Act on 19/03/07, which is the basis for reopening of assessment in present case. Ld.AR further submitted that reasons recorded for reopening does not speak of any independent material which had come to the notice of Ld.AO, and therefore reassessment notice is without any foundation which cannot be considered to be valid. He submitted that reasons recorded for reopening is based upon assessment proceedings in case of Smt.Chaya Sinha, who was co-owner along with assessee of alleged plot that was sold. Further he submitted that this Hon'ble Tribunal in case of Smt.Chaya Sinha has held reopening to be bad in law, by holding that there was no '*reasons to believe*' of escapement of any income.

12. On the contrary Ld. Sr.DR submitted that reopening is based on information collected by Inspector during assessment proceedings of Smt.Chaya Sinha. He submitted that Inspectors report clearly shows, that there was no agricultural income, which is substantiated by return of income, wherein no agricultural income has been declared by assessee. Further Ld.Sr.DR submitted that land was purchased and sold within a short period of 10 months time, which further substantiates revenue stand that assessee could not have started cultivating on alleged agricultural

land in this short period. Placing reliance upon statement of Sh.Praveen Kumar, husband of Smt. Chaya Sinha, Ld.Sr.DR submitted that, admittedly there has been no cultivation on alleged agricultural land and, therefore Ld.AO was correct in holding it to be capital asset in the hands of assessee. He submitted that based upon aforesaid materials gathered during assessment proceedings of Smt. Chaya Sinha, reopening in case of assessee is based upon a '*reason to believe*', of income having escaped assessment.

13. We have perused the submissions advanced by both the sides and the light of the records placed before us.

Assessee before us is an individual and had filed her return of income on 19/03/07, wherein she had disclosed profit from sale of agricultural land amounting to Rs.62,18,410/-. The same is evident from computation of income placed at page 3-4 of paper book. The assessment was reopened and as per reasons recorded, a similar claim in case of co-owner was denied by assessing officer and further that the land in question, is situated in adjoining area of Thasil, Palwal, and capital gain tax is payable on capital gains arising out of this transaction. However it is further observed that Inspectors report relied upon by Ld.AO show land is about 11 km from Thasil Palwal. Ld.AR while arguing his case, placed reliance upon decision of this Tribunal dated 11/03/16, passed in case of co-owner, in ITA No. 2462/Del/2014 for assessment year 2006-07 placed at page 38-41A of paper book.

Upon perusal of this order, passed by the coordinate bench of this Tribunal in the case of co-owner, it is observed that on similar facts,

reopening has been quashed by observing there was no 'reason to believe' for reopening the assessment. This Tribunal therein observed that:

“18. In the present case, the reasons disclose that the assessing officer reached the belief that there was escapement of income on going through the return of income filed by the assessee after the accepted the return under section 143 (1) without scrutiny, and nothing more. There is nothing but a review of the earlier proceedings and and abuse of power by the assessing officer both strongly deprecated by the Supreme Court in CIT versus Kelvinator (supra). The reasons recorded by the assessing officer in the present case to not confirm our apprehension about the harm that are less strict interpretation of the words “reason to believe” viz-a-viz an intimation issued under section 143 (1) can cause to the tax regime. There is no whisper in the reasons recorded of any tangible material which came to the possession of assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147.”

14. In the facts of the present case assessing officer is reopening assessment on 2 counts:

- assessment in the case of Smt. Chaya Sinha has been passed by denying exemption under section 2 (14) and 50% of short term capital gain has been added back to the total income of Smt.Chaya Sinha. And

- the exemption claimed by assessee is to be denied as it was a capital asset falling within the meaning of section 2 (14) (iii) (b) of the I T act, as the land in question is situated in the adjoining area of Thasil Palwal and capital gain tax is liable on the capital gain arising out of this transaction.

15. In our view the above 2 reasons cannot be the basis for reopening assessment in case of assessee before us. Merely because addition has been made in hands of co-owner no presumption could be drawn that income has escaped assessment in the hands of assessee, without there being independent '*reasons to believe*', based upon cogent materials. Secondly, Inspector's report based upon which assessment was completed in the hands of Smt.Chaya Sinha, specifically states that alleged agricultural land is situated 11 km away from Thasil Palwal, and therefore 2nd reason for reopening of assessment is again based upon a contrary view.

16. In the context of statement recorded of Sh. Pawan Kumar, husband of Smt.Chaya Sinha regarding no cultivation has taken place on alleged agricultural land during holding period and subsequently having being sold in a short span of 10 months, we observe that intention to use a particular piece of land for non agricultural purposes cannot by itself alter character of the land in question. What is to be seen is nature of land as on the date it was acquired. It is observed from letter dated 13/03/06 issued by Thesildar, Palwal, that alleged agricultural land is situated 12 km away from the city of Palwal. This fact has not been disputed by Ld.AO, in present facts of the case or by assessing officer who

passed assessment order in case of Smt.Chaya Sinha. Further authorities below has not been able to dispute that during financial year relevant to assessment year under consideration, as per revenue records land in question has been shown as “KHUD KHA” and without any basis or material evidence rejects these Government records by holding it to be an mechanical entry.

17. On the basis of the above, we do not find any materials, based upon which assessing officer had ‘*reason to believe*’, that income has escaped assessment.

Accordingly we allow legal claim raised by assessee in Ground No. 2.

18. Ground No. 3 is in respect of addition made on account of short term capital gain on sale of agricultural land holding that the land was not agricultural land within the meaning of section 2 (14) of the act.

As we have already quashed and set-aside the reopening of assessment, this ground becomes infructuous.

19. In the result appeal filed by assessee stands allowed on legal issue.

Order pronounced in the open court on 09/08/2018.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER
Date: 09.08.2018
Binita

Sd/-

(BEENA A. PILLAI)
JUDICIAL MEMBER

Copy of order to: -

- 1) The Appellant;
- 2) The Respondent;
- 3) The CIT;
- 4) The CIT(A)-, New Delhi;
- 5) The DR, I.T.A.T., New Delhi;

True Copy

By Order

ITAT, New Delhi

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