

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

ITA No. 646 of 2009
Date of decision 7 .1.2010

Commissioner of Income Tax II, Ludhiana ... Appellant

Versus

Sh. Satinder Pal Singh ... Respondents.

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr Rajesh Sethi ,Advocate for the appellant

- 1.To be referred to the Reporter or not ?
- 2.Whether the judgement should be reported in the Digest ?

M.M.KUMAR, J.

This order shall dispose of two appeals bearing ITA No. 646 and 647 of 2009 as the issue raised in both the appeals is the same.

The Revenue has filed the instant appeals under Section 260A of the Income Tax Act,1961 (for brevity 'the Act') in respect of assessment year 2001-02 challenging order dated 31.3.2009 passed by the Income Tax Appellate Tribunal, Chandigarh (for brevity 'the Tribunal') in ITA No. 641-CHD-2004 alongwith Cross Objection 38 Chandi/2006. The Tribunal after dealing with various aspects of the matter has disposed of the appeal filed by the Revenue alongwith the cross objection of the assessee- respondent. In respect of the question concerning distance of the agricultural land from the municipal limits of city of Khanna the Tribunal has decided the issue holding that distance of 2 kms. from the municipal limits of city of Khanna has to be reckoned for the purposes of Section 2(14)(iii) of the Act by measuring the same as per the road distance and not as per straight line

distance on a horizontal plane or as per crow's flight. After holding in the aforesaid manner, the Tribunal has remanded the matter to the Assessing Officer to ascertain as to whether the agricultural land in question falls within the definition of capital assets under Section 2(14) of the Act by considering the distance in terms of the approach by road. The Revenue has claimed that following three questions of law would arise for determination of this Court:

“ (1) Whether on the facts and in law, the Hon'ble ITAT was right in law in holding that distance of 2 kilometers for the purpose of section 2(14)(iii) of the Income Tax Act,1961 has to be taken in terms of approach by road and not as per straight line distance on a horizontal plane ;

(2)Whether on the facts and in law, the Hon'ble ITAT was legally justified in confirming the order of CIT(A) in deleting addition made by the A.O. on account of repayment of loan to Canara Bank from unexplained sources when the assessee failed to establish any nexus between the sale of horses and the amount of repayment of loan in the Canara Bank; and

(3)Whether on the facts and in law, the Hon'ble ITAT was legally justified in confirming the order of CIT(A) in deleting addition made by the A.O. on account of repayment of loan to Canara Bank from unexplained sources when the assessee failed to discharge the onus by adducing any supporting documentary evidence regarding the sources of repayment of loan before the assessing Officer ?”.

During the course of hearing, we have found that question Nos. (2)

and (3) are pure questions of fact and would not result into any substantive questions of law which are required to be adjudicated by this Court. Accordingly, we proceed to consider question No.1.

A perusal of the order passed by the Tribunal shows that once the principle of measuring distance has been settled namely that the distance of the agricultural land belonging to the assessee- respondent has to be measured in terms of the approach by road and not by a straight line distance on horizontal plane or as per crow's flight. The Tribunal has placed firm reliance on a judgement delivered by Mumbai Bench of the Tribunal in the case of Laukik Developers v. DCIT 105 ITD 657 wherein the aforesaid principle has been accepted.

Having heard the learned counsel we are of the considered opinion that the views expressed by the Tribunal on the principle of measurement merits acceptance. There is statutory guidance available in Section 2(14)(iii) of the Act. It would be profitable to read the aforesaid provision which is as under:

“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-

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(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 kilometers, 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, urbanization of that area and other relevant considerations, specified in this behalf by notification in the Official Gazette”.

A perusal of the aforesaid provision shows that 'capital asset' would not include any agricultural land which is not situated in any area within such distance as may be specified in this behalf by a notification in the official gazette which may be issued by the Central Government. The maximum distance prescribed by Section 2(14)(iii)(b) of the Act which may be incorporated in the notification could not be more than 8 Kms. from the local limits of municipal committee or cantonment board etc. The notification has to take into account the extent of, and scope for urbanization of that area and other relevant considerations. The reckoning of urbanization as a factor for prescribing the distance is of significant which would yield to the principle of measuring distance in terms of approach road rather than by straight line on horizontal plane. If principle of measurement of distance is considered straight line distance on horizontal plane or as per crow's flight then it would have no relationship with the statutory requirement of keeping in view the extent of urbanization. Such a course would be illusory. It is in pursuance of the aforesaid provision that notification No. 9447 dated 6.1.1994 has been issued by the Central Government. In respect of the State of Punjab, at item no.18 the sub division Khanna has been listed at serial no.19. It has inter-alia been specified that area upto 2 kms. from the municipal limits in all directions has to be

regarded other than agricultural land. Once the statutory guidance of taking into account the extent and scope of urbanization of the area has to be reckoned while issuing any such notification then it would be incongruous to the argument of the Revenue that the distance of land should be measured by the method of straight line on horizontal plane or as per crow's flight because any measurement by crow's flight is bound to ignore the urbanization which has taken place. Moreover, the judgement of the Mumbai Bench appears to have attained finality. Keeping in view the principle of consistency as laid down in Radha soawami Satsang v. CIT (1992) 193 ITR 321, we are of the view that the opinion expressed by the Tribunal does not suffer from any legal infirmity warranting interference of this Court. Accordingly question No. (1) is answered against the Revenue and in favour of the assessee by upholding the order of the Tribunal.

The other two questions being based on pure findings of fact would not constitute substantive question of law and the findings recorded by the Tribunal are hereby affirmed.

The appeals accordingly stand disposed of.

A copy of this order be placed on the file of connected appeal.

(M.M.Kumar)
Judge

(Jitendra Chauhan)
Judge

7.1.2010

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