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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 11.11.2024

+ **ITA 450/2024**

SANDEEP HOODA

.....Appellant

Through: Mr Abhimanyu Bhandari, Sr.
Advocate with Mr Kunal Sharma, Mr
Shubhendu Bhattacharya, Mr
Adhirath Chaudhary and Ms Yukti
Aggarwal, Advocates.

Versus

PR. COMMISSIONER OF INCOME TAX-7, DELHI & ANR.

.....Respondents

Through: Mr Aseem Chawla, SSC with Ms
Pratishtha Chaudhary, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (Oral)

1. The appellant has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 29.04.2024 passed by the learned Income Tax Appellate Tribunal (hereafter *ITAT*) in ITA 5670/Del/2019 in respect of the Assessment Year (AY) 2015-16.

2. The controversy in the present appeal relates to the appellant's claim for exemption under Section 54 of the Act. The appellant had filed its return of income for the relevant AY 2015-16 on 31.03.2016, declaring the total income of ₹1,27,54,600/-. The said income was selected for scrutiny.



3. The appellant (hereafter *Assessee*) had sold a residential property, 1/7 Shanti Niketan, New Delhi on 25.09.2014, for a consideration of ₹6,88,00,000/- and had earned a capital gain of ₹5,63,74,550/-. However, the assessee claimed exemption in respect of the said gains on the ground that he had constructed 'a residential house' within a period of three years. Therefore, the said gains were exempted under Section 54 of the Act.

4. The Assessing Officer (AO) made certain queries and found that the Assessee was not eligible for the exemption under Section 54 of the Act. The AO concluded that the Assessee had not constructed a residential house but purchased vacant agricultural land. The structure on the agricultural land, which the Assessee claimed was a constructed residential house, was only a makeshift structure that had been raised with a view to evade the tax liability.

5. The AO also caused the property 'Khewat No. 76, Khatoni No. 76, Village Bandhwari, Sohna, Distt. Gurgaon' (hereafter *the subject property*) to be physically inspected and confronted the Authorised Representative (AR) of the Assessee with the report of the inspector as well as photographs of the property which the Assessee claimed was 'a residential house.'

6. The AO sought a response of the Assessee but no written response was submitted at the material time. The AO made enquiries from the AR of the Assessee and his response indicates that the subject property in question could not be considered as a residential house.

7. The relevant questions and the responses of the AR, as recorded by the AO in the assessment order are set out below:

“Q.1 When the property '1/7 Shanti Niketan New Delhi - 110002' was sold?



A. September 25, 2014

Q.2 When did you purchase the new property 'Khewat No. 76 Khatoni No. 76, Village Bandhwari, Sohna, Distt. Gurgaon '?

A. March 12, 2015

Q.3 What was the nature of property in Q.2?

A. Agricultural land (suitable for construction of a residential house?)

Q.4 What is the present status of the property in Q.2?

A. As per assessee/ there is a boundary wall, 1 bedroom accommodation, toilet (attached), and 1 guard room. Regarding electricity supply we are not aware of present situation. Regarding water connection, we are also not aware of current water connection status. Constructed area is approx. 150-200 sq. ft.

Q. 5 When will you submit the final details with respect to Q. 4? Assessee has been informed to give supporting pictures.

A. 30th November, 2017.

Q. 6 Would you like to add anything more in the above statement?

A. No.”

8. In addition, the AO also extracted the report furnished by the Inspector, who was deputed by the AO to verify the construction raised on the land in question. The assessment order indicates that the agricultural land was situated at Village Bandhwari, Sohna, Gurgaon. The area was vast and uninhabited and comprised of hilly terrain. The relevant extract of the Inspector’s report, as noted by the AO in its assessment order, is set out below:

“INSPECTOR'S REPORT

(in the case of San deep Hooda)

As directed, I, along with Shri. Tarkeshwar Sah, OS went for enquiry of the land at Khewat No. 76, Khatoni No, 76, Village Bandhwari, Sohna, Gurgaon on 25.11.2017. On reaching the village Bandhwari, we met Sarpanch Lakhani (Mobile No, 9891475497) at his residence. On enquiry he informed us that he was unable to identify the exact location



of the land since the area was vast, uninhabited and comprise of hilly terrain. He also had given us the contact number of Patwari named Mr. Sawan (Mobile No. 9991160943), on contacting Mr. Sawan, he informed us that without Kila/Musti number, it is difficult to identify the exact location of the land.

T. KHUP SUAN LIAN

Inspector

ACIT, Circle – 22(2)
New Delhi.”

9. The AO was of the view that it was necessary for the Inspector to once again visit the site and called upon the Assessee to arrange a visit to the site on 07.12.2017. The inspection (second inspection) of the site was conducted on 07.12.2017 and the report furnished by the Inspector as noted in the assessment order, is set out below:

“INSPECTOR’S REPORT”

(in the case of Shri. Sandeep Hooda)

1. One makeshift guardroom (make plywood) of 7 x 6 feet, One cylinder and one gas stove along with some utensils were found in the guard room, on which guard Sh. Padam Singh prepares his daily food items.
2. One similar room of plywood of 16 x 12 feet was also there, with toilet attached, in which some furniture was lying. Nobody lives there except than guard.
3. No electricity connection was there on the land. For electricity genset is used.
4. No water connection was found in the premises. Only source of water was found to be a syntax tank of approximate 300 litres.
5. All the above makeshift structures were constructed in a corner of the land, The rest of the land i.e. 1.75 acres was lying simply vacant.
6. Lastly, the land was not having a cemented boundary walls. On three sides it was encircled by barbed wires and cemented pillars.”



10. In view of the aforesaid report, the AO concluded that the deduction under Section 54, as claimed by the Assessee, was not allowable.

11. The Assessee successfully appealed the said decision made by the AO before the learned Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*]. The learned *CIT(A)* found in favour of the Assessee. He is of the view that the Assessee had purchased a tract of agricultural land and had constructed two rooms, a toilet, and a kitchen. He also relied on the report of the Inspector, which reflected that on his visit he had found that there was a gas stove and essential utensils kept in the structures. He also noted that there was a soak pit for sewage disposal and there was a boundary wall, one bedroom accommodation, one toilet and one guard room. The learned *CIT(A)* was persuaded to accept that the subject property in question qualified the description of “a residential house”. He also reasoned that the subject property in question was located in rural area where no particular norms of construction were prescribed by the local authorities. In the circumstances, the Assessee was not required to observe the norms prescribed by Municipal Authorities for urban housing. He also referred to a certificate dated 11.09.2017 issued by an architect certifying that the Assessee’s house consisted of two rooms with the toilet, kitchen, and garden at the specified address.

12. Accordingly, the learned *CIT(A)* passed an order dated 04.04.2019, deleting the addition made by the learned AO on account of disallowance of exemption under Section 54 of the Act.

13. The Revenue filed an appeal assailing the decision of the learned *CIT(A)* before the learned ITAT. The learned ITAT found that the learned



CIT(A) had erred in interfering with the assessment order. The learned ITAT noted that the Assessee had entered into an agreement to sell dated 12.03.2015 with M/s Vera Edu Infra Pvt Ltd. for purchase of 1.75 acres of agricultural land on which assessee was desirous to construct a residential house. The learned ITAT also considered the responses of the AR of the Assessee as noted by the AO and reached a conclusion that the Assessee had not constructed a residential house till 25.09.2017.

14. The responses furnished by the AR to the questions posed by the AO on 27.11.2017 clearly indicated that there was no electricity connection or water connection to the subject property in question. It is also material to note that prior to 27.11.2017, on 13.11.2017, the AO had asked the Assessee to show cause why the deductions under Section 54 of the Act should not be disallowed as the construction of the house could not completed before 25.09.2017. However, the Assessee had not filed any written response at the material time. The learned ITAT also examined the Inspector's report and concluded that the assessee had not invested the capital gains in purchase of 'a residential house'. The learned ITAT held that the residential house whether situated in urban or rural locality is required to have the "basic amenities such as a boundary wall, kitchen, washroom, bedroom, electricity connection and water connection" as required for habitation in a residential house. The learned ITAT noted that although the Assessee may be intending to construct a residential house on the agricultural land purchased by him, the facts clearly established that the Assessee had not done so within a period of three years from the date of transfer of the property in question (Khewat No. 76, Khatoni No. 76, Village Bandhwari, Sohna, Distt. Gurgaon), that is on or before 25.09.2017.



15. In the aforesaid context the Assessee had projected the following questions for consideration of this court:

- a. Whether the ITAT misdirected itself in facts while holding that none of the basic amenities like boundary wall, kitchen, washroom, bedroom, electricity connection or water connection were available at the residential house of the Appellant, when the Revenue itself had admitted that there was a boundary wall and a kitchen and a washroom and a bedroom, albeit with minimal utilities?
- b. Whether under Section 54 of the Income Tax Act it is necessary to show that the residential house has the basic amenities as mentioned by the ITAT?
- c. Whether the ITAT was right in reversing the findings of the CIT(A) with respect to the certificate of the sarpanch and the certificate of the architect on the ground that the same had not been placed on record when the appeal had been filed by the Revenue upon whom it was incumbent to place on record the document the relevance and effect of which it intended to challenge?
- d. Whether the ITAT was right in holding that the certificates issued by the Sarpanch and the Architect had no evidentiary value in light of the physical inspection carried out by the inspector from the Department?
- e. Whether the ITAT was right in rejecting the case laws relied upon by the AR and also by the CJT(A) by simply stating that the facts of the said cases were completely distinguishable, without delineating the same on facts?"

16. The principal issue relates to whether the Assessee had constructed a residential house on the agricultural land within the stipulated period of three years from the date of transfer of the aforesaid property in question, that is, on or before 25.09.2017. The learned ITAT found that the Assessee had not done so. The question whether a residential house was constructed or not within the stipulated period is a question of fact. The Assessee has not challenged the finding of the fact of the learned ITAT on the ground that it is perverse, and in our view, rightly so.

17. It is relevant to refer to Section 54 of the Act which is set out below:



“54. Profit on sale of property used for residence.

[(1)] [Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset, [* * *] [being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of [one year before or two years after the date on which the transfer took place purchased], or has within a period of three years after that date [constructed, a residential house in India], then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,-

(i) if the amount of the capital gain [is greater than the cost of [the residential house] so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable



in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,-

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.”

18. It is apparent from a plain reading of Section 54 of the Act that the allowance is available if the capital gains arising from a sale of residential property is utilised by the Assessee for purchasing a residential property or constructing a residential house. It is obvious that the construction of a residential house would entail raising a construction for inhabitation as a residential dwelling unit.

19. The Inspector's report, which the learned ITAT had accepted is a makeshift guardroom made of plywood of 7 feet x 6 feet was found on the site and a similar room of plywood of 16 feet x 12 feet with a toilet attached was found at the said site. Putting together a structure of plywood sheets cannot be construed as constructing a residential house. The Inspector had also reported that there was no electricity or water connection on the land



and electricity was used by genset.

20. The first inspection report indicated that the exact location itself of the land was difficult to find as the area was vast and inhabited and comprised of hilly terrain. It is material to note that the structures made of plywood sheets were found to exist on the subject property during the second visit of the Inspector conducted on 7.12.2017.

21. In our view, no question of law arises for consideration of this court given the description of the subject property in question, as noted by the learned ITAT in its order. The findings of the learned ITAT cannot be assailed as perverse or manifestly erroneous.

22. The appeal is, accordingly, dismissed in the aforesaid terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 11, 2024 / tr

Click here to check corrigendum, if any