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

+ **INCOME TAX APPEAL No. 327/2017**

Date of decision: 18<sup>th</sup> December, 2018

SHRI RAJIV DASS

..... Appellant

Through Mr. Sachit Jolly & Mr. Sidhartha Joshi,  
Advocates.

versus

DY. COMMISSIONER INCOME TAX, OSD, NEW DELHI

..... Respondent

Through Mr. Zoheb Hossain, Sr. Standing Counsel  
& Mr. Piyush Goyal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**SANJIV KHANNA, J. (ORAL):**

This appeal under Section 260A of the Income Tax Act, 1961 ('Act', for short) by Rajiv Dass ('appellant-assessee', for short) relates to Assessment Year 2009-10 and arises from the order dated 2<sup>nd</sup> December, 2016 of the Income Tax Appellate Tribunal ('Tribunal', for short).

2. The contention of the appellant-assessee is that the findings recorded by the Tribunal to deny benefit of exemption under Section 54B of the Act are perverse and contrary to the facts on record.

3. The appellant-assessee is a resident of Delhi. For the Assessment Year 2009-10, he had declared income by way of salary and income from the other sources in addition to income by way of capital gains from transfer



of land in Village Noor Nagar, Pargana Loni, Ghaziabad, Uttar Pradesh to a real-estate developer, M/s Vasu Infrastructure Private Limited, vide different sale deeds executed in the month of December, 2008 for Rs.6,51,00,000/-. The appellant-assessee had purchased this land for Rs.58,90,000/- on 11<sup>th</sup> November, 2005. The purchaser had subsequently obtained permission vide order dated 10<sup>th</sup> October, 2011 for conversion and use of land for non-agricultural purposes.

4. It is undisputed that one of the conditions to claim benefit of exemption under Section 54B of the Act is that the land as a capital asset should be an agricultural land, used by the assessee being an individual or by his parents or Hindu Undivided Family for agricultural purposes during the period of two years immediately preceding the date of transfer. It is not the case of the appellant-assessee that the land was used for agricultural purposes by his parents or Hindu Undivided Family. Thus, the appellant-assessee was to prove and establish that the land in Ghaziabad sold to a real-estate developer was used by him as an individual for agricultural purposes during preceding two years before the date of transfer in December, 2008.

5. Learned counsel for the appellant-assessee has drawn our attention to the Khasra Girdwari for the Fasli year 1415, photocopy of which along with English translation has been placed on record. It is submitted that the Khasra Girdwari firmly establishes that "jai chara" (fodder) and "jawar chara" was grown on the land in the Rabi and Kharif season respectively. It is submitted that the Tribunal has erroneously relied upon the inquiry report of the Inspector of Income Tax ('Inspector', for short), dated 21st December, 2011, referring to large scale construction and building activities in the area as the assertion would refer to the status of the land or area on the date of



inspection i.e., 21st December, 2011, and would not reflect status of land in December, 2008 or earlier. While accepting that the appellant-assessee had not himself undertaken agricultural activities on the land, it is submitted that one Amar Pal Singh as a *batidhar* had undertaken the said activity on behalf of the appellant-assessee. Referring to the statement of Amar Pal Singh, it was urged that statement has been misconstrued and misinterpreted.

6. To examine the question of perversity, we would like to reproduce the findings recorded by the Tribunal regarding use of land for agricultural purpose. The findings read as under:-

“19. We, thus, observe that as per section 54B of the Act, the following two conditions required to be fulfilled simultaneously for availing exemption u/s 54B of the Act:

(i) the capital gains arises from transfer of a capital asset being agricultural land in the year immediately preceding the date on which the transfer took place was being used for agricultural purposes by the assessee being individual or his parents or Hindu Undivided Family for agricultural purposes, and

(ii) the assessee from the amount of capital gain arised from sale of agricultural land has purchased any other land, being used for agricultural purposes within two years after the said date he transferred the earlier land/original asset.

20. Keeping in view the above conditions, when we analyse the facts of the present case, then we note that for completion of the first condition, the first contention of the Id. AR is that the AO has accepted exempt agricultural income in the preceding A.Y 2008-09 thus as per Rule of Consistency, Same exempt agricultural income in A.Y 2009-10 cannot be disbelieved and the AO



cannot take a deviated stand or view. Firstly, we are in agreement with the Id. DR that *resjudicata* does not apply to the tax proceedings and in A.Y 2008-09, the AO had no occasion to examine the issue of exempt agricultural income in A.Y 2008-09 as the assessment was framed u/s 143(1) of the Act and consequently the AO had no occasion to examine the same on merits and in this situation, the AO is, not prevented from examining the issue, on all angles on merits in A.Y 2009-10 and he may take a deviated stand or view of the facts of the issue and provisions if the Act permits the same.

21. Secondly, the Id. AR vehemently stated that the assessee undertook agricultural activities on the land through Shri Amar Pal Singh who deposed in favour of the assessee by stating that he undertook agricultural activities over the land for two years as on *batai* [sharing basis] an acknowledgment of Shri Amar Pal Singh has been placed at page 102 of assessee's paper book, which stated that he took land of assessee for agricultural purposes for two years w.e.f. 4.12.2006. This is written on the plain paper, there is no mention of situation or name of the village, where the land under consideration is situated, etc. We further note that the statements of Shri Amar Pal Singh were recorded by the AO on 27.8.2013, during remand proceedings copies of which are placed at pages 97 to 99 of the assessee paper book No. 1.

22. On careful and logical analysis of above statement of Shri Amar Pat Singh, we clearly observe the following glaring facts:

(i) -Shri Amar Pal Singh is resident of 732, Razapur, Ghaziabad, property broker, who sits with property dealers;



(ii) Replying to question No. 3, he stated that except working on commission he never does any other business or profession;

iii) Replying to Question No. 12 he stated that the land is situated at Noor Nagar, Village Siani and could not state the Khasra number and area etc and as per sale deed dated 11.11.2005 in favour of assessee, land is situated at village' Noor Nagar, Pargana, Loni, Tehsil & District Ghaziabad. We have noted above that he is a resident of H.No. 732, Razapur, Ghaziabad, and not a resident of village Noor Nagar, where the land in question is situated and land is not situated at village Siani.

(iv) Replying to question No. 13, he stated that except land of assessee, he never took any other land on patta [or batai] which again shows that he never took any other land from any other person prior to or after this land of the assessee, thus we presume that it was the only transaction of batai. Inability of Shri Amar Pal Singh to narrate Khasra No. and wrong particulars about situation of land further fortify the conclusion recorded by the authorities below that he is not a genuine person who took land in question for agricultural purposes and activities from the assessee;

(v) Replying to question No. 18, he nailed the last nail to the coffin of the assessee's case wherein he stated that he himself sold the crop in Ghaziabad in Mandi and further stated that he is unable to submit receipts [parchi] of sale of crop which again makes his statement baseless and unbelievable.

23. In this situation, we decline to accept the contention of the Id. AR that the assessee undertook agricultural activities through Shri Amar Pal Singh for two years over the land after purchase on 11.11.2005 and before its sale on 29.12.2008. At this stage, we also require to consider that as per provision of section 54B of the Act [before amendment w.e.f 1.4.2013] wherein it was the first precondition that the



land which was transferred must have been used by the assessee or a parent of his for agricultural purposes during the immediately preceding two years on which the transfer took place. In the present case, admittedly- and undisputedly neither the assessee nor a parent of his undertook or used the land sold for agricultural purposes. The statement of Shri. AmarPal Singh, the so called bataidar, as per the assessee, who took land for agricultural purposes is not believable and rather from the threadbare analysis of the statement as noted above by us, it is clear that he is not an agriculturist, he is not a resident of village Noor Nagar he is unable to state Khasra Nos, area and correct situation of the land and he could not submit the receipt of crop selling. Over and above, he stated that neither before nor after he took any other land for agricultural purposes and thus we safely presume that it was only an incident of taking land for agricultural purposes which is clearly a creation of false evidence to establish claim u/s 54B of the Act. Thus, we hold that in this situation, the benefit of ratio of the orders of the Tribunal these cases of Ramesh NarahariJhekati [supra] Shri Bhagwanlal Reva Bhai [supra] is not available for the assessee.

24. Secondly, it was the contention and allegation of the Id. AR that the report of the Tehsildar Ghaziabad was not confronted to the assessee, but from paras 4.3 to 4.5 of assessment order it is clear that the AO vide note sheet entry dated 23.12.2011 asked and show caused the assessee about the report of the Tehsildar, Ghaziabad given on the basis of Revenue record that on the land situated at village Noor Nagar, Loni, Ghaziabad sold by the assessee no crops were raised during A.Y 2008-09 two [02] years immediately preceding year i.e. during F.Y. 2006-07 and 2007-08 and hence why exemption of capital gain may not be disallowed. The reply of the assessee vide



dated 27.12.2011 has been reproduced by the AO in para 4.4 which reads as follows"

*4.4. "In furtherance to our submissions already made and further queries raised by you, the assessee begs to submit as under:*

*1. The assessee had purchased agricultural land in Noor Nagar in the year November 2005 and then resorted to operations which were absolutely necessary for the purpose of effectively raising the produce from the land. The assessee was then engaged in operations as weeding, digging the soil around the growth, removal of undesirable undergrowth's and all operations, which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, like tending, pruning, etc. The assessee then started the cultivation of the land including tilling of the land, sowing of the seeds, planting and similar operations on the land were carried on thereafter. The assessee had already submitted the details of farmer (Sh. Amar Pal Singh), the copy of agreement etc. to whom the land had been given on Patta basis for verification by the department. The assessee had grown wheat and Jai (OATs) on the said land in the preceding two years. The assessee had shown Rs. 40,000/- as agricultural income in Assessment Year 2008-2009 and Rs. 47,500/- as agricultural income in Assessment Year 2009-2010 on receipt basis, Copies of Income tax computation had already been filed vide letter dated 21.12.2011. During the assessment year 2007-2008 the assessee had received bags of wheat produced from the said land.*

*2. The assessee had spent Rs. 47.84 lacs approximately towards leveling and development of land, filling of land and construction of boundary wall on the agricultural lands purchased. Keeping in view the geographical location of land the assessee had thought it wise to have a boundary wall*



*constructed for security purposes and to avoid any encroachments and animal grazing on the lands so purchased.*

3. *The assessee was of the belief that he did not have any assets as covered under section 2(ea) of the Wealth Tax Act and thus no wealth tax return had been filed. The assessee had the Noor Nagar agricultural land and during the period the assessee held the land, it was only meant for agricultural use and construction of building was not permissible under any law for the time being in force in the area in which such land was situated. Thus the said agricultural land was out of the purview of Wealth tax Act."*

25. Then the AO dismissed the reply and explanation in para. 4.5 which reads as follows:

*"4.5 The replies of the assessee have been duly considered but not acceptable and convincing as the land sold in December, 2008 was neither used for agricultural purposes nor any crops were grown during the past period starting from the year Nov.,2005 when it was originally purchased and upto the date of its sale as per the revenue records of the Tehsildar Ghaziabad. This issue is being discussed in detail as under:-*

*"After making inquiries from the office of Tehsildar Ghaziabad through the inspector of this office it is found that as per revenue records the land sold situated at village-Noornagar, Pargana Loni Tehsil. Ghaziabad bearing Khasara no. 1116 & 1123 were not used for agriculture purposes and no crops were raised for last three years. The Khatauni of the said land obtained from the TehsilGhaziabad according to which this land has been declared as non-agriculture land. These*



*records are placed on files and the copies of the same were also confronted with the assessee after giving him."*

26. From the reply of the assessee vide dated 27 11.2011, it is clear that the assessee narrated his own self-serving story but not rebutted to the report of Tehsildar which was Ghaziabad based on the Revenue record kept by the U.P.Government and it is also a well know procedure that the Patwari keeps and updates the Revenue records on every crop season for multiple use of data by the Government and this ground level report has to be presumed as self proven until and unless rebutted by sufficient explanation or evidence. In the present case, the assessee on being given opportunity to rebut the same did, not utter- any word in his reply [supra] filed before this AO. Thus, we decline to accept the contention of the assessee that the report of the Tehsildar Ghaziabad was not confronted to him by the AO.

27. Per contra, we clearly observe that it was very well confronted to the AO but not controverted to disputed by the assessee thus the authorities below were correct in relying the report of the Tehsildar Ghaziabad for accepting the fact that no agricultural activities were carried out on the land after purchase on 11.11.2005 during F.Y. 2006-07, 2007-08 and 2008-09, thus, the assessee failed to comply with the first pre condition as required by Section 54B of the Act that the capital gain on transfer of the land used for agricultural purposes not be charged to tax if capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which transfer of land took place was being used by the assessee or a parent of his [as per pre amended provision effective for A Y 2009-10] for agricultural purposes. This conclusion recorded by the AO as well as by the CIT(A) cannot be alleged as faulted or incorrect and we decline to interfere with the same.



28. At this juncture, it would also be necessary to deal with the contention of the assessee that once it is established that Shri Amar Pal Singh undertook agricultural activities over the land and the land owned and sold by the assessee has been used for agricultural purposes, he becomes entitled for claim u/s 54B of the Act on the sale of such land even if he is not a cultivator himself but gets cultivated under his supervision. To support this contention, reliance has been placed by the assessee on the order of the ITAT, Ahmadabad Bench in the case of Shree Bhagwan Bai [supra] but in that case the assessee could not even establish that the land in question was used for agricultural purposes during the immediately previous two years from the sale of land on 29.12.2008 as the statement of Shri Amer Pal Singh is not reliable and acceptable as believable to show that he undertook agricultural activity over the land from 4.12.2008 to 20.8.2008. At the same time, we clearly observe that the AO properly established by way of revenue records that the crops were not grown at the land in question after purchase and till date of its sale i.e. from 11.11.2005 to 29.12.2008. In the present case, the revenue records do not support the fact that the crops were grown on the land sold by the assessee during 11.11.2005 to 20.8.2008 on which possession was transferred by the assessee. Thus we respectfully hold that the benefit of ratio of this order is not available to the present assessee in the present case having dissimilar facts and circumstances,”

7. In the present case, the Tribunal has affirmed the findings of the Assessing Officer and the Commissioner of Income Tax (Appeals). Thus, the three authorities have on facts held against the appellant-assessee.



8. No doubt, Khasra Girdwari indicates that "jai chara" (fodder) and "jawar chara" was grown in the Rabi and the Kharif season of the Fasli year 1415 respectively, but the aforesaid recordings have been disbelieved and not accepted for cogent and good reasons. Admittedly, the appellant-assessee had not himself undertaken agricultural activities. He had not incurred any expenditure on agricultural activities, engaged of labour, purchase seeds or sold the harvest. Appellant-assessee had claimed that he had given the land on *batai* to Amar Pal Singh.

9. Before referring to the statement of Amar Pal Singh, we would note and record that the appellant had declared agricultural income of Rs.40,000/- and Rs.47,500/- in his returns for the Assessment Years 2008-09 and 2009-10 on receipt basis. These returns had been processed under Section 143(1) of the Act. During the course of the present assessment the appellant-assessee in response to the queries vide letter dated 27<sup>th</sup> December, 2011 had stated that "jai" (oat) was grown on the land during the preceding year and that during the period 2007-08 the appellant had received bags of wheat grown on the land. Further, the appellant-assessee had spent Rs. 47.84 lakhs towards leveling, development and filling of land and construction of boundary walls.

10. Amar Pal Singh in his statement recorded pursuant to the directions of the Commissioner of Income Tax (Appeals) had stated that he would sit with property dealers and earn income by way of commission by arranging houses on rent. His other source was rental income as he had rented out four rooms in his house. He did not own or have agricultural land. Earlier till 1986 he had done agricultural work. Thereafter, he would sometimes get small pieces of land to cultivate. However, Amar Pal Singh was unable to



give name of any owner and details of such land, except the appellant-assessee who was known to him since 2006. He could not recollect and give khasara number of the land in question except that the land was situated in village Sioani, Noor Nagar. On being asked as to the crops grown on the land, Amar Pal Singh had stated that he had grown "jai chara" (fodder), "jawar" and wheat. He did not refer to "jai" (oat). As per Khasra Girdwari, neither wheat nor "jai" (oats) was grown. Amar Pal Singh had also claimed that he had sold the agricultural produce at Ghaziabad Mandi for Rs.40,000/- in cash in the first year and Rs.47,000/- in the second year. There is therefore, contradiction in the statement made by Amar Pal Singh regarding the sale proceeds and the statement of the appellant-assessee that he had earned agricultural income. It is obvious that Amar Pal Singh had not "worked" for free. This would contradict the appellant-assessee's assertion that he had earned or made profit of Rs. 40,000 or Rs. 47,500/- from sale of agricultural produce. Pertinently, the returns filed by the appellant-assessee for the Assessment Years 2007-08 and 2008-09 were processed under Section 143(1) of the Act.

11. The conclusions recorded by the Tribunal are based on evaluation and appraisal of facts, which would include inference to be drawn from the rather vague, faltering and contradictory assertions of Amar Pal Singh and the appellant-assessee. Sole primacy and credence to the Khasra Girdwari in the background of facts was not warranted and justified. There were conspicuous gaps and loopholes in the case set-up by the appellant-assessee, which has been disbelieved by the Tribunal after in depth appraisal of conspectus of facts and material. Inspector's report had not only reflected on the land in 2011, but on the spot inquiries to ascertain whether the land was



being used for agricultural purposes prior to sale of land in December, 2008. Pertinently, the appellant-assessee had purchased the said land on 11<sup>th</sup> November, 2006 for a substantial amount of Rs.58.90 lakhs. The land is located in Ghaziabad district, which is approximate and adjoins Delhi and falls within the National Capital Territory of Delhi. It was sold after 3 years in December, 2008 to a builder and real-estate developer for Rs.6.51 crores. Relevant evidence and material have been considered, evaluated and appreciated by the Tribunal, which has given reasonable and cogent reasons for the findings on facts.

12. This is not the case where the Tribunal's order is perverse in the sense that no reasonable person would, in the relevant field, have not have arrived at the final finding and conclusion as drawn and under challenge. The test and parameter whether an order or judgment is perverse are rather strict. Even if we were to form a different opinion on evidence, we would not categorize the impugned order as a perverse order. The appeal has no merit and is accordingly dismissed.

भारतमेव जयते

**SANJIV KHANNA, J.**

**ANUP JAIRAM BHAMBHANI, J.**

**DECEMBER 18, 2018**  
**VKR/NA**