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

+ **ITA 106/2023 & CM APPL. 8188/2023**

PREET SINGH

..... Appellant

Through: Mr Satyen Sethi and Mr Arta Trana  
Panda, Adv.

versus

ASSTT. COMMISSIONER OF INCOME  
TAX, CIRCLE 32(1), & ANR.

..... Respondents

Through: Mr Shailendra Singh, Sr. Standing  
Counsel, Mr Viprav Acharya, Jr  
Standing Counsel and Mr Akash  
Saxena, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**ORDER**

% **20.02.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

**CM No.8188/2023**

1. Allowed, subject to the appellant/assessee filing legible copies of the annexures, at least three days before the next date of hearing.

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2. This appeal is directed against the order dated 22.09.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]. This appeal concerns Assessment Year (AY) 2013-2014.

3. *Via* the impugned order, the Tribunal has, in fact, dismissed the appellant/assessee's applications preferred under Rules 11 and 29 of the Income Tax (Appellate Tribunal) Rules, 1963 [in short, "1963 Rules"].

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4. The first application, which was preferred under Rule 11 of the 1963 Rules, was filed by the appellant/assessee to bring on record an additional ground, while the second application, which was preferred under Rule 29, was filed to bring on record additional evidence.

5. The heart of the matter is, as to whether or not the appellant/assessee should have been allowed to raise an additional ground (supported by the evidence placed along with the applications) that the land which the appellant/assessee sold was not a capital asset within the meaning of Section 2(14) of the Income Tax Act, 1961 [in short, “Act”].

6. Broadly, the Tribunal has concluded that since the additional ground did not emerge from the facts and material that was available with the Assessing Officer (AO), the applications could not be entertained.

7. Prima facie, in our view, the record seems to disclose that what was sold was agricultural land. However, the appellant/assessee had claimed deduction under Section 54B and Section 54F of the Act.

8. The statutory authorities, which included the Tribunal, have concluded that exemptions claimed under the said provisions were not available.

9. Section 54B, inter alia, required the appellant/assessee to invest the proceeds from sale of land in a land which was used for agricultural purposes, while Section 54F required the proceeds to be invested in a residential house.





12.1 In support of this plea, Mr Sethi has placed reliance on the certificate issued by the concerned Tehsildar of Kotkasim.

12.2 Furthermore, Mr Sethi says that the population of the concerned village, i.e., Village Biranvas, was at the relevant time only 800 and, therefore, it fulfilled other attributes necessary for excluding it from the scope and ambit of the definition of capital asset, as contained in Section 2(14)(iii) of the Act.

12.3 The argument is that if what was sold/transferred is not a capital asset, no capital gains would arise.

13. In support of this plea, Mr Sethi has relied upon the following judgments:

- (i) ***DCM Benetton India Ltd. v. CIT***, (2008) 173 Taxman 283 (Del)
- (ii) ***National Thermal Power Co. Ltd. v. CIT***, (1998) 229 ITR 383 (SC)

14. On the other hand, Mr Shailendera Singh, who appears on behalf of the respondents/revenue, has opposed the admission of the appeal.

15. Mr Singh says that the judgement of the Supreme Court in the ***National Thermal Power Co. Ltd.*** case clearly holds that additional ground or material can be admitted if no fresh facts are required to be examined.

16. It is Mr Singh's contention that in this case, the additional ground that the appellant/assessee sought to press before the Tribunal would require examination of additional material, i.e., the certificates issued by the Tehsildar and Sarpanch.

17. Prima facie, the argument advanced by Mr Singh does not impress us. The reason being that the order passed by the AO clearly reveals that what



was sold was agricultural land. The finding of fact returned by the AO in this behalf is extracted hereafter:

*“....Therefore, the proceeds of capital gains arose due to sale of agricultural property in tune of Rs. 46,51,412/- is being added back to the total income of the assessee.”*

18. Therefore, what is required to be examined is: whether the subject agricultural land is a capital asset within the meaning of Section 2(14)(iii) of the Act?

19. However, Mr Singh is right that in order to reach a conclusion either way, the material sought to be placed on record by the appellant/assessee would have to be examined.

20. In our view, which is again prima facie, the Tribunal being, under the Act, the final fact-finding authority for determining both issues of fact and law, it could have examined the said aspect, either on its own or in the alternate, remitted the matter to the AO for examination of the material brought on record by the appellant/assessee.

21. Given this position, in our view, the matter requires further examination.

22. Issue notice.

22.1. Mr Shailendera Singh accepts notice on behalf of the respondents/revenue.

23. Mr Singh says that he will return with instructions.

24. In case instructions are received to resist the appeal, the matter will be heard on the next date of hearing.



25. List the matter on 20.03.2023.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**FEBRUARY 20, 2023**

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*Click here to check corrigendum, if any*

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