

Heminder Kumari Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-28-1996

Reported in : (1996)57ITD409(Delhi)

Appellant : Heminder Kumari

Respondent : Assistant Commissioner of

Judgement :

1. The assessee is in appeal against the order of CIT(A)-III, New Delhi dated 17-8-1994 mainly on the ground that the agricultural land sold by the assessee, which is situated in village Dera Mandi, Tehsil Mehrauli, Delhi, is not liable to long term capital gains, as the same does not fall within the definition of "capital assets" given in section 2(14)(iii)(a) of the Income-tax Act, 1961.
2. The case was heard on 20-12-1994, 19-1-1995 and 4-4-1995 and lengthy submissions were made by the learned counsel for the assessee Shri R.Ganeshan and the learned DR, Shri D. D. Goel. At the conclusion of the hearing on 4-4-1995, both the parties also made written submissions.
3. The thrust of the arguments and written submissions by the learned counsel is that the land in question, which is situated in village Dera Mandi, is agricultural land. A reference has been made to the provisions of section 2(14)(iii), which are reproduced below for the sake of convenience :- "(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....."

(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 8 Kms.

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 urbanisation of that area and other relevant consideration specify in this behalf by Notification in the Official Gazette;" 4. The learned counsel submitted that the relevant Municipality in this case is the Delhi Municipal Corporation, established under the Delhi Municipal Corporation Act (No. 66 of 1957). He then referred to the preamble of the Act, which states that the Act is, for the purposes of consolidating and amending the law relating to the Municipal Government of Delhi. He further referred to the provisions of section 2(10) of that Act which define Delhi to mean the entire area of the Union Territory of Delhi except New Delhi and Delhi Cantonment Board. He further referred to the provisions of section 2(52) which define the expression "rural areas" to mean the areas of Delhi, which immediately before the establishment of the Corporation were situated within the local limits of the District Board of Delhi established under the Punjab District Boards Act, 1883, but shall to include such portion thereof as may, by virtue of a Notification under section 507, cease to be included in the rural areas as herein defined. He further submitted that the land in question is agricultural land and is governed by the Gaon Sabha and that the same is admittedly situated in a rural area. He further submitted that under section 507 of the Delhi Municipal Corporation Act, the Corporation has to issue a notification, with the previous approval of the Government, to declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification, that portion shall be included in and form part of the urban areas. In this connection, he reiterated that no such notification had been issued with reference to the area wherein the land in question is situated. In this connection, he also invited out attention to the letter of the Deputy Commissioner placed at page 118 of paper book, wherein it has been

stated that no such Notification under section 507 has been issued with regard to Dera Mandi. He further invited our attention to the provisions of clause (c) of section 507 and submitted that the task of collecting property tax in rural areas is entrusted to the Delhi Municipal Corporation but section 507 clearly provides that the Corporation shall pay to the Gaon Sabha an amount equal to the proceeds of the tax or such portion, as may be determined by the Corporation, after deducting the cost of collection of such property tax. In view of the foregoing, he learned counsel submitted that the Local Self-Government for rural areas, wherein Dera Mandi is situated, is within the jurisdiction of the Gram Panchayat. He also invited our attention to the provisions of section 150(3) of the Delhi Land Reforms Act, 1954 which provide that upon issue of a notification under section 507 of the Delhi Municipal Corporation Act, the Gaon Sabha constituted for the area covered by such notification shall stand dissolved and on such notification shall stand dissolved and on such dissolution, all properties - movable and immovable - and all interests of whatsoever nature, including the money held in Gaon Sabha Area Fund (GSAF) vested in the Gaon Sabha immediately before such dissolution, shall, with all rights of whatsoever description, used, enjoyed or possessed by Gaon Sabha, vest in the Central Government. In view of the foregoing, the learned counsel concluded that the land in question is not under the jurisdiction of the Delhi Municipal Corporation. In support of this proposition, he also relied on the case of ITO v. Surjan Singh [1983] 3 ITD 438 (Delhi), as also on the case of K. Parameshwaran v. ITO [1982] 2 ITD 371 (Mad.). Copies of the said decisions of the Tribunal, as also of relevant enactment, are placed in the paper book at pages 119-142. He further submitted that the judgment of the Andhra Pradesh High Court, as relied by the department, later confirmed by the Hon'ble Supreme Court in the case of G. M. Omer Khan v. Addl. CIT [1992] 196 ITR 269 is entirely misplaced. He further urged that two benches of the Tribunal have considered all these aspects in the aforesaid decisions and had concluded that such rural lands could not be treated as capital assets under section 2(14) of the Income-tax Act and that the said decisions ought to be followed to maintain the principles of judicial propriety.

5. The learned DR, Shri D. D. Goel, mentioned the history of the provision of section 2(14)(iii) of the Income-tax Act and also outlined the scheme of the

provisions of the Delhi Municipal Corporation Act, 1957. The thrust of his arguments and written submissions is that the expression "within the jurisdiction of a municipality" used in section 2(14)(iii)(a) refers only to the territorial jurisdiction. In this connection he invited our attention to the speech of the Finance Minister given at the time of introducing the Finance Bill, 1970 [75 ITR (Statutes) 22-23] wherein it was mentioned that the definition of an urban area is also being enlarged to include areas within the limits of any municipality of other similar authority having a population of ten thousand or more, with powers to cover, by notification, areas upto 8 Kms. outsidessuch limits. He further invited our attention to the notes on clause relating to the amendment of section 2(14)(iii) wherein it has been mentioned that the amendment seeks to bring within the term "capital asset" agricultural land situated within the limits of any municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town area committee, town committee or by another name) or a Cantonment Board having a population of ten thousand or more, according to the last Census for which the figures have been published before the first day of the previous year [75 ITR (St.) 69]. He further invited our attention to the memorandum explaining the provisions of the Finance Bill, 1970 [75 ITR (St.) 91] wherein the intention has been explained on similar lines. He, therefore, concluded that the intention of the Legislature in using the expression "within the jurisdiction of municipality" is to refer only to the territorial jurisdiction of a municipality and that even the figure of population of 10,000 is with reference to the municipality as a whole and not with reference to any area within the municipality. He also made a reference to the provisions of section 2(14)(iii)(b) and submitted that under the said provisions, the limits can be further extended upto a distance of 8 Kms. from the local limits of any municipality or Cantonment Board referred to in item (a) by issuing a notification. He, therefore, stressed that under the said provisions of item (b), the municipal limits referred to in item (a) can be further extended upto a radius of 8 Kms. from such municipal limits which automatically implies that the expression used in the said item (a) refers to territorial limits. He, therefore, contended that the municipality cannot be further categorised into urban areas or rural areas for the purposes of attracting the provisions of section 2(14)(iii) and levy of long-term capital gains in the present case. In this connection, he further

submitted that if such a construction was placed on the interpretation of the provisions of section 2(14)(iii)(a), it would lead to absurd results and will be against the intention of the Legislature, as the agricultural land in notified areas under section 2(14)(iii)(b) would be taxed. In this connection, he further submitted that in the notification issued under section 2(14)(iii)(b), No. S. O. 77 dated 6-2-1973 published in 89 ITR 145-160 (Statute) no area within the municipality limits has been notified on the basis that a rural area so covered has become an urban area.

5.1 The learned DR also referred in detail to the scheme of the provisions of the Delhi Municipal Corporation Act. He referred to the provisions of section 1(2) wherein it is specified that except as otherwise provided, the Act extends only to Delhi. Then he referred to the provisions of section 2(10) which define Delhi to mean the entire area of Delhi Except New Delhi and Delhi Cantonment. Then he took us through the definitions of rural areas and urban areas as given in section 2(52) and section 2(61) of the DMC Act, 1957. He emphasised that in the definition of "rural areas" it is specifically mentioned that only those areas of Delhi which immediately before the establishment of the Corporation were situated within the local limits of the District Board of Delhi were covered and the areas which, by virtue of a notification under section 507, ceased to be included in rural areas were excluded. He submitted that Chapters XXV and XXVI of the DMC Act, deal with miscellaneous and supplemental and transitional provisions. He further invited our attention to the provisions of section 510 of that Act which inter alia provide that notwithstanding anything contained in the Punjab District Boards Act, 1883, as in force in Delhi, as from the commencement of the DMC Act, the powers, duties and functions which may be exercised and performed by any local authority referred to in the said Act of 1883, shall, until the establishment of the Corporation, be exercised and performed by a person to be appointed by the Central Government as it may specify. He further invited our attention to the provisions of section 516 read with the 13th Schedule, whereby the Punjab District Boards Act, 1883 was repealed. In view of the foregoing provisions, he submitted that a joint reading of the said provisions clearly shows that categorisation of rural areas under the DMC Act was not on the basis of the concept of urbanisation of the areas, whether rural or urban. He submitted that the areas which were earlier covered by the Punjab District Boards Act, 1883 came to be defined as rural areas

under the DMC Act and the areas which were not rural areas as they are defined were called urban areas.

He further submitted that though it is true that certain special provisions have been made for such rural areas under section 507, but that itself shows that such rural areas are also covered by DMC Act, 1957. He also submitted that it is a different matter that such rural areas are also covered by other Acts like the Delhi Land Reforms Act, 1954 and the Delhi Panchayat Raj Act, 1954. He urged that the applicability of the latter two Acts does not take out the rural areas situated within the Union Territory of Delhi outside the jurisdiction of the Delhi Municipal Corporation. He further stressed that if the provisions of section 507 are read with the provisions of section 113 of the Delhi Municipal Corporation (DMC Act), it will clearly show that the special provisions in section 507 are made for the rural areas for the purpose of levying different taxes, giving exemption from certain taxes in those areas. In this connection, he made a specific reference to the provisions of section 507(b)(ii), whereunder the taxes, rates, fees and other charges in the rural areas or any portion thereof, could be levied, by issue of a notification, at lower rates than those at which they are levied in the urban areas. The rural areas or any portion thereof could also be exempted from any such taxes, rates, fees or other charges. Once a notification under section 507(a) is issued, the taxes in such rural areas or any portion thereof become leviable at the normal rates as applicable to the urban areas. In view of the foregoing, he submitted that the entire areas which fall within the territorial jurisdiction of the Union Territory of Delhi, except New Delhi and Delhi Cantonment, are covered by the DMC Act, 1957 and should be treated as falling within the areas which are comprised within the jurisdiction of the Delhi Municipal Corporation for the purposes of section 2(14)(iii)(a). In this connection, he also referred to the letter dated 31-3-1992 from MCD, office of the Executive Engineer - IV, South Zone, Green Park, wherein it is mentioned that the village Dera Mandi is within the jurisdiction of Municipal Corporation of Delhi. He further referred to the letter dated 24-3-1994 from MCD, office of the Zonal Engineer (Works) (III) wherein it is mentioned that the village Dera Mandi, upto Lal Dora limits, is under the jurisdiction of MCD as on 20-2-1989. Copies of the said letters are placed at pages 112 and 115 of the paper book. In support of the said proposition, the learned DR also relied on the decision of the

Hon'ble Kerala High Court in the case of CIT v. Murali Lodge [1992] 194 ITR 125 wherein it was held that if the agricultural land is situated within the area of municipality then it is a capital asset, on the sale of which capital gain is leviable. He further relied on the decision of the Hon'ble Kerala High Court in CIT v. Thomas Kurien [1992] 195 ITR 531. Wherein it has followed its earlier decision in Murali Lodge's case (supra). He further relied on the decision of the Hon'ble Madhya Pradesh High Court in CIT v. Laxmi Development Co. [1988] 171 ITR 124, wherein similar ratio has been laid down.

5.2 The learned DR further submitted that the decision of the Tribunal in the case of Surjan Singh (supra), wherein it relied on the decision of the Madras Bench in the case of K. Parameshwaran (supra), needs reconsideration in view of the decision of the Hon'ble Supreme Court and of various High Courts. In this connection he submitted that the issue before the Hon'ble Madras Bench of the Tribunal was entirely different. The facts in that case as reported at page 372 were that the land in question was situated in Town Panchayat, governed by the Madras Panchayat Act. The ITO had taken the view in that case that the term "Municipality" used in section 2(14)(iii)(a) would cover such town Panchayat also. The AAC confirmed the said view by holding that all self-governing bodies known by any local name would be included in the term "Municipality", in view of the words "by any other name" and that the emphasis was on the local Self-Government and not on the difference in name or structure or the composition of the units. The learned DR submitted that it would be clear that in the said case land was not situated within the jurisdiction of any municipality but was situated in a Town Panchayat and so the issue was whether Such Town Panchayat could be treated as a Municipality. He submitted that the Madras Bench of the Tribunal had held that Panchayats could not be treated as Municipalities under section 2(14)(iii)(a) of the Income-tax Act. He further referred to the discussion at page 376 of the said order and submitted that the land in question was situated neither in the city of Madras nor in any municipality governed by the Madras District Municipal Act and stated that the said land was covered by the Madras Panchayat Act. In view of the foregoing, he submitted that the facts, now before the Tribunal, are entirely different from the aforesaid case decided by the Hon'ble Madras Bench of the Tribunal which was relied upon by the Tribunal in the case of Surjan

Singh (supra). He submitted that the land in question, in the present case, is clearly situated in a village which is within the territorial jurisdiction of the Delhi Municipal Corporation governed by the provisions of the DMC Act, 1957.

In this connection, he also referred to the decision of the Hon'ble Andhra Pradesh High Court in the case of Addl. CIT v. G. M. Omar Khan [1979] 116 ITR 950 wherein it was observed that the Municipality may comprise of several localities, areas, villages or wards and that the moment they fall within the area of a Municipality, the assets situated in that village or area fall within the meaning of "capital assets", as defined in section 2(14)(iii)(a). He further submitted that the said decision of the Andhra Pradesh High Court was upheld by the Hon'ble Supreme Court as reported in G. M. Omer Khan (supra), wherein it was observed at pp. 272-273 as under :- "A close reading of section 2(14)(iii)(a) suggests the agricultural lands comprised within the jurisdiction of a municipality, etc., in the nature of things being of a higher value in comparison, were brought within the scope of taxation and not all agricultural lands.

Pressure on land in the vicinity of towns being what it is, profits likely to arise in its transactions would rightly catch the ear and imagination of the taxman as a fertile area for his share of the harvest. Therefore, the said provision bears an evident contrast and defining between land in an area within the jurisdiction of the municipality, etc., and lands outside it.

It is common knowledge that, in the entire country, local self-Government is carried out under various statutes by means of municipalities, municipal corporations, cantonment boards, etc.

After their initial set up, areas by means of those laws are added to an subtracted from and subsume as such for identity, not as a separate municipal unit but part of the already set up municipal unit. Such being the scheme of things, it is difficult to accept the plea of the appellant that even though his village was falling in the municipal area of Hyderabad, it retained its identity as a village and hence an 'area' so as to stand a part for the purposes of section 2(14)(iii)(a) of the Act." The learned DR, therefore, urged that the Hon'ble Supreme Court has taken due cognizance of the legislative intent and interpreted the provisions of section

2(14)(iii)(a) and according to the said interpretation, the entire agricultural land situated in an area within the municipality falls within the purview of section 2(14)(iii)(a) and that the land in question is a capital asset and has been correctly taxed by the lower authorities.

6. The learned counsel, in his written submissions dated 3-4-1995, has filed a rejoinder to the arguments advanced by the learned DR. The said written submissions are at pages 6 to 8 of the paper book. The learned counsel has referred to the decision in the case of *Charandas Haridas v. CIT* [1960] 39 ITR 202 (SC) for the proposition that in the case of an issue about the existence or otherwise of a Hindu Undivided Family, the provisions of the Hindu Law have to be referred to and in doing so the Income-tax Law will have to look not to the provisions of the Partnership Act but to the provisions of Hindu Law. In the context of this decision the learned counsel has stressed that the Tribunal is bound to consider whether the said rural agricultural land is within the jurisdiction of the Municipality and for adjudicating the same, the provisions of, and the definition contained in, the Delhi Municipal Corporation Act, the Delhi Panchayat Raj Act and the Delhi Land Reforms Act have to be looked at and should be applied to the issue in question.

7. We have carefully considered the rival submissions and have also perused the relevant record to which our attention was invited during the course of hearing. We have also carefully seen the case law relied upon by the parties. The thrust of the arguments of the learned counsel is that the expression "Municipality" occurring in section 2(14)(iii)(a) should be understood as a unit of local Self-Government for urban areas as different from a unit of local Self-Government for rural areas. On the other hand, the arguments of the revenue, as mentioned above, are that since the entire Union Territory of Delhi, except new Delhi and Delhi Cantonment, falls within the jurisdiction of the Municipal Corporation of Delhi, the lands, whatever be the character thereof, which are situated within the jurisdiction of the said Corporation are directly hit by the provisions of section 2(14)(iii)(a). The learned counsel relied heavily on the decisions of the Tribunal in *Surjan Singh's* case (supra) and in the case of *K. Parameshwaran* (supra). We may mention that the Tribunal, in its decision in the case of *Surjan Singh* (supra) had held that the word

"Municipality" in section 2(14)(iii)(a) has to be understood only as a body for the governance of urban local areas and that it could not, by any stretch of imagination, apply to rural areas which are kept separate and have a distinct entity. They held that the entire Union Territory of Delhi was basically divided into two parts, one part comprised urban areas and the other part concerned, there was definite local Self-Government by the Municipal Corporation of Delhi and that in the rural areas there was a different type of local Self-Government which was governed by the provisions of the Gram Panchayat Raj Act. In view of this the Tribunal held that for an area where there was no municipality and there was only a Panchayat, section 2(14)(iii)(a) was out of place. They further held that the movement lands in the rural areas were urbanised, in exercise of the power vested in the Corporation u/s 507(a) the provisions of section 2(14)(iii) would be immediately applicable to those areas as they would come within the purview of urban local Self-Government of Delhi Municipal Corporation.

In this connection we feel that the learned DR has rightly brought out the distinction between the facts before the Tribunal in the case of Surjan Singh (supra) and the facts in the present case. The details of distinction between the facts are outlined in para 5.2 of this order.

We feel that the submissions made by the learned DR have force and the case of the department is supported by the decision of the Hon'ble Supreme Court in the case of G. M. Omer Khan (supra), whereby the decision of the Hon'ble Andhra Pradesh High Court in the case of G. M. Omer Khan (supra) has been affirmed. In the said decision Hon'ble Supreme Court have examined the provision of section 2(14)(iii)(a) of the I. T. Act and their observations made at pages 272-273 have already been extracted in para 5.2 of this order. Their Lordships of the Supreme Court also affirmed the meaning given to the words "Municipality" and "area" occurring in section 2(14)(iii)(a) by the Hon'ble Madras High Court in the case of S. Hidhayathullah Sahib v. CIT [1986] 158 ITR 20. Their Lordships of the Supreme Court approvedly quoted a portion of the said judgment as follows :- "A close reading of section 2(14)(iii)(a) seems to suggest that it is the population of the municipality that has to be taken into account for the purpose of that section and not the population of any area within the municipality. It is no doubt true that the

language used in clause (iii) of section 2(14) is somewhat misleading. The section lays down two criteria : (1) that the agricultural land should be in an area within the municipality; and (2) that the area should have a population of the more than 10,000.

The expression 'which has a population of not less than ten thousand according to the last preceding census' is intended to qualify only the 'area' and not the 'municipality'. However, it is not possible to go only by the language used in that provision without having regard to the object and intendment of the provision. If the Legislature meant to fix a minimum limit of population for any area within a municipality or cantonment board, it would have specified a particular area such as village, ward, street, etc., and since the Legislature has left the area in a municipality undefined, it would not have prescribed a limit of population for such an unspecified or indefinite area within a municipality. It may be that a municipality may comprise of many villages, wards and streets and each assessee may claim that the limit of population is provided with reference to a village, ward or street. In such an event, the section will have no uniform application and will lead to many anomalies. Therefore, it is necessary to avoid such an interpretation of the section which leads to anomalies and which will make it invalid. We have to adopt such a construction which will make the section valid and certain.

This, in our view, is the correct position and has aptly and pithily been put. Nothing more is needed to be said on the subject. The interpretation put by the High Court on the provisions appears to us to be unexceptionable and rational. We affirm that interpretation.

It will be seen from the above extracts that their Lordships have categorically stated that the above portion states the correct position and the interpretation put upon the provisions of section 2(14)(iii)(a) is unexceptionable and rational. In view of the foregoing we feel that the decision of the Tribunal in the case of Surjan Singh (*supra*) is no longer a good law and the same is overruled by the aforesaid decision of the Hon'ble Supreme Court. A reference to the speech of the Finance Minister given at the time of introducing the Finance Bill, 1970, 75 ITR 22-23 (Statutes) and the note on clauses relating to the amendment of section 2(14)(iii)

also makes it very clear that the words "jurisdiction of Municipality" refer to the territorial jurisdiction of a municipality - in this case the Municipal Corporation of Delhi. We also agree with plea of the learned DR that any other interpretation would run counter to the principles of harmonious interpretation of the provisions of items (a) and (b) of sub-clause (iii) of clause (14) of section 2 of the I. T. Act, 1961. In the said item (b) it is clearly provided that the limit of 8 kms. has to be with reference to "the local limits of any municipality or cantonment board referred to in item (a) as the Central Govt. may specify by notification in the Official Gazette". Viewed from this angle, the notification which may be issued u/s 507(a) of the Delhi Municipal Corpn. Act, 1957 will have no bearing with reference to the application of the provisions of section 2(14)(iii)(a) of the I. T. Act as the area in village Dera Mandi is in any case within the territorial jurisdiction of the Municipal Corporation of Delhi. In the circumstances the plea of the learned counsel that the decision of the Hon'ble Supreme Court in G. M. Omer Khan's case (supra) cannot be applied in the case of the assessee cannot be accepted. We rather hold that the case of the department is fully supported by the said decision of the Hon'ble Supreme Court. Accordingly the orders of the learned CIT(A) are upheld.

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