

\$~17

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

Date of Decision: 16.01.2020

+ W.P.(C) 8160/2019

GURUDWARA SAHIB PATTI DHALIWAL Petitioner

Through: Mr. Karan Dewan, Advocate.

versus

CHIEF COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Ajit Sharma and Ms. Adeeba
Mujahid, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. The present petition under Article 226 and 227 of the Constitution of India is directed against the order dated 27.12.2018 passed by Chief Commissioner of Income Tax (Exemptions), Delhi relating to the Assessment Year (AY) 2012-13 whereby Petitioner's request for refund claim under Section 119 (2) (b) of the Income Tax Act (hereinafter, referred to as the "Act") has been declined.

2. The factual matrix giving rise to the present petition is that the Petitioner claims that the land belonging to them, situated in khasra No. 1243 Handbast No. 248 of Village Arraichan, Tehsil Payal, District – Ludhiana is agricultural in nature and is outside the municipal limit of Municipal Council, Doraha, Tehsil Payal, Ludhiana. Petitioner further contends that

the town Doraha is not notified as being in the vicinity of urban area Doraha and therefore the land is situated outside its municipal limits and is not a capital asset. The said land was compulsorily acquired by the Government and the Petitioner received compensation amount of Rs. 1,66,37,460/- and 20% tax amounting to Rs. 33,24,100/- was deducted at source pertaining to AY 2012-13 under Section 194 LA of the Act. Petitioner claims that the amount received is not taxable since the land acquired was “agricultural land” and the compensation received is exempted under Section 10 (37) of the Act. In order to seek refund, the Petitioner filed a belated refund claim under Section 19 (2) (b) of the Act of Rs. 33,24,100/-, contending that the TDS certificate in Form 16 A was not received on time and therefore the return could not be filed earlier and accordingly requested that the delay in claiming the refund be condoned. On 28.06.2018, the Office of the Chief Commissioner of Income Tax (Exemptions), Delhi called upon the Petitioner to submit details in support of correctness and genuineness of the claim of refund along with supporting documents/evidence. In response thereto, Petitioner vide letter dated 05.07.2018 claimed that compensation is exempt under Section 10 (37) of the Act as the same was in respect of agricultural land and was being used for agricultural purposes for more than two years prior to acquisition. On 13.07.2018, CIT (E), Delhi conveyed to the Petitioner that exemption under Section 10 (37) of the Act is available only to individuals and HUFs and therefore Petitioner was called upon to explain and justify its eligibility to claim benefit under the said provision. In reply to the said communication, the Petitioner vide letter dated 20.08.2018 stated that though exemption under Section 10 (37) is not available to assessee trust, compensation amount received is still not taxable as the land

in question is agricultural land situated outside municipal limits and hence is not a capital asset.

3. Respondents thereafter on the basis of local inquiries conducted by the jurisdictional ITO ascertained that according to the Patwari Report, land in question was categorized as “Gairmumkin” which means that the same was not agricultural. Further, khasra No. 1242 fell within municipal limits and khasra NO. 1243 was outside the municipal limits, but situated within 1 Km from the local limits of Municipality of Doraha town having a population of more than 25,000 as per 2011 census and, accordingly, the land in question was considered as a capital asset as per Section 2 (14) of the Act. In these circumstances, Petitioner was called upon to explain as to why the compensation amount received on compulsory acquisition of land owned by the Petitioner should be treated as exempt from tax, and also to further prove that the claim made by the Petitioner was correct and genuine.

4. Thereafter, since the Respondent did not receive any reply from the Petitioner, it proceeded to pass the order dated 27.12.2018 rejecting Petitioner’s application for condonation of delay for issue of belated refund. This order is impugned in the present petition.

5. We have heard the learned counsels for the parties at considerable length and have also perused the documents placed on record by the Petitioner in support of its contentions. Petitioner has *inter alia* impugned the order dated 27.12.2018 by contending that the subject land acquired was agricultural in nature and could not be treated as a capital asset. Learned counsel for the

Petitioner has relied upon Section 2 (14) (iii) and contended that Doraha town in Punjab has not been notified in the list of towns-in notification No. 9447 dated 06.01.1994, as amended by notification No. 11186 dated 28.12.1999, and therefore the compulsory acquisition of the land could not be considered as a capital asset, and therefore, the Petitioner was entitled to the benefit of the exemption. It was further argued that vide verification dated 12.09.2018, the SDM, Payal, Ludhiana has confirmed, that the land acquired for construction of national highway was agricultural land since two years prior to the date of acquisition. On strength of this certificate, it is claimed that the land in question is agricultural land. Additionally, the learned counsel for the Petitioner also relied upon the report dated 29.01.2019, issued by the Halqa Patwari, Tehsil Payal, District – Ludhiana, Punjab, to contend that the land acquired falls outside the municipal limits of Municipal Council, Doraha.

6. Ms. Adeeba Mujahid, learned senior standing counsel for the Respondent on the other hand, argued that the Petitioner is not entitled to claim exemption on income earned from agricultural land, as provided under Section 10 (37), the income is chargeable under the head “capital gains” arising from transfer of agricultural land which becomes exempt only if such capital gain arises in case of assessee being an individual or HUF. She submits that, in fact, this aspect is no more in controversy as the Petitioner has accepted this factual position and the only question that arises for consideration before the Court is whether the land in question is an agricultural land, or not. She further submitted that the certificate relied upon by the Petitioner is of no avail, as the same was never produced before

the Tax Authorities at any point of time. Moreover, the certificate relied upon by the Petitioner is not credible, as the same is only a typed notarized copy and does not bear any signatures of the Issuing Authority. She further submitted that regardless of the authenticity of the said document, since the matter has been examined by the jurisdictional ITO and the report has been furnished by the AO after verification of the records from the Municipal Office, Doraha; at this stage, the Petitioner cannot be permitted to rake up the issues relating to facts, by invoking the writ jurisdiction of this Court, particularly, when opportunity given to the Petitioner to tender documentary evidence to controvert the reports, was not availed.

7. We have given due consideration to the contentions urged by the respective counsels.

8. Petitioner - Gurudwara Sahib Patti Dhaliwal filed an application under Section 19 (2) (b) of the Act before the Chief Commissioner of Income Tax (Exemptions), Delhi on 30.06.2017. In the said application, request was made for condonation of delay along with return for AY 2012-13 filed in ITR-5 under the status of APOP, claiming refund of Rs. 33,24,100/- on account of TDS under Section 194LA at the rate of 20% on the amount of Rs. 1,66,37,460/- received on agricultural land acquired by Government.

9. In the application seeking condonation of delay, the assessee, *inter alia*, submitted that the belated refund claim of return was filed before ITO (E), Jalandhar on 21.03.2016, on account of the fact that the PAN of the assessee was lying with the said ITO. However, since the territorial jurisdiction over

the case vested with ITO, Ward-5, Khanna, the PAN as well as belated refund claim of return was transferred from Jalandhar to Khanna and request for approval of belated refund claim was made to Principal CIT-II, Ludhiana. During the processing of the file, the office of the Principal CIT-II, Ludhiana noticed that since the assessee society was registered under Section 12A and 12AA, the jurisdiction over belated refund claim vested with ITO (E), Jalandhar and the relevant documents and PAN of the society were ordered to be transferred to exemption ward, Jalandhar by Principal CIT-II, Ludhiana vide letter dated 26.04.2017 and the same came before ITO (E), Jalandhar. A report was called for from CIT (E), Chandigarh, who vide letter dated 17.05.2018, observed as under:

“....the assessee filed an application u/s 119(2) (b) of the I T Act for condonation of delay alongwith filing of return for the A.Y. 2012-13 filed in ITR-5 under the status of AOP claiming a refund of Rs. 33,24,100/- in respect of TDS u/s 194LA @20% on the amount of Rs. 1,66,37,460/- received on agricultural land acquired by Government. The assessee is registered u/s 12AA of the Act vide this office order No. 2869 dated 29.07.2016 applicable from A.Y. 2016-17 and onwards. The SDM, Payal, Ludhiana furnished Form-16 for TDS at Rs. 33,27,492/- for the A.Y. 2012-13.

On verification by the AO from the Municipal Corporation Office, Doraha, it was enquired that some portion (i.e. Khasra No. 1243) has been compulsory acquired by Government for Nation Highway, Further on verification from the villagers, it was gathered that the land does not belong to any individual or HUF rather belongs to Gurudwara Sahib Patti Dhaliwal (Trust). As section 10(37) of the I T Act is only applicable to an individual or HUF, thus the claim of the assessee for exemption u/s 10(37) of the Act is not genuine.

Further, as per the information collected by the AO from the

Tehsil officer, according to the Patwari's report, the Khasra No. 1242 & 1243 mentioned in Fard/Jamabandi 2011-12, Village Arraichan, Payal, Ludhiana is "Gairmumkin" which means the land is not agricultural. Accordingly, this land is to be considered as capital as per section 2(14) of the I.T. Act. Keeping in view the above, the application of the assessee for condonation of delay is not recommended. "

(Emphasis supplied)

10. During the pendency of the application, Petitioner filed a petition [CWP No. 10533 of 2018 (O & M)] before the High Court of Punjab and Haryana at Chandigarh, which was disposed of with a direction to the Respondent to consider Petitioner's application dated 30.06.2017 as expeditiously as possible. Accordingly, the Office of Chief Commissioner of Income Tax (Exemptions), Delhi vide letter dated 28.06.2018 gave an opportunity to the assessee to furnish documents/information in support of its application for condonation of delay. Further specific comments were asked for from CIT (E), Chandigarh on his letter dated 09.04.2018. In response thereto, the Authorized Representative of the Petitioner filed a reply dated 05.07.2018 and reiterated his contentions. The assessee was given another opportunity vide letter dated 13.07.2018 to furnish the details regarding:

"(a) A certified copy of certified issues by the SDM that such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by the assessee.

(b) As the exemption u/s 10(37) is available only to Individual and HUFs, please explain as to how the trust is eligible for benefit under this section."

11. In response thereto, the assessee filed reply dated 16.08.2018 and

explained as under:

“(i) Agricultural land vide Khasra No. 1243 hadbast No. 248 of village Arraichan owned by the Gurudwara Sahib Patti Dhaliwal, acquired by Competent Authority cum-Sub-Divisional Magistrate, Payal, Distt. Ludhiana.

(ii) The said Kharsa No. 1243 of Hadbast No. 248 of Village Arraichan was situated outside the Municipal Limit of Municipal Council, Doraha, Tehsil Payal, Distt Ludhiana, hence, not capital asset.

(iii) Though, the exemption u/s 10 (37) is not available to the Trust but it is certainly not taxable, agricultural land being situated outside the Municipal Limit of Doraha as per certificate referred above.”

12. Since the Petitioner has conceded that exemption under Section 10 (37) is not available to them, the only question that survives for our consideration is whether the land in question is a capital asset. If the land is not agricultural land, it falls within the meaning of “capital assets” as per Section 2 (14) (a) of the Act and would attract capital gains on the income derived from such asset. It would thus be appropriate to refer to the aforesaid provision which is extracted hereinbelow:

“(14) "capital asset" means—

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not include—

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession ;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—

(a) jewellery;

(b) archaeological collections;

(c) drawings;

(d) paintings;

(e) sculptures; or

(f) any work of art.

Explanation 1.—For the purposes of this sub-clause, "jewellery" includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

Explanation 2.—For the purposes of this clause—

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(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 ; or

(b) in any area within the distance, measured aially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

(iv) 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;

(v) Special Bearer Bonds, 1991, issued by the Central Government ;

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever;”

(Emphasis supplied)

13. Respondents have relied upon the report of Halqa Patwari which makes it clear that the acquired land in khasra No. 1242 and 1243 was

“Gairmumkin” in nature, and the same was not agricultural. The relevant portion of the report is reproduced hereunder:

*“Khasra No. 1242 as per copy of Jamabandi for the year 2011 situated as village Harraichan is a Gair Mumkin Land and Land measuring (6-10) comprised in khewat No. 634 Khasra No.1243 is also Gair Mumkin land as mentioned in the Fard **and the meaning of Gair Mumkin is the property is not under cultivation. Khasra No. 1242 falls within the boundary of Municipal Council Doraha as stated by the Nagar Council Department and Khasra No. 1243 is situated out of the boundary of Municipal Council**”*

(Emphasis supplied)

14. We are not inclined to give any weightage to the notarized typed copy of the certificate produced by the Petitioner, ostensibly from the Office of Sub Divisional Magistrate, Payal, since the veracity of the report is highly questionable. This is not just for the reason that the Petitioner has not produced the original or certified copy of the certificate, but essentially for the reason that the said certificate was never produced earlier for more than two years during the proceedings before CIT (Exemptions), New Delhi. Further, we have no reason to doubt the genuineness or the authenticity of the report of the Halqa Patwari, which forms the basis for the Respondent to arrive at the conclusion that the land in question cannot be categorized as agricultural land. This factual issue cannot be agitated in the writ proceedings.

15. The agricultural land which is excluded from the definition of “capital asset” is the land which is described under Sub Clause (iii). In the present case, we are concerned with Sub Clause (iii) (b) (II) which provides that agricultural land is exempted from the purview of “capital gains” unless the

area is within the distance, measured aerielly, not being more than 6 Kms from the local limits of any municipality or cantonment board referred to in item (a) (land situated in 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) and which has population of more than one lakh but not exceeding 10 lakh. The report received by the Respondent states that khasra No. 1243 is outside the municipal limit, but is situated within 1 Km from the local limits of municipality of Doraha Town and has a population of more than 25,000 as per 2011 census. Thus, according to this report, the land in question cannot be considered to be agricultural land. Petitioner has not been able to furnish any documentary evidence to contradict the aforesaid report. Further, when a report was called from CIT (E), Chandigarh vide letter dated 13.08.2018 on assessee's application dated 16.08.2018, CIT (E) Chandigarh vide letter dated 07.12.2018 forwarded his comments and *inter alia* on the question of the land being agricultural or not stated as follows:

“c. On perusal of the report submitted by the AO through his Range Head, it was revealed that the documents i.e. copy of the Notification of Gazette of India, Extraordinary in support of its version that Khasra No. 1243 was acquired by the SDM. Payal, Distt. Ludhiana, revealed that vide column 7 (which demonstrates the nature of land to be acquired) the nature of land has been specified as “vyavsyik” and not agriculture land against Khasra No. 1243. This evidence clearly leads to the conclusion that the land which has been acquired by SDM was of commercial nature and not agricultural one. The applicable failed to provide certified copy certificate issued by the SDM

that such land during the period of 02 years immediately preceding the date of transfer of land was being used for agricultural purpose by the Gurudwara.

d. Information gathered by the AO from the Tehsil Officer/ Patwari show that the land at Khasra No. 1242 and 1243 mentioned in Fard/Jamabandi 2011-12, Village, Arraichan, Payal, has been specified as “Gair Mumkin” which means that the land is not cultivable or not an agricultural land.”

(Emphasis supplied)

16. In view of the foregoing, the documentary material shown to us by the Respondent leads to the conclusion that the land in question would be categorized as a capital asset. Therefore, the assessee cannot claim the benefit of exemption to “agricultural land” and hence, the compensation received by the assessee in pursuance of land acquisition proceedings, is subject to tax and the refund has been rightly rejected, as being barred by limitation.

17. We do not find any infirmity in the impugned order. The petition is dismissed. There shall be no order as to costs.

SANJEEV NARULA, J

VIPIN SANGHI, J

JANUARY 16, 2020

nk