
M. JAIN

Before Adarsh Kumar Goel, J & Ajay Kumar Mittal, J

**COMMISSIONER OF INCOME TAX,
CHANDIGARH,—Appellant**

versus

SMT. ANJANA SEHGAL,—Respondent

Income Tax Appeal No. 276 of 2004

1st March, 2011

Income Tax Act, 1961—Ss. 2(14), 2(14) (iii) (a) & (b) & 260A—Agricultural Land by assessee which sought to be taxed u/s 2(14) as a “capital asset”—Land situated within 8 km of Municipal limits and covered by notification—On appeal CIT(A) deleted addition holding that land situated in Punjab and not in Haryana and specified distance from Municipal limits was of no consequences.

Held. Undisputedly land is within 8 km from Panchkula municipality but falls in the State of Punjab, Concept of municipality as a unit of the State or the fact that as State has no jurisdiction to make law beyond its territory have no relevance of the purpose of determining law beyond its territory has no relevance for purpose of determining whether land was

“Capital Asset” or not for the purpose of taxing capital gain. If land is adjacent to municipality and is urban land u/s 2(14) the land will continue to be urban land even if municipality and land fall in different States. Such land cannot be excluded from definition of “capital asset” as that would be against statutory scheme, Appeal Allowed.

(Para 8)

Urvashi Dhugga, Senior Standing Counsel *for the appellant.*

Radhika Suri, Advocate, *for the respondent.*

ADARSH KUMAR GOEL, J (ORAL)

(1) This order will dispose of ITAs No. 276 of 2004, 54 of 2005 and 448 of 2009 as it is stated by the learned counsel for the revenue that facts and law involved in these appeals are common. However, the facts or taken from ITA No. 276 of 2004.

(2) ITA No. 276 of 2004 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) against order dated 19th April, 2004 passed by the Income Tax Appellate Tribunal, Chandigarh Bench ‘B’, Chandigarh in ITA No. 135/Chandi/2001, for the assessment year 1997-98, claiming substantial questions of law :—

- “(i) Whether the ITA was right in law in holding that impugned agricultural land does not come within the definition “Capital Asset” as defined u/s 2(14) of the Income Tax Act because the land in question is situated in the State of Punjab and beyond 8 kilometers of Municipal limits of Rajpura even when the impugned land is also situated within a distance of 5 kilometers of the Municipal limits of Panchkula, District Ambala (Haryana) ?
- (ii) Whether expression “from the local limits of any municipality” used in Section 2(14)(iii)(b) of the Income Tax Act denotes “any municipality or municipality of the district in which the land is situated ?”

(3) The assessee sold agricultural land and was sought to be taxed for the capital gain on the ground that agricultural land in question was covered by the definition of ‘Capital asset’ under Section 2(14) of the Act. The land was situated within 8 kilometers of the municipal limits of Panchkula and was thus covered by the notification dated 6th January, 1994 contemplated under Section 2(14)(iii)(b). On appeal, the CIT(A) deleted

addition holding that the land in question was in the State of Punjab while Panchkula municipality was in the State of Haryana and even if the land was within the specified distance of municipality in the State of Haryana, the same could not be treated to be capital asset when the land was not in that State. The Tribunal upheld the said view.

(4) We have heard learned counsel for the parties.

(5) Learned counsel for the revenue submits that the definition for the purpose of land being included in agricultural land or otherwise and thus being capital asset or otherwise has consider whether the location of the land is within a municipality or within requisite distance of the municipality so that the urban land is treated as capital asset and is not excluded therefrom. In the present case, the land falls within the State of Punjab and is within the requisite distance from a specified municipality. Even if such municipality is out side the State of Punjab, land nonetheless remains urban. Any other interpretation will defeat the object of the provisions.

(6) Learned counsel for the assessee on the other hand submits that if the land was within the requisite distance from a specified municipality of any other State, the same will not be covered unless it was within or within the requisite distance from the municipality of the State. It was submitted that under Article 243Q municipalities are to be constituted in every State and thus the concept of State specific municipality cannot be ignored. It was also submitted that municipality of Panchkula was constituted on 25th January, 2001 and for the relevant year the same was Notified Area Committee which is at par with the municipality under Section 2(14)(iii)(a). Referring to the speech of the Finance Minister while introducing Finance Bill, 1970, interpreting Section 2(14)(iii)(b) in the Act, it was stated that the word 'such municipality' referred to the expression 'municipality' to be found in Clause (a) of Section 2(14)(iii) it was submitted that municipality had to be State specific. If the expression 'such' is to be ignored the same be against the settled principle that no word should be treated to be redundant or superfluous as held in **J. K. Cotton Spinning and Weaving Mills Co. Ltd. versus State of Uttar Pradesh and others (1)**, **Union of India and another versus Hansoli Devi and others (2)**, and **Sankar Ram and Co. versus Kasi Naicker and others (3)**.

(1) AIR 1964 SC 1170

(2) AIR 2002 SC 3240

(3) AIR 2003 SC 4156

(7) To appreciate the controversy, it will be appropriate to refer to relevant provisions of Section 2(14) of the Act :—

“2(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—

(i) xx xx xx xx

(ii) xx xx xx xx

(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 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 eight kilometers, 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, urbanization of that area and other relevant considerations, specified in this behalf by notification in the Official Gazette”.

(iv) xx xx xx xx

(v) xx xx xx xx

(vi) xx xx xx xx

The notification dated 6th January, 1994 issued by the Central Government is as under :—

“Now, Therefore, in exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) if sub-clause

(iii) of clause (14) of Section 2 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and insurance) No. SO77(E) dated 6th March, 1973 the Central Government having regard to the extent of and scope for urbanization of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the Schedule hereto annexed and falling outside the local limits of Municipality or Cantonment Boards, as the case may be shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above-mentioned provision of the Income Tax Act, 1961 (43 of 1961).

SCHEDULE

Sr. No.	Name of the State or Union Territory	Name of the Municipality or Cantonment Board falling in the State/Union Territory mentioned under column (2)	Details of areas falling outside the local limits of Municipality or Cantonment Board etc. mentioned under column(3)..
1	2	3	4
9.	HARYANA	44. Panchkuala (Distt. Ambala)	Areas up to a distance of 5 kms. from the municipal limits in all directions
xx	xx xxx	xxx	

1	2	3	4
18. PUNJAB		35. Rajpura	<p>Areas falling within—</p> <ul style="list-style-type: none"><li data-bbox="759 338 1068 552">(i) 1 Km. on either side of Rajpura-Sirhind Road up to a distance of 3 Kms. from the municipal limits on that road.<li data-bbox="759 574 1068 822">(ii) 1 Km. on either side of Rajpura-Banaur Road up to a distance of Kms. from the municipal limits on that road.<li data-bbox="759 845 1068 1093">(iii) 1 Km. on either side of Rajpura-Ambala Road up to a distance of 4 Kms. from the municipal limits on that road.<li data-bbox="759 1116 1068 1364">(iv) 1 Km. on either side of Rajpura-Ghanour Road up to a distance of 4 Kms. from the municipal limits on that road.<li data-bbox="759 1387 1068 1635">(v) 1 Km. on either side of Rajpura-Patiala Road up to a distance of 8 Kms. from the municipal limits of Rajpura.

(8) A perusal of the above provisions makes it clear that what it intended to be covered in term 'Capital Asset' is agricultural land comprised within the jurisdiction of a municipality and within the specified distance from the local limits of municipality or other local bodies mentioned therein as specified in the notification. It is undisputed that the land in question is within the specified distance from Panchkula municipality which falls in the State of Haryana while land is in the State of Punjab. Thus land is urban land for the purpose of definition of 'capital asset' under Section 29(14). Concept of municipality as a unit of State or the fact that a State has no jurisdiction to make law beyond its territory have no relevance for the purpose of determining whether particular land was 'capital asset' or not for the purpose of taxing capital gain. If the land is adjacent to a municipality and is urban land covered under Section 2(14), even if municipality and the land fall in different States, the land will continue to be urban land. If such land is excluded from the definition of 'capital asset', purpose of statutory scheme will not be achieved.

(9) The judgments relied upon to submit that all words of a statute should be assigned meaning do not support the contention of the assessee, including the land in dispute in 'capital asset' does not ignore any word in the definition as assumed by learned counsel. Speech of Finance Minister also does not help the assessee. The relevant extract thereof is as under :—

“*Sub-clause (a)* seeks to amend clause (14) of section 2 of the Income Tax Act which defines the term “capital asset”. 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 committee or by any other name) or a cantonment Board having a population of 10,000 or more according to the last census for which the figures have been published before the first day of the previous year. Further, agricultural land situated in areas lying within a distance not exceeding 8 kilometers from the local limits of such municipalities or cantonment boards will also be covered by the amended definition of “capital asset”, if such areas are, having regard to the extent of and scope for their urbanisation

and other relevant considerations, notified by the Central Government in this behalf. The effect of the proposed amendment will be that capital gains arising from the transfer of agricultural land situated in municipal or other urban areas or notified adjoining areas will be liable to income-tax for the assessment year 1970-71 and subsequent years.”

(10) We are unable to accept that the above speech leads to any other interpretation. Accordingly, we answer substantial questions in favour of the revenue and against the assessee.

(11) Accordingly, the appeals are allowed, The impugned orders are set aside.

(12) A photocopy of this order be placed on the file of each connected case.

M. JAIN

J.°