

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH,
(VIRTUAL HEARING AT KOLKATA)****[BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &
SHRI SONJAY SARMA, JUDICIAL MEMBER]****I.T.A. No. 210/PAT/2018**
Assessment Year: 2014-15

ITO, Ward-4(5), Patna	Vs.	Shri Suresh Prasad S/o. Late Jugal Prasad, Katra Bazar, Rikabganj, Malsalami, Patna City, Patna- 800008. [PAN: ABIPP 4922 F]
Appellant		Respondent

Date of Hearing	18.07.2022
Date of Pronouncement	04.08.2022
For the Revenue	Shri Rupesh Agrawal, Sr. DR
For the Assessee	Shri Sunil Kr. Dubey, Advocate

ORDER**PER SONJOY SARMA, JM:**

The present appeal has been preferred by the revenue against the order of Id. CIT(A), Patna-2 dated 06.06.2018 [hereinafter referred to as 'CIT'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The revenue in this appeal has taken the following grounds of appeal:

- i. The Order of the CIT [A] dt. 6.06.2018 is perverse and bad in law & facts in as much as he did not consider the basic fact of the Addition made under the Head, Long Term Capital Gain for Rs. 3,63,50,267/ as the Assessee failed discharge, the onus of evidence substantiating his claim of Exemption from Capital Gain on account of Agriculture Land, during the Assessment Proceedings.*
- ii. The Order of the CIT [A] is further perverse and bad in law & facts in as much as he has erred in admitting additional evidence in violation of Rule 46A.*
- iii. The Order of the CIT [A] is further perverse and bad in law & facts in as much as he failed to understand that TDS was deducted v/s 194LA treating it to be other than Agriculture Land, hence, it comes within the meaning of Capital Assets u/s 2(14)(iii).*

iv. *The Order of CIT [A] is further perverse and bad-in-law & facts in as much as he did not consider the Word, Compulsory Acquisition, for which the Assessee had given consent.*

v. *The Order of CIT [A] is further perverse and bad-in-law & frets in as much as he failed to consider the issue, reason and main frets behind the Addition, as to why the Assessing Officer has considered and treated it fit to be Capital Gain/Assets in the Assessment Order keeping in view of the provisions u/s 2(14)(iii) and u/s 10(37) of the I.T. Act, 1961.*

vi. *The Order of CIT [A] is further perverse and bad-in-law & facts in as much merely considered in his Order that- **“it is undisputed and evidentially prove that the Compulsorily Acquired Land fulfills the Condition of provision of Section 10(37) and Section 2(14)(iii) of the I.T. Act, 1961”** merely on the ground that **“part of the land is still under agricultural cultivation.***

vii. *The Order of CIT [A] is further perverse and bad-in-law & facts in as much opined **on his own that- “TDS has been deducted by the Land Acquisition (only due to not understanding the technical feet of Section 10(37) and 2(14)(iii).***

viii. *The Order of CIT [A] is further perverse and bad-in-law & facts in as much as I not consider the distance of the Acquired Land keeping in view of Municipal A Section 2(14)(iii).*

2. Brief facts of the case are that the assessee receipt of compensation for Rs. 3,68,19,767/- against acquisition of his land by the District Land Acquisition Officer, Patna and it was found that the assessee was liable to pay tax on capital gain on compensation amount. Accordingly, the case was opened u/s 148 of the Income-tax Act and notice was issued upon the assessee and in response to such notice, the assessee filed its return of income for A.Y. in question. While doing so, the assessee showing his works contract business income for Rs. 1,20,960/- and agricultural income for Rs. 3,55,500/-. Further, the assessee has shown exempted income for Rs. 3,55,500/- under the head, agricultural income and Rs. 3,68,19,767/- under the head, compensation receipt amount totaling to Rs. 3,71,75,267/-.

3. Further, the AO issued notice u/s 142(1) to assessee to submit documentary evidence in relation to the compensation receipt and exempted income and in response to the same, the assessee had submitted his detailed reply. However, the AO on the basis of submission made by assessee, he had calculated the long term capital gain as under:

“Sale consideration

Rs. 3,68,19,767/-

<i>Less: Estimated cost of acquisition</i>	<i>Rs. <u>4,69,500/-</u></i>
<i>50,000/- x 939/100</i>	
<i>Long Term Capital Gain</i>	<i>Rs. 3,63,50,267/-</i>

It was added back to the total income of the assessee.”

4. Dissatisfied with the above order, assessee preferred an appeal before the Id. CIT(A) wherein the Id. CIT(A) allowed the appeal of the assessee by observing as under:

5. Now, dissatisfied with the above order passed by the Id. CIT(A), the revenue is in appeal before the Tribunal.

6. The main grievance of the revenue relates to the exemption allowed to the assessee by the Id. CIT(A) from compensation received on acquisition of land and the remaining ground no. (ii) to (ix) are consequential or general in nature, therefore, need not to be adjudicated.

7. At the time of hearing, the Id. DR submitted that order passed by Id. CIT(A) dated 06.06.2018 is perverse and bad in law. Since assessee completely failed to discharge the onus of evidence sustaining his claim of exemption from capital gain during assessment proceeding further Id. CIT(A) has erred in admitting additional evidence in violation of Rule 46A of the Income-tax Act and as such it required to be quashed.

8. On the other hand, Id. AR supported the order passed by the Id. CIT(A) and submitted that the order passed by the Id. CIT(A) was a reasoned order need not required any further inference by the Hon'ble Tribunal. He further submitted that the Id. CIT(A) deleted the addition with the following observation:

“The appellant has submitted all the required documents regarding acquisition of land as asked by AO during the assessment proceeding such as Gazette Notification in relation to acquisition of his land, sale receipt of agricultural product, letter of NHAI etc. which evidentially confirms the said compulsorily acquired land under the provision of section 2(14)(iii) of the I.T. Act.

I have considered the submission made by the appellant and also going through documents such as Gazette Notification in relation to acquisition of land I am of

the view that the whole of the capital gain arising on transfer of land by way of acquisition by the State Government is not taxable. I accordingly hold that the additions made by computing LTCG and disallowing exemption u/s 10(37) of the Income Tax is not sustainable. The same is directed to be deleted.”

9. Further, the ld. AR submitted that Circular No. 36/2016 dated 25.10.2016 issued by CBDT which reads as under:

*“Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

*ITA.II division. North Block,
New Delhi, the 25th of October, 2016*

Subject: Taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLAAR Act') reg.-

Under the existing provisions of the income-tax Act, 1961 ('the Act'), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

2. The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act. the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been

examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

4. The above may be brought to the notice of all concerned.

5. Hindi version of the order shall follow. “

10. The relevant paras of above said circular are reproduced herewith which is self-speaking:

“The RFCTLARR Act (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) which come into effect from 1st January, 2014 in section 96 inter alia provides that income tax shall not be levied on any award or agreement made (except those made under section 46 under the RFCTLARR Act). Therefore, compensation received for compulsory acquisition of land under the RFTLARR Act (except those made under section 46 under the RFCTLARR Act), is exempted from levy of income tax.

As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non agricultural land in the matter of providing exemption from income tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non agricultural land. The matter has been examined by board it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income tax vide section 96 of the RFCTLARR Act shall not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in Income-tax Act, 1961”

And as such the compensation received by the assessee against compulsory acquisition of land by Govt. for construction of National Highway is beyond the purview of taxation.

11. On consideration of rival submission and material available on record, we are of the view that the order passed by the Id. CIT(A) is a reasoned order and as such there is no need to inference by this Tribunal in the order passed by the Id. CIT(A). Besides that in the present case also the CBDT vide Circular No. 36/2016 dt. 25/10/2016 clarified that the

compensation received in respect of award or agreement which has been exempt from levy of Income Tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income Tax Act, 1961 even if there is no specific provisions of exemption for such compensation in the Income Tax Act, 1961. In the said Circular it is also clarified that no distinction had been made towards compensation received for compulsory acquisition of agricultural land and non agricultural land in the matter of providing exemption from income Tax under the RFCTLARR Act. In the instant case the assessee received compensation for compulsory acquisition of commercial land during the F.Y. 2014-15 which was exempted under section 96 of the RFCTLARR Act, as clarified by the CBDT Circular No. 36/2016 dt. 25/10/2016. We therefore considering the totality of the fact as discussed hereinabove are of the view that the Id. CIT(A) was justified by not confirming the action of the A.O. Accordingly the appeal of the revenue is dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 04.08.2022

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 04.08.2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant– ITO, Ward-4(5), Patna.
2. Respondent – Shri Suresh Prasad.
3. CIT(A),
4. CIT ,
5. DR, ITAT,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata