

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5290/Del/2016
Assessment Year: 2009-10**

**Income-tax Officer,
Ward 5(2), New Delhi.**

vs.

**Buniyad Developers
Pvt. Ltd., A-54, Phase-I,
Naraina Indl. Area,
Delhi.**

PAN :AAACB1149A

(Appellant)

(Respondent)

Appellant by : Sh. Rajiv Saxena, Adv.
Sh. Shyam Sunder, Adv.
Respondent by : Sh. Rajesh Kumar, Sr.DR

Date of hearing: 17.09.2020

Date of order : 21.09.2020

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 23.06.2016 in appeal No. 176/15-16 passed by the learned Commissioner of Income Tax (Appeals)-II, New Delhi ("Ld. CIT(A)"), for assessment year 2009-10, in the case of Buniyad Developers Pvt. Ltd. ("the assessee"), the Revenue filed this appeal on several grounds involving the issue of adding capital gains arising out of sale of agricultural land for the purpose of computing

book profit u/s. 115JB of the Income-tax Act, 1961 (for short “the Act”).

2. Brief facts of the case are that the assessee is a company, deriving income from agricultural activities and earning from investments. For the assessment year 2009-10, they have filed their return of income on 30.09.2009 declaring nil income but paid tax on book profits u/s. 115JB of the Act at Rs.5,73,70,009/-. The return was processed u/s. 143(1) of the Act. Subsequently, during the assessment proceedings relating to assessment year 2010-11, ld. Assessing Officer noticed that the assessee claimed exempt income to the tune of Rs.21,71,74,573/- on account of profit on sale of agricultural land and the ld. Assessing Officer treated the agricultural land as capital asset u/s. 2(14)(iii) of the Act and income arising out of transfer of such land under the head ‘Long-term Capital gains’. On that, ld. Assessing Officer noticed that in F.Y. 2009-10 also, the lands were sold in part and that there has been no income declared in respect of its profits of Rs.5,58,61,180/- earned on sale of land.

3. The Assessing Officer accordingly issued notice u/s. 148 of the Act and after hearing the assessee made an addition of Rs.5,41,38,217/- with interest income of Rs.21,90,212/-.

4. The assessee preferred appeal before the ld. CIT(A) and argued that income earned from sale of land is exempt u/s. 10 of the Act, as the land sold by the assessee was in village Kishora, which is more than 8 Kms. away from the Municipal limits. The assessee further

argued that even for the purpose of section 115JB, the profits arising from sale of agricultural land cannot be added to the book profits under the provisions of section 115JB(2)(k)(ii) of the Act.

5. By the time of consideration of appeal for assessment year 2009-10 by the CIT(A), the first appeal preferred by the assessee in respect of assessment year 2010-11 was dismissed by the Id. CIT(A), the assessee carried the matter in appeal to Income-tax Appellate Tribunal and produced certificate issued by Tehsildar to show that the land in question was located more than 8 Kms away from the Municipal limit, the Tribunal set aside the order of CIT(A) and remanded the matter to the file of Assessing Officer for consideration of the evidence, and in the remand assessment, the Assessing Officer accepted the income earned from sale of land as exempt u/s. 10 of the Act, as the land sold was located more than 8 Kms from Municipal limits.

6. Taking note of such assessment order passed pursuant to the remand order by ITAT for assessment year 2010-11, the Id. CIT(A) found that since the village where the sold land was located was 8 Kms away from the Municipal limits, the very basis of Assessing Officer for reopening the assessment proceedings for the AY 2009-10 has no *locus standi*, as the Assessing Officer himself admitted the said fact. He, therefore, allowed the contention of the assessee on that ground.

7. Ld. CIT(A) further considered the contention of the assessee that under the provisions of section 115JB(2)(k)(ii) of the Act, the profits derived from sale of an agricultural land, which is exempt u/s. 10 of the Act, has to be reduced from the book profits and therefore, the assessee is entitled to relief even in respect of the amount that was offered to tax. Ld. CIT(A) accepted the same and since the addition itself was exempt as the land sold was outside the purview of capital assets defined u/s. 2(14) of the Act and exempt u/s. 10 of the Act, the same requires to be reduced from the book profits u/s. 115JB of the Act. Ld. CIT(A), therefore, directed the Assessing Officer to compute the tax in accordance with law by reducing the amount of income to which any of the provisions of section 10 of the Act applies, if the said amount is credited to the profit and loss account.

8. Aggrieved by the said direction to reduce the amount of income to which section 10 of the Act applies from the book profits if such amount is credited to the profit and loss account, this appeal is preferred by the Revenue.

9. Basing on the decision of the Jaipur Tribunal in the case of ITO vs. M/s. Krish Home Pvt. Ltd. Dated 13.12.2018 in ITA No. 390/JP/2018, ld. DR argued that the provisions of section 115JB is a self contained code, the assessing officer cannot tinker with the books of accounts prepared by the assessee as per schedule VI of the Companies Act, once any income is not declared by the assessee or treated by the assessee in the books of accounts as agricultural income, then the same cannot be allowed as deduction as per the

provisions under section 115JB of the Act, and the book profits for the purpose of section 115JB of the Act shall, therefore, included the amount realized on the sale of the land. On this premise, he argued that the CIT(A) exceeded the authority given under law because when the assessee himself offered certain income by crediting the same to the profit and loss account, it is not open for the CIT(A) to tinker with the financials of the assessee and to grant relief. He, therefore, prayed that grant of relief given by CIT(A) in so far as the tax offered is concerned, is unsustainable.

10. Per contra, the ld. AR submitted that the profits earned on sale of agricultural land within the meaning of section 2(14) are exempt u/s. 10 of the Act and therefore, ld. CIT(A) followed the provisions of section 115JB(2)(k)(ii) of the Act and in that process, no question of tinkering with the accounts of assessee arises, but it is only after taking the book profits of the assessee as the starting point, the ld. CIT(A) directed the computation of the book profit by giving effect to the provisions of section 115JB(2)(k)(ii) of the Act. He further submitted that in view of decision of Kochin Bench of Tribunal in the case of ACIT vs. Nilgiri Tea Estate Ltd. (2014) 47 taxmann.com 329, the profits from sale of agricultural land would not be included for the purpose of computing book profit u/s. 115JB of the Act. He further submitted that if an assessee under a mistake, misconception or not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected, as was held by Hon'ble Gujrat High Court in the

case of S.R. Koshti vs. CIT, 276 ITR 165(Guj). He further submitted that the authorities are under the obligation under the Act to act in accordance with law. Lastly, he placed relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Shelly Products and Another, 261 ITR 367 and submitted that if the assessee had, by mistake and inadvertence or on account of ignorance included in his income any amount which is exempt from payment of Income-tax or is not income within the contemplation of law, the assessee may bring the same to the notice of the Revenue, which if satisfied, may grant the assessee necessary relief and refund the tax paid in excess, if any.

11. We have gone through the record in the light of the submissions made on either side. As of now, it an admitted fact that the land that was sold was located in village Kishora, which is more that 8 kms away from municipal limits and the profits earned on sale of such land are exempt u/s. 10 of the Act. Further, provisions of section 115JB(2)(k)(ii) provide that the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply, shall be reduced from computation of book profit, if any such amount is credited to the statement of profit and loss. In this matter, the assessee computed the book profits while crediting the sale consideration of agricultural land to the profit and loss account and offered the same to tax. Obviously, it is a mistake. In view of the decision of Hon'ble Supreme Court in the case of Shelly Products (supra), such a mistake has to be rectified by the Revenue Authorities

when it is brought to their notice and they are satisfied with the genuineness of the claim. Therefore, when the ld. CIT(A) is satisfied that the income which is exempt u/s. 10 of the Act is included in the book profit u/s. 115JB, which should not be done, the ld. CIT(A) is justified in directing the learned Assessing Officer to follow the law and to compute the tax in accordance with provisions of section 115JB by reducing the amount of income to which section 10 applies, if such amount is credited to the profit and loss account. The action of the ld. CIT(A) is perfectly legal and does not suffer any infirmity. We see no ground to interfere with the same. We, therefore, while declining to interfere with the findings of ld. CIT(A), find the appeal of the Revenue as devoid of merits.

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

Order pronounced in the open court on 21/09/2020

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 21/09/2020
'aks'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar
ITAT New Delhi