**(2006) 07 P&H CK 0039**

**In the Punjab And Haryana At Chandigarh**

Commissioner of Income Tax — APPELLANT

Vs

Gurcharan Singh — RESPONDENT

**Date of Decision :** 04-07-2006

**Acts Referred:**
Income Tax Act, 1961 — Section 2

**Citation :** (2007) 212 CTR 420

**Hon'ble Judges :** Rajesh Bindail, J;Adarsh Kumar Goel, J

**Bench :** Division Bench

## Judgement

1. In compliance to the direction of this court in ITC Nos. 122 and 123 of 1982, dated 31-8-1988, the following question of law was referred to this court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of order passed in ITA Nos. 1176-1177 of 1979 for the assessment years 1974-75 and 1975-76:

Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the decision of the Appellate Assistant Commissioner that the cost of acquisition of the agricultural land should be ascertained as on 28-2-1970 for capital gain purposes and not as on 1-1-1954?

The brief facts are that the assessee sold some agricultural land during the assessment year in question and declared the cost price thereof at the rate of Rs. 25,000 per acre as on 28-2-1970. The assessing officer rejected this figure and adopted the cost as on 1-1-1954 at the rate of Rs. 5,000 per acre and calculated capital gain arising therefrom accordingly. In appeal filed by the assessee against the order of assessment the appellate Assistant Commissioner of Income Tax vide order dated 26-7-1979 accepted the plea of the assessee to the effect that the land in question, which was agricultural in nature, became capital asset only with effect from 28-2-1970 when amendment in Section 2(14) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') was made. Before this date, the agricultural land owned by the assessee was not capital asset, so assessee was right in taking the cost price of the land as on 28-2-1970 as against the cost adopted by the assessing officer as on 1-1-1954. However, the estimate value of the land as on 28-2-1970 was reduced from Rs. 25,000 to Rs. 20,000 per acre by the Appellate Assessment Commissioner.

2. The revenue went in appeal, against the order passed by the Appellate Assessment Commissioner, to the Tribunal and failed.

3. By rejecting the plea of the revenue, the Tribunal relied upon a judgment of Hon''ble Supreme Court in the case of Commissioner of Income Tax, Bombay City I, Bombay Vs. Bai Shirinbai K. Kooka, , wherein it was held that where an assessee who held, by way of investment, certain shares in companies, conirriericed a business in shares converting the share into stock-in-trade of the business, and subsequently sold these shares at a profit, in that eventuality the assessee''s assessable profits on sale of the shares was the difference between the sale price of the shares and the market price of the shares prevailing on the date when the shares were converted into stock-in-trade of the business in shares, and not the difference between the sale price and the price at which the shares were originally purchased by the assessee. No judgment taking a contrary view has been cited before us. In the present case also by amendment in the Act, agricultural land became a capital asset on the sale of which capital gain tax became exigible, so applying the principles of law laid down in Bai Shirinbai K. Kookkas case (supra), the date of valuation of the capital asset will be the date when the agricultural land became capital asset.

4. In view of our above discussions we are of the view that the Tribunal was right in taking the view that valuation of land should be taken on the date when it became a capital asset.

5. Accordingly the question of law referred to above is decided in positive Le., against the revenue and in favour of the assessee.