

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A .No.-368/Del/2016
(ASSESSMENT YEAR-2009-10)**

Dev Dutt Tyagi, S/o-Late Sri Ram Charan Tyagi, Vill.Basantpur, Saithly Muradnagar, Distt.-Ghaziabad, Uttar Pradesh. PAN-AFCPT4001M (APPELLANT)	vs	ITO, Ward-1(5), C.G.O.Complex-1, Hapur Chungi, Ghaziabad-201002. (RESPONDENT)
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Assessee by	Sh. Sanjay Parashar, AR
Revenue by	Sh. K.K.Jaiswal, Sr. DR

Date of Hearing	16.03.2016
Date of Pronouncement	03.05.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 30.10.2015 of CIT(A), Ghaziabad pertaining to 2009-10 assessment year on various grounds assailing the addition made by Assessing Officer which have been sustained in appeal by the CIT(A).

2. The relevant facts of the case are that the assessee is an individual who had sold residential plots for Rs.12,30,000/-. In view of the fact that the assessee had not returned of income for the year under consideration and the information of sale of plots was with the Revenue, notice u/s 148 was issued and served on 01.06.2012 after recording the reasons. The assessee in the response to the notice accepted that

4 specific plots were sold to 3 different parties on various dates. It was claimed that agricultural land was sold and description in the sale deed that it was a residential plot, it was submitted was not of much relevance. The explanation offered was not accepted. In appeal before the First Appellate Authority by the assessee it was submitted that the relevant evidence would be the land Revenue record maintained by the Tehsil office and not description in the sale deed. The Revenue records it was submitted referred that it was agricultural land. Decision of the Hon'ble Delhi High Court dated 09.12.2009 reported in 2009 Taxman 14 [Delhi] was relied upon for the proposition that on the date of purchase the land in question was agricultural land and the relevant criteria was the nature of land on the date of acquisition. The character of the land at the point of time it was sold it was submitted is to be seen. The said explanation of the assessee was not accepted and decisions relied upon in support of the view taken by the Assessing Officer over and above other decisions were relied upon.

3. Both the sides have been heard who re-iterate their respective stands. After hearing both the sides, we are of the view that in the peculiar facts and circumstances of the case the material facts need to be culled out. We find that all along assertions that the land in question is an agricultural land are found to have been made before the AO as well as the CIT(A). However, we find that evidence in support thereof is not placed before us.

4. In the peculiar facts and circumstance of the case, we are of the view that it would be appropriate to set aside the issue back to the file of the Assessing Officer with a direction to pass a speaking order in accordance with law after taking into consideration the status of the land at the time of sale as recorded in the land

Revenue records the necessary evidence is directed to be placed on record by the assessee. We hope that the opportunity so granted should not be abused by the assessee as failing which the Assessing Officer would be at liberty to pass a speaking order on the piece of material available on record.

5. In the result the appeal filed by the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 03 of May, 2016.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Dated: 03/05/2016
Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI