

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 758/JP/2011
निर्धारण वर्ष / Assessment Year : 2008-09

Mamchand Gurjar, Near Housing Board, Sector-1, Bhiwadi, Alwar.	बनाम Vs.	I.T.O., Ward 2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACWPC0978 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 833/JP/2014
निर्धारण वर्ष / Assessment Year : 2008-09

Smt. Sukhdai, W/o- Late Shri Narayan Singh, C/o- Shri Mam Chand Gurjar, Near Housing Board, Sector-1, Bhiwadi, Tehsil- Tijara, Alwar.	बनाम Vs.	I.T.O., Ward 2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 834/JP/2014
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Manphool Gurjar, S/o- Late Shri Narayan Singh, C/o- Shri Mam Chand Gurjar, Near Housing Board, Sector-1, Bhiwadi, Tehsil- Tijara, Alwar.	बनाम Vs.	I.T.O., Ward 2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 835/JP/2014
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Hari Singh, S/o- Late Shri Narayan Singh, C/o- Shri Mam Chand Gurjar, Near Housing Board, Sector-1, Bhiwadi, Tehsil- Tijara, Alwar.	बनाम Vs.	I.T.O., Ward 2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 836/JP/2014
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Shyam Lal, S/o- Late Shri Narayan Singh, C/o- Shri Mam Chand Gurjar, Near Housing Board, Sector-1, Bhiwadi, Tehsil- Tijara, Alwar.	बनाम Vs.	I.T.O., Ward 2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIPL 0704 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 837/JP/2014
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Jagat Singh, S/o- Late Shri Narayan Singh, C/o- Shri Mam Chand Gurjar, Near Housing Board, Sector-1, Bhiwadi, Tehsil- Tijara, Alwar.	बनाम Vs.	I.T.O., Ward 2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BLGPS 4473 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Smt. Poonam Roy (DCIT)

सुनवाई की तारीख / Date of Hearing : 25/04/2018
उदघोषणा की तारीख / Date of Pronouncement : 27/04/2018

आदेश / ORDER

PER: BHAGCHAND, A.M.

ITA No. 758/JP/2011 filed by the assessee emanates from the order of the Id. CIT(A), Alwar dated 20/06/2011 for the A.Y. 2008-09 and ITA Nos. 833 to 837/JP/2014 filed by the different assessees emanates from the order of the Id. CIT(A), Alwar dated 25/09/2014 pertaining to the A.Y. 2008-09.

2. In all these appeals, a common issue is involved, therefore, all the appeals were heard together and for the sake of convenience and brevity, a common order is being passed.

3. The common issue involved in these appeals is sustaining the addition of capital gain considering the land sold by these assessees as 'capital asset' and not as an agricultural land, which does not fall under the definition of 'capital asset' as per the Income Tax Act. The land sold was 14.08 bighas (3.52 hectare) at khasara No. 22/1220 and 22/1221 at village Jalalpur, tehsil- Tijara, district- Alwar (Raj) held by all these co-owners in 1/6th share each.

3.1 The facts of ITA No. 758/JP/2011 is that the assessee Shri Mamchand Gurjar is an agriculturist and also derives income from rent and interest. The return of income for the A.Y. 2008-09 was filed on

26/3/2009 declaring total income of Rs. 2,47,540/- and agricultural income of Rs. 1,22,750/-. The Assessing Officer finalized the assessment at a total income of Rs. 31,07,195/- wherein an addition of Rs. 24,99,286/- was made on account of capital gain on the sale of the land. This action of the Assessing Officer was confirmed by the Id. CIT(A). Now the assessee is in appeal before the ITAT. The grounds of appeal read as under:

Grounds of ITA No. 758/JP/2011

- "1. That the Id. CIT(A), Alwar erred in law as well as on the facts while confirming the addition of Rs. 2499286/- by considering agriculture land as residential property. As land under consideration measuring 14.08 Bigha is regularly used for agriculture purpose and also situated more than 8 K.M. distance from municipal area of Tijara and same does not fall under the definition of capital asset, define in Section 2(14) of IT Act.*
 - 2. The assessee craves leave to add/alter any of the ground of appeal before or at the time of hearing.*
 - 3. Necessary cost be awarded to the assessee."*
4. While pleading on behalf of the assessee, the Id AR has submitted that the facts of the issue are that the assessee alongwith other family members jointly purchased land in the year 1993-94 and the same were sold during the year under consideration. As per the contention of the assessee, this land was earlier held by a person belonging to the scheduled caste community as agricultural land. As per the laws of State

Government, agricultural land in the name of scheduled caste person cannot be transferred to any non scheduled caste person. To avoid this, the seller converted the land into the residential. After conversion, this land becomes salable to assessee. The only purpose of conversion by previous owner was to make it salable in open market and to overcome the legal hurdle of state laws. However, for all practical purposes, the land continued to be used for agricultural purposes. The facts on record shows that the agricultural activities were being carried out on this land by the previous owner and by these assessees also. All the co-owners of the land were agriculturists and they have declared agricultural income in their respective returns of incomes. Prior to the purchase of the land, the agriculture activities were being carried out on this land and even after the purchase of the land, the land continued to be used for agriculture purposes by co-owners. In support of this, copy of khasra girdawari for relevant period has been placed on record. The agricultural income was being continuously disclosed in the return of income. The land is surrounded by agricultural land only. This land is located beyond 8 k.ms. from the municipal limits of small town Tijara in Alwar district. In this regard, a certificate from the panchayat was placed on the record. There was no scope for urbanization on this land. The size of land also shows that this could not be used for residence by these persons also. It is

submitted that the land in question was purchased by the assessee from a scheduled caste person and the Assessing Officer as well as the Id. CIT(A) has given more emphasis on the form rather than the substance. The land disclosed in the registry has been classified as Barani Doyam, which is capable in growing crops. Even the person to whom the land was sold were continuing agriculture operations on this land. They continued to do agricultural operation after the purchase of this land. Further the Id. AR of the assessee has submitted as under:

In the assessment order on page 5 and 6 the Learned Assessing Officer has observed that the land purchased was residential property. The assessee constructed room of the size of 10x15 feet and Baramda of 15 x 8 feet for the use of cattle. Boundary wall was also constructed and one hand pump was also installed. The Learned Assessing Officer has also admitted that the land purchased was residential property in documents but **"some part of land was used for cultivation"**, (on page 6 of the assessment order). The Learned CIT(A) has also admitted that **"the khasra girdawari shows that the assessee used this residential land in cultivating the agriculture."**(page 12 of the assessment order). However both the authorities still decline to accept that since the land was used of agricultural purposes therefore the same continued to be agricultural land despite being shown as converted in the records. The submission of the assessee is that when the land is used for agricultural which is borne out from the fact that assessee also installed a hand pump for carrying out agricultural activity. The construction of one room of the size of 10 x 15 feet and construction of one baramda of the size of 15 x 8 cannot convert land of the size of 6957 sq. meters from agricultural to residential. It is common knowledge that law permits some construction upto 5% of land on agricultural land also.

Therefore the mere construction of a small room and baramda cannot be said to alter the use and character of the land. The Learned Assessing Officer and the Learned CIT(A) have failed to controvert the submission of the assessee that during the entire period of holding from 1993-94 to 2007-08 was continuously used for agricultural purposes. Supporting evidence was filed in the shape of khasra girdawari. The assessee also disclosed agricultural income in the income tax returns. What more evidence is required to establish that the land was of the nature of agricultural land. The assessee has disclosed agricultural income in various Assessment Years as under as quoted by the Learned CIT(A) on page no. 8 of his order –

Assessment year	Agricultural income declared by the assessee	Remarks
2003-04	112750	Accepted by the Revenue
2004-05	168500	Accepted by the Revenue
2005-06	147750	Accepted by the Revenue
2006-07	168960	Accepted by the Revenue
2007-08	163850	Accepted by the Revenue

Intention of the assessee –

While rejecting the claim of the assessee the Learned CIT(A) has observed as under in para 5.3 of his order –

"I have carefully considered the assessment order as well as submission of the assessee and case relied upon, originally this was owned by 'scheduled caste'. As per the land Revenue act any agricultural land belonging to scheduled caste cannot be sold to the other than scheduled caste. The assessee devised a method to transfer this land in his own name by converting agricultural in residential property to violate the land laws of Rajasthan Govt. **The intention of the assessee was clear to earn the bounty of profit by selling this land in his name but he also wanted to avoid to pay the tax on long term capital gain. Thus he also created the evidence to give the colour of agricultural land and agricultural income shown in the I.T. Return.**"

The perusal of the aforesaid para discloses the mindset of the Learned CIT(A) in deciding the issue. On the one hand he has accepted the fact that the land in question purchased by the assessee was essentially and basically of agricultural nature. It was only because the seller was a schedule caste person that the land **was purchased after getting it converted.** The purpose of conversion was not that the land was going to be used for purposes other than agriculture. In fact the limited purpose of conversion was to get the land transferred from the owner who was a schedule caste person. Beyond that the purpose of conversion was nothing. **This fact has not been properly appreciated by the Learned CIT(A) even though he has acknowledged the facts in his order. To this extent the order of the Learned CIT(A) is erroneous and deserves to be quashed.**

The Learned CIT(A) has raised the issue of the intention of the assessee which is unfortunate and uncalled for. The Learned CIT(A) has held that the assessee purchased the land with a moto of earning profits and he has shown agricultural income in the income tax returns just to establish that the land was agricultural. It is not clear from the order of the Learned CIT(A) as to what made him to observe like this. The land was purchased by the assessee in the year 1993-94. It is common knowledge that the prices of land and immovable property started rising in the year 2004 and these were at their peak in the year 2007. It is because of the abnormal rise in the land price that the assessee took the decision to sale the land and the law does not prohibit the assessee from doing this. It wrong on the part of the Learned CIT(A) to say that agricultural income was disclosed to give the land color of agricultural land. The revenue has accepted the agricultural income. So it does not behove the Learned CIT(A) to observe like this. The assessee could not plan in 1993-94 while purchasing the land that the land prices would soar in the year 2007. Such things cannot be planned and they go on their way. The assessee just availed the opportunity of selling the land at higher price. There is no manipulation on the part of the

assessee. The Learned CIT(A) erred in taking a decision on wrong assumptions. Hence the decision of the Learned CIT(A) deserves to be quashed.

5. Importance of Revenue records –

It is submitted that in the case of the assessee his claim has been rejected solely on one ground that the land was not agricultural in the records. It is submitted that it is settled position of law that Revenue records are not conclusive. In several case where the land was shown as agricultural land in Revenue records despite that the same was not accepted as the land was not put to agricultural use. In the case of the assessee the reverse is true. The land is being used for agricultural purposes but is not shown as agricultural in the Revenue records. In the circumstances it is pleaded that what is important is the use of the land and not the record of it. In the matter of CWT V/s officers in charge, (Court of wards) (1976) 105 ITR 133(SC) Hon'ble Supreme Court held that the entries in the revenue records is a material evidence to show the nature of the land but it is not conclusive. Further evidence is required to show the lands in question at the material time have not lost the character of agriculture land. The onus is on the assessee to establish the nature of the land. When once the assessee discharges the onus, the onus shifts to the department to prove the land is not agricultural. Further in the matter of Sri Krishna RaoL. Balekai V/s. WTO 48 ITR 472(Mys) it was held that present characteristics and not potentialities of a land are the proper criterion. If a land is ordinarily used for the purposes of agricultural and allied to agriculture, it would be agricultural land.

6. Parameter laid down by the decision of the courts –

In the case of Sarifabibi Mohmed Ibrahim & Ors vs. CIT 204 ITR 6321 the Hon'ble Supreme Court has discussed the issue at length. The court has quoted the 13 factors evolved by the Gujarat High Court in the case of CIT vs. S.J. Desai for deciding the issue of land being agricultural. It is submitted that the assessee's case complies with all the parameters except one that the same was not agricultural in revenue records. These are discussed below –

Sr. No.	Particular of parameters	Remarks
1.	Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land Revenue.	Although the land was subject to the payment of land Revenue but in the Revenue records it was shown as non-agricultural. The khasra girdawari furnished disclosed that the land was used for the agricultural purposes.
2.	Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time	Since the date of purchase to the date of sale the land was put the agricultural use only.
3.	Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement	Since the date of purchase to the date of sale the land was put the agricultural use only.
4.	Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land	Yes the agricultural income disclosed in the income tax return by the assessee was accepted by the Revenue.
5.	Whether the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee). Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date.	No permission was sought for urbanization of the land.
6.	Whether the land, on the relevant date, had ceased to be put to	No. The land continued to be used for agricultural purposes

	agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature.	even after the sale.
7.	Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes.	The reverse is true. In the Revenue records the land is shown as non agricultural but was used for agricultural purposes throughout the possession of the assessee.
8.	Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural.	No. The land is surrounded by the agricultural lands.
9.	Whether the land itself was developed by plotting and providing roads and other facilities.	Land was never developed. Only a small room and baramda was constructed for purposes of cattle feeding etc.
10.	Whether there were any previous sales of portions of the land for non- agricultural use.	No piece of land was sold earlier.
11.	Whether permission under s. 63 of the Bombay Tenancy & Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist was for non agricultural or agricultural user	No. The land has been sold to an agriculturist only for purposes of agriculture.
12.	Whether the land was sold on yardage or on acreage basis	No.
13.	Whether an agriculturist would purchase the land for agricultural purposes at the	The land has been purchased by an agriculturist.

	price at which the land was sold and whether the owner would have ever sold the land valuing it as a Property	
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Thus it would be seen that the case of the assessee meets all the parameters except only one, that too technically only. It is again reiterated that in the Revenue records the land was shown agricultural only for purposes of transfer in the name of the assessee from the previous owner who happened to be scheduled caste person. The land could not be transferred to him unless converted to non-agricultural. In view of this the case of the assessee deserves to be considered sympathetically. The Learned Assessing Officer and the Learned CIT(A) failed to consider the facts of the case in the right perspective. In the circumstances of the case no capital gains are attracted. The addition made by the Learned Assessing Officer and so confirmed by the Learned CIT(A) deserves to be deleted.

7. Mere technicality of the case –

The important issue involved in the case is that despite the Revenue records showing the land as converted, the land continued to be used for agricultural purposes. The Learned Assessing Officer has not disputed this fact. The assessee has established the same with reference to khasra girdawari. The land was shown as converted in the Revenue records because the same could be transferred otherwise in the name of the assessee. But for the Revenue records the land has continuously remained agricultural, was used only for agricultural purposes and therefore the issue of capital gains does not arise. The land was non-agricultural only technically and not practically. The assessee humbly requests the Hon'ble ITAT to decide the issue practically and not technically.

5. On the other hand, the Id DR has relied on the orders of the authorities below. She submitted that once the land has been classified as

residential then there is no scope for treating the land as agricultural land for the purpose of taxation. She further submitted that the case laws relied upon by the Id AR were in respect of the cases where agricultural land was treated as non-agricultural by considering the various facts on the record. The guideline of Hon'ble Gujarat High Court in the case of CIT Vs. S.J. Desai to decide the issue of land being agricultural is also for the purpose that the land which is agricultural in the nature but the various other aspects make it to be treated as non-agricultural for the purpose of taxation. Therefore, the ratio laid down is not applicable in the assessee's case. She pleaded to sustain the order of Id. CIT(A).

6. The Bench have heard both the sides on this issue. The following facts are undisputed on record. The land which was purchased by these co-owners in the year 1993-94 from Shri Malkhan Singh S/o- Shri Sawaliya, who was belonging to Scheduled caste category. Agricultural land belonging to Scheduled caste category cannot be transferred to any other person except to a person of scheduled caste category as per the Rules and Regulations of the State Government. These assessees were not of S.C. category hence had the land not converted it could not have been legally transferable to these assessees. The land has been classified in the purchase registry as Barani Doyam and converted. The facts of agriculture activities continued to this land had been recorded in land

revenue records. The total area of the land was more than 14 bighas (3.52 hectare). The location of the land was beyond 8 KM from any municipal limit. The surrounding land was used for agricultural purposes. There was no scope for urbanization. There was no scope even for extension of any village Abadi on this land. Size of land itself negates the possibility of utilizing this whole land for self residential purpose by these assesses. Thus, it is well established by the fact on records that the purpose of land conversion of Shri Malkhan Singh was only with the intention to sale it to any person rather than restricted sale option to the scheduled caste category person. The intention of the seller Shri Malkhan Singh was not to convert the land to residential and then use the same for that purpose. There was no scope for urbanization. As per the Rules and regulations applicable for conversion, the agricultural land converted to residential if not utilized for the converted purpose within two years then the conversion becomes null and void. The assessee was continuously used the land for agricultural purposes. A small room of 10"x15" and a varanda of 15"x8" for the purpose of cattle was constructed. This small cattle shed construction on such a huge land does not suggest that the land was utilized for residential purposes or there was any intention to use for that purpose. Khasra Girdawari placed on the record establishes that this land continued to be utilized as agricultural

land by these assesseees. The assesseees continued to declared agricultural income in their return of income. The Hon'ble High Court of Mysore in the case of Sri Krishna Rao L Balekai Vs WTO 48 ITR 472 (Mys) has held that the land is assessed to the land revenue and agricultural land under the State Revenue law which certainly a relevant fact but it is not conclusive to decide the character of land. In each case, one or more factors may be present or absent to make ultimate decision which can be reached on a balanced consideration of the totality of circumstances. The Hon'ble Gujarat High Court in the case of CIT Vs. S.J. Desai 139 ITR 0628 had evolved 13 points to decide the character of land. The fulfillment of these criterias has been elaborated in the submissions of the Id AR, which are reproduced hereunder:

Sr. No.	Particular of parameters	Remarks
1.	Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land Revenue.	Although the land was subject to the payment of land Revenue but in the Revenue records it was shown as non- agricultural. The khasra girdawari furnished disclosed that the land was used for the agricultural purposes.
2.	Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time	Since the date of purchase to the date of sale the land was put the agricultural use only.
3.	Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement	Since the date of purchase to the date of sale the land was put the agricultural use only.
4.	Whether the income derived from the	Yes the agricultural income

	agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land	disclosed in the income tax return by the assessee was accepted by the Revenue.
5.	<p>Whether the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non- agricultural use of the land? If so, when and by whom (the vendor or the vendee).</p> <p>Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date.</p>	No permission was sought for urbanization of the land.
6.	Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature.	No. The land continued to be used for agricultural purposes even after the sale.
7.	Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes.	The reverse is true. In the Revenue records the land is shown as non-agricultural but was used for agricultural purposes throughout the possession of the assessee.
8.	Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural.	No. The land is surrounded by the agricultural lands.
9.	Whether the land itself was developed	Land was never developed. Only a

	by plotting and providing roads and other facilities.	small room and baramda was constructed for purposes of cattle feeding etc.
10.	Whether there were any previous sales of portions of the land for non-agricultural use.	No piece of land was sold earlier.
11.	Whether permission under s. 63 of the Bombay Tenancy & Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist was for non agricultural or agricultural user	No. The land has been sold to an agriculturist only for purposes of agriculture.
12.	Whether the land was sold on yardage or on acreage basis	No.
13.	Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a Property	The land has been purchased by an agriculturist.

The land records like Khasra Girdawari shows that this land continuously used for agricultural purposes. The land from the date of purchase till the date of sale, continued to be used as agricultural land. Prior to the purchase also, the land continued to be used for agricultural purposes and even after the sale, the land continued to be used for agricultural purposes. This land was purchased from an agriculturist and also sold to an agriculturist. The term 'Agriculture Land' has not been defined in the Constitution of India and also in the Income Tax Act, but agriculture land must be land which could be said to be either actually used or ordinarily used or meant to be used for agriculture purpose. In other words,

agricultural land must have a connection with an agriculture user or purpose. The determination of the character of a particular piece of land, according to the purpose for which it is meant or set apart and can be used. It is a matter which needs to be determined on the facts of each particular case. It is not the mere conversion but the actual condition and intended user, which has to be seen. When there are sufficient evidence and surrounding circumstances which indicate the intention of owner to convert with the agriculture land to residence was not the use it for that purpose. It continued to be agricultural land. Therefore, the land can be termed as 'agriculture land'. The agricultural income earned was being disclosed in the return of income. There was no permission sought for urbanization of the land. The surrounding of lands were all being used for agricultural purposes only. There was no scope for urbanization at relevant time even in near future as it was situated at faraway place from municipal limit of Tijara. Therefore, the dominant factor for conversion of this agricultural land was to make it transferable as this agricultural land was belonging to a scheduled caste person and was not transferable to any other person other than the scheduled caste person. These assesseees were not of that category. Apparently the sole reason for conversion was to make the land transferable to these assesseees. There was no other apparent reason to convert it. The conversion was made only to make the

land transferrable rather than the utilization of the same for the declared purpose for which it was converted. Thus, the dominant purpose of conversion was to make the land transferable to any other person not limited to the scheduled caste persons. The location of the land itself shows that it was not capable to be developed for urbanization. The land continued to be cultivated and all the necessary activities of agriculture operations continued on this land. Prior to purchase of the land, during the holding the land by these assesseees and even after selling of this land, the land continued to be used for agriculture purposes. In view of the decision of Hon'ble Supreme Court and the Hon'ble High Courts, this land cannot be categorized as non-agriculture. Hence the addition made/sustained deserve to be deleted in all these appeals.

7. The other grounds in all these appeals were not pressed, therefore, the same are dismissed as not pressed.

8. In the result, all the six appeals of the assesseees are allowed on the issue of capital gain.

Order pronounced in the open court on 27/04/2018.

Sd/-

(भागचंद)

(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27th April, 2018

*Ranjan

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellants- (i) Shri Mamchand Gurjar, Alwar.
(ii) Smt. Sukhdai, Alwar.
(iii) Shri Manphool Gurjar, Alwar.
(iv) Shri Hari Singh, Alwar.
(v) Shri Shyam Lal, Alwar.
(vi) Shri Jagat Singh, Alwar.
2. प्रत्यर्थी/ The Respondent- The I.T.O., Ward 2(2), Alwar.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 758/JP/2011 & 833 to 837/JP/2014)
आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar