

**IN THE INCOME TAX APPELLATE TRIBUNAL
(MEERUT CAMP, MEERUT)**

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6008/Del./2018
(ASSESSMENT YEAR : 2010-11)**

RAHUL SINGH
C/O VINOD KUMAR GOEL,
282, BOUNDARY ROAD,
CIVIL LINES, Meerut
Uttar Pradesh
(PAN : EVAPS5779F)
Appellant

Vs. ITO,
Ward-2(2)
Meerut

Respondent

ASSESSEE BY : Sh. V.K.Goel, Adv.
REVENUE BY : Shri Yogesh Sharma, Sr.DR

Date of Hearing : 11.01.2019

Date of Order : 25.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant RAHUL SINGH, Meerut (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 04/06/2018 passed by Ld. Commissioner of Income Tax(Appeals)-Meerut qua the Assessment Year 2010-11 on the grounds inter alia that :

“1. That as per order it is not clear whether notice under section 148 was issued after proper recording of reasons and approval was obtained from Pr. CIT, Meerut. The CIT(A) has not disposed off this ground without proper consideration.

2. *That the A.O. is in error in holding that agriculture land of the assessee is capital asset as defined in Section 2(14) of I.T.Act. Hence, no capital gain is charge on the sale of agriculture land. The assessee furnished details before CIT(A) which is misreported by CIT(A) and not considered assessee's reply properly.*

3. *That the assessee has right to add, delete or modify any grounds during the appeal proceeding.”*

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : the Assessing Officer completed the assessment u/s 144/147 of the Income Tax Act, 1961 (for short 'Act') by making addition of Rs. 15,60,350/- on account of long term capital gain (LTCG) on the sale of agriculture land.

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has partly allowed the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly the Assessing Officer has made the addition on the basis of report submitted by Inspector of Income Tax that the actual distance of the agricultural land in question by road is only 4.2 Km. from the Municipal limits as per notification u/s. 2(ia) provision II(b) the distance has been notified for Meerut as being 8 Km from Municipal limits in all directions. The Ld. CIT(A) has declined the contention of the assessee that the property in question is not a capital asset u/s 2(14) of the I.T. Act and also based his decision on the report of the Inspector.

6. We are of the considered view that when the assessee has come up with specific plea that the land in question is not situated within the urban area as per notification, "INCOME TAX ACT, 1961 : NOTIFICATION UNDER SECTION 2(1A)(C), PROVISIO, CLAUSE (II) (b) AND SECTION 2(14) (III) (b) : URBANISATION OF AREAS", which is available at page 5 to 40 of the paper book, the Ld. CIT(A) was required to adjudicate the issue in the light of the notification (Supra).

7. In these circumstances, we are of the considered view that the issue is required to be set aside to the AO who will examine the issue afresh in the light of the notification relied upon by the assessee to work out if the land in question is situated beyond 8 Km from the municipal limits. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the Assessee. Consequently, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 25th January, 2019.

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated: 25/01/ 2019
BR**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**

Date of dictation	15.01.2019
Date on which the typed draft is placed before the dictating Member	16.01.2019
Date on which the typed draft is placed before the Other Member	25.01.2019
Date on which the approved draft comes to the Sr. PS/PS	25.01.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	25.01.2019
Date on which the fair order comes back to the Sr. PS/PS	25.01.2019
Date on which the final order is uploaded on the website of ITAT	25.01.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	