

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
I.T.A. No. 3741/DEL/2016 (A.Y. 2012-13)**

ITO Ward-34(2), Room No. 807, 8 th Floor, E-2 Block, Civic Centre, Minto Road New Delhi (APPELLANT)	Vs.	Pankaj Gupta BP-39, West Shalimar Bagh Delhi PAN : AAFFG4970Q (RESPONDENT)
--	-----	--

Appellant by	Sh. S.C.Gupta, AR
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	08.08.2019
Date of Pronouncement	22.10.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the revenue against the order dated 30.03.2016 passed by the CIT(A)-12, New Delhi for assessment year 2012-13.

2. The grounds of appeal are as under :

“1. The CIT (A) erred on facts and circumstances of the case and in law by deleting the addition of Rs. 1,71,86,776/- made under the head Long Term Capital Gain and treating the capital asset as agricultural land?

2. The CIT(A) erred on facts and circumstances of the case and in law. by not appreciating the facts that the assessee has neither has produced evidence with regard to agricultural operations carried out nor has agricultural income generated on that land in the current or previous year?

3. *Whether the CIT(A) erred by dismissing the contention of AO that the land was a capital asset u/s 2(14)(iii)(b) of the Act?*
4. *The CIT(A) erred by ignoring the fact that distance measured from municipal limits of Sohna Municipality to assessee's land was no aerial distance and therefore cannot be relied upon?*
5. *The CIT(A) erred on facts and circumstances of the case and in law by ignoring the fact that the land comes under the recent urbanization master plan of Haryana Govt, introduced in 2012, and possibly use of non-agricultural purpose?"*

3. The assessee is deriving business income as a partner in firm, M/s. Pratham (India) International in the nature of share in profit, salary and interest income. In addition to it, the assessee is having income under the head of 'income from capital gain' and 'income from other sources'. Return of income declaring gross total of income of Rs. 20,27,886/- was filed by the assessee on 02.01.2013. The return was processed u/s 143(1) and was selected for scrutiny. Notice u/s 143(2) was issued on 12.08.2013 and was duly served upon the assessee. Subsequently notice u/s 142(1) was issued to the assessee. In response to the above notices, Authorised Representative of the assessee attended the assessment proceedings from time to time and filed necessary details as called for. On perusal of the computation of income filed by the assessee for the assessment year 2012-13, the Assessing Officer observed that the assessee claimed long term capital gain on sale of LIG flat located at Shalimar Bagh, Delhi at Rs. 12,47,505/-. Also during the year under consideration, the assessee sold another land situated at village Basai, Dist. Nuh (Mewat), Gurgaon for a consideration of Rs. 2,10,22,780/-. The assessee submitted reply dated 20.10.2014 thereby stating that the land in the question is rural agricultural land and therefore it is beyond the ambit of long term capital gain. The Assessing Officer added to Rs. 1,71,86,776/- to the income of the assessee under the head long term capital gain. The Assessing Officer also made addition in respect of interest expenses amounting to Rs. 5,08,600/-.

Thus, the Assessing Officer made addition of Rs. 1,76,95,376/- and computed the total income at Rs. 1,97,23,260/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the assessee did not produced evidence with regard to agricultural operations carried out and also regarding agricultural income generated on that land in the current or previous years. The Ld. DR further submitted that the land was a capital asset u/s 2(14)(iii)(b) of the Act. The Ld. DR further submitted that the distance measured from municipal limits of Sohna municipality to assessee's land was no arrear distance and therefore cannot be relied upon. The Ld. DR further submitted that the land comes under the recent urbanization master plan of Haryana Government introduced in 2012 and possibly use of non-agricultural purpose.

6. The Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. The CIT(A) held as under :-

"9.10 Ground No. 3 & 4 relates to addition of Rs. 1,71,86,776/- holding that said land was capital asset within the meaning of Section 2(14)(iii) of the Act. The main contention of Assessing Officer is that the distance of Appellant's land is less than five kilometer from the municipal limits of Sohna Municipal Committee. It is seen that boundary of Sohna Municipal Committee was changed in 2014, as per Haryana Government Notification No. 18/39/2014-3C-1 dated 04.03.2014. Prior to this, the boundary of Sohna Municipal Committee was defined by Haryana Government Notification of 1998. The Sohna Municipal Committee was upgraded to Sohna Municipal Council vide Notification No. 18/163/2014-3C-1 dated 05.09.2014 issued by Government of Haryana and The Municipal Limits

were extended upto village Raipur vide Notification No. 18/39/2014-3C-1. Therefore, it is apparent that the notification 18/39/2014-3C-1 dated 04.03.2014 is not relevant as the case of Appellant relates to sale of land during A.Y. 2012-13 relevant to F.Y. 2011-12. Further, as per notification no. So 9447 dated 06.01.1994, the specified distance from Sohna Municipal limits for the purpose of treating agricultural land as capital asset is only 5 Kms. and, therefore, it is to be seen whether the said land falls within 5 Kms. from old municipal limits of Sohna Municipal Committee. Assessing Officer in para 3.2 of assessment order has stated that sub-registrar Nuh vide reply dated 17.11.2014 has submitted that the land in village Basai was located at a distance of 17 Kms. from Nuh Nagar Palika and it is situated at a distance of 8 Kms. from Sohna Nagar Palika. Therefore, as per the report of subregistrar Sohna Nagar Palika, the distance of land of Appellant in Basai village from outer limits of Sohna Nagar Palika was more than 5 Kms. Further, Appellant has submitted that the distance between old M.C. Limit and extended M.C. Limit on Sohna-Nuh-Alwar Road is almost 1.35 Kms. He has relied on letter dated 09.07.2015 of District Town Planner, Gurgaon, wherein it is stated that aerial distance between old M.C. Limit and extended M.C. Limit of Sohna Municipal Committee is almost 1.35 Kms. Therefore, the distance of Appellant's land in Basai village from old municipal boundary of Sohna municipality is about 6.25 Kms. even if distance of 4.9 Kms. is taken as reported by ITI in his report dated 20.11.2014. It appears that report of ITI was based on current municipal limit of outer boundary of Sohna Municipal Council which is apparent from the assessment order in which Assessing Officer has considered the distance of Appellant's land in Basai village from municipal limits of Sohna Municipal Committee extended upto Raipur. Assessing Officer in her Remand Report has not stated the aerial distance between Appellant's land in Basai village and the outer boundary of Sohna Municipal Committee. It is true that as per Greater Gurgaon Master Plan of 2031 there is great impetus to growth in this area wherein

a well developed industrial area is coming up and Basai village is situated in close proximity to Sohna which is also part of Greater Gurgaon. However, Ld. Assessing Officer has not brought out anything on the issue whether the land was not being used for agricultural purposes. ITI in his report dated 20.11.2014 has not stated anything on the issue of lack agricultural operations on the said land. Therefore, in view of the totality of facts and circumstances of the case, it is held that Appellant's land was an agricultural land at the time of sale and, therefore, it is not a capital asset within the meaning of Section 2(14)(iii) of the Income Tax Act, 1961. Accordingly, addition of Rs. 1,71,86,776/- is deleted."

It is pertinent to note that the boundary of Sohna Municipal Committee was defined by Haryana Government Notification of 1998. The Sohna Municipal Committee was upgraded to Sohna Municipal Council vide Notification No. 18/163/2014-3C-1 dated 05.09.2014 issued by Government of Haryana and The Municipal Limits were extended upto village Raipur vide Notification No. 18/39/2014-3C-1. Thus the notification 18/39/2014-3C-1 dated 04.03.2014 is not relevant as the case of assessee relates to sale of land during A.Y. 2012-13 relevant to F.Y. 2011-12. Besides this, as per notification no. So 9447 dated 06.01.1994, the specified distance from Sohna Municipal limits for the purpose of treating agricultural land as capital asset is only 5 Kms. and, therefore, it is to be seen whether the said land falls within 5 Kms. from old municipal limits of Sohna Municipal Committee. Assessing Officer in para 3.2 of assessment order has stated that sub-registrar Nuh vide reply dated 17.11.2014 has submitted that the land in village Basai was located at a distance of 17 Kms. from Nuh Nagar Palika and it is situated at a distance of 8 Kms. from Sohna Nagar Palika. Therefore, as per the report of sub-registrar Sohna Nagar Palika, the distance of land of assessee in Basai village from outer limits of Sohna Nagar Palika was more than 5 Kms. From the records it can be seen that report of ITI was based on current municipal limit of outer boundary of Sohna Municipal Council which is apparent from the assessment order in which

Assessing Officer has considered the distance of assessee's land in Basai village from municipal limits of Sohna Municipal Committee extended upto Raipur. The Assessing Officer in the Remand Report has not stated the aerial distance between assessee's land in Basai village and the outer boundary of Sohna Municipal Committee. These facts were not distinguished by the Ld. DR during the course of hearing. Thus, the CIT(A) has given the detail finding and there is no need to interfere with the same. The appeal of the revenue is dismissed.

9. In result, appeal of the revenue is dismissed.

Order pronounced in the Open Court on 22nd October, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 22/10/2019

Binita

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	22.10.2019
Date on which the typed draft is placed before the dictating Member	22.10.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	