

**IN THE INCOME TAX APPELLATE TRIBUNAL “C-SMC” BENCH: KOLKATA**  
[Before Shri A. T. Varkey, JM ]

**I.TA No.637/Kol/2019 A.Y 2014-15**

Prodyut Kumar Ghosh PAN: BDYPG9272J	Vs.	I.T.O, Ward 23(1), Hooghly
Appellant		Respondent

Date of Hearing	22.08.2018
Date of Pronouncement	30.10.2018

For the Appellant	Shri P.J. Bhide, FCA, Id.AR
For the Respondent	Shri Mrinal Kanti Biswas, Addl. CIT, Id. Sr.DR

**ORDER**

**PER SHRI A.T. VARKEY, JM**

This appeal is preferred by the assessee against the order of Ld. CIT (Appeals) , 6, Kolkata dated 21-01-2019 for the assessment year 2014-15.

2. Grounds of appeal of the assessee are as under:-

- *For that in the facts and circumstances of the case the appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.*
- *For that order passed by the Learned Commissioner of Income Tax Appeals is bad in law and the same be quashed.*
- *For that in the facts and circumstance the Learned Commissioner of Income Tax Appeals erred in upholding the addition of Rs.26,96,2501- made on account of sale of agriculture land in rural area "being agriculture land as per section 2(14) of Income Tax Act, 1961" as income from other sources. The addition is not called for and hence the same be deleted.*
- *For that the consideration received by the assessee on account of sale of Rural agriculture land be considered as capital receipt and should be untaxed.*

- *Without prejudice to the above, the Income from sale of land be treated as income from Capital gains and the same be computed as per law.*
- *For that the learned CIT (Appeals) erred in confirming the interest ix] s 234 A/B/ C the same was unjustified and hence the same be recalculated as per the applicable law.*
- *The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.*
- *The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”*

3. The main grievance of the assessee is against the action of Id. CIT(A) in upholding the addition of Rs.26,96,250/-, which according to assessee is the amount of sale consideration he received from sale of his agricultural land, which according to him is exempt from tax. Brief facts as noted by the AO is that he noted that the assessee had filed his return of income on 15-12-2015 for the A.Y 2014-15 showing total income of Rs.86, 790/- after having allowed deduction under Chapter VI-A of the Act. Later the case was selected for scrutiny under ‘CASS’ on the ground ‘large agricultural income’. The AO notes that Id.A/R of assessee appeared for the assessee and produced copy of I.T return, copy of bank statement, copy of sale deed of land and other related documents. Thereafter the AO noted during the course of assessment proceeding a show-cause notice was issued on 18-09-2016 to the assessee stating “*It is seen from your Income Tax Return for the Assessment Year 2014-15 (ITR-2) filed on 15-12-2015, that you have disclosed aggregate income of Rs. 27,83,040/-. Out of which you have claimed net agricultural income of Rs.26,96,250/-. But during the assessment proceedings you have not produced any documentary evidence of agricultural income and could not sustained your claim. Therefore, you are requested to show-cause why rebate on agricultural income for computation of tax liability will not be disallowed.*” Pursuant to his show cause stated above the assessee replied as under:-

*“I have shown income under salary and agricultural income under exempted income. I have sold agricultural land during the financial year 2013-14 amounting to Rs. 26,96,250/-. Sale of agricultural land is not agriculture income. Hence, I accept my error while filing Income Tax*

*Return as I am unaware of Income Tax Laws Properly.” [ emphasis given by me]*

4. Thereafter, the AO notes from the aforesaid reply that the assessee has no agricultural income. Therefore, the AO observed that the rebate of agricultural income for computation of tax is disallowable and income shown of Rs.26,96,250/- needs to be treated as income from other sources. He computed the total income of the assessee at Rs. 27,83,040/-. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to dismiss the appeal of assessee by holding as under:-

*“4. The only ground of this appeal is an addition of Rs. 26,96,250/-. The appellant in its return of income had offered the same as "agricultural income" before the AO. In assessment proceedings appellant contended that the impugned sum pertained to sale of "agricultural land" and hence the same doesn't fall within the definition "capital asset" within sec. 2(14) of the IT Act. The AO did not accept the contention of the appellant and now the appellant has re-iterated its contention that the said land being "agricultural land" cannot be taxed. Having gone through the material and evidence so placed before me, I find that the impugned land has been claimed to be situated outside the Municipality boundary of Dunkuni, West Bengal. The appellant has' claimed it squarely satisfies the requirements of being 2 kilometers away from the Municipality boundary whose population is less than 1 lac. For the same the appellant has given the population census of "Dunkuni Municipality" from the google website search. Having gone through the material so placed by the appellant, I find that the requirement of law if! the matter has not been duly satisfied by the appellant,- The appellant has failed to furnish any evidence such as certificate of "Gram Panchayat" or "Block Development Office" as to the exact location of the impugned land and has merely submitted that the impugned land is 3-5 kilometers away from the municipality boundary of Dunkuni. In absence of any certificate from local Panchayat / Block Development Officer or Municipality, it is 'difficult to ascertain as to whether such land is beyond the Municipality limit. Further the appellant has not furnished any evidence as to whether agriculture operation has been carried out on the impugned land prior to such sale. Hence the character of such land also cannot be accepted as "agricultural land" in absence of any evidence. The evidence so placed by appellant in form of "Khajana receipt" is not conclusive and needs to be substantiated by the "Land crop return" or similar evidence filed with Patwari, B.D.O. or any other local authority, which appellant failed to. Hence the appellant's contention cannot be accepted in such respect. Hence this ground of the appellant is dismissed.” Aggrieved, the assessee is before us.*

5. Before us, Shri P.J. Bhide, the Id. AR of the assessee drew our attention to the Income Tax Return for the A.Y 2014-15 and stated that he has shown income under salary and consideration from sale of agriculture land under exempted income. It was brought to our notice that assessee has sold agriculture land during the F.Y 2013-14 amounting to Rs. 26,96,250/- and contended that the sale consideration from agriculture land though not taxable was shown as agriculture income in the ROI as exempt from Tax. On being confronted by the AO, the assessee being ignorant of the nuance of Income Tax law erroneously accepted as his error on this fact. And the AO, taking advantage of assessee's ignorance, saddled the entire sale consideration from agricultural land as addition to the total income of the assessee and the Id. CIT(A) without exercising his co-terminus powers has denied the rightful claim of assessee for absence of few certificates. Assailing the action of the lower authorities, the Id.AR of the assessee took our attention to the Definition of 'Capital Assets' as per Income Tax Act 1961 ( hereinafter the 'Act') as under:-

*As per sec. 2(14) of Income Tax Act, 1961  
"capital asset" means-*

*(a) property of any kind held by an assessee, whether or not connected with his business or profession;*

*(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),*

***but does not include-***

*(i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession;*

*(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes-*

*(a) Jewellery*

*(b) archaeological collections*

*(c) Drawings*

*(d) Paintings*

*(e) Sculptures*

*(f) Any work of art. .*

**(iii) Agricultural land in India, not being land situate-**

*(a) in any area which is comprised **within the jurisdiction of a municipality***

*(whether known as a - , municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a **population of not less than ten thousand**; or*

*(b) In any area within the distance, **measured aeri ally**,-*

*(I) not being more than **two kilometres**, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of **more than ten thousand** (but not exceeding one lakh); or If the land in question is situated within 2 kms*

*(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh or*

*(III) Not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.*

6. Thereafter. The Id.AR submitted that the Rural area for the above purpose is as follows:

**Thereafter Upto the assessment year 2013-14**, - any area which is outside the jurisdiction of a municipality or cantonment board having a population of 10,000 or more and also if the land in question does not fall within such notified distance (upto 8 kilometers from the local limits of such municipality or cantonment board).

7. It was pointed out by the Id. AR that there was a change brought out in finance bill 2013, wherein amendments were introduced in Sec 2(14)(b). Therefore

**From the assessment year 2014-15-**

Any area which is outside the jurisdiction of a municipality or cantonment board having a population of 10,000 or more and also which does not fall within distance (to be measured aeri ally) given below-

<i>2 kms from the local limits of municipality/cantonment board</i>	<i>If the population of the municipality/cantonment board is more than 10,000 but not more than 1 lacs</i>
<i>6 kms from the local limits of municipality/cantonment board</i>	<i>If the population of the municipality/cantonment board is more than 1 lacs but not more than 10 lacs</i>
<i>8 kms from the local limits of</i>	<i>If the population of the</i>

<i>municipality/cantonment board</i>	<i>municipality/cantonment board is more than 10 lacs</i>
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8. The assessee submitted that his land is about 3 kms (aerially) away from the Municipality boundaries of Dankuni .And the population of Dankuni Municipality as per Dankuni Population Census for the year 2011 is 94,936 which is below 1 lacs. So, according to Id. AR, since the assessee's land (agriculture) was situated 3 kms from the boundaries of Dankuni Municipality, the condition precedent that population of Dankuni Municipality was supposed to be over 1 lac for his ( assessee's ) land to qualify as a capital asset. So according to assessee, his agriculture land since is situated in rural area, therefore is not a capital asset as per sec. 2(14) of Act. Moreover, it was submitted and pointed out to us by the Id. AR that before Financial Year 1970-71, Gains from Sale of Agricultural land in Rural area in India was not taxable. Thereafter, amendments were brought in and by virtue of it, if the agricultural land is situated within the jurisdiction of a municipality area/cantonment board was treated as a capital asset and so sale of the land(agriculture) was also made taxable. However if the agricultural land is situated outside the boundaries of any Municipality or Cantonment board, and the distance (aerially) from any Municipality and Cantonment Board as given in chart (supra) satisfies the requirements of population given in the chart (supra) as per the last census, then the sale of agricultural land will attract capital gain. And if the agricultural land does not fall in the ken of the chart supra or any condition i.e if the population requirement is not satisfied though the land falls in distance from the boundaries of Municipality or Cantonment, then the sale consideration cannot attract capital gain. Accordingly the Id. AR submits that no liability to tax will arise in respect of gains derived from transfer of agricultural land in rural area. And thereafter took our attention the page-12-14 of paper book which shows the Population Census of Year 2011 of Dankuni Municipality from which we note that the Dankuni Municipality has population 94,936 ( i.e.less than One lakh). And our attention was drawn to page-15 of paper book, which is the copy of the Certificate dt. 15/6/2019 issued by Dankuni Municipality, which was issued pursuant to the assessee's application u/s 6 of Right to Information Act, 2005, which corroborates the fact that the population of Dankuni Municipality is 94,936 as per last

Census of Year 2011. Our attention was drawn to page 16 of paper book, which is the Certificate dt. 05/07/2019 issued by Prodhan of Janai Gram Panchayat regarding classification of assessee's land and its location, which is as under:-

To Whom It May Concern

*That Sri Pradyut Kumar Ghosh , Son of Sri Swapan Kurnar Ghosh, resident of Village: Janai , owns land as J.L. NO 57 of Janai Mouza , L.R. Khatian No. 6341 and L. R. Dag No. 5160 which as recorded as 'SUNA LAND' i.e, Agricultural land and is also surrounded by Agricultural Land Plots.*

*I further certify that this land has been actually cultivated.*

*I also certify that this piece of land is located at distance of more than 3 Kms away from the Municipality boundary of Dankuni.”*

9. The Id. AR based on the aforesaid documents contended that even though the assessee's agricultural land falls within 3 kms from the boundaries of the Dankuni Municipality, however, since the Population of the said Municipality is below one lakh, the agricultural land of the assessee cannot be treated as Capital asset and so the sale consideration of assessee's agricultural land cannot be taxed. Per contra, the Id. DR contended that assessee ought to have explained these facts and filed documents before the AO/CIT(A) to substantiate his claim. In the absence of documents the Id. CIT(A) rightly did not allow the appeal of the assessee.

10. Having heard both the parties. I note that assessee in his R.O.I (return of income) erroneously reflected the sale consideration that he received to the tune of Rs.26,96,250/- as agricultural income. On being confronted by the AO and when asked by the AO to produce evidence of agricultural income, the assessee realized the mistake that Rs. 26,96,250/- was wrongly reflected as agricultural income in R.O.I where as it should have been shown as "Exempted Capital Gain ". However, the AO did not bother to examine the claim of assessee as to whether the sale of agricultural land is exempted from capital gain, have taxed the same as 'income from other sources'. On appeal the Id. CIT(A) taking note that assessee failed to produce any documents to substantiate his claim, was pleased to dismiss the appeal. We note that

assessee's claim is that assessee's agricultural land which was sold for a consideration of Rs.26,96,250/- cannot be taxed as a Capital Asset as per the definition given under sec. 2(14) of the Act. According to the assessee the land he sold was agricultural land which was about 3 kms (aerially) away from the Municipal boundaries of Dankuni Municipality. And since the population of Dankuni Municipality as per the latest Census of Year 2011 was only 94,936, which is below one lakh population which was a condition precedent to qualify as a Capital Asset, the assessee's agricultural land sold in the A.Y cannot be treated as Capital Asset and the sale consideration cannot be taxed. I am satisfied with the claim of the assessee that the sale consideration of Rs. 26,96,250 received from sale of agricultural land in the facts narrated above if found factually correct should not be taxed. Since the AO/CIT(A) has not examined the veracity of the documents filed before me, I am inclined to remand this issue back to the file of AO for the limited purpose of verification of documents and if found correct, then the claim that Rs. 26,96,250/- to be allowed as not taxable. In any event, if the assessee fails in the verification of the facts discussed [supra], the consideration the assessee received for sale of agricultural land in any way cannot be taxed under the head 'income from other sources' and then only capital gain to be levied in accordance to law after hearing the assessee.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on 30 October, 2019

Sd/-  
A.T. Varkey  
Judicial Member

Dated 30 -10-2019

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: Shri Prodyut Kumar Ghosh Janai Ghosh Para P.O Janai, Hooghly-712304. .
2. Respondent/Revenue: Income Tax Officer, Ward 23(1), Hooghly, Khadinamore P.O Chinsurah R.S Dist\_Hooghly-712102.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

\*\*PP/SPS True Copy By By Order Assistant Registrar  
ITAT Kolkata