

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I-2 SMC": NEW DELHI  
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 179/Del/2019  
(Assessment Year: 2010-11)

Rohit Badana, House No. 169, Sector-15A, NIT Faridabad, Haryana PAN: AVNPB0812F  (Appellant)	Vs.	ITO, Ward-2(2), Faridabad  (Respondent)
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Assessee by :	Shri Sumit Kansal, CA
Revenue by:	Shri Jagdish Singh, Sr. DR
Date of Hearing	24/02/2019
Date of pronouncement	17/03/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT(A), Faridabad dated 28.11.2018 for the Assessment Year 2010-11, wherein, the appeal filed by assessee before him against the order passed by ITO, Ward 2(2), Faridabad u/s 143(3) read with section 147 of the Act dated 22.12.2017 was partly confirming the addition of Rs. 1510500/- to that extent only.
2. The assessee has raised the following two grounds of appeal:-

“1. *The Ld. CIT(A) has erred in law and on facts in restricting the addition of Rs. 1950000/- to Rs. 1510500/- without appreciating the facts that it was an exempted capital gain on sales of agricultural land.*

2. *The Ld. CIT(A) has erred in law and on facts to appreciate the fact that situation of agricultural land bearing Kila No. 19/2-8-9 of Kabulpur Bangar was beyond 8 Kms and does not fall under the definition of assets as defined under section 2(14) of the Income Tax Act, 1961*

*Sub-registrar, Gauchi Faridabad in his report dated 07-09-2018 has stated that the land sold in question was 13Kms beyond from the Municipal Corporation of Ballabgarh.*

*As per the Google Map situation of agricultural land in question bearing Kila No. 19/2-8-9 of Kabulpur Bangar is 8.794 Kms from the Municipal Limit hence does not fall under the definition of assets for computing the Long Term Capital Gain.*

*The Ld. CIT(A) has erred in law and on facts in not treating the rural agricultural land beyond Municipal Limit, sold during the year, as agricultural land within the meaning of section 2(14)(iii) of the Income Tax Act, 1961.”*

3. The brief facts of the case shows that AIR information was received of cash deposit amounting to Rs. 12,95,500/- in savings bank account of the assessee with HDFC Bank. Notice u/s 148 was issued on 28.03.2017. The assessee submitted return of income on 10.11.2017 declaring Nil income and agricultural income of Rs. 447500/-. The ld AO observed that assessee has claimed exempt income of Rs. 20 lakhs on account of sale of land. The assessee sold an agricultural land having his share of 50% for Rs. 39 lakhs having his share of Rs. 19.50 lakhs. The ld AO found that land sold by the assessee is a ‘capital asset’ and therefore, asked the assessee to file the computation of capital gain. The assessee did not submit any reply and therefore, the ld AO made an addition of Rs. 19.50 lakhs of capital gain to the total income of the assessee and assessment order was passed on 22.12.2017.
4. Aggrieved, assessee preferred appeal before the ld CIT(A). The assessee submitted the application of additional evidence under Rule 46A. The ld CIT(A) admitted the same and obtained the remand report of the ld AO. On the merits the ld AO submitted that the land is situated within specified distance of Municipal Corporation of Ballabgarh. The ld AO held that the submission of the assessee is contrary to the facts which says that the land is at the distance of 5 kms from the municipal corporation limit of Faridabad. In the return, he also stated that the report of Patwari dated 04.09.2018 also says that the above land is not situated beyond 8 kms from the corporation limit. Thus, according to the ld AO the additional evidence furnished by the assessee does not deserve any consideration. In the rejoinder, the assessee challenged the remand report of the assessee, hence, stated that it is not a ‘capital asset’. Even otherwise the assessee submitted that cost of acquisition should be granted as deduction to the assessee.
5. The ld AR supported the order of the lower authorities. He further referred to the AO’s comment made in the order of the ld CIT(A) at page No. 12 and 13. He thus stated that the report submitted by the assessee is not proper and therefore, the order of the ld CIT(A) does not suffer from any infirmity.

6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The only issue involved in this appeal is that whether the land sold by the assessee is 'capital asset' in terms of provision of section 2(14) of the Act or not. The assessee has submitted that as per the certificate of the Joint Registrar, Ballabgarh the impugned land is situated 13 kms away from the office of Municipal Corporation of Ballabgarh. Therefore, according to the assessee it is a agricultural land and profit on sale of such land is not chargeable to tax as it is not a 'capital asset' u/s 2(14) of the Act. The ld AO further commented on report of Joint Sub Registrar, Gauchhi by assessee which is contrary to the information obtained from Municipal Corporation, Faridabad during the course of assessment proceedings. As per the report of Municipal Corporation, Faridabad the impugned land is situated at 5 kms from Municipal limit. Therefore, there is a dispute about the distance of the land from the relevant municipal corporation. Before us, assessee stated that it is situated 13 kms away from the municipal corporation of Ballavgarh whereas, the ld AO obtained the report which shows that it is of 5 kms from the Municipal Corporation, Ballavgarh. Further, on enquiry the ld AO found that the main land is further situated about 7 to 8 kms from the boundary of Municipal Corporation. The ld AO, therefore, has got two different distance certificate and the assessee has also got two different certificates. The Google Map also showed that the land is situated at a distance of 8.794 kms from the Municipal Corporation boundary of Jahasaintly. The ld CIT(A) has disregarded the certificate submitted by the assessee as well as the downloaded distance calculation from Google Maps. Therefore, there is no correct situation of the above land coming out from the orders of the lower authorities as well as from the submission of the assessee. It is of a paramount importance to first determine whether the impugned land sold by the assessee is situated within the specified limit of distance to hold it 'capital asset' u/s 2(14) of the Act. Without correctly ascertaining the same, which is difficult in view of contrary facts coming out from the record. It is not possible before us to substantiate whether the impugned land sold by the assessee is a 'capital asset' or not. In view of the above fact, we set aside the whole issue back to the file of the ld AO with a direction assessee to

substantiate the actual distance of the land from the eligible town or area and ascertain whether it is a 'capital asset' or not. Further, if it is a 'capital asset' sale of which is chargeable to tax under the head capital gain then it is for the assessee to demonstrate with evidence about the cost of acquisition. In view of this, we set aside the whole issue back to the file of the Id AO with a direction to the assessee to substantiate that the impugned asset sold resulted into exempt capital gain and if not then to show that what is cost of acquisition of the sale. Ld AO is directed to the compute capital gain in accordance with the law. Hence, ground No. 1 and 2 of the appeal are allowed with above direction.

7. In the result, appeal of the assessee is allowed for statistical purposes.  
Order pronounced in the open court on 17/03/2020.

-Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 17/03/2020  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi