

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 654/JP/2018
निर्धारण वर्ष / Assessment Year: 2014-15

Asha Bhargava L/R of Devendra Kumar Bhargava, E-81, Devashish, Radha Marg, Ambabari, Jaipur.	बनाम Vs.	D.C.I.T. Circle-2 Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABSPB 6891 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dileep Shivpuri (Adv)
राजस्व की ओर से / Revenue by: Smt. Rooni Paul (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 25/02/2021
उदघोषणा की तारीख / Date of Pronouncement : 18/03/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the assessee against the order of the Id. CIT(A)-I, Jaipur dated 05/03/2018 for the A.Y. 2014-15, wherein following grounds have been taken:

- "1. That on the facts and under the circumstances of case, Id. CIT(A) grossly erred and was arbitrary in not treating the impugned land as rural agricultural land and outside the scope of Section 2(14) of the Act and not accepting the gain from sale of such land as exempt from tax.*
- 2. That the Id. CIT(A) was wrong, illegal and arbitrary in confirming the addition of Rs. 1,15,77,722/- under long term capital gain by approving the action of AO in taking up fair market value of property as on 01/04/1981 on basis of DVO report."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Brief facts of the case are that the main assessee is an individual Sr.Citizen and had filed his return of income declaring taxable income of Rs. 2,44,75,010/-. The source of income were pension, income from business, other sources and long term capital gain (in short, LTCG) on sale of agriculture land and building thereon. The case of the assessee was selected for scrutiny and after providing due opportunity of hearing and seeking report of DVO, the assessment was finalized U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) by taking fair market value of property as on 01/04/1981 at Rs. 91,900/- as determined by the DVO. A LTCG was accordingly computed at Rs. 3,46,43,290/- as against declared gain of Rs. 2,30,65,568/- resulting in an addition of Rs. 1,15,77,722/- under LTCG. Aggrieved by the of A.O., the assessee preferred appeal before the Id. CIT(A) and the assessee apart from challenging the valuation carried out by the DVO, the assessee also challenged the entire additions of LTCG by pleading that the land of the assessee was outside the scope of Section 2(14) of the Act and thus any gain on sale of the said land was exempt from taxes. However, the Id. CIT(A) after considering the case of both the parties, dismissed the appeal filed by the assessee by holding that the assessee has neither

brought on record any evidence which may establish that the land was of the assessee was more than 8 KM from the municipal limit of Jaipur nor produced any evidence to suggest that the land was used for agricultural purposes.

4. Aggrieved by the order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

5. At the outset, during the pendency of the appeal, the assessee also moved an application under Rule 29 of the Income Tax Appellate Rules, 1963 (in short, the Rules) for seeking permission for admission of additional evidence and in this respect relied upon the contents contained in his application, which is reproduced below:

"1. *The assessee has by way of this appeal, challenged the order of the CIT(A) -01, Jaipur dated 05.03.2018. The main ground of appeal relates to addition on account of capital gains, in which the assessee has contended that the land in question, on which capital gains has been computed, was situated more than 8 kms. away from the municipal limits of Jaipur as on 06.01.1994. Thus, it is not exigible to capital gains.*

2. *That this ground of appeal was taken before the CIT(A) also who rejected the said ground in these words:*

"(xi) Thus, in view of the above judicial pronouncements, it is crystal clear that if a land is situated beyond 8 kms. from

the outer limits of Municipality of Jaipur, then the land does not ipso facto becomes agricultural land. The appellant has neither brought on record any evidence which may establish that the land at village Machhwa was more than 8 kms. from the municipality of Jaipur even on 06.1.1994 nor produced any evidence to suggest that the land under consideration was used for agriculture purposes.

(xii) Therefore, in view of the above discussion and considering the totality of facts and circumstances of the case, it is held that the AO was justified in treating the land sold by the appellant at Village Machhwa, as a capital asset u/ s 2(14) of the Act and thus, on its sale, the said land is subject to capital gains tax. Hence, this ground of appeal is hereby rejected."

In other words, the plea of the assessee was rejected for want of evidence that the said land was more than 8 kms. from the limit of Jaipur Municipality and was being used for agricultural purposes.

3. *That it is stated that the CIT(A) never asked the assessee's A/R to produce evidence in this regard though detailed submissions were made at that level. Hence, to prove our contention on the main ground of appeal it is essential that the following evidence being produced by the assessee, be admitted by the worthy ITAT since it goes to the root of the main issue before them:*
 - a) *Copy of sale deed dated 13.02.2014 duly stating that the land in question is agriculture land and also mentioning, inter alia, that there were "Amla" trees on the said land, which is an evidence of it being used for agriculture purposes.*

It is important to point out that on 06.10.2020 the worthy ITAT had asked the assessee to produce the same.

- b) Certificate from the office of the Nagar Nigam Greater & Heritage, Jaipur dated 04.09.2020 confirming that Village Machhwa, Kalwad Road, is not within the area of Jaipur Nagar Nigam;*
- c) Certificate of the Tehsildar, Jaipur dated 08.09.2020, that Village Machhwa was more than 8 kms. from the limit of Jaipur Nigam Parishad;*
- d) Certificate of Dy. Tehsildar, Kalwad dated 12.09.2019 submitting the Girdawari (revenue record) of Village Machhwa from Samvat 2023-2071 and confirming agricultural operations being conducted on the said land.*

It is most humbly requested that the abovementioned additional evidence may kindly be accepted as they go to the root of the matter and without the same, adjudication of the issue will not be feasible or possible."

6. On the other hand, the Id DR has contested the said application and submitted that the application filed by the assessee is not maintainable as the same is an afterthought and has been filed with an intention to fill up the lacunae in the case of assessee and consequently prayed for dismissal of the same.

7. We have considered the rival contentions and carefully perused the material placed on record. As per contents of the application filed by the assessee for admission of additional evidence. It was specifically

mentioned by the assessee that the assessee has taken specific plea before the Id. CIT(A) that the land of the assessee is outside the scope of Section 2(14) of the Act and in this respect, the assessee has drawn our attention to the written submissions filed before the Id. CIT(A) which are at page Nos. 35 to 39 of the paper book. The Id. CIT(A) had dismissed the appeal on the ground that the assessee has neither brought on record any evidence which may establish that the land of village Machhwa was more than 8 Km from the municipality of Jaipur nor any evidence to suggest that the land under consideration was used for agricultural purposes. The Id AR vehemently submitted before us that the Id. CIT(A) never asked the assessee/AR for producing evidence in this regard. Though, the assessee had placed on record written submissions wherein this specific plea was contained and therefore, in this respect, the assessee wants to lead additional evidence which are in the shape of copy of sale deed dated 13/02/2014, certificate from the office of Nagar Nigam greater & Heritage, Jaipur dated 04/09/2020, certificate of the Tehsildar, Jaipur dated 08/09/2020 and certificate of Dy. Tehsildar, Kalwad dated 12/09/2019.

8. After having heard both the parties on this application and after perusal of the record, we found that it is an admitted fact that the land of the assessee locates at village Machhwa and the said village has not been

disputed by the Revenue. The assessee had also in his written submissions submitted before the Id. CIT(A), has categorically stated that the land of the assessee was outside the scope of Section 2(14) of the Act and thus any gain on sale of said land was exempt from tax but the Id. CIT(A) had rejected the said contention of the assessee in absence of the documents. It is an admitted position that the revenue authorities not only acts as an adjudicator but also acts as an investigator and the Id. CIT(A) being the superior official possesses all powers that an A.O. can exercise and the job of the investigator is to collect evidence and to separate the crux and to find out the truth in the facts and circumstances of the case. The Id. CIT(A) has never asked the assessee at any stage to produce such documents in support of his contention and even now the assessee has only wanted to place on record copy of registered sale deed dated 13/02/2014 wherein it has been mentioned that the land in question is agricultural land and also contains inter alia, that there were "Amla" trees on the said land which is apparent evidence to the effect that the land of the assessee was being used for agricultural purposes. Certificate from the office of Nagar Nigam Greater & Heritage, Jaipur dated 04/09/2020 confirming that village- Machhwa, Kalwad Road is not within the area of Jaipur Nagar Nigam, certificate of the Tehsildar, Jaipur dated 08/09/2020, that village Machhwa was more than 8 Kms from the

limit of Jaipur Nigam Parishad and the certificate of Dy. Tehsildar, Kalwad dated 12/09/2019 submitting the Girdawari (revenue record) of village Machhwa from Samvat 2013-2071 and confirming agricultural operations being conducted on the said land.

9. All the above mentioned documents are part of public records which are within the public domain. All the above documents were being prepared by the public officials during the discharge of their official duties, therefore, presumption of correctness is attached with the above documents now placed on record by the assessee. The Id. DR has not raised any objection with regard to authenticity and genuineness of the documents in question and thus we are of the view that all those documents which are part of public record goes to the root of the case for adjudicating the controversy in question and it is a settled law that the technicalities should not and must not come in the way of dispensing justice. No prejudice shall be caused to the revenue in case the documents placed on record by the assessee are admitted as additional evidence whereas on the contrary, rights of the assessee would be prejudiced in case the documents are not admitted as additional evidences. Although, the assessee was expected to place on record all those documents before the lower authorities in order to substantiate his submissions but keeping in view the principles that the justice should not

only be done but must manifestly appears to have been done, therefore, we allow this application filed by the assessee under Rule 29 of the Rules and admit all documents i.e. sale deed dated 13/02/2014, certificate from the office of Nagar Nigam Greater & Heritage, Jaipur dated 04/09/2020, certificate of the Tehsildar, Jaipur dated 08/09/2020 and the certificate of Dy. Tehsildar, Kalwad dated 12/09/2019 alongwith Girdawari for Samvat 2013-2071 as additional evidences for considering while deciding the main grounds raised by the assessee.

10. Both the grounds raised by the assessee in the main appeal before us are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in not treating the land of the assessee as rural agricultural land outside the scope of Section 2(14) of the Act, therefore, we thought it fit to dispose off these grounds by this consolidated order.

11. The Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions submitted before us which are reproduced below:

"1. It is submitted that Ld. CIT (Appeals-I), Jaipur as per paras (xi) 86 (xii) at page 14-15 of his order dated 05.03.2018, did not accept the plea of assessee for treating the impugned agricultural land outside the scope of capital asset as defined in section 2(14)

of the Act on the grounds that the assessee was unable to bring on record proper evidence to establish that the land at village Machwa, Kalwar Road, Jaipur was more than 8 kms from the municipality of Jaipur even on 06.01.1994 nor had led any evidence to suggest that the land under consideration was used for agriculture purposes.

2. *In this regard, in continuation to our earlier submissions, it is further submitted that in the case of **Dr. Subha Tripathi in ITA No. 1129/JP/2011 dated 24.05.2013**, which was also cited by the assessee before Ld. CIT (A) Jaipur, it is an admitted fact in that case that the land was situated at village Machwa, Jaipur, as is the case of the assessee under appeal. This fact of location of land has been duly mentioned at para 2.1 of page 2 of the order of the Hon'ble Coordinate Bench of the Tribunal. It was held by the Hon'ble Bench that the distance of 8 kms has to be taken into account in terms of notification dated 06.01.1994 and the Hon'ble Bench decided in that case that as the land in question was located beyond 8kms from the municipal limits as on 06.01.1994 when the notification was published in the official gazette, the same would fall under the exclusion clause of the term "Capital Asset" as per provision of section 2(14)(iii)(b) of the Act. It is also submitted that Hon'ble ITAT remanded the matter to AO only for verification of the fact that the land was capable of use for agricultural purposes or not in line with the decision of the Hon'ble Supreme Court in case of **Sarifa Bibi Mohmed & Ors v/s CIT, 204-ITR-631**. The copy of the order in case of Dr. Subha Tripathi is enclosed herewith as per **Annexure-I**.*
3. *It is humbly submitted that it is a fact on record that the assessee had purchased this agricultural land at village*

Machwa around 50 years ago. It is also submitted that the fact of situation of agricultural land of the assessee at village Machwa is identically similar to the situation of land in case of Dr. Subha Tripathi cited supra. It is also a fact that the said land was being used for agricultural purposes, evidence of which has already been filed in the Paper-book Vol .I, page 4685. The Hon'ble Coordinate Bench in that case has already held that the land at village Machwa was situated beyond 8 kms. of the municipal limit of Jaipur as on 06.01.1994 and therefore, land of the assessee, based on similar facts, may also be kindly treated as rural agricultural land and under the exclusion clause of Capital Asset as per section 2(14) of the Act.

4. *It is humbly submitted that in case of **Kheti Lal Sharma HUF in ITA No. 103/JP/2012 dated 18.03.2016**, (copy of the order is enclosed herewith as **Annexure J**) and which has been later on affirmed by the Hon'ble Rajasthan High Court, the Hon'ble Coordinate Bench followed the judgment in the case of Dr. Subha Tripathi. It has been mentioned at page 17 of that order at para 6 that:*

"It has been held by the Coordinate Bench that there is no dispute that the Jaipur municipality has been duly notified vide said notification dated 06.01.1994 and as on the date of said notification, the land in question was beyond 8 kms from the municipal limit exists on that point of time. In the case of assessee on the date of this notification dated 06.01.1994, the municipal limit of Jaipur on Ajmer Road on which the assessee land is situated was up to ESI Hospital. The Ld. AR placed the evidence in paper book at serial no. 91. The assessee's land is 16 kms away from the ESI Hospital. These facts have not been controverted by the Ld. DR. Being a

precedence, we respectfully following the order of the Coordinate Bench held that the land sold by the assessee is not a Capital Asset under section 2(14) of the Act. Thus, capital gain does not arise. On this ground the assessee appeal is allowed."

5. *It is humbly submitted that the agricultural land of assessee was situated at village Machwa, Tehsil Jaipur. The land in case of Dr. Subha Tripathi was also at village Machwa and the Hon'ble Bench on the facts in that case has already held that the land was situated beyond 8 kms of municipal limit as on 06.01.1994. In the case of Kheti Lal Sharma HUF, the Hon'ble Coordinate Bench has held the municipal limit of Jaipur on Ajmer Road to be up to ESI Hospital on Ajmer Road side. The assessee has earlier submitted a Google Aerial map showing the aerial distance of land from ESI Hospital to village Machwa which is more than. 17 kms. (Paper book Vol.I page no.93-94). In view of the similar facts of the case as earlier decided by the Honb'le coordinated benches, it is most humbly submitted that the land of the assessee may also be treated as rural agriculture land and not as a capital asset.*
6. *It is submitted that the assessee now as per **Annexure K** is further submitting a certificate from the office of Nagar Nigam Greater and Heritage, Jaipur dated 04.09.2020 confirming the fact that village Machwa does not fall in the municipal limit of Jaipur as well as a certificate from the Tehsildar dated **08.09.2020(Annexure L)** stating that the distance of the agriculture land in question as owned by late Devendra Kumar Bhargava from the municipal limit of Jaipur was more than 8 km. It is therefore most humbly submitted that on the identical facts of cases as decided by the Hon'ble Coordinate Benches as well on the basis of certificates from the revenue*

authorities, the land of assessee may not be treated as capital asset and no capital gain tax liability may be held on sale of such land.

7. *That as regards, the use of the land for agricultural purposes is concerned, it is humbly submitted that the assessee has duly disclosed agricultural income in its return of income for the relevant assessment year 2014-15 itself and the same was duly accepted and mentioned in the assessment order dated 23.12.2016 passed under section 143 (3) of the Act. Apart from above copy of Khasra Girdawari Report has already been submitted in support of the contention that the land was agricultural land in revenue record as well as used for agricultural purposes. As the land sold was agricultural land, duly mentioned in sale deed as agricultural land, used for agricultural purposes and agricultural income was declared and accepted by AO in the relevant assessment year, in view of the facts and law it is humbly prayed that the land may be treated as rural agricultural land and not as a capital asset and the resultant income on sale of agricultural land may be not subject to capital gain tax."*

12. On the contrary, the Id DR has relied on the orders of the authorities below and also relied on the decisions in the cases of CIT Vs Shree Hanuman Sugar & Industries (1992) 195 ITR 625 (Cal) and Smt. Sarifabibi Mohmed Ibrahim Vs CIT (1993) 70 Taxman 301 (SC).

13. We have heard the rival contentions of both the parties and have perused the material placed on record, judgments cited by the parties as well as orders passed by the revenue authorities. Now the only question

that arises for consideration before us is to the effect as to whether the land of the assessee was outside the scope of Section 2(14) of the Act or not? In this respect, from the record, we found that it is an undisputed fact that the land of the assessee is located at village Machhwa and in this regard, we found that the Coordinate Bench of this Tribunal in the case of **Dr. Subha Tripathi in ITA No. 1129/JP/2011 order dated 24/05/2013** dealt with identical issue and concluded that the land situated at village Machhwa, Jaipur was located beyond 8 KM from the municipal limits as on 06/01/1994 when the notification was published in the official gazette and thus the same would fall under the exclusion clause of term "capital assets" as per provisions of Section 2(14)(iii)(b) of the Act. The relevant portion of the order of the Coordinate Bench is reproduced below:

"2.7 We have considered the rival submissions as well as the materials on record. The question arises for our consideration and adjudication is whether the land in question though located beyond 8 kms from the Municipal Limits of Jaipur Municipality as on the date of notification dated 06-01-1994 but subsequently it falls within the distance of 8 kms from the Municipal Limits due to the expansion of the Municipal Limits would still be regarded as agricultural land not falling in the definition of capital asset in terms of Section 2(14)(iii)(b) of the Act. There is no dispute that Jaipur Municipality has been duly notified vide said notification dated 6-01-1994 and as on the date of said notification, the land

in question was beyond 8 kms from the Municipal Limits exists at that point of time. The dispute arises because of the expansion of Municipal Limits and thereby the said distance from the Municipal Limits as on the date of sale of the land in question is only 2 kms and thereby the authorities below have treated the land in question as not falling under the exclusion clause of Section 2(14)(iii)(b) of the Act. There is no quarrel on the point that as per sub-clause (b) of clause (iii) of Section 2(14), the notification of the Central Govt. is mandatory to bring the land in the definition of capital asset which is not located within the limits of the Municipality but located within the distance of 8 kms from the local limits. So far, the agricultural land which is located in the limits of Municipal Limits, the same will be treated as capital asset and no further requirement is to be examined. Since the land in question is located outside the local limits of Municipality, therefore, in order to determine whether the land in question falls under mischief of sub-clause (b) of Section 2(14)(iii) of the Act, the distance of 8 kms has to be taken into account in terms of notification dated 6-01-1994. As per explanation 2 of the said notification dated 6-01-1994, the Municipal Limits is to be the limits as existing on the date on which the notification is published in the official gazette. We quote the explanation 2 of the notification (supra) as under:-

“(2) The reference to the municipal limits or the limit of Cantonment Board in the Schedule to this notification is to the limits as existing on the date on which on which the notification is published in the official gazette.”

If the stand of the Revenue is accepted that the distance of 8 kms should be considered from the Municipal Limit exists as on the date of the sale of land then it would render the notification

issued by the Central Govt. as ineffective and unworkable / otios. As it is made clear by explanation 2 of the said notification that Municipal Limits is to be considered as existing on the date on which notification is published in the official gazette, therefore, the date of notification is relevant and material point to determine the distance of 8 kms from Municipal Limits. There is no amendment or withdrawal of the said notification except a recent amendment has been brought in the statute by the Finance Act 2013 whereby the requirement of said notification has been dispensed with for invoking sub-clause (b) of clause (iii) of Section 2(14) of the Act w.e.f. 01-04-2014. Thus it is discernible from the notification dated 06-01-1994 and the recent amendment in the statute whereby the said notification has been dispensed with that the distance of 8 kms has to be considered from the Municipal Limits as exists on the date of notification for the purpose of invoking sub-clause (b) of clause (iii) of Section 2(14) of the Act. Accordingly we hold that the land in question which was located beyond 8 kms from the Municipal Limits as on 6-01-1994 when the notification was published in the official 8 gazette, the same would fall under the exclusion clause of the term 'capital asset' as per provisions of 2(14)(iii)(b) of the Act."

Since the Coordinate Bench while reaching to the conclusion with regard to similarly situated land had already concluded that the same is located beyond 8 KM from the municipal limits as on 06/01/1994, thus, would fall under the exclusion clause of the term 'capital asset', therefore, we taken judicial notice with regard to facts contained in the decision of the Coordinate Bench. Apart from that, it was also again held in the case of

Khetilal Sharma HUF Vs ITO in ITA No. 103/JP/2012 order dated 18/03/2016 that the land of village Machhwa was beyond 8 KM from the municipal limit and the said order was later on confirmed by the Hon'ble Rajasthan High Court and the Coordinate Bench had also followed the judgment of Dr. Subha Tripathi and the relevant portion of the order is contained at page No. 17 of the said order at para 6 which reads as under:

"It has been held by the Coordinate Bench that there is no dispute that the Jaipur Municipality has been duly notified vide said notification dated 06/1/1994 and as on the date of said notification, the land in question was beyond 8 km from the municipal limit exist on that point of time. In the case of assessee, on the date of this notification dated 6th January, 1994, the municipal limit of Jaipur on Ajmer Road on which the assessee land is situated was up to ESI hospital. The Id AR placed the evidence in paper book at sl. no. 91. The assessee's land is 16 km away from the ESI hospital. These facts has not been controverted by the Id DR. Being a precedence, we respectfully following the order of the Coordinate Bench and held that land sold by the assessee is not a capital asset U/s 2(14) of the Act. Thus, capital gain does not arise. On this ground, the assessee's appeal is allowed."

Apart from that while taking judicial notice of the census of India 2011, Directorate of Census Operators Rajasthan, Series-09 Part XII-A and information and location code of village Machhwa (080203), we found that the distance of the said village is more than 10 KMs from Jaipur and the total population of the village is 2453. The assessee had also submitted an aerial map showing aerial distance of land to village Machhwa which is more than 17 KM and the said map has already been

placed on record in the page book at page Nos. 93-94. The Id. AR has also drawn our attention to the certificate issued from the office of Nagar Nigam Greater and Heritage, Jaipur dated 04/09/2020 wherein it was specifically confirmed that village Machhwa does not fall in the municipal limit of Jaipur as well as a certificate from the Tehsildar dated 08/09/2020 stating that the distance of agricultural land in question as owned by the assessee from the municipal limits of Jaipur was more than 8 KM. Since the assessee has placed on record certificates from the different authorities which are public documents and prepared by public officials during the discharge of their duties, therefore, presumption of correctness is attached with the above information contained in the documents. Therefore, while taking judicial notice, we are of the view that there is no need for seeking any remand report in this peculiar circumstances where judicial decisions are available on same point and thus while keeping in view the principles of judicial consistency and also taking into considering the decision of Coordinate Benches and that all public documents in the shape of certificates from different authorities as well as registered sale deed that the land of the assessee was more than 8 KM from the municipal limits of Jaipur. Therefore, respectfully following the same, we hold that the land in question at village Machhwa having

population of 2453 as per 2011 Census Survey was beyond 8 KM from the municipal limits of Jaipur.

14. As far as the uses of land for agricultural purpose is concerned, in this regard, we found that the assessee had purchased agricultural land at village Machhwa around 50 years ago and the copy of registered sale deed dated 13/2/2014 duly depict that the land in question is agricultural land and also mentions inter alia that there were "Amla" trees on the said land which itself is an evidence of its being used for agricultural purposes. Further, a very important fact which emerges in the present case is that the assessee himself has duly disclosed agricultural income in its return of income for the relevant assessment year and the same was duly accepted and mentioned in the order of assessment dated 23/12/2016 passed U/s 143(3) of the Act. Apart from that the Khasra Girdawari report has already been submitted and placed on record by the assessee in support of his contentions that the land was agricultural land in the revenue records as well as used for agricultural purposes and even in the registered sale deed through which the land in question was sold also carries specific mention that the land which was being sold by the assessee was agricultural land and was used for agricultural purposes. Therefore, since the assessee has duly proved the use of land for agricultural purposes by placing on record the registered sale deed,

Khasra Girdawari, return of income which also carries agricultural income of the assessee with regard to land in question and all those factual documents have neither been controverted or rebutted by the revenue authorities in any manner whatsoever. The Id. DR has also relied upon the decision in the case of **CIT Vs Shree Hanuman Sugar & Industries (1992) 195 ITR 625 (Cal)** and **Smt. Sarifabibi Mohmed Ibrahim Vs CIT (1993) 70 Taxman 301 (SC)** but the pari materia contained in those cases are not relevant to the facts of the present case as in the referred cases, the respective assessee in those cited cases had sought conversion of land from agricultural to non-agricultural purposes and they had not placed on record any evidence with regard to cultivation of land for a period of four years prior to its sale, thus in no way, the decisions cited by the Id. DR are of any help to the revenue. Even otherwise, Id. CIT(A) in its order had examined and duly considered the entire facts and the legal position and thus concluded that if the land is situated beyond 8 KM from the outer limits of municipality of Jaipur as on 06/01/1994 and the land was used for agriculture purpose then the same would be outside the ambit of the provisions of Capital Asset u/s 2(14) of the Act and is not subject to capital gain tax. Id. CIT(A) had specifically held that since the assessee had failed to place on record any evidence to

prove these two conditions, therefore, was not given any relief on this aspect.

15 Since now before us, the assessee has successfully proved by placing on record the documentary evidences that the land in question at village Machhwa is 17 KM away from Jaipur and this village is having population of 2453 and land of the assessee is used for agriculture purposes as discussed by us in the preceding para of this order, therefore, keeping in view the totality of facts and circumstances and also keeping in view all the documentary evidences placed on record, we are of the view that the land in question of the assessee was situated beyond 8 KM from the municipal limits of Jaipur and was being used for agricultural purposes and was thus outside the scope of Section 2(14) of the Act and therefore, any gain on sale of the said land is exempted from tax. Thus, we allow these grounds of appeal and directed to delete the addition.

16. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 18th March, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/03/2021

***Ranjan**

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

1. अपीलार्थी / The Appellant- Smt. Asha Bhargava, L/R of Devendra Kumar Bhargava, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T. Circle-2 Jaipur.
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. 654/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar