IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI G.S.PANNU, PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos.5312 & 5313/Del/2014
Assessment Years : 2009-10 & 2010-11

Smt. Aarti Sekhri, 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-AOJPS4139K	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA Nos.5360 & 5361/Del/2014 & 1766/Del/2017
Assessment Years : 2009-10, 2010-2011, 2010-11

Ms. Puja Sekhri, 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-AOJPS4220H	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA Nos.5294/Del/2014
Assessment Year : 2010-11

Sh.Gaurav Sekhari, 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-AAOPG3103G	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA No.1765/Del/2017
Assessment Year : 2010-11

Sh.Gaurav Sekhari, 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-AAOPG3103G	vs	ACIT, Central Circle-15, New Delhi.
APPELLANT		**RESPONDENT**

ITA Nos.5362 & 5363/Del/2014
Assessment Years : 2009-10 & 2010-11

Ms. Shobha Sekhri, 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-AATPS1222M	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA No.1767/Del/2017
Assessment Year : 2010-11

Sh.Bhupinder Kumar Sekhari, No.6, Sultanpur, Mandi Road, Mehrauli, New Delhi-110030 PAN-AATPS6454P	vs	ACIT, Central Circle-15, New Delhi.
APPELLANT		**RESPONDENT**

ITA Nos.5377 & 5378/Del/2014
Assessment Years : 2009-10 & 2010-11

Sh. Bhupinder Kumar Sekhri, 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-AATPS6454P	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA Nos.5314 & 5315/Del/2014
Assessment Years : 2009-10 & 2010-11

Sh. Kapil Sekhri, 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-ABKPS4820K	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA No.5364/Del/2014
Assessment Year : 2010-11

M/s. Nova Infratech Pvt.Ltd., 448-451, Chinmin Farms, Village Satbari, Mehrauli, New Delhi-110030 PAN-AAACN0311L	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA No.5375/Del/2014
Assessment Year : 2008-09

M/s. Keerthi International Products Ltd., A-35, Brij Green Farms, Chattarpur, Mandir Road, Village Satbari, New Delhi-110030 PAN-AACCK4984A	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

ITA No.5390/Del/2014
Assessment Year : 2010-11

M/s. Tinna Overseas Ltd., No.6, Sultanpur, Mandir Road, New Delhi-110030 PAN-AAACT3586D	vs	DCIT, Central Circle-17, New Delhi.
APPELLANT		**RESPONDENT**

Appellant by	Sh. Salil Aggarwal, Sr.Adv., Sh. Shailesh Gupta, Adv. & Sh. Madhur Aggarwal, Adv.
Respondent by	Ms. Sunita Singh, CIT DR
Date of Hearing	27.07.2021
Date of Pronouncement	30.09.2021

ORDER

PER KUL BHARAT, JM :

This bunch of 17 appeals filed by the different assessees was taken up for hearing. Since identical issues are involved in all these appeals, these appeals are being disposed off by way of a consolidated order. We take up ITA No.5313/Del/2014 pertaining to Assessment Year 2010-11 as a lead case, as agreed by the Ld. Authorized Representatives of the parties before us.

2. In **ITA No.5313/Del/2014 [Assessment Year 2010-11],** the assessee has taken up following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs.2,32,08,282/- in respect of capital gain earned on transfer of agriculture land and has also erred in considering the agriculture income of Rs 47,060/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the

documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/0412010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10 The learned Commissioner of Income Tax (A) has also erred in justifying the action of the assessing officer regarding the levy of the interest and initiating the penalty proceeding U/S 271(1) (c) of the Income Tax Act.

1.11 The appellant may-be permitted to add, alter or amend any of the foregoing grounds of appeal."

3. Further, an application seeking filing of additional ground was made on behalf of the assessee. The Additional ground of the assessee's appeal reads as under:-

> *"That the assessment order passed by learned Assessing Officer is without jurisdiction and void-ab-initio and is liable to be quashed, as proceedings initiated under section 153C of the Act are without satisfying the statutory conditions envisaged under the Act and are thus, without jurisdiction."*

FACTS

4. The facts giving rise to the present appeal are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('the Act') was conducted on 11.11.2010 in Tinna Group of cases. It is recorded by the Assessing Officer ("AO") that during the course of search, certain documents belonging to assessee were found. Thereafter, notice u/s 153A of the Act was issued on 19.11.2012, requiring the assessee to furnish the return of income. In response thereto, the assessee vide letter received by the Assessing Officer on 31.01.2013 requested that the original file u/s 139 of the Act, may please be treated as the return filed in response to the notice u/s 153A of the Act. In this case, it is observed by the Assessing Officer that the original return was filed by the assessee declaring taxable income of Rs.5,04,203/- and in computation of income, the assessee had also declared exempt income (agriculture and other income) of Rs.2,11,01,525/-. The Assessing Officer noticed during the course of assessment proceedings that the assessee had purchased a land measuring 40 Bighas, 1 Biswa vide Sale Deed dated 15.05.2006 for Rs.39,76,785/- at Village Rojka Gujar, Distt.-Sohna, Haryana. This land was subsequently, sold by the assessee on 19.01.2010 for consideration of Rs.2,50,31,250/-. The Assessing Officer noticed that the assessee had not disclosed any capital gain arising out of the sale of land situated at Village

Rojka Gujar, Distt.-Sohna, Haryana. The Assessing Officer confronted this issue with the assessee who vide letter dated 13.03.2013 submitted that land at Village Rojka Gujar, Distt.-Sohna, Haryana. did not fall within the category of "capital assets" as it was not situated within a distance of 8 kms from the municipal limits of Gurgaon Municipal Corporation. The Assessing Officer noticed that in the Sale Deed, nature of the land was stated to be "GAIR MUMKIN PAHAR" (not possible rocky terrain) and in the land revenue records, the type of land was mentioned as "BANJAR KADIM" (Barren land). As per Assessing Officer, both these terms were mentioned in Sale Deed and land revenue records clearly established that the land at Village Rojka Gujar, Distt.-Sohna, Haryana was an uncultivable land. Therefore, the Assessing Officer treated the land in question as non-agricultural land, a capital asset in terms of section 2(14) of the Act and made addition of Rs.2,32,08,282/- as the capital gain arising of this transaction.

5. Aggrieved against this, the assessee preferred an appeal before Ld.CIT(A), who after considering the submissions and material placed before her, sustained the addition. The ld. CIT(A) while sustaining the addition relied on certain observation made by the Land Revenue Authorities in consolidation proceedings.

6. Aggrieved against this, the assessee is in appeal before this Tribunal.

7. The solitary ground on merit in this case is against the action of the Assessing Officer for making addition of Rs.2,32,08,282/- as capital gain arising out of sale of piece of land measuring 40 Bighas, 1 Biswa situated in the revenue area of Village Rojka Gujar, Distt.-Sohna, Haryana.

7.1. **Dispute**:-As per the assessee, the land in question was an agricultural land. The assessee has been carrying out agricultural operations and earning agricultural income therefrom. Therefore, the said land did not fall within the definition of capital assets as defined u/s 2(14) of the Act. As per the Assessing Officer, the land in question was "GAIR MUMKIN PAHAR" as described in the Sale Deed being a barren land therefore, neither the agricultural operation could be carried out nor such operations was permissible under law. Hence, the capital asset within the meaning of section 2(14) of the Act.

7.2. **Finding by Ld.CIT(A):-** Ld.CIT(A) has sustained the addition and rejected the claim of the assessee that the land being agricultural land could not be amenable to capital gain tax. For the effective adjudication of the dispute, the finding of Ld. CIT(A) is reproduced hereunder for ready-reference:-

> *7.2. "The 3 documents that completely overturn the claims of the appellant are:*
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> - *the order dated 29.03.2010 relating to consolidation of holdings passed by Commissioner, Gurgaon Division, Haryana Government; .*
> - *the order dated 23.04.2010 passed under section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, by the Divisional Commissioner, Gurgaon; and*
> - *the clarification given by the Tehsildar, Sohna by his letter dated 16.03.2011.*
>
> *7.3. In the background of consolidation and re-partition of lands being undertaken by the Consolidation Officer in the revenue estate of village Rojka Gujar, where the area under consolidation was found to be more than the actual area shown in the Jama Bandi, Commissioner, Gurgaon Division passed an order dated 29.03.2010, where he noted: 'Since the whole land is uncultivable and is either Banjar Kadim or Gair Mumkin Pahar, hence no*

purpose will be solved by re-partitioning of the said land.' He also observed that the area had been notified by the Forest Department by its notification dated 11.12.1970 and that the land was for the 'common purposes of all the inhabitants'. Finally, he directed the Settlement Officer (Consolidation) cum District Revenue Officer, Gurgaon to scrutinize the proceedings of the consolidation held till then by the Consolidation Officer, Sohna and 'report about the illegalities, if any, committed by the Consolidation Officer. The Consolidation Officer, Sohna was also directed not to proceed with the the land.

7.4. In his order dated 23.04.2010, the Divisional Commissioner, Gurgaon noted that the Settlement Officer (Consolidation) cum District Revenue Officer, Gurgaon had reported that the Jama Bandi, known as Parat Sarkar, and kept in Sadar Record Room, showed land of 9190 Bigha 9 Bishwa in the revenue estate of Rojka Gujar of which 1379 Bigha 19 Bishwa was Banjar Kadim and 7810 Bigha 10 Bishwa was Gair Mumkin Pahar. As against this, the Jama Bandi, known as Parat Partwar, and available with the Patwari, showed land of 9895 Bigha 1 Bishwa, which was excess by 847 Bigha 4 Bishwa. The Divisional Commissioner, Gurgaon also noted that the revenue estate of Rojka Gujar was not inhabited, and that there were 'only two types of land', namely, Banjar Kadim and Gair Mumkin Pahar, and clearly there were 'interpolations in the record of rights' (Jama Bandit. He stated: 'This type of fraud is never heard in the revenue administration. The Revenue Officers such as Circle Revenue Officers and Patwaris are the custodian of the case, the Revenue Officers have acted not as a custodian of record of rights but they have misused their position by incorporating the unlawful and illegal entries in the Jama Bandi, i.e, record of rights.' He also noted: 'While preparing the scheme of consolidation it has been mentioned at sr no. 1 of the scheme of consolidation that in order to nullify the effect of excess area measuring 874 Bigha 4 Bishwa, a proportionate cut will be imposed on all the owners. By doing so the Consolidation officer has tried to legalise the fraudulent owners who have become owners as a result of illegal entries. It is also possible that on the basis of illegal entries many transactions by way of sale deeds might have occurred and on the basis of such illegal transactions their names might

have been included in the record of rights. If these fraudulent owners are not weeded out, then they would become the owners if this scheme of consolidation is implemented.' Finally, the Divisional Commissioner, Gurgaon concluded that the Settlement Officer, Gurgaon was being directed to amend the scheme of consolidation such that

- *the consolidation should be done only in respect of the actual area as per Parat Sarkar kept in Sadar Record Room, excluding the excess area interpolated by fraud;*
- *the names of the fraudulent owners to be deleted by reviewing the mutations sanctioned earlier;*
- *the mutations sanctioned on the basis of fraudulent entries should be deleted before taking up consolidation proceeding;*
- *the land should be divided only in the two categories of Banjar Kadim and Gair Mumkin Pahar.*

7.5. In his letter dated 16.03.2011 to the Addl. DIT (Inv), Delhi, the Tehsildar, Sohna stated that following the discovery of discrepancies, the process of consolidation (chak bandi) had been stopped in respect of the lands at village Rojka Gujar on the orders of the Commissioner, Gurgaon Division; that the lands were either Gair Mumkin Pahar or Banjar Kadim; that these lands were held in common (sanjha) where the shares of the owners were definite but not identifiable; and that while the share of land could be sold by the owners, physical possession could not be given. It was also explained that Gair Mumkin Pahar referred to rocky lands on which no cultivation was possible and Banjar Kadim referred to lands where no crop had been sown for several years.

7.6. It is also relevant that the finding of the Divisional Commissioner, Gurgaon - that Jama Bandi (Parat Patwar) was not reliable and did not match with the Jama Bandi (Parat Sarkar) kept in the Sadar Record Room and that the Revenue Officers had incorporated unlawful and illegal entries in the record of rights (Jama Bandi-Parat Patwar) - was made in April, 2010 itself. Therefore, in view of the noting and observations contained in the orders of Commissioner, Gurgaon Division, Divisional Commissioner, Gurgaon and the

letter of the Tehsildar, Sohna - that documented the nature of land at village Rojka Gujar as rocky (Gair Mumkin Pahar) and barren (Banjar Kadim); use of these lands for common purposes only; unidentifiable shares making physical possession by owners impossible; and unlawful and illegal entries in the record of rights (Jama Bandi) incorporated by revenue officers while carrying out the process of consolidation - the documents relied by the appellant are untrustworthy. Therefore, no credence can be placed on the Khasra Girdwari, Chak bandi and mutation documents filed by the appellant as 'evidences' in the paper book.

7.7. Even the copy of the electricity bills in the name of Bhupinder Kumar, cited as evidence of agricultural operations by the appellant, by themselves do not establish the claims of the appellant, particularly when the original and genuine revenue records do not record any such endeavour on those lands. As noted earlier, agricultural operations were not possible on the lands of Rojka Gujar. Even till March 2011, when the Tehsildar, Sohna wrote to the Addl. DIT (Inv), Delhi, the process of consolidation had not been resumed and hence consolidation could not have been completed.

7.8. The appellant has claimed that the copy of photographs, enclosed in the paper book as 'evidence', prove that the lands at Rojka Gujar was agricultural. But, the pictures are random and it is not established that these photographs represent the land at Rojka Gujar taken on 26.03.2007, as claimed by the appellant.

7.9. The appellant has questioned the use of the statements of the previous owner, Hemant Chauhan and the subsequent owner, Kirpal Singh Randhawa, by the AO on the plea that cross examination was not allowed, and at the same time relied upon the statement of the latter that 'part' plantation and cultivation was possible on those lands. But the conclusion, that no agricultural operations were being carried out and that the lands at Rojka Gujar were either Gair Mumkin Pahar or Banjar Kadim, emerges from the reliable revenue records and orders of the Commissioner and Divisional Commissioner, Gurgaon, as discussed above.

7.10. It is also noted that none of the family members, including the appellant, admitted in their statements made u/s 132(4) recorded during the time of

search, that they derived income from agricultural operations, though they did refer to the ownership of lands at village Rojka Gujar. It was only in the statement of Sh Bhupinder Kumar Sekhri (Father-in-law of the appellant), recorded on 10.03.2011, four months after the search, that it was stated, evidently as an after-thought, that bajra and wheat were grown on those lands. It was also claimed that the family had a tractor for agricultural purposes. However, when questioned about Khasra details, Sh Bhupinder Kumar Sekhri claimed ignorance about the mention of crops in the revenue records. Moreover, none of these contentions were supported by any corroborative and independent evidence.

7.11. The reference by the appellant to the receipt of sale proceeds from agricultural produce sold in the Mandi, muster roll of labour, purchase bills of hardware items, seeds and fertilizer, in support of the claim that the land had been used for agriculture becomes irrelevant in the light of the factual findings of the Commissioner and Divisional Commissioner, Gurgaon. The genuine revenue documents and Government orders establish that no agricultural operations were carried out on the lands situated in village Rojka Gujar and also that the entries in the documents such as the record of rights, mutation deed, Girdwari, relied by the appellant, were fraudulent interpolations or outcomes of fraud. Therefore, the entire 'documentary evidences' filed by the appellant lose evidentiary value. Moreover, since the companies of the Sekhri group hold agricultural and farm lands elsewhere in Haryana and deal in agricultural products, ownership of tractor, purchase of seeds, fertilizer and hardware, sale of produce in Mandi etc is not surprising. But mere existence of these items/ transactions does not establish that agricultural operations were being carried out on the lands held by the appellant in the village Rojka Gujar.

7.12. The muster roll of labour, that refers to 'labour' for 'safai', 'khudai' and 'gaurd' ('guard'), copies of which were filed before the AO towards the end of the proceedings on 13.03.2013, along with a claim that 'agricultural activities' were carried out on the lands at Rojka Gujar by making 'payments to 'Guru Farms & Nurseries', are evidently make-believe assertions. No detail was provided about 'Guru Farms & Nurseries' either at the assessment or the appellate stage. The copies of 'attendance register' sheets with letter 'P' filled in

every column cell raise more questions than answers. Therefore, in the absence of any independent and corroborative evidence, the contentions of the appellant remain suppositions bereft of facts that merit rejection.

7.13. To support her claim that agricultural operations were being carried out on lands at village Rojka Gujar, the appellant has advanced an argument that even if agricultural operation was not permissible, land may be said to be agricultural if it is used as such. But, this argument is flawed since for an event to take place, it must be first in the realm of possibility. At this stage it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of CIT v Raja Benoy Kumar Sahas Roy 32 ITR 466 (SC), where the term 'agriculture' was defined thus:

> *A critical examination of the definition of "agricultural income" as given in section 2(1) of the Indian Income-tax Act and the relevant provisions of the several Agricultural Income-tax Acts of the various States also lends support to this position. In the first instance, it is defined as rent or revenue derived from land which is used for agricultural purposes; and it is next defined as income derived from such land by agriculture or by the activities described in clauses (ii) and (iii) of section 2(1)(b) of the Act. These activities are postulated to be performed by the cultivator or receiver of rent-in kind of such land in regard to the products raised or received by him which necessarily means the produce raised on the land either by himself or by the actual cultivator of the land who pays such rent-in-kind to him. If produce raised or received by the cultivator or receiver of rent-in-kind is thus made the subject-matter of clauses (ii) and (iii) in section 2(1)(b) of the Act, the term "agriculture" used in clause (i) of section 2(1)(b) must also be similarly restricted to the performance of the basic operations on the land and there its no scope for reading the term "agriculture" in the still wider sense indicated above.*
>
> *If the term "agriculture" is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it will be seen that the term "agriculture" receives a wider interpretation both in regard*

to its operations as well as the results of the same. Nevertheless there Is present all throughout the basic idea that there must be at the bottom of It cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations. (emphasis supplied).

The appellant did not provide any detail whatsoever relating to basic operations, such as tilling, sowing, irrigation, harvesting etc, being performed on the lands owned by her at village Rojka Gujar, As held by the Privy Council in Raja Musthafa Alikhan v CIT 16 ITR 330 (PC) it was the appellant's burden to prove that exempt agricultural income was being earned.

7.14. In the case of Sarifabibi Mohammad Ibrahim v CIT 70 Taxman 301 (SC) /204 ITR 631 (sq, the Apex Court had this very issue before them and it was held by their Lordships:

Para 9. Whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of this Court and the High Courts, but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a consideration of all of them-a process of evaluation. The inference has to be drawn on a cumulative consideration of all the relevant facts.

Para 10. The first decision of this Court which considered the meaning of the expression 'agricultural land' is in CIT v Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466. But the question there was whether the income from forest land derived from sal and piyasal trees, 'not grown by human skill and labour' constitutes agricultural income? The decision that directly considered the issue, though under the Wealth-tax Act, 1957 is in CWT v. Officer-in-charge

(Court of Wards) {1976} 105 ITR 133 (SC) (hereinafter referred to as the Begumpet Palace case). It was an appeal from a Full Bench decision of the Andhra Pradesh High Court. The High Court had taken the view, following a decision of the Madras High Court in T. Sarojini Devi v. T. Sri Krishna AIR 1944 Mad. 401, that the expression 'agricultural land' should be given the widest meaning. It held that the fact that the land is assessed to land revenue as agricultural land under the State Revenue Law is a strong piece of, evidence of its character as an agricultural land. On appeal, a Constitution Bench of this Court held that; (a) Inasmuch as agricultural land is exempted from the purview of the definition of the expression 'assets', it is 'impossible to adopt so wide a test as would obviously defeat the purpose of the exemption given'. The idea behind exempting the agricultural land is to encourage cultivation of land and the agricultural operations. "In other words this meaning than the very wide ambit given to it by the Full Bench of the Andhra Pradesh High Court", (b) What is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality but its actual condition and intended user which has to be seen for purposes of exemption, (c) "The person claiming an exemption of any property of his from the scope of his assets must satisfy the conditions of the exemption", (d) "The determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case", (e) The fact that the land is assessed to the Land

Revenue as agricultural land under the State Revenue Law is certainly a relevant fact but it is not conclusive.

In para 12 of their decision, the Hon'ble Supreme Court referred to the decision of the Gujarat High Court in the case of CIT v Siddharth J Desai [1983] 139 ITR 628 (Guj), where 13 factors/indicators had been evolved to

determine whether land was agricultural or not. The 13 factors approved by the Apex Court were the following :

(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?

(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

(3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?

(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?

(5) Whether, the permission under section 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature?

(7) Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?

(8) Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?

(9) Whether the land itself was developed by plotting and providing roads and other facilities?

(10) Whether there were any previous sales of portions of the land for non-agricultural use?

(11) Whether permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non- agriculturist was for non-agricultural or agricultural user?

(12) Whether the land was sold on yardage or on acreage basis?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?

The Hon'ble Court went on to state:

At the risk of repetition, we may mention that not all of these factors would be present or absent in any case and that in each case one or more of those factors may make appearance and that the ultimate decision will have to be reached on a balanced consideration of the totality of circumstances. "

Referring to the case of CIT v V A Trivedi [1988J] 172 ITR 95 (Born), which had considered the question again, their Lordships noted that the Bombay High Court had 'observed that to ascertain the true character and the nature of the land, it must be seen whether it has been put to use for agricultural purposes for a reasonable span of time prior to the relevant date and further whether on the relevant date the land was intended to be put to use for agricultural purposes for a reasonable span of time in the future' .

7.15. The facts of the case at hand are:

- *Lands of village Rojka Gujar, which is an uninhabited village on the outskirts of Faridabad and falls in the Aravalli hills, are categorized as Gair Mumkin Pahar or Banjar Kadim.*

- *In the revenue records, the village is described as Be-Chirag (without human habitation) and consists of sparsely forested, denuded land. The land of the village was under a single Khewat (revenue number) shared by co-owners.*

- *Out of 5744 acres, 4,798 acres were notified under sections 4 and 5 of the Punjab Land Preservation Act and remaining was conserved as forest under the greening of Aravalli scheme of the Forest Department. Under the Forest Conservation Act, land under these notifications cannot be diverted for any use other than forest related activities without the permission of the Union Ministry of Environment and Forests.*

- *The consolidation laws, which are aimed at reversing fragmentation of agricultural holdings and reserve common lands, were abused by revenue officers to partition the jointly held Khewat land, though in the absence of agricultural activity there was no fragmented land to consolidate.*

- *Following the discovery of fraud, the Directorate of Consolidation of Holding, Haryana passed an order on 22.08.2012 de-notifying the consolidation proceedings after recording that objective of the scheme of consolidation for betterment of agricultural activities was not being met in respect of lands at village Rojka Gujar that had no human habitation, where the single khewat having a thousand co-owners had joint share in the land, where not a single square inch of the land under consolidation is under cultivation since long, where the land is either Gair Mumkin Pahar or Banjar Kadim, and where the land use cannot be diverted for any purpose other than forest related activities.*

7.16. The aforementioned principles laid down by the Apex Court are applied tto the case at hand. The land was not classified in revenue records as agricultural and no land revenue was paid. The land being Gair Mumkin Pahar or Banjar Kadim was held jointly as 'commons' and never used for purposes of agriculture at any point of time. It was protected under the Forest Conservation Act and its use could not be changed without the permission of the Union Ministry of Environment and Forests. Therefore, the land was not agricultural land.

7.17. There is also no merit in the claim of the appellant that addition u/s 153A has to be based on incriminating material found during search. The position of law has been explained by the jurisdictional High Court in its order dated 29/3/2012, in the case of Anil Kumar Bhatia 24 Taxman.com 98 (Delhi) where, their lordships held:

> *Para 18 ..... Under Section 153A and the new scheme provided for, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place.*
>
> *Para 19....Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme ... Under Section I53A, however, the Assessing Officer has been given the power to assess or reassess the 'total income' of the six assessment years in question in separate assessment orders.*
>
> *Para 20 .... With all the stops having been pulled out, the Assessing Officer under Section I53A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section I53A, by even making reassessments without any fetters, if need be. (emphasis supplied)*

In the case of CIT v Chetan Dass Lachman Dass 25 Taxman.com 227 (Delhi), their lordships held:

> *Para 11 ... Section I53A which provides for an assessment in case of search, and was introduced by the Finance Act, 2003 w.e.f 01.06.2003, does not provide that a search assessment has to be made on the basis of evidence found as a result of search or other documents and such other materials or information as are available with the Assessing Officer and relatable to the evidence found ...*

> *... Section I53A(l)(b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. To repeat, there is no condition in this Section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or information available with the Assessing Officer which can be related to the evidence found. (emphasis supplied)*

It is thus evident from the two aforementioned decisions of the jurisdictional' High Court that u/s 153A, the AO is required to assess the total income of the person in whose case notice u/s 153A or 153C has been issued. In Chetan Dass Lachman Dass (supra), their lordships have further explained what was stated in para 19 and para 20 in Anil Kumar Bhatia (supra), namely that, in determining the 'total income' there are no fetters, since there is no condition u/s 153A that assessment has to be confined to the material or relatable to the material found during search. Indeed, this is the distinguishing feature of the assessments u1s 153A, vis a vis the erstwhile block assessments under Chapter XIVB, where such a condition was built into the provision itself. That the powers of the AO, under the provisions of section 153A, are beyond sections 147, 148, 151 and 153, has been taken note of in Anil Kumar Bhatia (supra). It is also relevant that section 153A refers to the determination of the 'total income', which is defined in sub section (45) of section 2 of the Income Tax Act thus:

> *"total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act;*

Section 5, mentioned in the definition of 'total income', refers to the 'scope of total income', and states that 'total income' includes 'all income' of a person 'from whatever source derived'. Therefore, considering Anil Kumar Bhatia (supra) and Chetan Doss Lachman Dass (supra), a harmonious interpretation of section 153A with all these provisions would lead to the inevitable conclusion that the AO is required to assess the total income in cases where

notice u/s 153A or 153C has been issued. While determining the total income of a person u1s 153A therefore, the entire economic/financial matters pertaining to the year under consideration will have to be considered by the AO, whether or not these are relatable to the search. For these reasons therefore, the submissions of the appellant are rejected. In any case, the addition made by the AO is based on the post search inquiry with reference to the land at village Rojka Gujar, some documents of which were found during search.

7.18. Thus, in view of the discussion above, the orders of the Commissioner, Gurgaon Division and the Divisional Commissioner, Gurgaon establish beyond doubt that no agricultural operations could have been performed on the lands at village Rojka Gujar were ownership was joint and not identifiable and the soil was rocky and barren. They also reveal that fraud was committed and interpolations were made by the local revenue officers in the record of rights. Hence, the documents of Jama Bandi and Girdwari, cited by the appellant, were not reliable pieces of evidence. The authorities also noted that the fraud had led to subsequent acts, such as mutation, which too had to be 'deleted'. Hence, no credence can be placed on the mutation deed filed by the appellant. In the absence of feasibility of agricultural operations on the lands at village Rojka Gujar, the appellant could not have derived agricultural income. Clearly then the sum reflected as agricultural income by the appellant was the income of the appellant from undisclosed sources. Consequently, the income of Rs 47,060, claimed as agricultural income by the appellant, was correctly treated as income from other sources by the AO. Since the lands in question were not agricultural, it constituted a capital asset and the surplus arising on account of its sale was correctly subjected to capital gains tax by the AO at Rs 2,32,08,282. As a result, grounds I to 7 of the appeal are dismissed. Appeal against the initiation of penalty proceedings is premature and hence ground 8 of the appeal is also dismissed."

7.3. **Submissions on behalf of the assessee**:-

1. "That all the 17 captioned appeals involve consideration of common issue, wherein the learned CIT(A) has upheld the order of learned AO by holding that agricultural land sold by assessee is a capital asset and denied exemption so claimed

*by assessee - appellant under section 2(14)(**ii**) of the Act. It is further, submitted that since all the 17 captioned appeals involve identical issues, as such, submissions are here being made in the case of Smt. Arti Sekhri for AY 2010-11 (which has also been taken as lead case by learned CIT(A)) bearing ITA No.5313/Del/2014, which would apply for all the remaining appeals.*

2. The chronological sequence of events leading to the filling of the instant appeal for AY 2010-11 in the case of Smt. Arti Sekhri bearing ITA No.5315/Del/2014 is as under:

Sr.No.	*Particulars*	*Date*
i)	*Date of search u/s 132 of the Act*	*11.11.2010*
ii)	*Date of notice u/s 153A/C*	*19.11.2012*
iii)	*Date of filing of return of income*	*29.03.2011*
iv)	*Assessment u/s 153A or 143(3)*	
	Date of order	*28.03.2013*
	Income assessed	*2,37,59,545/-*
v)	*Order of CIT(A)*	
	Date of order	*07.07.2014*
	Findings	*Dismissed*

3. That it is submitted that during the impugned assessment year, the assessee had sold its agricultural land located at Rojka Gujjar, Sohna Road for a consideration of Rs.2,10,54,465/- and the same was claimed as exempt under section 2(14)(iii) of the Act being agricultural land and situated at beyond 8 kms from the nearest municipality. However, the learned AO denied the aforesaid exemption by holding that the said land is not cultivable and is "rocky terrain", and the same is not an agricultural land, in doing so, the learned A0 relied on following documents:

(i) On the sale deed, which was furnished before the Assessing Officer during the course of assessment proceedings, wherein, it was mentioned that the land is "GAIR MUMKIN PAHAR" (kindly see page 3 of the AO, Order and sale deed at page 154 to 156 of PB -I).

(ii) Circular issued by Forests and Animal Husbandry Department, Haryana Government (kindly see pages 3 to :; of AO's order).

(iii) Tehsildar letter dated 16.03.2011 and order of Commissioner, Gurgaon (kindly see pages 6 to 13 of AO's order).

(iv) Statement of Sh. Hemant Chauhan dated 29.03.2011 (kindly see page 14 of AO's order).

(v) Letter from Sh. Randhawa dated 28.05.2011 (kindly see page 15 of AO's order).

3.1. At the outset. It IS submitted that. as was also submitted before the learned CIT (A) that the above set of documents statement were never brought to the knowledge of the assessee during the course of assessment proceeding and the same have directly come in the order of assessment. Thus, no adverse interference can be made on the basis of these documents, as the same have not been made available to assessee for rebuttal nor any opportunity to cross - examine has been provided by the lower authorities, even though the same was specifically requested before the learned CIT(A). In this regard, reliance is placed on following case laws:

a) [2015] 127 DTR 241 (SC) Andaman Timber Industries VS. CCE

b) 258 ITR 317 (Del) United Electricals vs. CIT

c) [1980] 125 ITR 713 (SC) KishinchandChellaram vs. CIT

d) IT (SS) A. No. 12/D/07 Shri RadheyShyam Bansal vs ACIT

e) IT(SS) No. 233 and 234/D/2006 dated 19.09.2008 Shri Manit Gulati and Sandeep Gulati

f) 109 TTJ 700 (Del) SMC Share Brokers Ltd. vs DCIT affirmed in 288 ITR 345 (Del) CIT vs. SMC Share Broker Ltd.

g) [2007] 293 ITR 43 (Del) CIT vs. S.M. Aggarwal

h) 322 ITR 396 (Del) CIT vs Ashwani Gupta

i) 295 ITR 105 (Del) CIT vs. Dharam Pal Prem chand Ltd .

j) 306 ITR 27 (DeI) CIT vs. Rajesh Kumar

k) 303 ITR 95 (Del) CIT vs. Pradeep Kumar Gupta

l) 315 ITR 265 (Del) CIT vs Jindal Vegetables Products Limited

3.2. It is further submitted that all the aforesaid documents/ statement so mentioned in the assessment order and also relied by learned CIT (A) have been received/ recorded in March 2011 i.e, prior to issuance of notice issued under section 153A of the Income Tax Act, which was issued on 19/11/2012 which means that the proceeding in the case of the assessee have been started after 19/11/2012. Thus, it is clear that aforesaid documents so quoted in the assessment order has not been issued/recorded by the Assessing officer but by the Investigation wing of the department. As such, it is clear that the assessing officer has made no application of the mind nor any investigation or enquiry was ever conducted by lower authorities. The orders so passed arc merely copy and paste of observations of the Investigation wing in the appraisal report. Thus, reliance is placed on the following judgments on the proposition that, when no investigation has been carried out by the learned Assessing Officer and as such the burden which lay upon the learned A.O has not been discharged, as such, the addition so made is unsustainable and deserves to be deleted.

a) 149 TTJ 165 ITAT (TM) Vishnu Jaiswal vs CIT

b) [2013] 357 ITR 146 (Del) CIT vs. Fair Finvest Ltd.

c) [2014]361 ITR 10 (Del) CIT h. Gangeshwari Metal (P.) Ltd.

d) ITA No. 87I/D/2010 A.Y.2003-04 dated 25.05.2012 ITO vs. M/s Excellence Town Planner (P) Ltd.

e) ITA No.1125/D/2012 A.Y 2002-03 dated 01.06.2012 ITO vs M/s Hi Tech Accurate Communication (P) Ltd.

f) ITA No.1177/D/2012 A.Y.2002-03 dated 05.10.2012 ITO vs M/s. India Texfab Marketing Ltd.

g) ITA No. 4498/D/2010 A.Y. 2003-04 dated 30.12.2010 Intimate Jewels (P.) Ltd.

h) ITA No. 1078/Del/2013 Mithila Credit Services Ltd. vs. ITO

i) ITA No. 212/2012 (Del) dated 11.04.2012 CIT vs Goel Sons Golden Estate (P) l.td.

j) ITA No.50/Del/2011 ACIT vs Panchanan International Pvt Ltd

k) ITA No.535/Del/2009 dated 31.03.2015 Asst.CIT vs Lakshmi Float Glass Ltd.

l) ITA No.71, 72 & 84 of 2015 (Del) dated 12.08.2015 CIT vs Vrindavan Farms Pvt. Ltd.

3.3 Be that as it may, on merit, the assessee appellant seeks to submit that on the basis of the aforementioned documents, the learned Assessing Officer had held in the impugned order of assessment that even though the land sold is situated beyond 8 kms from the municipal limits but since, the same is not cultivable, thus, cannot be termed as "agricultural land" and denied the exemption so claimed by assessee with regards to capital gains under section 2(14)(iii) of the Act (kindly see pages 15 to 18 of AO's order). That the order so passed by learned Assessing Officer was also upheld by learned CIT(A) by recording similar findings (kindly see pages 4 to 13 of CIT(A)'s order).

3.4. From the perusal of the above, It may be observed that there is no dispute regarding the fact that condition given as per the section 2(14)(iii) of the Income Tax Act (that the land is not situated a) In any area which is comprised within the jurisdiction of a municipality and which has a population not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or b) In any area within such distance, not being more than 8 kms from the local limits of any municipality) is satisfied in the instant matter. However, the dispute is regarding the fact that whether the agriculture activities can be carried out on the land or not. The assessing officer while passing the order made the addition by holding that no agriculture activities can be carried out on the land at Rozka Gujjar and as such this land is not an agriculture cultivable land. The finding of the assessing officer can be categorized in following 4 points:-

i) Physical possession was not with the assessee as the consolidation has been done

ii) No crops were ever shown on the basis of land records

iii) The land is Gair Mumkin Pahar and is a rocky land

iv) No plantation cutting of tress, grazing of animal are permissible on this land.

3.5. It is submitted that findings so recorded by learned AO on the basis of aforesaid documents were rebutted by the assessee -appellant before learned CIT(A), however, she ignored the relevant submissions and documents and recorded her findings on mere assumptions and surmises and merely recorded the same findings as were recorded by learned Assessing Officer. As such, in the impugned appeal, the assessee-appellant begs to make its submissions in brief against the findings so recorded by lower authorities, which are as below:-

i) ***Physical possession was not with the assessee as the consolidation has not been done***

- *The learned assessing officer and CIT(A) have observed that as per the letter of the Tehsildar, Land at Village Roj Ka Gujjar Distt Sohna (Haryana) is a joint account (SHAMIL KHATA) land and though the shares of the owners are definite but the owners cannot claim that they are owner of particular piece of land. Their shares are definite but undivided, since no consolidation in respect of land at Village Roj Ka Gujjar, Distt Sohna (Haryana) has taken place, though one can sell land, one cannot hand over the physical possession to the purchaser. As such the finding of learned AO and CIT (A) is that no physical possession in respect of the land was with the assessee.*

- *In this connection we would like to submit and draw your honour's kind attention to the order passed by the Commissioner, Gurgaon attached with the reply of Tehsildar, Sohna (page no 9 of the assessment order), Wherein the Commissioner, Gurgaon has stated that consolidation process is under way in village Rojka Gujjar, Thus. it is submitted that consolidation of the land had been started as per the notification dated 21/10/1991 and was ongoing,*

- *In this connection, it is important to note that in respect of the area or the land in the possession the assessee the consolidation of land has been completed and in the other parts of Gurgaon the consolidation exercise was in progress. In this connection the assessee received the documents from the consolidation officer. The copy of the documentary evidence in respect of the same being the MALKIYAT AND KHETI BARI KE VIKAS KE ADHIKAR (HAK) issued by the revenue authorities is enclosed at page no 89 to 92 of PB - I. As such, the findings so recorded by lower authorities that consolidation has not been done is clearly against the facts and is contrary to material available on*

record. As the consolidation has been done in the case of the land held by the assessee, thus, it cannot be said that the physical possession was not with the assessee.

- *It is further submitted that the electricity connection was installed at the land at Rozka Gujjar. The copy of electricity bill in respect of the same is enclosed at page no. 157 to 15X of Paper Book-1. The electricity connections were installed from Dakshin Haryana Bijli Vitran Nigam (Government enterprises) and electricity was consumed during the course of agriculture activities at the land at Rojka Guzzar and as such the assumption of the assessee that physical possession was not with the assessee is clearly against the fact. As such if there was no physical possession, how the electricity connection is possible.*

- *It is also submitted that page no 26, Annexure A-5, party No.R-1, of the documents seized during the Course of search (the copy in respect of the same is enclosed at page no 165 of PH-I. These documents are the actual site photographs of the land at Rozka Gujjar taken on 26.03.2007.In the photographs it is clearly visible that the land is properly developed with barbed fencing. Further the temporary huts built for the labour on the land also support the fact that the physical possession was with the assessee.*

- *However, all the aforesaid documentary evidences were blatantly ignored by both learned AO and CIT(A) and they based their findings solely on the basis of Investigation report, without conducting any enquiry or investigation of their own and without even rebutting the documentary evidences so furnished by the assessee-appellant.*

ii) No crops were Sown on land on the basis of land records

- *The findings so recorded by learned AO and CIT (A) that no crops were ever sown on the land is clearly against the facts in view of the following submissions.*

- *That during course of search voluminous documents were seized and page no.105-106 of the party No.R-1, Annexure A-5, of the seized document is the copy of KHASRA GIRDAWRI AUR PHASAL JANCH (the copy in respect of the same is enclosed at page nos 159 to 164 of Paper Book-1) issued by the*

revenue department. In the KHASRA GIRDAWRI OR PHASAL JANCH the details of the agriculture produce being the Bajra and other agriculture items produced on the land at Rozka Gujjar is clearly mentioned. The document establishes the fact that the agriculture activity have been done on the land at Roj ka Gujjar.

- *Thus, from the perusal of the documentary evidence in respect of consolidation done by the land consolidation officer it is important to note that the word MALKIYAT AND KHETI BARI KE VIKAS KE ADHIKAR (HAK) is mentioned in the document. As such the assessee got the possession and all the right of agriculture.*

- *It is also submitted that during the instant assessment year the agriculture produce from agriculture activities at Rojka Gujjar were been sold by the assessee in the Mandi. The sale proceeds from the agriculture produce have been received by the assessee through banking channel, which fact has not been disputed or rebutted by lower authorities. Further, the learned Assessing Officer has failed to bring out any instance as to show that the land has been used for purpose other than agriculture purposes.*

- *From the perusal of the above it may observed that all the documentary evidence in respect of agriculture activities have been produced during the course of assessment/ appellate proceedings and as such, the assessee has discharged its onus. In this connection, Kerala High court in the case of Commissioner of Income Tax vs Fagoomal Lakshmichand 1978 112 ITR 009 held what is agricultural land has to be determined on the basis of the present connection of the land with an agricultural purpose and user and not the mere possibility of user in the uncertain future. The burden is on the department to adduce cogent evidence to support its case that the land acquired was not an agricultural property: CWT v. Officer-in-Charge (Court of Wards), Paigha [1976] 105 ITR 133 (SC) and CIT v. Ananthan Pillai [1974] 94 ITR 122 (Ker) relied. The determination of the character or the land is a matter which has to be made on the fact of each particular case. The assessee had placed relevant and cogent evidence to support his contention that the land was agricultural property. No evidence was adduced by the department to controvert this contention.*

iii) The land at Rojka Gujjar is Gair Mumkin Pahar

- *That the learned AO while passing the impugned order has mentioned that the land at Rojka Gujjar is Gair Mumkin Pahar and is rocky terrain. These findings so recorded by learned AO are based on sale deed so submitted by assessee during the course of assessment proceedings (kindly see pages 154 to 156 of the PH-I). In doing so, the lower authorities have failed to appreciate the basis fact that the word used in the sale deed is simply a nomenclature, which has been used to identify this area, however, if look at the facts and the material available on record, as is submitted in earlier paragraphs, it becomes apparently clear that agricultural activities were undertaken by assessee during the impugned assessment year.*

- *It is further submitted that page No.26, Annexure A-5, party No R-I, of the document-, seized during the course of search (the copy in respect of the same is enclosed at page no. 165 of PB - I), clearly shows the actual site photographs (If the land at Rozka Gujjar taken on 26/03/2007. In the photographs it is clearly visible that the land is not mountainous but is properly developed with barbed fencing. Further the various crops grown on the land and the temporary huts built for the labour on the land also support the contention of the assessee. These documents are part of records available With the Income Tax department, which were never rebutted by the lower authorities nor even discussed ill the orders so passed by learned AO and CIT (A).*

- *It is also submitted that even if it is assumed that land is Gair Mumkin Pahar, then in that case the area will be unhibited and in that case electricity connection cannot be sanctioned by the electricity department. However, in the instant case electricity connection has been sanctioned and the copy of electricity bill is at pages 157 to 158 of PB – I, which clearly establishes the fact that the electricity connection is installed at this land and the same has also been consumed. As such the assumption made by the Assessing Officer that the land is Gair Mumkin Pahar is contrary to material available on record and without there been any investigation or enquiry by lower authorities in this regard.*

iv) Plantation activities are not permissible on this land

- *That the learned Assessing Officer at page 8 of its order of assessment has mentioned that the summons were issued to the forest officer and the forest officer referred to the Circular No.O.33/PA-2/1990/S 470 dated 11.02.1970 issued by Haryana government (Forests and Animal Husbandry Department). On the basis of this circular the Assessing Officer observed that the plantation activities are not permissible on the land at Rojka Gujjar. With reference to the said circular, it is submitted that second paragraph of the circular is important, which is reproduced below:-*

> *"Now, therefore in exercise of the powers conferred by section 4 o the said Act the Governor of Haryana hereby prohibits the following acts for period of 25 years with effect from the date of this order, the areas specified in the schedule annexed hereto the said area forming part of the village in Gurgaon Tehsil of Gurgaon District specified in the schedule annexed to erstwhile Punjab Government notification No.9419-D dated 30th September 1948."*

- *Thus, from the perusal of the above circular it becomes evidently clear that the said circular issued by the Forest Department was valid for 25 years from the (date of issue of circular was 11/02/1970) and as such the above mentioned circular was valid upto 11/02/1995 (i.e. upto 25 years from 11/02/1970). In view of the facts discussed above the circular quoted by the assessing officer is not applicable for the year under appeal.*

- *That further, from the perusal of the above circular it is also important to point out that this circular was applicable in the area specified by the forest department. In this connection attention is drawn to the list of villages with Killas/Khasra Numbers (the list so issued by the forest department is enclosed at page nos. 160 to 164 of Paper Book-1). The list so issued by the forest department does not bear the khasra no of the land sold by the assessee in village Rojka Gujjar. Thus, the aforesaid circular so relied by lower authorities, is not applicable on the facts of the case of assessee-appellant.*

v) That in addition to the aforesaid submissions, the assessee –appellant would like to discuss the authenticity or applicability of the various documents/statements as relied by the Assessing Officer in the assessment order:-

- ***Reply of the summon from the Tehsildar, Sohna***

The Tehsildar Sohna has nowhere stated in the reply that consolidation has not been completed in respect of the land held by the assessee but only stated that consolidated exercise for the entire village has not been completed because of some title issue noticed in the land records. Further as discussed above the documentary evidence to support that the consolidation has been completed and the physical possession was with the assessee, as has been submitted in earlier paragraphs. Further during the course of search the page no 105-106 of the party No.R-1, Annexure A-5 of the seized document being the copy of KHASRA GIRDAWRI AUR PHAASAL JANCH issued by Patwari along with the photograph and electricity bill clearly shows that the agriculture activities have been carried out by the assessee. As such the reply of the Tehsildar that the land is Gair Mumkin Pahar is clearly against the fact.

- ***Statement of Hemant Chauhan director Chauhan Builders***

In the statement recorded it has been mentioned that in the AY 2005-06 and AY 2006-07 the company Chauhan Builders and Construction Pvt.Ltd. has not shown any agriculture income because the land was not able to cultivate. As such in the statement it was not mentioned that in the AY 2008-09 and Assessment Year 2009-10 and subsequently the agriculture activities have not been carried out. Further, it is also Important that in the Column giving the details or KRISHAK the name of the Hemant Chauhan is clearly mentioned in the document titled "Khasra GIRDAWRI AUR PHASAL JANCH". As such the reply of the Hemant Chauhan is contrary to material available on record,

- ***Reply of summon from Randhawa Group***

In the reply it is clearly mentioned that plantation and cultivation is possible. Further regarding the possession the reply is not true. In this connection we would like to draw your kind attention to the sale deed in the paper book, in respect of land sold to Randhwa Group. In the sale deed it is clearly mentioned that the purchaser has got the ownership and possession of the land. Further the mutation records, electricity connection, photographs and certificate in respect of consolidation discussed in the above para's clearly

establish the fact the possession was with the assessee. As such the reply of the Randhwa Group is clearly against the fact.

4. In light of the aforesaid, it is thus, prayed that all 17 appeals so filed by assessee since involves consideration of identical issues and in view of our aforesaid submissions the appeal of the assessee-appellant be allowed and relief be granted to the assessee-appellant.

7.4. **Submissions on behalf of the Revenue:-** Ld.CIT DR vehemently opposed the submissions of the assessee and supported the orders of the authorities below. Ld.CIT DR submitted that so far the question of agricultural land is concerned, the Land Revenue authorities have stated in response to the letters issued by the Assessing Officer that the land in question is a barren land and no agricultural activity was permissible on the land. Further, Ld.CIT DR submitted that Ld. CIT(A) has categorically recorded the findings of Commissioner who is competent authority under land revenue authorities of the concerned State. It has been categorically held that no consolidation proceedings were completed. Ld.CIT DR further submitted that as per order dated 23.04.2010, the Divisional Commissioner, Gurgaon recorded that the Settlement Officer (Consolidation) cum District Revenue Officer, Gurgaon had reported that the Jama Bandi, known as Parat Sarkar, and kept in Sadar Record Room, showed land of 9190 Bigha 9 Bishwa in the revenue estate of Rojka Gujar of which 1379 Bigha 19 Bishwa was Banjar Kadim and 7810 Bigha 10 Bishwa was Gair Mumkin Pahar. As against this, the Jama Bandi, known as Parat Partwar and available with the Patwari, showed land of 9895 Bigha 1 Bishwa, which was excess by 847 Bigha 4 Bishwa. Ld.CIT DR further pointed out that Ld.CIT(A) had recorded the finding of the Divisional Commissioner who had stated that there were only two types of land namely, Banjar Kadim and Gair Mumkin Pahar, and there was "interpolations in

the record of rights" (Jama Bandi). Ld.CIT DR submitted that as per the letter of Tehsildar, Sohna to the Additional DIT (Inv.), Delhi dated 16.03.2011, it was stated that following the discovery of discrepancies, the process of consolidation (chak bandi) had been stopped in respect of the lands at Village Rojka Gujar on the orders of Commissioner, Gurgaon Division, it was further stated that the lands were either Gair Mumkin Pahar or Banjar Kadim. Therefore, the process of consolidation was abandoned. Ld.CIT DR in sum and substance relied on the finding of the Assessing Officer and Ld.CIT(A). Further, Ld.CIT DR submitted that the Assessing Officer as well as Ld.CIT(A) considered the Circular issued by the State Government of Haryana dated 11.12.1970. It was stated that vide the said notification, Forest Department had prohibited agricultural operations in the land in question.

8. We have heard the rival submissions and perused the material available on records and gone through the orders of the authorities below. The controversy in narrow compass is that whether the land sold by the assessee is an agricultural land hence, excluded from the definition of capital assets as provided u/s 2(14) of the Act or it is a capital asset hence, amendable to capital gain. There is no dispute with regard to the fact that the land in question was sold by the assessee and no capital gain tax was disclosed and paid on this transaction. During the course of search on Tinna Group, a Purchase Deed 15.06.2006 pertaining to the land in question was found. It was stated before the Authorities below that the land which was sold was an agricultural land. Therefore, the assessee was not liable to pay capital gain tax on this transaction. Before adverting to the rival submissions and for an effective adjudication, the relevant provision of law i.e. sections 2(1A) and 2(14) of the Act, are reproduced as under:-

Section 2(1A)

(1A) "agricultural income" means—

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by—

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that—

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(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 aerially,—

(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

(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.

Explanation 1.—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.

Explanation 2.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

Explanation 3.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year."

Section 2(14)

2(14) "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; or

(f) any work of art.

Explanation 1.—For the purposes of this sub-clause, "jewellery" includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

Explanation 2.—For the purposes of this clause—

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(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 aerially,—

(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

(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.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

(iv) 6 per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;

(v) Special Bearer Bonds, 1991, issued by the Central Government ;

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetization Scheme, 2015 notified by the Central Government.

Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever."

9. Hence, as per Section 2(14) of the Act the land should not be situated in the area as mentioned therein. Admittedly, the land does not fall within any of the area

as mentioned in Section 2(14). In the opinion of the Authorities below the basic agricultural operations were not carried out and no such activity was permissible. It was stated by the Assessing Officer that the land being Gair Mumkin Pahar i.e. banjar land, no agricultural operations could be carried out and permitted by law. A great stress was laid on the notification No.S.O.46/P.A.-2/1900/S.5/70 dated 11.02.1970 which reads as under:-

> ***"No. S.O.45/P.A.-2/1900/S.5/70****-Whereas certain areas mentioned in the Schedule annexed hereto are comprised within the limits of the local areas notified under section 3 of the Punjab Land Preservation Act, 1900 with erstwhile Punjab Government notification No.9419-D, dated the 30th September, 1948, whereas in respect of the said areas the Governor of Haryana is satisfied after due inquiry that the regulations, restrictions and prohibition hereinafter specified are necessary for the purpose of giving effect to the provisions of the said Act.*
>
> *Now, therefore, in exercise of the powers conferred by section 5 of the said Act, the Governor of Haryana hereby prohibits the following acts for a period of 25 years, with effect from the date of this order, in those areas:-*
>
> *1. The cutting of trees or timber or brush wood and the lopping of trees for any purpose; provided that the Divisional Forest Officer, Gurgaon Forest Division, may permit:-*
>
> *(a).The cutting of trees for house building an agricultural implements, and of dry wood for fuel and for marriage by persons shown in the settlement record as entitled to do so; and*
>
> *(b).The lopping of branches for lac and the sale of Chal-leaves to leather workers:*
>
> *Provided further that for the cutting of dry wood for the death ceremonies by the persons shown in the settlement records as entitled to do so, the permission of the Divisional Forest Officer shall not be required and that for this purpose a simple information to the Forest Guard concerned within a fortnight of felling shall do.*

2. The collection or removal of grass for any purpose provided that the Divisional Forest Officer, Gurgaon Forest Division, may permit:-

(a). The cutting or sale of ripe grass after the rainy season; and

(b). The cutting or sale of green grass during the rainy seasons from such portions of the notified area in which grass may have sufficiently established itself.

3. The pasturing of any cattle other than goat, sheep and camels:

Provided that in such area where the forest crop is well established and in cases of emergency such as abnormal drought or folds, the Divisional Forest Officer, Gurgaon Forest Division, may through open such area for grazing of the cattle of the land owners on such conditions as may be appropriate in each case.

SCHEDULE

District	***Tehsil***	***Village with H.B.No.***	***Description of Khasra Nos.***		***Area in acres***
			Rectangle No.	***Kila Nos.***	
1	*2*	*3*		*4*	*5*
Gurgaon	*Gurgaon*	*Rojka Gujar H.B.No.172*	*-*	*1 to 44, 45 min, 46 min, 55 min, 56, 57, 58 min, 62 to 65, 66 min, 69 min, 70 to 76*	*2617*

10. A bare reading of the notification reveals that it was in force for 25 years w.e.f. 11.12.1970 hence, the period of its operation came to an end way back in the year 1995. No other notification is brought to our notice by the Revenue. Hence, reliance made by the Assessing Officer on this notification is not justified, coupled with the fact that land notified in that Circular did not include the land under dispute. Further, the Assessing Officer observed that the sale receipts for the sale of agricultural produce were nothing but an arrangement to make a false claim that land was an agricultural land. However, no evidence is placed on record to substantiate this observation. Undisputedly, no material is placed before us except the statement of one Shri Hemant Chauhan stating that no agricultural activity was carried out by him. It is pointed by the Ld. Senior Counsel for the

assessee that statement of Shri Hemant Chauhan pertains to earlier assessment year which is not relevant for the present proceedings. We at this juncture cannot set the clock back and find out by making on spot inspection whether agricultural activity is being carried out or not. We have no option but to adjudicate the issue purely on the basis of material placed before us by the parties. It is observed from the record that the Assessing Officer has grossly failed to verify the veracity of claim of the assessee by making on the spot inquiry .

11. Further, we find the Ld. CIT(A) has heavily relied on the order of the Commissioner, Gurgaon dated 29.03.2010 who had made certain adverse observations regarding consolidation proceedings. In our considered view, those observations related to legality of consolidation proceedings that has nothing to do with the taxability of the sale consideration on the transfer of land in question. These proceedings relate to title of the property and operate in all together different field. Further, reliance is placed on the order dated 23.04.2010 passed u/s 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, by the Divisional Commissioner, Gurgaon and the clarification given by the Tehsildar, Sohna by letter dated 16.03.2011. So far as, the observation of the Tehsildar is concerned, the same is generalized but not specific to the land in question. Therefore, in our considered view these evidences as relied by the Ld. CIT(A) were not sufficient to hold that land in question was not an agricultural land. The assessee has placed on record Khasra Girdawri i.e. record of the crops found to have been sown at the relevant time. It is mandated by law that the Patwari is required to make on the spot verification of crop sown by the farmers in every cropping season and record the same in Khasra Girdawari. There is nothing on record suggesting that these Khasra Girdawri entries were subsequently

cancelled or were not found to be correct. The assessee has placed on record various other evidences to substantiate her claim that the land in question was being used for agricultural purpose. The authorities below have based their finding purely on the observations made during the consolidation proceedings these observations are general nature and are not land specific. Therefore, inquiry related to land in question ought to have been made. Undisputedly, we are concerned with the taxability of sale consideration, it is not the case of the Revenue that sale consideration was not out of transfer of capital asset. The Assessing Officer unequivocally has treated the same as capital asset. The case of the assessee is that sale consideration cannot be subjected to tax since the land was being used for agricultural purpose. In support of this claim, the assessee furnished the evidences in the form of entries in revenue records, photographs and proof of sale of agricultural produce. These evidences have been rejected on the ground that (a) the consolidation was not completed; (b) Sale Deed describes land as "Gair Mumkin Pahar"; and (c) the adverse observation by the land revenue authorities regarding consolidation proceeding and entries recorded by the Consolidation Officer. Ld. Senior Counsel for the assessee has placed reliance on various case laws to buttress the contention that mere nomenclature in the Sale Deed or in the revenue records as barren land does not make the land non-agricultural. It is contended that such nomenclature would not change the character and category of land.

12. The Hon'ble Supreme Court in the case of *Smt. Sarifabibi Mohmed Ibrahim vs Commissioner of Income-Tax, [1993] 204 ITR 631 [SC]* has held that "*Whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of this Court and the High Courts,*

but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a consideration of all of them - a process of evaluation. The inference has to be drawn on a cumulative consideration of all the relevant facts". Hon'ble Gujarat High Court in the case of *Commissioner of Income Tax, Gujarat-II v. Siddharth J.Desai 139 ITR 628* has held that "several tests have been evolved." Few of them are – **"[i]** Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue; **[ii]** Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time; **[iii]** Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement; **[iv]** Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature? **[v]** Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes? **[vi]** Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural? [vii] Whether the land itself was developed by plotting and providing roads and other facilities? **[viii]** Whether there were any previous sales of portions of the land for non-agricultural use? **[xi]** Whether the land was sold on yardage or on acreage basis? **[x]** Whether an agriculturist would purchased the land for agricultural purposes at the price at which the land was sold and whether the owner would

have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?

13. In the case in hand, admittedly it has been recorded by the Revenue official that certain crop was grown by the assessee. The assessee has also placed on record, certain evidences proving the sale of agricultural produces. These two evidences proved that prior to transfer of the land in question was being used for the agricultural purposes. The Revenue could not rebut the evidences filed by the assessee. The only basis of non-acceptance of the assessee's plea was that the land was part of notification which was issued by the Forest authorities wherein the plantation etc. were prohibited. As discussed above that the said notification remained in force till the year 1995. Moreover, Ld. Counsel for the assessee pointed out that the land in question was not part of 1970 notification. This contention is not rebutted by the Revenue. The Revenue has not brought any other notification to our notice which has superseded the 1920 notification by further extending the period. The Assessing Officer did not make any enquiry from the Village as well as from other land owners of the surrounding areas. Nothing is placed on record to prove the fact that entry recorded in the Revenue records related to the land was cancelled by the Competent Authority. Further, the Assessing Officer has not brought any material on record suggesting that no agricultural operation was possible on the land in dispute.

14. On the contrary, the assessee has furnished documents in the form of photographs, electricity connection and proof of sale of agricultural produces. At the time of hearing, Ld. Counsel for the assessee has also placed reliance on the judgement of Hon'ble Delhi High Court in the case of *DLF United Ltd. vs CIT [1986]*

158 ITR 342 on identical facts. The Hon'ble High Court was pleased to decide the issue in favour of the land owner by observing as under:-

13. "Learned counsel for the assessed has referred to a judgment of this court in Gaon Sabha of Lado Sarai v. Jage Ram, 2nd [1973] 1 Delhi 984, where some useful observations have been made regarding the nature of agricultural land. It was stated by the court as follows :

"In our opinion, it is a mistake to consider that banjar qadim or ghair mumkin are not agricultural lands, These two types of lands are also covered by the provisions of the Act. In Land Revenue Assessment Rules, 1929, which were framed by the Governor-General in exercise of the powers conferred by section 60 of the Punjab Land Revenue Act, 1887, on December 23, 1929, by Notification No. 6073-R, dated December 23, 1929, under rule 2, sub-rule (2), it is stated that :

'(2) The most important classes of uncultivated land are as follows :

(a) banjar jadid : land which has remained unsown for four successive harvests :

(b) banjar qadim : Land which has remained unsown for eight successive harvests; and

(c) ghair mumkin : land which has for any reason become uncultivable, such as land under roads, buildings, streams, canals, tanks, or the like, or land which is barren, sandy or ravines'."

14. This is quotation would show that land which is banjar qadim or banjar jadid or ghair mumkin is land which is not cultivable, but nevertheless, it was held by the court that the said land was an agricultural land.

15. Though a person who is the owner of agricultural land which he does not cultivate and the same is acquired by the Government, there can be little doubt that the compensation amount will not be income. The question that has arisen in this case is whether it makes any difference if the owner happens to be a

person who has bought the agricultural land with the object of cavorting it into urban plots. Before such plots have been carved out and steps taken for developing the same, the land was acquired by the Government. This means that the land retained its agricultural characteristics and the compensation would still be compensation paid for agricultural land. Let us say a person buys an agricultural land with a view to selling it on profit. The net profit would not be taxable as a business receipt because it would be a profit out of agricultural land. It would be a kind of capital gain exempt from taxation. This is approximately the reasoning in the previous case. So, we would answer the first question on the footing that the compensation amount is not taxable as a profit from business.

16. It is necessary to mention here that capital gains are taxable on the transfer of a capital asset, but the definition of capital asset excludes agricultural land as per section 2(14)(iii). As the character of this land remained agricultural land, the gain would not be taxable. It is necessary here to mention that the amount of Rs. 2,55,571 mentioned in the question is the extra compensation over and above the cost of the acquired agricultural land. So, in actual fact, the question is related to a capital gain resulting from the acquisition of the land in question."

15. There is another aspect of the matter that the Land Revenue Authorities had recorded a finding that physical possession was not handed over as the consolidation proceedings were not completed. The ordinary corollary of such findings would be that no transfer of land took place which is self-contradictory for the stand of the Assessing Officer for charging capital gain tax on transfer of land. Therefore, in the absence of any cogent evidences to rebut the claim of the assessee that the land in question was being used for agricultural purposes, and the evidences as supplied by the assessee not being found to be false and fabricated, we are unable to sustain the findings of the Assessing Officer. Therefore, Respectfully following the judgement of the Hon'ble Supreme Court in the case of

Smt. Sarifabibi Mohmed Ibrahim vs Commissioner of Income-Tax (supra); judgement of Hon'ble Gujarat High Court in the case of *Commissioner of Income Tax, Gujarat-II v. Siddharth J.Desai* (supra) and more particularly, the judgement of Hon'ble Delhi High Court in the case of *DLF United Ltd. vs CIT [1986] 158 ITR 342.* Wherein it has been held character of land being agriculture did not change by mentioning in revenue records as 'Ghair Mumkin'. We therefore hereby, direct the Assessing Officer to delete the addition.

15.1. The assessee has also raised a Ground No.1.10 against initiation of penalty proceedings, the same is held to be premature, hence dismissed. Thus, grounds raised by the assessee are partly allowed.

16. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

> *"That the assessment order passed by learned Assessing Officer is without jurisdictional and void ab-initio and is liable to be quashed, as proceedings initiated under section 153C of the Act are without satisfying the statutory conditions envisaged under the Act and are thus, without jurisdiction."*

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

17. In the result, the appeal of the assessee is partly allowed.

18. Now, we take up **ITA No.5312/Del/2014** relating to **Assessment Year 2009-10** filed by the assessee. The assessee has raised following grounds of appeal:-

> *1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.*

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in considering the agriculture income of Rs 22,018/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon

division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

18.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

18.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

19. We have considered the rival submissions of the parties and also perused the material available on record. We find that no change into facts and circumstances have been pointed by the Revenue. We, therefore taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

20. In the result, the appeal of the assessee is partly allowed.

21. Now, we take up **ITA No.5360/Del/2014** relating to **Assessment Year 2009-10** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in considering the agriculture income of Rs 86,000/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon

division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

21.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

21.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra]. .

22. We have considered the rival submissions of the parties and also perused the material available on record. We find that no change into facts and circumstances have been pointed by the Revenue. We, therefore taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

23. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

"That the assessment order passed by learned Assessing Officer is without jurisdictional and void ab-initio and is liable to be quashed, as proceedings initiated under section 153C of the Act are without satisfying the statutory conditions envisaged under the Act and are thus, without jurisdiction."

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

24. In the result, the appeal of the assessee is partly allowed.

25. Now, we take up **ITA No.5361/Del/2014** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in considering the agriculture income of Rs 2,16,000/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

25.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

25.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

26. We have considered the rival submissions of the parties and also perused the material available on record. We find that no change into facts and circumstances have been pointed by the Revenue. We, therefore taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

27. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

> *"That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in overlooking the basic fact that no incriminating material was found during the course of search and the assessment as contemplated under section 153A is not a denovo assessment and as such the additions so made by assessing officer which are beyond the scope of assessment under section 153A of the Act and are liable to be deleted in totality."*

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

28. In the result, the appeal of the assessee is partly allowed.

29. Now, we take up **ITA No.1766/Del/2017** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

> *1. "The order of the learned Assessing officer is arbitrary, against law and facts on record.*
>
> *2 The learned Commissioner of Income Tax (A) while confirming the penalty or Rs.44,61,577/- has erred in not considering that the conditions given in section 271(1)(c) of' the Income Tax Act for levy of penalty is not fulfilled in this case and there are no concealment to attract the penalty u/s 271 (l)(c) of the Income Tax Act.*
>
> *3 The learned Commissioner of Income Tax (A) has erred in not considering the fact that in the order passed u/s 143(3)/ 153C or the Income Tax Act addition of Rs.2,16,38,760/- have been made without going through the details, statutory provisions as well as documentary evidence filed during the course of assessment proceeding and ignoring the fact that no incriminating material in respect of addition so made have been found during the course of search.*

4 The appellant herein craves its right to alter, amend, add and / or withdraw any grounds of appeal and / or to take any additional grounds of appeal."

29.1. The grounds raised in this appeal are against the levy of penalty and confirming the same by Ld. CIT(A). The impugned penalty has been levied on the capital gain as computed by the Assessing Officer. Since in the quantum proceedings, the capital gain has been deleted by holding that the land as transferred was agricultural land and therefore, out of the purview of the capital gain tax hence, the penalty levied on the same amount would also deserves to be deleted. The Assessing Officer is therefore, directed to delete the addition.

31. In the result, the appeal of the assessee is allowed.

32. Now, we take up **ITA No.5294/Del/2014** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs.2,34,12,500/- in respect of capital gain earned on transfer of agriculture land and has also erred in considering the agriculture income of Rs.1,01,640/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

32.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

32.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

33. We have considered the rival submissions of the parties and also perused the material available on record. We find that no change into facts and circumstances have been pointed by the Revenue. We, therefore taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

34. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

> *"That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in overlooking the basic fact that no incriminating material was found during the course of search and the assessment as contemplated under section 153A is not a denovo assessment and as such the additions so made by assessing officer which are beyond the scope of assessment under section 153A of the Act and are liable to be deleted in totality."*

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

35. In the result, the appeal of the assessee is partly allowed.

36. Now, we take up **ITA No.1765/Del/2017** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1. "The order of the learned Assessing officer is arbitrary, against law and facts on record.

2 The learned Commissioner of Income Tax (A) while confirming the penalty or Rs.48,54,381/- has erred in not considering that the conditions given in section 271(1)(c) of' the Income Tax Act for levy of penalty is not fulfilled in this case and there are no concealment to attract the penalty u/s 271 (l)(c) of the Income Tax Act.

3 The learned Commissioner of Income Tax (A) has erred in not considering the fact that in the order passed u/s 143(3)/ 153C or the Income Tax Act addition of Rs.2,35,14,140/- have been made without going through the details, statutory provisions as well as documentary evidence filed during the course of assessment proceeding and ignoring the fact that no incriminating material in respect of addition so made have been found during the course of search.

4 The appellant herein craves its right to alter, amend, add and / or withdraw any grounds of appeal and / or to take any additional grounds of appeal."

37. The grounds raised in this appeal are against the levy of penalty and confirming the same by Ld.CIT(A). The impugned penalty has been levied on the capital gain as computed by the Assessing Officer. Since in the quantum proceedings, the capital gain has been deleted by holding that the land as transferred was agricultural land and therefore is out of the purview of the capital gain tax hence, the penalty levied on the same amount would also deserve to be deleted. The Assessing Officer is therefore, directed to delete the addition.

38. In the result, the appeal of the assessee is allowed.

39. Now, we take up **ITA No.5362/Del/2014** relating to **Assessment Year 2009-10** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in considering the agriculture income of Rs.2,38,634/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

39.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

39.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

40. We have considered the rival submissions of the parties and also perused the material available on record. We find that no change into facts and circumstances have been pointed by the Revenue. We, therefore taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

41. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

"That the assessment order passed by learned Assessing Officer is without jurisdictional and void ab-initio and is liable to be quashed, as proceedings initiated under section 153C of the Act are without satisfying the statutory conditions envisaged under the Act and are thus, without jurisdiction."

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

42. In the result, the appeal of the assessee is partly allowed.

43. Now, we take up **ITA No.5363/Del/2014** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs.2,23,03,125/- in respect of capital gain earned on transfer of agriculture land and has also erred in considering the agriculture income of Rs.29,410/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary

evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

43.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

43.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

44. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in

ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

45. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

> *"That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in overlooking the basic fact that no incriminating material was found during the course of search and the assessment as contemplated under section 153A is not a denovo assessment and as such the additions so made by assessing officer which are beyond the scope of assessment under section 153A of the Act and are liable to be deleted in totality."*

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

46. In the result, the appeal of the assessee is partly allowed.

47. Now, we take up **ITA No.1767/Del/2017** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

> *1. "The order of the learned Assessing officer is arbitrary, against law and facts on record.*
>
> *2 The learned Commissioner of Income Tax (A) while confirming the penalty or Rs.34,63,600/- has erred in not considering that the conditions given in section 271(1)(c) of' the Income Tax Act for levy of penalty is not fulfilled in this case and there are no concealment to attract the penalty u/s 271 (l)(c) of the Income Tax Act.*
>
> *3 The learned Commissioner of Income Tax (A) has erred in not considering the fact that in the order passed u/s 143(3)/ 153C or the Income Tax Act addition of Rs.1,66,76,641/- have been made without going through the details, statutory provisions as well as documentary evidence filed during*

the course of assessment proceeding and ignoring the fact that no incriminating material in respect of addition so made have been found during the course of search.

4 The appellant herein craves its right to alter, amend, add and / or withdraw any grounds of appeal and / or to take any additional grounds of appeal."

48. The grounds raised in this appeal are against the levy of penalty and confirming the same by Ld.CIT(A). The impugned penalty has been levied on the capital gain as computed by the Assessing Officer. Since in the quantum proceedings, the capital gain has been deleted by holding that the land as transferred was agricultural land and therefore, is out of the purview of the capital gain tax hence, the penalty levied on the same amount would also deserve to be deleted. The Assessing Officer is therefore, directed to delete the addition.

49. In the result, the appeal of the assessee is allowed.

50. Now, we take up **ITA No.5377/Del/2014** relating to **Assessment Year 2009-10** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in considering the agriculture income of Rs.28,006/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned

from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

50.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

50.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

51. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

52. In the result, the appeal of the assessee is partly allowed.

53. Now, we take up **ITA No.5378/Del/2014** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs.1,65,83,501/- in respect of capital gain earned on transfer of agriculture land and has also erred in considering the agriculture income of Rs.93,140/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

53.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

53.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

54. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

55. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

"That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in overlooking the basic fact that no incriminating material was found during the course of search and the assessment as contemplated under section 153A is not a denovo assessment and as such the additions so made by assessing officer which are beyond the scope of assessment under section 153A of the Act and are liable to be deleted in totality."

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

56. In the result, the appeal of the assessee is partly allowed.

57. Now, we take up **ITA No.5314/Del/2014** relating to **Assessment Year 2009-10** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in considering the agriculture income of Rs.1,36,680/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search

khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

57.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

57.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

58. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

59. In the result, the appeal of the assessee is partly allowed.

60. Now, we take up **ITA No.5315/Del/2014** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs.1,96,58,868/- in respect of capital gain earned on transfer of agriculture land and has also erred in considering the agriculture income of Rs.86,960/- as income from other sources without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search

khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

60.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

60.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

61. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

62. In the result, the appeal of the assessee is partly allowed.

63. Now, we take up **ITA No.5364/Del/2014** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs.6,26,562/- in respect of capital gain earned on transfer of agriculture land during the year without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search

khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

63.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

63.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

64. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

65. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

"That the assessment order passed by learned Assessing Officer is without jurisdictional and void ab-initio and is liable to be quashed, as proceedings initiated under section 153C of the Act are without satisfying the statutory conditions envisaged under the Act and are thus, without jurisdiction."

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

66. In the result, the appeal of the assessee is partly allowed.

67. Now, we take up **ITA No.5375/Del/2014** relating to **Assessment Year 2008-09** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "1.1 The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs 84,20,569/- in respect of capital gain earned on transfer of agriculture land during the year without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is

actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.7 The learned Commissioner of Income Tax (A) has also erred in justifying the action of the assessing officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1) (c) of the Income Tax Act.

1.8 The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal.

67.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

67.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

68. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

69. In the result, the appeal of the assessee is partly allowed.

70. Now, we take up **ITA No.5390/Del/2014** relating to **Assessment Year 2010-11** filed by the assessee. The assessee has raised following grounds of appeal:-

1.1. "The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 The learned Commissioner of Income Tax (A) has erred in justifying the action of the Assessing officer who has erred in making addition of Rs.9,01,250/- in respect of capital gain earned on transfer of agriculture land during the year without going through the facts, details as well as documentary evidence filed during the course of appellate proceeding.

1.3 The learned Commissioner of Income Tax (A) while dismissing the appeal has failed to appreciate the fact that the capital gain has been earned from agriculture land and it satisfies all the condition given as per statutory provision of Income Tax Act.

1.4 The learned Commissioner of Income Tax (A) has not considered the fact that the agriculture operations have been carried out on the land and all the documentary evidence in support of income and expenses from agriculture operation have been filed during the course of assessment proceeding as well as appellate proceeding.

1.5 The learned Commissioner of Income Tax (A) has ignored the statutory position as per which the land is said to be agriculture land if the same is actually used, ordinarily used for agriculture and it is not relevant whether the agriculture operation is permissible or not.

1.6 The order of the learned Commissioner of Income Tax (A) shows lack of application of mind as the Assessing officer has not disputed the documentary evidence in respect of physical possession of the land as well as agricultural operation carried out on the land like Khasra Girdawari, electricity connection, land records, actual site photographs etc.

1.7 The learned Commissioner of Income Tax (A) has also failed to appreciate the fact that in the documents seized during the course of search khatuani showing the cultivation of Bazra in this area was found which clearly shows these lands are subject to agriculture operation.

1.8 The learned Commissioner of Income Tax (A) has also erred in dismissing the appeal of the assessee without giving a reasonable opportunity of being heard.

1.9 The learned Commissioner of Income Tax (A) has failed to appreciate the fact that order of the Commissioner and Divisional Commissioner, Gurgaon

division dated 29/03/2010, 23/04/2010 relied upon (while dismissing the appeal) has been passed by the revenue authority after the date of transfer of land by the assessee.

1.10. The learned Commissioner of Income Tax (A) has also erred in justifying the action of the Assessing Officer regarding the levy of the interest and initiating the penalty proceeding u/s 271(1)(c) of the Income tax Act.

1.11. The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal."

70.1. The facts and grounds are identical in this year as well in ITA No.5313/Del/2014 relating to Assessment Year 2010-11.

70.2. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.5313/Del/2014 (Assessment Year 2010-11) [supra].

71. We have considered the rival submissions of the parties and also perused the material available on record. Since no change into facts and circumstances have been pointed by the Revenue, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.5313/Del/2014 for Assessment Year 2010-11 would apply *mutatis mutandi* to the identical grounds raised in this year as well.

72. In this appeal, the assessee has also raised additional ground on the legality of the assessment order which reads as under:-

"That the assessment order passed by learned Assessing Officer is without jurisdictional and void ab-initio and is liable to be quashed, as proceedings initiated under section 153C of the Act are without satisfying the statutory conditions envisaged under the Act and are thus, without jurisdiction."

Since we have deleted the addition on merit, this ground has become of academic nature only hence, not being adjudicated and kept opened.

73. In the result, the appeal of the assessee is partly allowed.

74. In the final result, appeals in ITA Nos. 5312, 5313, 5314, 5315, 5360, 5361, 5362, 5363, 5364, 5375, 5377, 5378, 5390, 5294/Del/2014 are partly allowed and appeals in ITA Nos. 1765, 1766, 1767/Del/2017 are allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 30th September, 2021.

Sd/- ***Sd/-***

(G.S.PANNU) **(KUL BHARAT)**
PRESIDENT **JUDICIAL MEMBER**

Amit Kumar
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI