

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.5581/Del/2016
Assessment Year: 2009-10

ITO Ward- 49 (4) New Delhi	Vs	Savitri Gupta D1/2, Janakpuri New Delhi PAN No. AFVPG0285R
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Anil Kumar Sharma, Sr. DR
Respondent by	None

Date of hearing:	08/11/2021
Date of Pronouncement:	08/11/2021

ORDER

PER N. K. BILLAIYA, AM:

1. This appeal by the revenue is preferred against the order of the CIT(A)-17, New Delhi dated 12.08.2016 pertaining to A.Y.2009-10.

2. The solitary grievance of the revenue read as under :-

“1. The Ld. CIT (A) has erred in ignoring the fact that as per sale deed itself the distance of the property from Kashipur Municipality is less than 7kms. Further, as per letter dated 19.02.2013 received from Sub-Registrar, Kashipur in response to notice u/s 133(6), Village- Gangapur Rakba is situated adjoining to the municipality limits of Kashipur Tehsil. The same fact is also mentioned in the rate list of land enclosed with the above mentioned letter.”

3. None appeared on behalf of the assessee. We have heard the DR at length. Case record carefully perused.

4. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has sold two properties situated near in the vicinity of Village Gangapur, Tehsil Kashipur, Distt. Udham Singh Nagar, Uttarakhand for consideration of Rs.2.12 crores and Rs.1.89 crores.

5. On verifying the details the AO was of the opinion that the properties under consideration situated near Gangapur, Rakwa is adjacent to Municipality. The AO was of the firm belief that the properties under consideration do not qualify to be treated as agricultural land as defined under sub-section iii of Section 2 (14)

of IT Act and accordingly the sale consideration under the head long term capital gains.

6. Assessee accordingly agitated the matter before the CIT(A) contending that the said properties are agricultural properties and hence sale consideration is exempt from tax. After considering the facts and the submissions the CIT(A) held as under :-

“4.1 I have considered the facts & circumstances of the case and submission of the appellant. I find merit in the argument of the appellant. The fact remains that the land was located in the village Gangapur Rakba which was situated in Kashipur Tehsi Neither the village nor the tehsil headquarter was notified by the Central Government under the clause (b) to sec. 2 (14) (iii) for the purpose of including the area upto 8 kms from the municipal limit to render the land as capital asset. Further, the Hon'ble Karnataka High Court in the case of CIT Vs. Madhu Kumar N (HUF) (Supra) has discussed the issue involved and the fact of the present case are identical to the fact of the case cited above. Under these circumstances, the AO is directed to treat the land as agricultural land and accordingly to delete the addition.”

7. Before us the DR could not bring any evidence on record to show that the impugned properties were situated within 8 kilometers of the notified area. In fact the DR could not demonstrate that Village Gangapur, Rakba which is situated in Kashipur Tehsil in a notified area. The ratio laid down by the Hon'ble Karnataka High Court in the case of CIT Vs. Madhu Kumar N. (HUF) in ITA No. 3926 of 2009 dated 29.03.2012 squarely apply on the facts of the case in hand. The relevant findings of the Hon'ble High Court read as under :-

"9. An agricultural land in India is not a capital asset but becomes a capital asset if it is the land located under section 2(14)(iii)(a) & (b) of the Act, Section 2(14)(iii)(a) of the Act covers a situation where the subject agricultural land is located within the limits of municipal corporation, notified area committee, town area committee, town committee or cantonment committee and which has a population of not less than 10,000.

10. Section 2(14)(iii)(b) of the Act covers the situation where the subject land is not only located within the distance of 8 kms from the local limits, which is covered by Clause (a) to section 2(14)(iii) of the Act, but also require the fulfillment of the condition that the Central Government has issued a notification under the Clause for the purpose of including the area upto 8 kms, from the municipal limits, to render the land as a "Capital Asset."

8. As mentioned elsewhere in the case in hand also it is not in dispute that the subject land is not located within limits of Municipal limits, therefore, in our considered opinion section 2 (14)(iii) (a) of the Act is not attracted on the facts of the case and, therefore, we decline to interfere with the findings of the CIT(A).

9. In the result, the appeal filed by the revenue is dismissed.

10. Decision announced in the open court in the presence of Sr.DR on 08.11.2021.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-08.11.2021

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.11.2021
Date on which the typed draft is placed before the dictating Member	08.11.2021
Date on which the typed draft is placed before the Other member	08.11.2021
Date on which the approved draft comes to the Sr.PS/PS	08.11.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	08.11.2021
Date on which the final order is uploaded on the website of ITAT	08.11.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	