

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.390/SRT/2017**

**Assessment Years: (2012-13)**

**(Virtual Court Hearing)**

Harshadray Manibhai Vashi At: Nadod, Maroli Bazar, Jalalpore, Navsari-396436	Vs.	Income Tax Officer, Ward-2, Navsari, Palak Arcade, Aayakar Bhavan, 3 <sup>rd</sup> Floor, Shantinagar, Tithal Road, Valsad
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKJPV 1648 J</b>		
<b>अपीलार्थी /Assessee</b>		<b>प्रत्यर्थी /Respondent</b>

निर्धारित की ओर से /Assessee by	Shri Mehul Shah, CA
राजस्व की ओर से /Respondent by	Shri Anurag Dubey, Sr. DR
सुनवाई की तारीख /Date of Hearing	19-07-2022
उद्घोषणा की तारीख Date of Pronouncement	22-08-2022

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Years (AY) 2012-13 is directed against the order passed by the Commissioner of Income-Tax (Appeals)-Valsad [in short "ld. CIT(A)] dated 03.10.2017 which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 23.03.2016.

2. Grounds raised by the assessee are as follows:-

*"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in reopening the assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in treating the land sold by assessee as capital asset within the meaning of section 2(14) of the I.T. Act, 1961 & thereby erred in taxing Rs.33,77,480/- as income from long term capital gains by invoking the provisions of Sec. 50C of the Act.*

*3. It is therefore prayed that assessment framed u/s 143(3) r.w.s. 147 of the Act may kindly be quashed and/or addition made by assessing office and confirmed by learned Commissioner of Income-tax (Appeals) may please be deleted.”*

3. At the time of hearing, Learned counsel for the assessee informs the Bench that assessee does not wish to press ground No.1 and ground No.3, therefore, we dismiss ground No.1 and ground No.3 as not pressed.

4. Succinct facts *qua* ground No.2 are that assessee is an individual. The Assessing Officer observed that assessee has sold immovable property situated At. Parujan, Tal. Jalalpore, Dist. Navsari Survey/Block No.537 and 541 at the documentary rate of 1,68,87,407/- with five co-owners. The assessee has not filed the return of income therefore the capital gain was remained unexplained. Therefore, assessee’s case was reopened and after recording reason, Assessing Officer issued notice u/s 148 of the Act dated 06.12.2015. In response thereto, as neither submitted any return of income nor submitted any detail, therefore AO deputed for the verification of the premises (land) at Parujan, Maroli Bazar Navsari and as per report the land in question is more than 15 km. from Navsari. The land situated at the bank of River of Mindhola River and Assessing Officer observed that there has been no agricultural activities since long. The assessing officer enquired from the office of the Talati and found that there is no record about the agricultural produced in the land of assessee.

5. Further, it was noticed by AO that jantry value of the land is an amount of Rs.1,68,87,407/- by stamp valuation authority, whereas the document is registered on the value of Rs.99 lakh. Therefore AO issued a show cause notice to the assessee, which is reproduced below:

*“During the course of assessment, it is noticed from the information of sub registrar that you have sold out the properties Block No.541 vill. Perujan Sub Dist. Jalalpore Dist. Navsari 6 Heq. 83 Aree 55 sq.mts. at the cost of Rs.70,00,00/- and property Block No.537 vill. Oerujan 1 Heqa. 90 Aree 27 sq.mts at the cost of Rs.29,00,000/- in the joint names of 05 members name,. In this connection, this office has received the information that you sold out the property at the market rate of Rs.1,32,53,250/- and 36,34,157/- aggregate value of two plots Rs.1,68,87,407/- and made the said document as per the Juntry value, accepted the value of said property of Rs.1,68,87,407/- in this count your share is not determined in documents.*

*In this connection, it is noticed that you have not filed return of income and not offered the capital gain on these land.it seems that you have earned the aforesaid amount from undisclosed sources. Considering this fact, you are requested, to show cause as to why an amount of Rs.1,68,87,407/- should not be added to your total income as undisclosed investment and why should not be restricted the benefit of indexation for capital gain, why penalty u/s 271(1)(c) of the I.T Act should not be initiated for concealment of income.”*

6. In response to show-cause notice, the assessee has filed his reply dated 23.03.2016. The assessee replied to the assessing officer that said land does not come in the ambit of section 50C of the Act and stated that this property is belonged to agricultural land and sold it to the person who is farmer, therefore it is out of purview of capital gain.

7. However, Assessing Officer rejected the contention of the assessee and noticed that lands are situated near by Kanakpur-Kansad Nagarpalika, which is only 5 k.m. far from these lands, therefore these lands are also covered into the ambit of section 2(14) of the Act, as capital assets. The Assessing Officer also noted that assessee has filed return of income on 17.03.2016, declaring total income of Rs.1,58,020/- and agricultural income of Rs.2,15,552/-, and no capital gain offered to tax, and not furnished the copy of land purchased documents or valuation report for consideration of indexation cost of the property. However, assessing officer observed that for justification of the case the share of the assessee considered 1/5<sup>th</sup> share, and brought to tax to that limit. Therefore, Assessing Officer made addition to the tune of Rs.33,77,480/- ( 1/5<sup>th</sup> of Rs.1,68,87,407), under the head “Long Term Capital Gain in view of the provisions of Section 50C of the Act.

8. Aggrieved by the order of Assessing Officer the assessee carried the matter in appeal before Ld. CIT(A) who has confirmed the action of the Assessing Officer. Aggrieved, the assessee is in further appeal before us.

9. Shri Mehul Shah, Learned Counsel for the assessee, begins by pointing out that assessee has submitted sale deed and document of the land, wherein the category of land is mentioned as agriculture land. Further, the ld Counsel contended that said agriculture land will not fall under capital assets as per provision of section 2(14) of the Act. Accordingly, it was argued that there is no case for applicability of

provision of section 50C of the Act as the land transferred was not capital assets. The Id Counsel has submitted before the Bench copy of CBDT's notification no. 9447 dated 06.01.1994 wherein the agriculture land situated beyond 8km. from the municipal limits in all directions for Navsari and Surat Districts of Gujarat will not be capital assets as per section 2(14) of the Act. The Id Counsel submitted that said agriculture land was situated beyond 8 km. from Surat Municipal limits as well as Navsari Municipal limits. It was also stated by the Id Counsel that the limit of 8 km. from Kankapur Kansad Nagar Palika cannot be applied to the assessee's case as the said amendment in section 2(14) of the Act is effective from 01.04.2014. This fact brought out by the Id Counsel, indicate that the reference by the AO regarding the distance of 8 km. from Kankapur Kansad Nagar Palika has no applicability to the current facts, of the case as the amendment to section 2(14) of the Act pertaining to 8 km. distance from local municipality is effective from 01.04.2014 only whereas the assessee has sold this land on 19.01.2012. The Id Counsel has also submitted before the Bench, certain evidences of sale of sugarcane which proves that sugarcane crop was cultivated on the said land.

10. On the other hand, Ld. Sr.DR for the Revenue relied on the order of lower authorities and contended that Ld. CIT(A) passed a speaking and reasoned order, therefore it must be upheld.

11. We have heard both the parties and perused the materials available on record. We note that assessee filed his return of income showing his agricultural income. We note that assessee's case relates to assessment year 2012-13, wherein the distance by air was not counted to determine the distance with the municipality. The assessee submitted before us sale deed of land which is placed at Page 14 to 97 of the paper book. He also submits the proof of agricultural activities i.e. certificate of supply of sugarcane and paddy which is placed at Page 98 to 99 of the paper book. The Learned Counsel pleads that Form-8A which is placed at Page no. 100-101 of the paper book. The Id Counsel contended that land in question is an agricultural land, which is mentioned in Form No.7/12, revenue record, which is placed at Page no.102-103 of the paper book. The Learned Counsel further argued that the land is

situated within 22 km. from the Surat Municipal Corporation and 20 km. from Navsari. Therefore, based on this factual position, learned Counsel contended that impugned land is an agricultural land, and since the sale of agricultural land is exempt from tax as per section 2(14) of the Act and hence no tax should be imposed on the assessee and addition made by Assessing Officer may be deleted.

12. The learned Counsel submitted before us extracted of Notification of CBDT No.9447/1994 dated 06.01.1994, which is placed at Page no. 104 to107 of the paper book, which is reproduced below:

**ANNEXURE 'A'**

**THE GOVERNMENT OF INDIA  
EXTRAORDINARY [PART II SEC.3 (ii)]  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

**NOTIFICATION**

**New Delhi, the 6th January, 1994  
(INCOME TAX)**

S.O.10(E). - Whereas a draft notification was published by the Central Government in exercise of the power conferred by item (B) of clause (ii) of the proviso to sub clause (c) of clause (1A), and item (b) of sub-clause (iii) of clause (14), of Section 2 of the Income Tax Act, 1961 (43 of 1961), in the Gazette of India Extraordinary, Part-II Section 3, sub section (ii) dated the 13th February, 1991 under the notification of the Government of India in the Ministry of Finance (Department of Revenue) Mo. S.O. 91(E), dated 9th February 1991, for specifying certain areas for the purposes of the said clauses and objections and suggestions were invited from the public within a period of 45 days from the date the copies of the Gazette of India containing such notification became available to the public;

And whereas copies of the said Gazette were made available to the public on the 13th February, 1991;

And whereas the objections and suggestions received from the public on the said draft notification have been considered by the Central Government;

		21	Kadi	Areas up to a distance of 3kms. from the municipal limits in all directions.
		22	Kalol	Areas upto a distance of 3 kms. from the municipal limits in all directions.
		23	Modasa	Areas upto a distance of 2 kms. from the municipal limits in all directions.
		24	Mahuva	Areas upto a distance of 5 kms. from the municipal limits in all directions.
		25	Mehsana	Areas upto a distance of 5 kms. from the municipal Limits in all directions. Areas upto a distance of 5 kms. from the municipal limits in all directions.
		26	Morbi	Areas upto a distance of 5 kms. From the municipal limits in all directions.
		27	Nadiad	Areas upto a distance of 5 kms. from the municipal limits in all directions.
		28	Navsari	Areas upto a distance of 8 kms. from the municipal limits in all directions.
		29	Palanpur	Areas upto a distance of 4 kms. from the municipal limits in all directions.
		30	Penn	Areas upto a distance of 4 kms. from the municipal limits in all directions.
		31	Petlad	Areas upto a distance of 5 kms. from the municipal limits in all directions.
		32	Porbandar	Areas upto a distance of 5 kms. from the municipal limits in all directions.

		33	Rajkot	Areas upto a distance of 8 kms.
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				from the municipal limits in all directions.
		34	Sanand	Areas upto a distance of 2 kms. from the municipal limits in all directions.
		35	Shihor	Areas upto a distance of 5 kms. from the municipal limits in all directions.
		36	Savarkundala	Areas upto a distance of 5 kms. from the municipal limits in all directions.
		37	Surat	Areas upto a distance of 8 kms. from the municipal limits in all directions.
		38	Valsad	Areas upto a distance of 8 kms. from the municipal limits in all directions.
		39	Vapi Indi. Township	Following areas upto a distance of 8 kms., from the municipal limits of Vapi Udyognagar Panchayat namely villages of: Balitha, Chala, Dungra, Koparli, Salvav.
		40	Veraval	Areas upto a distance of 2 kms. From the municipal limits in all directions.
		41	Viramgam	Areas upto a distance of 2 kms. from the municipal limits in all directions.
9	Haryana	1	Ambala Cantonment Board/Municipal Committee	Areas upto a distance of 8 kms. from the outer limits in all directions. - -
		2	Ambala City	Areas upto a distance of 8 kms. from the municipal limits in all directions.

Now, therefore, in exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) of sub-clause (iii) of clause (14) of Section 2 of the Income-tax Act, 1961(43 of 1961) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) NO. 5.0. 77(E), dated the 6th February, 1973, the Central Government having regard to the extent of, and scope of Urbanisation of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the Schedule hereto annexed and falling outside the local limits of municipality or cantonment board, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above mentioned provision of the Income-tax Act, 1961 (43 of 1961)

**SCHEDULE**

St.	Name of the State or Union Territory		Name of the Municipality or Cantonment Board falling in the State/Union Territory mentioned under Column (2)	Details of areas falling outside the local limit or Municipality or Cantonment Board etc., mentioned under Column 3
1	2		3	4
I	Andhra Pradesh	1	Adilabad	Areas upto a distance of 8 kms. from the municipal limits in all directions.
		2	Adoni	Areas up to a distance of 8kms. from the municipal limits in all directions.
		3	Anantapur	Areas upto a distance of 8 kms. From the municipal limits in all directions.

13. The learned Counsel also submitted the Government Notification / Circular 17/2015, Govt. of India, Ministry of Finance, CBDT dated 06.10.2015, wherein the measurement of the distance for the purpose of section 2(14)(iii)(b) prior to AY 2015-16, have been discussed, which is reproduced:

Circular No. 17/2015

F.No.279/Misc./140/2015-ITJ  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
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New Delhi, 6<sup>th</sup> October, 2015

**Subject:- Measurement of the distance for the purpose of section 2(14)(iii)(b) of the Income-tax Act for the period prior to Assessment year 2014-15**

"Agricultural Land" is excluded from the definition of capital asset as per section 2(14)(iii) of the Income-tax Act based, inter-alia, on its proximity to a municipality or cantonment board. The method of measuring the distance of the said land from the municipality, has given rise to considerable litigation. Although, the amendment by the Finance Act, 2013 w.e.f. 1.04.2014 prescribes the measurement of the distance to be taken aerially, ambiguity persists in respect of earlier periods.

2. The matter has been examined in light of judicial decisions on the subject. The Nagpur Bench of the Hon. Bombay High Court vide order dated 30.03.2015 in ITA 151 of 2013 in the case of Smt. Maltibai R Kadu has held that the amendment prescribing distance to be measured aerially, applies prospectively i.e. in relation to assessment year 2014-15 and subsequent assessment years. For the period prior to assessment year 2014-15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance. The said decision of the High Court has been accepted and the aforesaid disputed issue has not been further contested.

3. Being a settled issue, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/ not pressed upon. This may be brought to the notice of all concerned.

  
(D.S. Chaudhry)  
CIT (A&J), CBDT,  
New Delhi

14. Based on above circulars, the Ld. Counsel contended that issue under consideration is squarely covered by the judgment of Coordinate Bench in the case of Smt. (Dr.) Subha Tripathi vs. DCIT, Circle-6, Jaipur (2013) 34 taxmann.com 286 (Jaipur-Trib.), wherein it was also held as follows:

*"2.7 We have considered the rival submissions as well as the materials on record. The question arises for our consideration and adjudication is whether the land in question though located beyond 8 kms from the Municipal Limits of Jaipur Municipality as on the date of notification dated 06-01-1994 but subsequently it falls within the distance of 8 kms from the Municipal Limits due to the expansion of the Municipal Limits would still be regarded as agricultural land not falling in the definition of capital asset in terms of Section 2(14)(iii)(b) of the Act. There is no dispute that Jaipur Municipality has been duly notified vide said notification dated 6-01-1994 and as on the date of said notification, the land in question was beyond 8 kms from the Municipal Limits exists at that point of time. The dispute arises because of the expansion of Municipal Limits and thereby the said distance from the Municipal Limits as on the date of sale of the land in question is only 2 kms and thereby the authorities below have treated the land in question as not falling under the exclusion clause of Section 2(14)(iii)(b) of the Act. There is no quarrel on the point that as per sub-clause (b) of clause (iii) of Section 2(14), the notification of the Central Govt. is mandatory to bring the land in the definition of capital asset which is not located within the limits of the Municipality but located within the distance of 8 kms from the local limits. So far. the agricultural land which is located in the limits of Municipal Limits, the same will be treated as capital asset and no further requirement is to be examined. Since the land in question is located outside the local limits of Municipality, therefore, in order to determine whether the land in question falls under mischief of sub-clause (b) of Section 2(14)(iii) of the Act, the distance of 8 kms has to be taken into account in terms of notification dated 6-01-1994. As per explanation 2 of the said notification dated 6-01-1994, the Municipal Limits is to be the limits as existing on the date on which the notification is published in the official gazette. We quote the explanation 2 of the notification (supra) as under:-*

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

*If the stand of the Revenue is accepted that the distance of 8 kms should be considered from the Municipal Limit exists as on the date of the sale of land then it would render the notification issued by the Central Govt. as ineffective and unworkable/otios. As it is made clear by explanation 2 of the said notification that Municipal Limits is to be considered as existing on the date on which notification is published in the official gazette, therefore, the date of notification is relevant and material point to determine the distance of 8 kms from Municipal Limits. There is no amendment or withdrawal of the said notification except a recent amendment has been brought in the statute by the Finance Act 2013 whereby the requirement of said notification has been dispensed with for invoking sub-clause (b) of clause (iii) of Section 2(14) of the Act w.e.f. 01-04-2014. Thus it is discernible from the notification dated 06-01-1994 and the recent amendment in the statute whereby the*

said notification has been dispensed with that the distance of 8 kms has to be considered from the Municipal Limits as exists on the date of notification for the purpose of invoking sub-clause (b) of clause (iii) of Section 2(14) of the Act. Accordingly we hold that the land in question which was located beyond 8 kms from the Municipal Limits as on 6-01-1994 when the notification was published in the official gazette, the same would fall under the exclusion clause of the term '**capital asset**' as per provisions of 2(14)(iii)(b) of the Act.

**2.8** Since the authorities below have treated the land in question as capital asset by invoking sub-clause (b) of clause (iii) of Section 2(14) of the Act and it was accordingly held in threshold that the land in question falls within the distance of 8 kms from the Municipal Limits, therefore, the other aspect of the issue whether the land in question can be termed as an agricultural land and not falling under the definition of expression asset by reason of it continued as an agricultural land by satisfying all the requirements. There are certain tests to be adopted for ascertaining whether a particular land is exempt from the purview of definition of expression asset in terms of Section 2(14)(iii) of the Act. The most important aspect is the objects for exempting the agricultural land which is to encourage cultivation of land and agricultural operation. Therefore, for the purpose of granting exemption, a restricted meaning has to be given to the expression '**agricultural land**' as contemplated u/s 2(14)(iii) of the Act. It is settled proposition as held by the Hon'ble Supreme Court required in the case of Smt. Sarifabibi Mohmed Ibrahim v. CIT [1993] 204 ITR 631/70 Taxman 301 that what is really to be shown is the connection with an agriculture purpose and user and not the mere possibility of user of land, by some possible future owner or possessor for an agriculture purpose. It is not the mere potentiality but its actual condition and intended user which have to be seen for the purpose of exemption. The determination of 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.

**2.9** In the case in hand, the issue has not been examined by the lower authorities by considering this aspect of actual use of the land in question by the assessee and the purchaser because it has been treated as capital asset by invoking the provisions of sub-clause (b) of clause (iii) of Section 2(14) of the Act. Therefore, this issue is required to be examined after verification of the relevant facts. Since necessary relevant facts are not on record, therefore, we set aside this issue to the record of the AO to verify relevant facts and records and then decide this aspect of the issue as per the guidelines laid down by the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim (supra) and CIT v. Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466.

**2.10.** The other grounds raised by the assessee in this appeal are consequential and depend on the outcome of the Ground No.1 which we have set aside to the record of the AO. Therefore, the Ground No.2 to 4 are also set aside to the record of the AO to decide after adjudication of Ground No.1.”

15. On the identical facts, we rely on the order of Co-ordinate Benches of ITAT Delhi in the case of Alka Sharma vs. ITO Ward-69(1) in ITANo.309/Del/2018 dated 22.04.2019, wherein it was held as follows:

"2. The facts in brief are that the assessee has sold land at village Sarna, Chhindwara, MP for sum of Rs.53,65,000/-; and out of said sale, assessee had claimed exemption of Rs.52,15,00/- u/s54, on account of amount deposited in the 'Long Term Capital Account'; and. u/s 54F on the purchase of flat at Gurgaon. The value of property for the stamp duty purpose was determined at Rs.78,00,000/-. The Ld. AO required the assessee to explain, as to why the long-term capital gain should not be determined at Rs. 74,13,898, considering the fact that stamp duty valuation of the property has been determined at Rs. 78,00,000/-. The assessee's main contention was that the land was an agricultural land situated in village, Sarana, district Chindwara which was having population of 3000; and was beyond the distance of 8 KM from nearest municipality. This fact was also confirmed by the Tehsildar, vide copy of Khastra and Khatauni dated 28.8.2012 and 2.2.2016, that it was an agricultural land. Thus, no capital gain was leviable, because agricultural land is not treated as 'capital asset' in terms of section 2(14). AO then issued notice to the Tehsildar of Chindwara, vide letter dated 1.2.2016, requiring him to convey the distance of the agriculture land from the municipality of Chindwara. In response, Tehsildar, vide letter dated 11.3.2016 informed the AO that the distance of property sold from the local limit of Chhindwara was approximately of 2 Km and population of Chindwara as per census 2011 was 20,90,922. As per the AO, the assessee's case was falls under the provision of section 2(14)(iii)(b). AO further observed that Khastra and Khatauni reveals that no agricultural activity was carried out by the assessee; and the land presently stands in the name of M/s. Adani Pench Power Limited. Accordingly, the AO treated the land to be a capital asset and determined the long-term capital gain at Rs. 74,22,958/- as per section 50C; and only allowed deduction u/s 54F amounting to Rs. 53,65,000/- and the difference amount of Rs. 20,57,958 was taxed as long-term capital gain.

3. Before the Ld. CIT (A), assessee submitted that the nature of land sold, was an agricultural land at the time of sale deed and it was classified as agricultural land in land revenue's record. There is no change of land till that time. AO in fact has admitted in para 3.3 of his order that assessee's case falls under the provision of section 2(14) (iii)(b), which is only applicable for the agricultural land. Here the land is not situated in a particular notified area. Further, one of the earlier letters of Tehsildar was never provided to the assessee and the same has been obtained under the RTI Act. In the said letter, it was clearly stated that the land mentioned was agricultural land in the year 2012, which is now lying vacant and the said land was outside the limits of **Chhindwara Municipal Council** at the time of sale and also, the present population of the village is around 3000. Thereafter, AO has sent another letter to the Tehsildar, wherein it was stated that land is situated at about 2 Kms from the **Municipal Corporation** and the population of Chindwara District was more than 20 lacs. The said letter was never confronted to the assessee nor has been taken in cognizance by the AO. It was further submitted that earlier Chindwara was a Municipal Council and was notified as Municipal Corporation only in the year 2014, vide Gazette Notification No. 408 dated 5<sup>th</sup> September, 2014; and therefore, subsequent notification cannot be the basis for drawing adverse inference. At the time of sale not only the land was agricultural land but was situated at a distance of about 9.5 KMs from the limits of nearest Municipality, i.e 'Chhindwara Municipal Council'. In support, a certificate dated 6.5.2016 from the Land Revenue Office was also filed. The assessee's detailed submission in this regard has been noted and incorporated in the impugned appellate order in detail. The assessee had also filed

*application for additional evidence which was mainly the distance certificate which was obtained from revenue authorities of the concerned Tehsildar Chhindwara.*

*4. Ld. CIT (A) had sent the additional evidence along with the submission of the assessee to the AO to submit the remand report. Ld. AO in his remand report has stated that the additional evidence submitted by the assessee a distance certificate and the distance mentioned is 9.5 KMs which is by road, whereas the distance should be taken aerially and the Khasra and Khatauni mentioned that no agricultural activities was carried out by the assessee in the period financial year 2010-11 and 2011-12. Assessee in response has also given a detailed rebuttal which has been incorporated in the impugned order. Ld. CIT (A) first of all, after detailed reasoning has rejected the admission of additional evidence and has mainly referred and relied upon the observation of the Ld. AO made in the assessment order.*

*5. After hearing both the parties, and on perusal of the relevant finding in the impugned order as well as material referred to before me, I find that assessee is an individual who is working as a teacher in 'Amity International School', New Delhi. She owned agricultural land at Village Sarna, District Chhindwara which was purchased by her late husband who had died in the year 1997; and after the demise of her husband the said property was devolved upon the assessee. The assessee sold the said land for a consideration of Rs. 53,65,000/- in the financial year 2012-13, relevant to assessment year 2013-14. However, in the sale deed, the value of agricultural land for the purpose of stamp duty was determined at Rs. 78,00,000/-. The core issue is, whether the said land falls within the ambit of 'capital asset' as defined in section 2(14)(iii)(b). It transpires from the record that, in order to ascertain whether the land was sold by the assessee was agricultural land or not; and whether it falls within one of the conditions given in section 2(14)(iii)(b), AO had sought to make an inquiry from Tehsildar. In response, Tehsildar had initially written a letter to the AO vide letter dated 1.2.2016 stating that; -*

- a) the said land was agricultural land in the year 2012, but in present, the same is recorded as non- agricultural land and is lying vacant;*
- b) it was also stated in Point No. 2 of the Letter that the said land was outside the limit of Municipal Corporation at the time of Sale and also at present;*
- c) Land is not cultivated;*
- d) In point no. 5 it was stated that the population of the Village is around 3000.*

*5.1 Thereafter, another letter was sent by the AO, in response to which the Tehsildar in his letter has stated that: -*

- (a) The said Land is situated at about 2 KMs from the limits of Municipal Corporation; arid*
- (b) The Population of Chhindwara District as per 2011 Census was 20,90,922.*

6. From the perusal of the second letter of Tehsildar, it is seen that, firstly, it states that the said land is 2 KM away from '**Nagar Palika Parishad**', i.e., **Municipal Corporation of Chhindwara**. The Municipal Corporation of Chhindwara has been notified by Gazette Notification issued by Govt. Of Madhya Pradesh on 5<sup>th</sup> September 2014, that is, much after the event of sale; arid within the limits of the said Municipal Corporation, the area of the -land is also covered. The earlier letter of the Tehsildar on the other hand mentions that the said land is away at a distance of 9.5 KM from '**Nagar Palika Parishad**' i.e., **Municipal Corporation of Chhindwara**. The Municipal Corporation of Chhindwara has been notified by Gazette Notification issued by Govt. of Madhya Pradesh on 5<sup>th</sup> September 2014, that is, much after the event of sale; and within the limits of the said Municipal Corporation, area of Chhindwara Municipal Council was later on enlarged by the notification letter dated 28<sup>th</sup> August, 2014. Thus, it appears that at the time of sale, the agricultural land was more than 8 kms from the then Municipal Council and population of the village was less than 3000. It was in the year 2014 that area of municipality was enlarged. Hence there seems to be no contradiction. The assessee during the course of the first appellate proceedings, further corroborated this fact in the form of Distance Certificate from the Land Revenue authorities on the ground that same could not obtained due to paucity of time. Hence same was filed as an additional evidence. The copy of said certificate is appearing at page 25 of the paper book, which certifies that the distance of the said land was 9.5 Km's away from **Nagar Palika Parishad**' i.e., **Chhindwara Municipal Corporation** in the year 2012. This certificate coupled with earlier certificates of Tehsildar obtained by the AO, goes to corroborate the case of the assessee that, at the time of sale, firstly, the land was at the distance of 9.5 KMs from Chhindwara Municipal Council and it was later on after the Gazzette Notification by the Govt. Of Madhya Pradesh in the year 2014, that area of Chhindwara Municipal Council has been enlarged and thereafter the said land has come within the purview of Chhindwara Municipal Corporation. It is from such enlarged area that the agricultural land is now 2 KM away from the said limit. What is required to be seen is, whether the distance of the land from local municipal limit falls within the ambit of capital asset u/s 2((14) and the conditions laid down in clause (iii) or not. Here in this case it is evident from the record that at the time of sale the assessee's land was more than 8 KMs away from the local limits of Municipal Council. Ld. CIT(A) was thus not correct in rejecting the additional evidence which was merely corroborative in nature as supported the earlier two letters from Tehsildar obtained by the AO in his inquiry; and in order to reconcile the same, assessee has filed a certificate from the revenue authorities. To adjudicate the issue and in the interest of justice same should have been admitted by the Ld. CIT(A). And more so, once AO was confronted with the said certificate and remand report was called for.

7. Accordingly, I am of the opinion that based on these records, it is held that assessee's land cannot be treated as a capital asset in terms of section 2(14), because it was an agricultural land and was more than 8 KMs away from the local limit of the municipality and population was also less. Hence the chargeability of capital gain on sale of such agricultural land does not arise. The addition thus made is deleted.”

16. We note that in the instant case, apart from the revenue records classifying the land as agricultural land, the Assessing Officer accepted the agricultural income declared from the said land. The above mentioned documents submitted before the Bench, have determined the character of the land to be agricultural land. Thus, we find that land is an agricultural land which is situated beyond 8 kilometers from the Municipality, hence, from the above facts and the legal precedent applicable to these facts it is vivid that land is an agricultural land which is exempt from tax, therefore addition made by the Assessing Officer is hereby deleted.

17. In the result, appeal filed by the assessee is allowed.

Order is pronounced in the open court on 22/08/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत/Surat

दिनांक/ Date: 22/08/2022

Dkp, Outsourcing Sr.P.S./ \*\* SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat