

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1580/Del/2018
(Assessment Year : 2009-10)**

Sh. Chander Mani Sharma S/o. Sh. Shanti Swaroop R/o. VILL.-Ibrahimpur Junaidpur URF Maujpur, Khurja Junction Khurja (U.P.) PAN : DTXPS1373B	Vs.	ITO, Ward-3(1), Bulandshahr Uttar pradesh
(APPELLANT)		(RESPONDENT)

Appellant by	None
Revenue by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing:	14.09.2023
Date of Pronouncement:	14.09.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 30.11.2017 of CIT (A), Aligarh (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 19.10.2016 passed u/s 144/147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-3(1), Bulandshahr (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. At the time of hearing, none has appeared for the assessee and notices have been issued repeatedly. The record shows that on behalf of the assessee/ appellant written submissions are on record along with letter forwarded by Shri Jai Kisan, Adv. Ld. AR of the assessee that the order may be passed on the basis of written submissions and other documents on the record.

4. The ground raised and the impugned orders when considered brings forth that assessee had sold land which assessee claimed has given rise to exempt income as it was agriculture land while Ld. AO on the basis of sale deed concluded that the land sold was in the form of an industrial plot. The assessee has claimed that at the time of execution of sale deed there was an agreement to sale and on the basis of agreement to sale the nature of land should be considered to be agricultural in nature.

4.1 Ld. DR supporting the findings of Id. Tax Authorities below has submitted that on the basis of clauses of sale deed Ld. Tax Authorities have rightly denied the benefits.

5. It can be appreciated from the matter on record that the claim of assessee is on the basis that the lands sold was situated beyond the municipal limits and was giving agricultural produce. In the written submissions, Ld. AR has relied the *Hon'ble Allahabad High Court judgment in CIT vs. Smt. Sanjeeda Begum [2006] 154 Taxman 346 and the judgment in ITO, Ward - 2, Bulandshahar vs. Sh. Jitender Kumar* of the Delhi Tribunal to submit that the agricultural land sold in the form of industrial plot is an agricultural land and same is not liable for capital gains tax.

6. Appreciating the matter on record it comes up that Ld. CIT(A) has relied the proviso in Section 50C which has come in effect from 01.04.2017, considering the same to be clarificatory in the nature and applied the same with retrospective effect to arrive at the computation of sales consideration for the purpose of capital gains. However, the agreement dated 26.08.2008 has not been considered for the purpose of ascertaining the nature of land being agricultural or non-agricultural and has gone on the basis of recitals of the sale deed executed on 17.02.2009 to hold that when the land was transferred its land use had been changed and it was declared to be non-agricultural land. Admittedly, the land use was changed on 04.09.2008 while the agreement to sale was registered on 26.08.2008, thus for all intents and purposes when the Ld. CIT(A) was taking the proviso to Section 50C to be clarificatory in nature and giving retrospective effect the nature of land at the time of agreement to sale should be accepted.

7. In the light of aforesaid, the issue is restored to the files of ld. CIT(A) to examine the nature of land on the date of registered agreement to sale on 26.08.2008 and then ascertain whether the land sold would fall within the definition of capital asset u/s 2(14) of the Act. **The appeal is allowed for statistical purposes.**

Order pronounced in the open court on 14th September, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:- 14.09.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

AR, ITAT
New Delhi