

**IN THE INCOME TAX APPELLATE TRIBUNAL
(AGRA BENCH 'DB' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.9/AGR/2021
(ASSESSMENT YEAR : 2015-16)**

Neeraj Agarwal,
E-213, Kamla Nagar,
Agra – 282 003.

vs. Pr. CIT, Agra 1,
Agra.

(PAN : ABJPA0585A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ravi Agrawal, Advocate
REVENUE BY : Shri Surendra Pal, CIT DR

Date of Hearing : 09.10.2023
Date of Order : 12.10.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
Pr.CIT, Agra 1, Agra dated 03.03.2021 pertaining to assessment year
2015-16.

2. Grounds of appeal taken by the assessee read as under :-

“1. Because the learned CIT order u/s 263 is illegal, bad in law and time barred.

2. Because the learned AO has made full enquiry about the nature and distance of agricultural land at the time of making assessment.

3. Because the assessee filed the certificate of Tehsildar in respect of land at Karmana village who verified that this land is situated beyond 8

km. from Municipal limit. Thereafter the AO completed the assessment and exempted the capital gain and sale of mud as agricultural land and its income as exempt.

4. Because the order passed u/s 263 while the learned Principal Commissioner of Income Tax without giving proper opportunity to the assessee for hearing.

5. Because the Tehsildar is the final authority in land revenue and has issued the certificate of land which is situated beyond 8 Km. cannot be rejected rightly. The CIT administration wrongly rejected the certificate of Tehsildar. The land is situated at Gata No.24 and is beyond 8 km. from Municipal limit.”

3. The background of this case noted by the Id. Pr.CIT is as under:-

On perusal of assessment records, it was observed that the assessee had shown opening balance of stock of land amounting to Rs.85,24,986/- and closing balance amounting to Rs.59,55,592. The assessee sold a piece of land situated at village karmana Agra for Rs.23,00,000 and claimed it as agricultural land. However, it came to notice that village karmana is within the radius of 8 k.m. from the bounding of Nagar Nigam Agra. The opening balance of the said land was shown as Rs.21,60,251/- as per the stock inventory and the selling cost of the said land was shown as Rs.23,00,000/-. The assessee also earned income of Rs. 3,96,653/- on the sale of mud from the said land. Thus, it appeared that the assessee had earned income to the tune of Rs.5,36,653/- (Rs. 1,40,000 from sale of land and Rs. 3,96,653 from sale of mud) which has not been accounted for during the assessment.

4. On enquiry in this regard, Id. PCIT noted the assessee's response as under :-

“(i) In this regard, it is submitted that this is a scrutiny case made by the AO after duly hearing and making several queries by the ITO time to time from the assessee at the time of hearing of this assessment in this case. That facts are that the assessee sold agricultural land in village Karmana, Agra Gate No. 24 area 0.4600 hec. Being Bhumidhar of this land and agricultural was being done on this land. The cost of this land is debited in the book of accounts was Rs. 21,60,521 as opening balance acquired more than 3 years back and it was sold for Rs. 23.00 lakhs, resulting into capital gain of Rs.1,39,749/-. There is also sold the mud/ soil of this land to make the land fertile and the level of land so as to get the maximum price of the sale of agricultural land. The assessee declared this income of Rs.3,96,653/- as the capital gain from the sale if mud of agricultural land and Rs.1,39,749 from the sale of land totaling to Rs.5,36,402/- and not Rs.5,36,653/- as shown in the notice, as it appears, this is to be clerical error. The assessee claimed the income of the sale proceed of land and sale of mud on this land as agricultural income in the return is exempted income portion of return.

(ii) The AO raised various queries during the course of assessment proceedings. In reference to the queries raised by the AO on 13.02.2017 during the assessment proceedings, he required to furnish the certificate of land situated beyond 8 kms. From Nagar Nigam, Agra adjourned for 27.02.2017. In response that notice, the assessee filed a certificate from Tehsildar of that agricultural land dated 21.02.2016 certifying as under:-

"The land at village karmana, tehsil and district Agra does not come within the municipal limit and this land of Gata No. 24 is more than 8 Kms is beyond the limit of Nagar Nigam."

The copy of this certificate is enclosed fat your ready reference. This certificate is also on the record of the AO. Thus the learned AO after making the due enquiries and finding out

that the sale proceed of this land was agricultural and situated beyond 8 kms. of Nagar Nigam limit of Agra and also sale of mud of this land as agricultural income, and not taxable. He allowed exemption for the same.

(iii) It is further submitted since the sale of mud of this land was made to level and make the land fertile is also the part of agricultural income and therefore both these amounts were rightly allowed by the AO, as agricultural income and exempt from tax.”

5. Considering the above, Id. PCIT noted that no queries in respect of the nature of land were raised by the AO. However, he noted that in the assessment record, a copy of letter addressed to Tehsildar, Agra Tehsil, Agra vide which a certificate was sought by the assessee is available. On the said application, there was a note which stated that the village Karmana does not fall within the municipal limits at Agra and the land under question is approximately 8 kms. away from the municipal limit. However, Id. PCIT noted that a note cannot be treated as certificate issued and needs further verification. He proceeded to do some internet search and was of the opinion that Karmana village in Agra district is located less than 3 kms. from the Taj Mahal. In these circumstances, he set aside the assessment order and the matter is restored back to the file of the AO for deciding the issue afresh.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. We find that note to Tehsildar cannot be equated to a certificate. But internet search done by Id. CIT (A) is also not conclusive evidence. Moreover, there is conflicting view as to whether there was a certificate from Tehsildar available or a note to him by the assessee as claimed by Id. CIT (A). Be as it may, it is clear that AO has made an enquiry and taken a plausible view. In these circumstances, we are of the opinion that the AO has made necessary enquiries and it is a plausible view that the land involved is agricultural land. Hence, we are of the opinion that the order of Id. PCIT needs to be set aside and the issue is decided in favour of the assessee.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on this 12th day of October, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 12th day of October, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT, Agra 1, Agra
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**