

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.13/DEL/2020  
(Assessment Year: 2013-14)**

Shri Ashish Gupta,  
R-11/32, Raj Nagar,  
Ghaziabad – 201 002 (Uttar Pradesh).

vs.

ITO, Ward 1 (1),  
Ghaziabad.

**(PAN : AGIPG3854E)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Subodh Gupta, CA  
Shri Mukesh Agarwal, CA  
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 10.06.2024  
Date of Order : 13.06.2024

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the ld. CIT (Appeals), Ghaziabad dated 25.07.2019 for the assessment year 2013-14.

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

“1. Because the order of Ld. Lower Authority is bad in law as well as is against the facts and circumstances of the case.

2. Because learned Commissioner of Income Tax (Appeals) erred in sustaining the addition of long term capital gain Rs.13230858/- by wrongly observing that land situated at village masuri pargana dasna is within the municipal limits of Ghaziabad though the agricultural land is undisputedly beyond

the municipal limits of Ghaziabad and dispute was applicability of notification So10(E)/9447 published on 06/01/1994.

3. Because learned Commissioner of Income Tax (Appeals) erred in holding the agricultural land, capital assets though the same is beyond 8 km. of municipal limits in terms s. 2(14)(iii)(a)/(b) of act as also held by hon'ble ITAT in several cases, hence order is against the law.”

3. Briefly stated the facts of the case are that the assessee is an individual. He is a salaried person and showing income from salary and commission. During the year under consideration, the assessee has sold a land at Khasra No.789, 790 & 791 at Village Masuri, Pargana, Dasna, Ghaziabad. The assessee has one half share in the said property. AO noted that the assessee has not disclosed the said transaction in ITR in the relevant column of schedule 'capital gain'. Therefore, Assessing Officer asked the assessee to furnish computation of capital gain on transfer of this property. Assessee responded that the said land was an agricultural land and does not fall within the meaning of capital assets as per provisions of section 2(14) of the Income-tax Act, 1961 (for short 'the Act'). To verify this claim, Assessing Officer deputed Inspector of Income-tax who has submitted his report dated 29.02.2016 stating that the said land is situated within 5 kms from the municipal limits of Ghaziabad. Assessee was asked to send his representative with the Inspector to make a visit of the said property with the Inspector of the Department. Again, the Inspector, who visited the said property with the representative of the assessee, submitted his report that the

said property is about 5 kms. of the municipal limits of Ghaziabad. Assessee's counsel insisted that the municipal limits of Ghaziabad in 1994 i.e. the date of notification u/s 2(14) of the Act may be considered for calculating the distance of said property from the municipal limits of Ghaziabad in 1994. Since the assessee has purchased this property in FY 2005-06 and sold the property in FY 2012-13, the plea of the assessee for calculating the distance of the said property from the municipal limits of Ghaziabad in 1994 was rejected by the Assessing Officer. Assessing Officer noted that in the meanwhile information was carried out from the Tehsildar who also confirmed that the said land is about 5 kms from the municipal limits of Nagar Nigam. AO concluded as under :-

“ Amply opportunities have already been provided to the assessee to present his case and to substantiate as to how the said land is situated beyond 8 Kms from the Municipal limits of Ghaziabad, which is the only point of dispute in this case. The Inspectors as well as Tehsildar has reported that the said land is about 5 Kms from the Municipal limits of Ghaziabad and the assessee has also visited the property through his AR along with the IT! and measured the distance of the land from the Municipal limits. Further, I observed that the said findings can't be changed or manipulated by anyone at any point of time. Therefore, after considering all facts and circumstances of the case, the asset transferred by the assessee during the year is held to be a capital asset within the meaning of Section 2(14) of the Act and the same is chargeable to capital gain tax under the Income Tax Act, 1961.

7. During the year under consideration, the assessee has sold 0.6143 hectares of land at land Khasra No. 789, 790 & 791 at Village- Masuri, Pargana- Dasna, Ghaziabad for Rs.2,92,50,000/- on 05.11.2012. The said land was purchased by the assessee in financial year 2005-06 for Rs.15,06,000/- and stamp duty of Rs.1,20,500/- was paid thereupon. The assessee

has ½ share in the said property Thus, the computation of Long Term Capital Gain on transfer of this property is made and long term capital gain is computed at Rs.1,32,30,858/-.”

4. Against this order, assessee appealed before the ld. CIT (A). Before the ld. CIT (A), assessee made elaborate submissions. But ld. CIT (A) was not impressed and passed a very short order not dealing with the submissions of the assessee as under :-

“The appellant has challenged the application of provisions of capital gain contending that the land sold by him was agricultural rural land and is exempt from tax as per provisions of IT Act, 1961. During the course of appellate proceedings it has been argued that for the purpose of determination of rural or urban land the municipal limits as on 06.01.1994, when the notification of distance from respective municipal limits, was passed, should be considered with reference to section 2(14)(iii).

5.1.1 Examination of facts reveal that the appellant sold a joint property leading to assessment of long term capital gain of Rs. 1,32,30,8581- by the AO for appellant. During the course of assessment proceedings the AO found that the said property is a capital asset, as the same lies within the municipal limits of Ghaziabad on the date of sale. During appellate proceedings the appellant contended that the municipal limit, as on 1994, should be considered for the purpose of determination of nature of land sold. However, since the property has been sold during the FY 2012-13. During the year of sale, the land is found to be capital asset in accordance with the municipal limits of Ghaziabad municipality during FY 2012-13 within the provisions of section 2(14)(iii). Thus, the contention of the appellant, that the sale of above said land does not attract capital gain is not accepted. Accordingly, this ground of appeal is dismissed.”

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

6. Ld. Counsel for the assessee summarised his submissions as under :-

“The case of the assessee is that the distance of about 5 km from Dasna Flyover, Govindpuram, as confirmed by the Income Tax Inspectors and Tehsildars were on the date of their respective inspections i.e. in February/ March 2016. Assessee's argument is that distance of the land in question should be reckoned as existed on the date of notification no. 9447 dated 06.01.1994, when the municipal limits were upto Hapur Chungi (near Income tax Office) and from where the distance was 8.7 km approx. as per IT Inspector's report.

Assessee also refers to the response dated 22.03.2016 from Ghaziabad Nagar Nigam enclosing a Notification dated 31.08.1994 to the effect that municipal limits were extended upto Govindpuram and Dasna Drain on 31.08.1994 on its upgrading from Municipal Council (Nagar Palika) to Municipal Corporation (Nagar Nigam) on same date.

Assessee also referred to confirmation dated 15.03.2016 from GNN to the effect that distance of Vill Masuri during the year 1993-94 was 10 km from the local limits of the Municipal Council (Nagar Palika). Therefore, considering the report of the inspector dated 04.03.2016 as well as confirmation by Ghaziabad Nagar Nigam dated 15.03.2016, the land in question is undoubtedly beyond 8 km from the limits of Municipal corporation during 1993-94, though the confirmation from GNN of distance of 10 km is more reliable than the report of the inspector.

Assessee also submitted that for the purpose of exemption u/s 2(14)(iii)(b), notification by Central Government is mandatory and there being no notification after 06.01.1994, the expansion of municipal limits from Hapur Chungi to Dasna Flyover on 31.08.1994, shall be irrelevant and is to be ignored. Therefore, land in question at Vill Masuri is not a capital asset, either at the time of purchase or sale, and no capital gain is chargeable to tax.

For above proposition, assessee relied on a decision of ITAT, Jaipur in the case of Smt. (Dr.) Subha Tripathi V. Deputy Commissioner of Income Tax, Circle-6, Jaipur, [2013] 34 taxmann.com 286 (Jaipur - Trib.) [AY 2008-09], in which it was held:

"2.7 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 06.01.1994. As per explanation 2 of the said notification dated 06-01-1994, 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 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. 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."

Reliance was also placed on decision of High Court of Karnataka, in the case of CIT vs Madhukumar-N.HUF vide ITA 396 of 2009 dated 29.03.2012 [AY 2005-06] in which it was held that:

"11. In the present case, it is not in dispute that the subject land is not located within the limits of Dasarahalli City Municipal Council therefore, Clause (a) to section 2[14][iii] of the Act is not attracted.

12. However, though it is contended that it is located within 8 kms., within the municipal limits of Dasarahalli City Municipal Council in the absence of any notification issued under Clause (b) to section 2[14][iii] of the Act, it cannot be looked in as a capital asset within the meaning of Section 2(14)(iii)(b) of the Act also and therefore though the Tribunal may not have spelt out the reason as to why the subject land cannot be considered as a 'capital asset' by giving this very reason, we find the conclusion arrived at by the tribunal is nevertheless the correct conclusion. "

Reliance was also placed on decision of ITAT, Ahmedabad, in the case of ITO vs Akash Deep Farms Pvt Ltd vide ITA 561/Ahd/2017 dated 10.12.2018 [AY 2012-13] in which it was held that:

"12 We also take affirmative note of the significant plea on behalf of the assessee that distance of 8 kms. from the Municipality has to be seen from the date of notification dated 06.11.1994 in the light of judicial pronouncements quoted above.

13. Hence, on objective analysis of the facts and law enunciated by the judicial pronouncements, we find that impugned land falls outside the ambit of definition of capital asset provided in Section 2(14) of the Act. Consequently, the capital gains arising on sale of agricultural land which is not a capital asset cannot be brought to charge under s. 45 of the Act. We thus find merit in the plea of the assessee for exemption of capital receipt from ambit of taxation."

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

8. Upon careful consideration, we find that assessee's arguments have sufficient cogency. It is correct that the distance of 5 kms. from Dasna flyover, Govindpuram confirmed by Inspectors of Income-tax Department and Tehsildar were on the date of their respective inspections i.e. February

and March 2016. On the other hand, assessee's plea that the distance of land in question should be reckoned as existed on the date of Notification No.9447 dated 06.01.1994 when the municipal limits were upto Hapur Chungi and from where the distance was 8.7 kms. approx. as per IT Inspector's report. The basis of submission is that for the purpose of exemption u/s 2(14)(iii)(b) of the Act, the notification by Central Government is mandatory and there was no notification after 06.01.1994. Hence, the expansion of municipal limits from Hapur Chungi to Dasna Flyover on 41.08.1994 should be irrelevant in absence of any further notification. Therefore, the land in question at Village Masuri is not a capital asset. The above proposition is duly supported by the case laws relied upon by the ld. counsel for the assessee. Hence, in the background of aforesaid discussion and precedent, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

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

**Order pronounced in the open court on this 13<sup>th</sup> day of June, 2024.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

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

**Dated the 13<sup>th</sup> day of June, 2024  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**