आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 628/JP/2023
निर्धारण वर्ष/Assessment Years : 2015-16

Vinaya Sharma 431 A, Talwandi, Kota	बनाम Vs.	ACIT, Central Circle, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFRPS 6215 F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya, Adv. &
Shri Devang Gargieya, Adv.
राजस्व की ओर से/ Revenue by : Ms. Alka Gautam, CIT (V.H)

सुनवाई की तारीख/ Date of Hearing : 23/09/2024
उदघोषणा की तारीख/Date of Pronouncement: 17/10/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is because the assessee dissatisfied with the order of the Commissioner of Income Tax (Appeal), Udaipur dated 26/08/2023 [for short CIT(A)] for assessment year 2015-16. The said order of the ld. CIT(A) arise as against the order dated 26.12.2019 passed under section 143(3) r.w.s 153A of the Income Tax Act, by ACIT, Circle, Kota.

2. In this appeal, the assessee has raised following grounds: -

"1. The impugned order u/s 143(3) rws 153A dated 26.12.2019, as well as the action taken u/s 153A and notices are bad in law, illegal, invalid. Not void-ab-intio on facts of the case, for want of jurisdiction, without proper following law and procedures of the Act, and also barred by limitation and various other reasons and hence the same may kindly be quashed.

2. Rs.3,10,99,395/-: The ld. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining the disallowance/addition of Rs.3,10,99,395/- made by the ld. AO on account of denying the exemption u/s 10 on the sale consideration received on sale of agriculture land treating the same as capital assets, also erred in not considering the material and evidences in their true perspective and sense. Hence the addition so made by the ld. AO and confirmed by the ld. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.

3. Rs.1, 50,000/-: The ld. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining the disallowance/addition of Rs.1,50,000/- made by the ld. AO on account of treating the agriculture income as income from other sources, also erred in not considering the material and evidences in their true perspective and sense. Hence the addition so made by the ld. AO and confirmed by the ld. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.

4. The ld. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A, B,C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

5. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing."

2.1 The assessee also raised the additional which reads as under *;*

"The Ld. AO and CIT(A) erred in law as well as on the fact of the case in considering the subjected agricultural land as a "capital asset" u/s 2(14) (iii) by placing wrong interpretation and ignoring the material placed on record. The subjected land being beyond the limits prescribed under the statute hence, was not a capital asset. The treatment so given by taxing the long term capital gain being contrary to the provisions of law and facts, the said land be declared as not a case of a capital asset, quashing the levy of long term capital gain tax".

3. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Income Tax Act, 1961 was carried out on 07.09.2017 at the various premises of "Resonance Group, Kota" to which the assessee belongs. A number of persons / premises covered u/s 132 of the IT Act, 1961. Cash, jewellery and other documents found and seized from some persons residence and business premise. The case of the assessee was also covered under search proceeding. The search action was carried out on the assessee on 07.09.2017. Consequent to search action, the case of the assessee was centralized to Central Circle-Kota by the Principal Commissioner of Income-tax, Kota vide his order dated 14.08.2018. Assessee is an individual and derives Income from salary, capital gain and other sources. Consequent to search notice u/s 153A of the Act was issued to the assessee on 07.02.2019 which was duly served. In response to notice issued u/s 153A, the assessee furnished her return of income on 27.02.2019, declaring total income of Rs. 5,31,100/- and agriculture income of Rs. 1,50,000/-. Earlier the assessee had filed her return of income u/s 139 of the Act on 22.07.2015 at the total income of Rs. 2,70,850/- and agriculture income of Rs. 1,50,000/-. There is difference of Rs. 2,60,250/- between ITR filed under section 153A and 139 of the I.T. Act, 1961. Notice u/s 143(2) of Act was issued on 27.03.2019 which was

duly served. Further, notice under sub section (1) of Section 142 of the Act was issued on 28.03.2019 along with questionnaire / Annexure-A requiring certain details / information, which was served upon the assessee through speed post. In response to that, assessee furnished the desired details/information/documents/ which were examined with respect to claims made in the return of income.

3.1 During the search action it was found that the assessee during the year under consideration has sold an immovable property at Rs. 3,13,90,625/-. When asked about this transaction during post search enquiry, the assessee has stated that this amount is related to agriculture land sold in FY 2015-16 and actual sale consideration received was Rs. 3,13,90,625/-. She further stated that she had paid capital gain considering the sale value of Rs. 65,00,000/- for the AY 2016-17 and remaining amount of Rs. 2,48,90,625/- was never offered for taxation.

3.2 The assessee considered the sale in FY 2015-16 based on the realisation of cheques in bank account in the month of April 2015; however the registries of the sale was done on 25.03.2015 i.e. in FY 2014-15. The assessee herself calculated the capital gain on the sale consideration and furnished ITR for AY 2016-17 on 21.06.2016 at total income of Rs. 8,20,670/-and agriculture income NIL. Further, after the search conducted

on 07.09.2017 the assessee revised the return on 30.03.2018. In revised return the assessee the assessee has not considered capital gain on the sale of immovable property. It is also mentioned that assessee has not claimed any exemption on agriculture income in previous years also. The assessee in computation submitted along with ITR for AY 2016- 17 claimed indexation on the cost and improvement of immovable property and arrived at capital gain of Rs. 2,60,407/-.

3.3 During the assessment proceeding, the assessee was asked to produce documents supporting the claim of exemption u/s 10 of the Act vide show cause notice dated 23.11.2019. The assessee submitted the reply contending that she has sold an agricultural land amounting to Rs. 3,13,90,625/-. The entire amount of Rs. 3,13,90,625/- has been shown in the income tax return filed u/s. 153A of the Act as exempt income. Copy of Khasra & Girdawari was placed on record.

3.4 Ld. AO noted that assessee has not furnished documents to confirm that the immovable property is an Agriculture land and hence the exemption claimed by the assessee was denied and addition of Rs. 3,10,99,395/- [3,13,90,625/- less 2,91,230/- (indexed cost of purchase)] was made in the hands of the assessee. The assessee also shown agricultural income of Rs. 1,50,000/- as the assessee could not justify the

income with cogent evidence and even the assets was not considered as agricultural land, said income was considered as other income of the assessee.

4. Feeling dissatisfied with the finding of the ld. Assessing officer, assessee preferred an appeal before the Commissioner of Income Tax, Appeal, Udaipur-2. Apropos to the grounds so raised the relevant finding of the ld. CIT(A) is reiterated here in below:

Decision of ld. CIT(A) on issue of exemption u/s. 10

“4.3 In appellate proceedings the Ld. AR submitted details and documents at the time of hearing therefore, a letter was written to the AO calling for remand report on the following point:-

(i) The AO had disallowed the exemption because evidences to prove that the land sold was agriculture was not furnished before the AO. The appellant contended that evidences were submitted before the AO. You are requested to verify the evidences enclosed by the appellant alongwith reply. You are also, expected to verify whether the said land was within municipal limits or not. You may use online date or physical verification as aerial distance form municipal limits is to be measured. You are also expected to verify other conditions

4.4 A Remand report submitted by AO vide his office letter No.170 dated 10.07.2023 through proper channel i.e. Addl. Commissioner of Income Tax, Central Range, Udaipur as under-

In this connection, as directed by your good office, an opportunity of being heard was provided to the assessee vide this office DIN & Letter No. ITBA/COM/F/17/2022-23/ 1050587886(1) dated 10.03.2023 & the case of the assessee was fixed on 17.03.2023. In response to this the assessee has submitted reply on 14.03.2023. Further, the third party information has also been called for from the Tehsildar, Kota. After carefully consideration the submission of assessee as well as the information gathered from the third party, necessary reply/comment is being submitted as under.
2.1 Issue related to disallowance of Exemption u/s 10:

In this connection, it is submitted that during the course of assessment proceedings, the assessee was asked to produce documents supporting the claim of exemption u/s 10 of the IT Act vide show cause notice u/s 142(1) dated 23.11.2019. In reply thereto, the assessee has submitted her reply on 26.11.2019, which is reproduced as under:

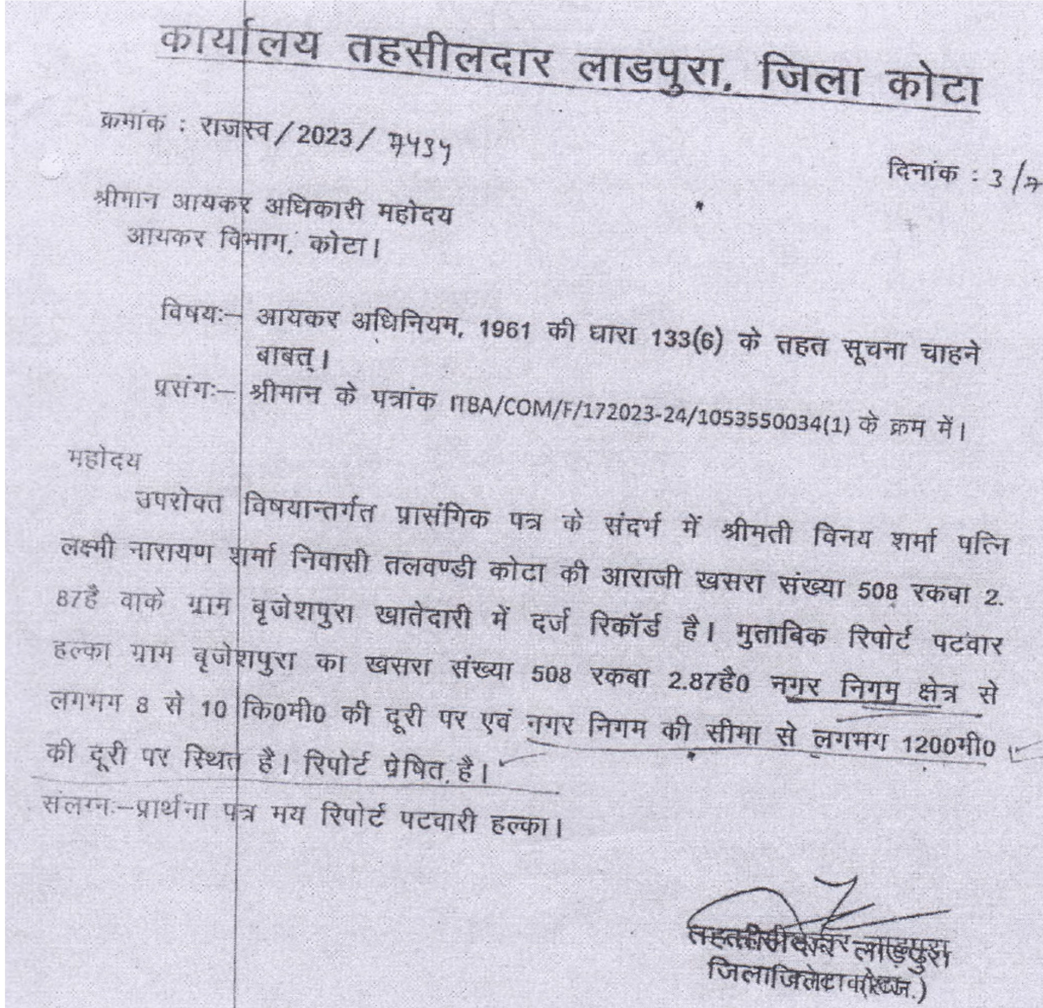
"During the financial year 2014-15, assessee has sold an agriculture land amounting of Rs.3,13,90, 625/-, such land was situated at village- Brijeshpura, Tehsil- Ladpura, which was rural Agriculture land and not covered in the definition of capital assets. Assessee has shown the entire amount of Rs.3, 13,90,625/- in income tax return filed u/s 153A for the assessment year 2015-16 on dt. 27.02.2019 as exempted income. Copy of Khasra & Gridavari is being enclosed."

In submission dated 26.11.2019, the assessee herself accepted that she had sold immovable property at Rs.3.13,90,625/- and mentioned the immovable property as agriculture land. However, no documents have been provided to confirm that the Immovable property is an Agriculture land covered under the definition of IT Act.

Further, during the course of appellate proceedings, the assessee has submitted additional evidence which was received from the office of Tehsildar, Kota and on the basis of such evidence, the assessee stated that the property under question was not situated in purview of the municipality limit of Kota. Hence, the aforesaid land may be treated as rural Agricultural land & deduction u/s 10 of the IT Act has to be given accordingly.

To verify the genuineness of the fact, a letter bearing DIN No. ITBA/COM/F/ 17/2023-24/1053550034 (1) dated 05.06.2023 has been sent to Tehsildar, Ladpura, Kota with a request to provide what distance the above agriculture land is situated from the outer boundary of Kota Municipal/UIT as on 25.03.2015. Further also provide the aerial distance from the periphery (outer boundary) of Kota. In response to this the concerned authority has submitted his reply vide his office letter no. 7434 dated 03.07.2023 (Copy enclosed).

In view of above the submission furnished by Tehsildar, Kota, it is noticed that the distance of the sold agricultural land of the assessee, which was situated at village-Brijeshpura, Tehsil- Ladpura, Kota is 1.200 KM from the Municipality limit of Kota. Hence, the same is covered within the municipality limit of Kota & covered in the definition of capital assets. The remand report is submitted for kind perusal and necessary action at your end.



कार्यालय तहसीलदार लाडपुरा, जिला कोटा

क्रमांक : राजस्व/2023/ 7435

दिनांक : 3/7

श्रीमान आयकर अधिकारी महोदय
आयकर विभाग, कोटा।

विषयः– आयकर अधिनियम, 1961 की धारा 133(6) के तहत सूचना चाहने बाबत्।
प्रसंगः– श्रीमान के पत्रांक ITBA/COM/F/172023-24/1053550034(1) के क्रम में।

महोदय

उपरोक्त विषयान्तर्गत प्रासंगिक पत्र के संदर्भ में श्रीमती विनय शर्मा पत्नि लक्ष्मी नारायण शर्मा निवासी तलवण्डी कोटा की आराजी खसरा संख्या 508 रकबा 2.87है वाके ग्राम बृजेशपुरा खातेदारी में दर्ज रिकॉर्ड है। मुताबिक रिपोर्ट पटवार हल्का ग्राम बृजेशपुरा का खसरा संख्या 508 रकबा 2.87है0 नगर निगम क्षेत्र से लगभग 8 से 10 कि0मी0 की दूरी पर एवं नगर निगम की सीमा से लगभग 1200मी0 की दूरी पर स्थित है। रिपोर्ट प्रेषित है।

संलग्नः–प्रार्थना पत्र मय रिपोर्ट पटवारी हल्का।

तहसीलदार लाडपुरा
जिला कोटा (राज.)

पटवार मन्डल ब्रजेशपुरा

श्रीमान तहसीलदार साहब
लाडपुरा कोटा

विषय: ग्राम ब्रजेशपुरा के खसरा नं. 508/2.87 की रिपोर्ट करने बाबत।

महोदय,
निवेदन है कि ग्राम ब्रजेशपुरा के खसरा नं. 508/2.87 है० नगर निगम से दूरी 10 किलोमीटर एवं नगर निगम सीमा से लगभग 1200 मीटर है।
रिपोर्ट श्रीमान की सेवा में पेश है।

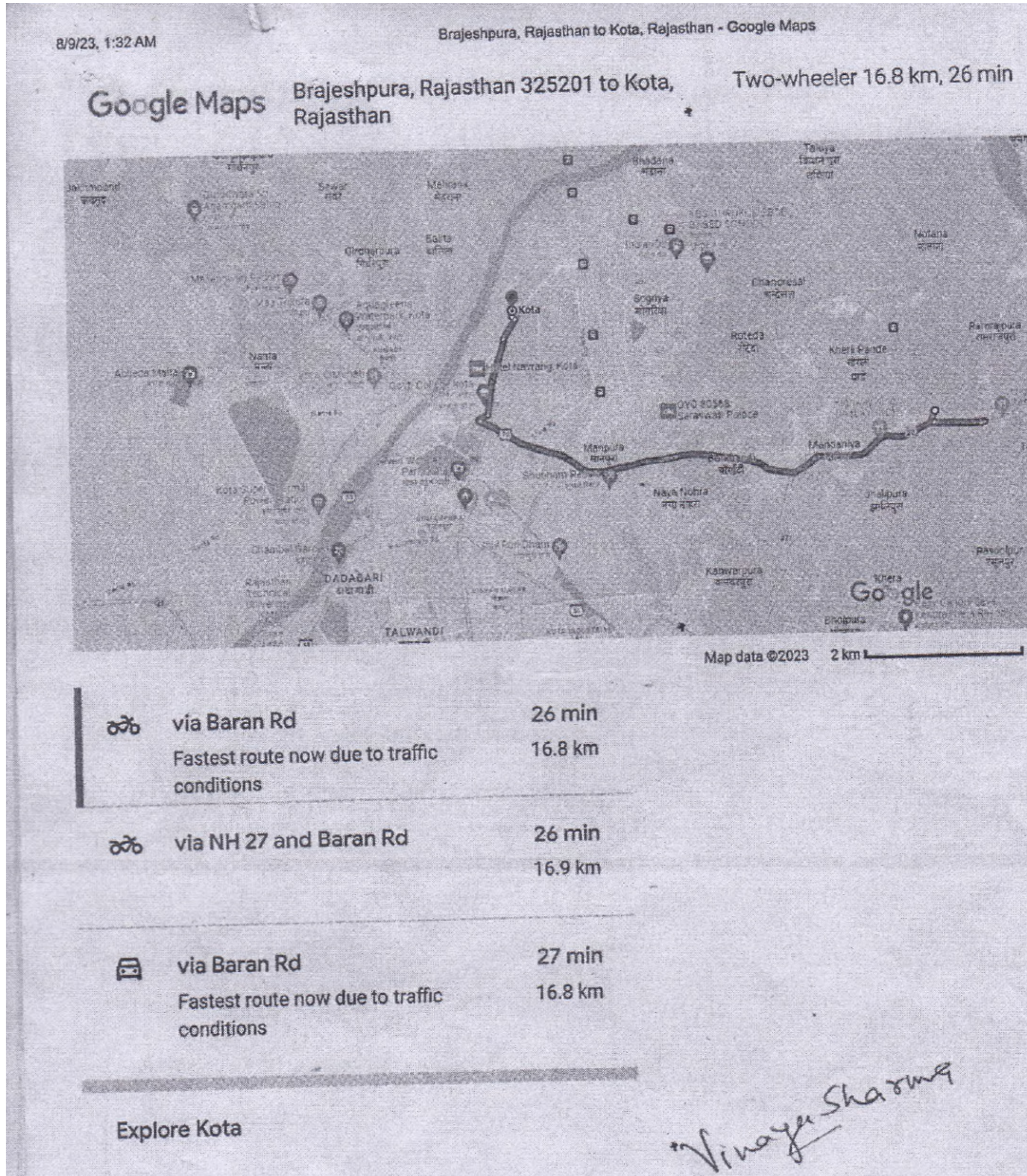
पटवारी [illegible]
3/7/23

4.5 The appellant submitted the rejoinder submission on remand report of the AO as under:-

"1. I sold an agriculture land situated at village Brijeshpura Tehsil Ladpura Distt. Kota amounting to Rs.3,13,90,625 to Shri Jagdish Agarwal and Smt. Chandra Kala Agarwal. This agriculture land is situated in rural area and it is captal assets as per Sectin 2(14) of Income-tax Act 1961.
a. The distance of agriculture land situated in village Brijeshpura Khasara No. 508 is to village Brijeshpura is 1.5 k.M.+ the distance from Brijeshpura to Kota Nagarnigam boundary i.e. Naya Nohara is 9.6 K.M. hence the distance of agriculture land Khasara No.508 is 1.5+9.6 K.M. total 11.01 K.M. for the evidence copy of GOOGLE MAP is submitted herewith. Hence the Agriculture land sold to Shri Jagdis Agarwal of Rs.3,13,90,625/- is €APTAL ASSET U/s 2(14) of I.T. Act and exempt under section 10 from capital gain tax. hence addition made by A.O. Kota is quite wrong. You are requested please deleate the addition of Rs. 3, 13,90,625/-

b. The addition made Rs. 1,50,000/ is also quite wrong I shown this income is from agriculture land but the AO erred to treat this income as income from other sources, to say that I not

submitted evidence is also quite wrong, we already submitted copy of Girdawari and Khasra. You are requested to please treat this income as agriculture not income from other sources. Hence this income is only addable for the computation of tax only."



कार्यालय तहसीलदार लाडपुरा, जिला कोटा

क्रमांक : राजस्व/2023/5716 दिनांक : 24/3/23

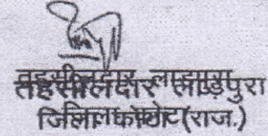
श्रीमान आयकर अधिकारी महोदय
आयकर विभाग, कोटा।

विषयः– कृषि भूमि खसरा संख्या 508 रकबा 2.87है0 ग्राम बृजेशपुरा की वस्तुस्थिति के बाबत्।
प्रसंगः– प्रार्थना पत्र श्री विनय शर्मा पत्नि लक्ष्मीनारायण शर्मा निवासी तलवण्डी कोटा के अनुसार।

महोदय

उपरोक्त विषयान्तर्गत प्रार्थी श्रीमती शशि शर्मा पत्नि श्री मुरारीलाल शर्मा निवासी चम्बल कॉलोनी व श्रीमती विनय शर्मा पत्नि लक्ष्मी नारायण शर्मा निवासी तलवण्डी कोटा की आराजी खसरा संख्या 508 रकबा 2.87है वाके ग्राम बृजेशपुरा खातेदारी में दर्ज रिकॉर्ड है। मुताबिक रिपोर्ट पटवार हल्का ग्राम बृजेशपुरा का खसरा संख्या 508 रकबा 2.87है0 किस्म नहरी प्रथम पूर्व में विनय शर्मा पत्नि लक्ष्मीनारायण शर्मा निवासी तलवण्डी कोटा के नाम दर्ज थी जिसका रजिस्टर्ड विक्रय पत्र द्वारा दिनांक 25.03.2015 को बेचान किया जा चुका है। उक्त कृषि भूमि नगर निगम क्षेत्र से लगभग 8 से 10 कि0मी0 दूरी पर स्थित है। उक्त आराजी नगर निगम क्षेत्र मे न आकर ग्राम पंचायत के क्षेत्र में आती है। रिपोर्ट प्रेषित है।
संलग्नः– प्रार्थना पत्र मय रिपोर्ट पटवारी हल्का।

Attested
Vinaya Sharma



तहसीलदार लाडपुरा
जिला कोटा (राज.)

क्रमांक/ [illegible] दिनांक [illegible]
मूल ही पटवारी हल्का/भूअभि. दसलाना
को भेजकर लेख है कि प्रार्थना पत्र
पर जांच कर जांच रिपोर्ट ....
दिवस में कार्यालय में प्रस्तुत करें।

तहसीलदार
लाडपुरा, कोटा

पटवार मण्डल दसलाना

महोदय,

निवेदन है कि ग्राम [illegible] का खसरा नं. 508 रकबा 2.87 है० किस्म नहरी प्रथम पूर्व में विनय शर्मा पत्नि लक्ष्मीनारायण शर्मा नि. तलवण्डी कोटा के नाम दर्ज थी जिसका रजिस्टर्ड विक्रय पत्र द्वारा दिनांक 25.03.2015 से बेचान कर दिया था उक्त कृषि भूमि नगर निगम क्षेत्र में नहीं आती है उक्त कृषि भूमि पंचायत क्षेत्र में आती है उक्त भूमि नगर निगम से लगभग 8 से 10 कि० मी० दूर है। रिपोर्ट श्रीमान कि सेवा अग्रिम कार्यवाही हेतु प्रेषित है।

पटवारी दसलाना
24/03/2023

Attested
Vinaya Sharma

4.6 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under.-

In this case during the search a page was found on which transaction of sale of land for Rs. 3,13,90,625/- was recorded. The transaction was partly in cheque and partly in cash.

The appellant accepted in her statement recorded during search that this transaction was done by her and only part receipts (cheque) were offered for taxation in the Income Tax Return. She voluntarily surrendered the difference amount for taxation in the statement as reproduced by the AO in the assessment order.

The AO observed that the appellant had considered sale transaction for computing taxable capital gain and the land was treated by herself as capital asset and she paid tax on capital gain before filling return of income for AY 2016-17 on 21.06.2016. However, after the search action took place, the assessee revised the return for AY 2016-17 on 30.03.2018 and not shown any capital gain. Further, the assessee claimed exemption of the total sale consideration u/s 10 of the IT Act in ITR filed u/s 153A for AY 2015-16 on 27.02.2019, However, the same was not claimed in original ITR filed for AY 2015-16 on 22.07.2015.

As per AO the appellant accepted the transaction but claimed that the immovable property as agriculture land. As per AO no documents have been provided to confirm that the immovable property is an Agriculture land.

To verify the genuineness of the fact about location of land, a remand report was called for from AO. The AO reported that letter was sent to Tehsildar, Ladpura, Kota with a request to provide what distance the above land is situated from the outer boundary of Kota Municipal/UIT as on 25.03.2015. Further he was also requested to provide the aerial distance from the periphery (outer boundary) of Kota Municipal limits. In response to this the concerned authority Tehsildar, Kota, stated that the distance of the sold agricultural land of the assessee, which was situated at village- Brijeshpura, Tehsil-Ladpura, Kota is 1.200 KM or 1200 meters from the Municipality limit of Kota. Hence, the same is within 8 kilometers of the municipality limit of Kota & covered in the definition of capital assets.

The remand report sent by the AO was sent to the appellant for rejoinder. The appellant reiterated the stand taken in her reply and also relied upon google map to show that the distance of land is more than 8 km from the boundary of the municipal limits of Kota.

There are various issues to be decided to decide the matter in hand. The various issues involved are deliberated as under-

1. Statement recorded during the search is an important piece of Evidence

First issue which is to be decided is that whether the sumender made in the statement recorded during search can be ignored. Hon'ble Supreme Court Of India in the case of Roshan Lal Sanchiti v. Principal Commissioner of Income-tax (2023) 150 taxmann.com 228 (SC)/[2023] 292 Taxman 549 (SC)/(2023) 452 ITR 229 (50) 28-11- 2022] held as under -

"Section 132 of the Income-tax Act, 1961-Search and seizure General (Sadement under section 132(4)) Assessment year 2013-14-High Court by impugned order Nells that retraction of

statement recorded under section 132(4) has to be made within masonable time se immediately after statement of assessee is recorded and hence, where retraction of statemen recorded under section 132(4) and later confirmed in statement recorded ander peccion had been made by assessee after almost eight months, same was is de diচনোটিসটিier SLP filed by assessee against impugned order of High Court was to se dismissed as sof High Court being agreeable, no case was made out to interfions with impugned seder-Halid, yes [Paras 2 and 3] [In favour of revenue)"

In this case, there is no retraction fled by the appellant. There is to complaint filed by the appellant that the statement taken during the search was taken under pressure. Therefore, the statement recorded during the search cannot be discarded and it has to be believed to be true. In this statement, the appellant accepted the transaction of immoveable property and accepted that capital gain tar lability is due on this which she promised to pay. This acceptance by the appellant was based on correct appreciation of facts. She was aware off the fact that the land is capital asser as per provisions of Income Tax act. it is also supported by the fact that capital gain was offered for taxation on diis property transaction in the netum fled before search In that retum only cheque transactions were shown and cash receipts were not shown.

Considering the above facts, the statement recorded during the search remains as an important piece of evidence which is further supported by the return income filed by the appellant and also the seized paper found during search which is not denied by the appellant.

1. Land is Capital Asset

Next issue which is to be decided in this case is whether the claim off the appellant with regard to the land being capital asset or not as per the provisions off the Income Tax Act. As per section 2(14) of Income Tax Act, 196 definition off Capital Assets is as under-

2 in this Act, unless the context otherwise

(14) "Capital assat means-

(a) Property of any kind held by an assessee, whether or not connected with his business or profession

(b) any securities held by a Foreign Institutional Investor which has invested in such secunties in accordance with the regulations made under the Securities and Exchange Board of India Act. 1992 (15 of 1992);

7((c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof.]

but does not include-

(1) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession

(ii) personal effects, that is to say, movable property (including wearing apparel and fumiture) held for personal use by the assessee or any member of his family dependent on him, but excludes

(a) jewellery,

(b) archaeological collections,

(c) drawings;

(d) paintings,

(e) sculptures, or

(1) any work of art.

Explanation 1-For the purposes of this sub-clause, "jewellery" includes-

(a) omaments made of gold, silver, platinum or any other precious metal or any alloy containing

one or more of such precious metals, whether or not containing any precious or semi- precious stone, and whether or not worked or sewn into any wearing apparel: UME TAU DARI

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel,

(iii) agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand, or

(b) in any area within the distance, measured aerially,-

(i) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or
(ii) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh or

(iii) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation For the purposes of this sub-clause, 'population" means the population acconting to the last preceding census of which the relevant figures have been published before the first day of the previous year,

The AO mentioned in the assessment order that the appellant did not produce documents to prove that the land involved was agriculture land as per provisions of Income Tax Act.

In the appellate proceedings, the appellant furnished evidences in the form of certificate of Tehsildar stating that the land is situated about 8 to 10 kilometers from the Municipality. It was stated that copy of khasra and girdawari of the Agriculture land was already produced to the A.O. It was stated that during the year under consideration the

land is Rural Agriculture Land and not covered in the definition of capital assets hence the sale consideration of such land, sold is exempted u/s 10 of Income Tax Act, 1961. Further, appellant relied upon the record of rights, wherein it was classified as agricultural land and the land was subjected to cultivation, wherein assessee cultivated various crops.

In this certificate furnished by the appellant, there is no mention of municipal limits rather it is mentioned that the distance is from Municipal area (Nagar Nigam Kshetra). Further, the distance was not aerial distance. Therefore, the AO was asked to verify and find out facts as per provisions of Income Tax Act. As can be seen from the above reproduced definition of capital asset, the distance is to be taken from the local limits of any municipality and not area. TAX DEPARTMEN

The AO furnished report from Tehsildar in response to notice u/s 133(6) of the Ac. It is seen from the report dated 3-07-2023 that the land is situated within 1200 meters or 1.200 Kms from the municipal limits.

Prima facie there appears that the Tehsildar has furnished two contradictory reports. In first certificate furnished by the appellant the distance of land from Nagar Nigam Area was stated to be 8 to 10 kilometer whereas in the second report the distance from Ngar Nigam Limit is stated to be 1200 meter. However, on close examination, both the facts are found to be correct. In the report submitted by the appellant there is no mention of Nagar Nigam Seema or municipal limit. The land can be excluded from the definition of capital asset only when the distance is measured as per the definition. The distance was required to be measured from Municipal Limits and not from Municipal area. Further, aerial distance was required to be measured. Other arguments of the appellant are not in the scope of examination as per definition of capital asset and hence these arguments are not relevant. Going by this definition, the land is found to be covered by the definition of capital asset.

It is also notable that the Certificate of Tehsildar furnished by the appellant is dated 24-03-2023 and the report of Tehsildar furnished to the AO during the remand proceedings is dated 3-07-2023. There is no contradiction in both the certificate or report. The second report is more specific and relevant as per requirement of definition of capital asset as per provisions of Act.

The appellant has submitted distance as per google maps which is not relevant for the purpose of measurement in this case as the distance provided by google is by motorable road for a car or motorbike. The requirement of law is that the distance should be measured from the outer limits of the municipality and aerial distance should be measured.

Therefore, the claim of the appellant that the land was not capital asset is not found acceptable.

1. Decisions quoted by the appellant

The appellant relied on the following judgements:-

a) Shri M.R. Pattabhiram (HUF), in WTA No.34-36/Bang/2014 dated 16.10.2015.

In this case A.O. made addition of Rs.2.06 crores as LTCG arising from sale of land. The assessee claimed that the said land is situated beyond 10 kms. Away from the nearest Municipal limit and therefore, it is not a capital asset as per section 2(14) of the Income-tax Act, 1961. However, the A.O. held that the land was converted for non-agricultural purposes before execution of sale deed, therefore, it is a capital asset u/s 2(14) of the Act and it cannot be exempted u/s 10(1) of the Act. Accordingly, the same was brought into taxation as capital gain.

Going by above facts the issue before the hon'ble court in that case was the main reason for treating the land as non-agricultural is that the land was converted for usage of non-agricultural purposes. Also the land was situated beyond 10 kms. Away from the nearest Municipal limit and therefore, it is not a capital asset as per section 2(14) of the Income-tax Act, 1961. This is not the case in the case of the appellant. The land is situated within 1.2 Kms from the Municipal Limits therefore it is capital asset as per section 2(14) of the Income-tax Act, 1961. The decision is therefore, not found applicaple on the facts of the case of the appellant.

b) Shri M.R. Anandaram (HUF), ITAT Bengaluru Bench in ITA Nos. 1169 to 1172/Bang/2015 & CO Nos. 220 to 223/Bang/2015.

In this case it was held that though the subject land was converted into non- agricultural purposes, cultivation of the land for agricultural purposes till the date of sale was continued unabated and as such, the land should have been treated as agricultural land. There is no such issue in the case of the appellant. There is no issue of conversion of land into non agriculture use. In fact, in this decision the issue of distance from municipal limits was not even discussed. Hence, on the facts of the case, this decision is not found applicable.

c) Hon'ble Jurisdictional High Court of Karnataka in the case of CIT Vs. Smt. K. Leelavathy (2012) 21 taxmann.com 148 (Kar) dated 2.1.2012

In this case also it was held that the mere inclusion of land without any infrastructure development does not convert the land into non-agricultural land. Hence, the order passed by the Tribunal, based on evidence on record, does not call for any interference. There is no such issue in the case of the appellant. There is no issue of conversion of land into non agriculture use. In fact, in this decision the issue of distance from municipal limits was not even discussed. Hence, on the facts of the case, this decision is not found applicable.

Further the appellant relied upon judgement of Income Tax Appellate Tribunal Hyderabad ITA. No. 1715/Hyd/2012, Assessment Year 2009-2010 to argue that the Agriculture land which are not in Municipal Limit is not to be treated as capital assets.

In this decision it was held that Hyderabad Airport Development Authority, is not a Body within the meaning of clauses (a) and (b) of the said Section. Therefore, the learned Tribunal has held that the proceeds of sale of agricultural land do not form capital gain, as they do not relate to capital asset. There is no such issue in the case of the appellant. The issue in the case of the appellant is that the land is situated within 8 Kms of the Municipal Limits of Kota.

It is also to be noted that CBDT issued Circular No. 17/2015-Income Tax dated 06.10.2015 regarding Measurement of the distance for the purpose of section 2(14)(iii)(b) of the Income-Tax Act for the period prior to the Assessment Year 2014-15. It further quotes that the amendment prescribing "distance is to be measured aerially, applies prospectively ie in relation to assessment year 2014-15 and subsequent assessment years". The assessment year relevant is covered by the CBDT Circular also. The decisions relied upon by the appellant are before the period of AY 2014-15, which do not take into consideration of aerial distance hence not applicable.

Population of Kota City as per census of 2011 was 10,01,694 which is more than 10 lakhs. Therefore criteria of distance of 8 Kms from the municipal limits is applicable in the case of this land. As discussed above, the land is situated only 1200 meter from the limits of municipal limits. Therefore, the land is to be treated as capital asset as per the definition.

In view of the above discussion, the appellant was required to include the transaction in capital gain statement of Income Tax Return and it was not an exempt transaction as claimed by the appellant.

This ground of appeal is therefore treated as dismissed."

Decision of CIT(A) for agricultural income offered

5.3 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-
The AO made addition on following grounds -
1. The assessee did not produce any document in support of agriculture income
2. The assessee for assessment years prior to AY 2015-16, it is found that the assessee has not claimed any exemption as agriculture income.
3. It is established that the immovable property owned by the assessee is not considered as agriculture
The appellant in the appellate proceedings argued that assessee has provided copy of khasra and girdawari of the Agriculture land which is situated in rural area from which it is clear that the same is agriculture land and assessee has produced various crops at that land. It is argued that Assessee was owner of total 2.87 hector (Approx 18 beegha) on which she cultivated agriculture produce and sold the same in open market. During

the year under consideration assessee earned Rs. 1,50,000/- (Net) from sale of Agriculture produce.

The argument of the appellant are twofold. One is ownership of land and another is location within rural and that the land is treated as agriculture land as per Khasra Girdawari. Both of these are compulsory element to prove the agriculture income. However, the appellant has not furnished any evidence to prove agriculture operations. There is no evidence of any expenditure on seed, tilling, fertilizers and manures, irrigation etc. Further, the appellant has not furnished any evidence of sale of agriculture produce sold. In the absence of these evidences, the claim of the appellant remains only an assertion. Only ownership of the land does not prove that agriculture operations were really done by the appellant. Further, in the absence of sale bills it is not proved that any agriculture produce was successfully harvested and sold by the appellant. The claim of the appellant is therefore not found to be acceptable.

This ground of appeal is therefore treated as dismissed."

5. As the assessee did not find any favour, from the appeal so filed before the ld. CIT(A), assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the ld. AR of the assessee, has filed the written submissions which is reproduced herein below:

> "Brief General Facts: The assessee Smt. Vinaya Sharma (Aged 71yrs) is senior citizen residing at 431-A, Talwandi, Kota *(hereinafter referred as "assessee" or "appellant")*. During the course of previous year, she derived income from salary, and other sources. The appellant had e-filed her return of income u/s 139 of the Income-tax Act, 1961 *(hereinafter referred as "the Act")* on 22.07.2015 at the total income of Rs. 2,70,850/- and agriculture income of Rs. 1,50,000/-(PB 1-2).
> A Search & Seizure operation u/s 132 of the Act was carried out on 07.09.2017 at the various premises of "Resonance Group, Kota". During the course of Search Proceeding Cash, jewellery and other documents found and seized from residence and business premise of some person. The case of the appellant was also covered and search action was carried out at the residence of the appellant on 07.09.2017. Consequent to Search action the case of the appellant was centralized to Central Circle-Kota by the Pr. CIT, Kota vide his order No. Pr. CIT/ITO(Tech.)/KTA/ S.127/2018-19/1565 dt. 14.08.2018. Notice u/s 153A of the Act was issued by the AO on 07.02.2019 in response to which the appellant

furnished her return of income on 27.02.2019, declaring total income of Rs. 5,31,100/- and agriculture income of Rs. 1,50,000/-(PB 3-6).

During the course of assessment proceedings, the AO issued notice u/s 143(2) dt. 27.03.2019 and various notices u/s 142(1) along with questionnaire which were duly responded by the assessee furnishing all the relevant details & information along with supporting documents.

However, the AO not feeling satisfied with the submission of the assessee, made additions by passing Assessment order dt.26.12.2019 u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 and assessed income of Rs. 3,17,80,490/- by making impugned addition of Rs. 3,10,99,395/- on account of Long Term Capital Gain and Rs. 1,50,000/- on account of denial of exemption claimed regarding Agriculture Income.

Aggrieved by the aforesaid additions the appellant had preferred appeal before CIT(A) on 15.01.2020. Unfortunately however, the ld. CIT(A) Udaipur-2 vide its order dt. 26.08.2023 confirmed the impugned additions by AO without appreciating the submissions made before him.

Aggrieved from the above order, the assessee preferred this appeal.

GOA 1: General ground

GOA 2: Denial of exemption u/s 10 from taxing Agricultural Income:

Facts: The issue involved is whether the income arising from any agricultural activities or relating to the land could have been a subject matter of the legislature for imposition of tax thereon.

Hence this ground.

Submission:

1. This issue has been discussed in great detail in the case of Manubhai A. Sheth *v.* N.D. Nirgudkar, Second ITO [1980] 4 Taxman 381 (Bombay) (DPB 1-26), wherein it was held as under:

"Section 45, read with section 2(1) and section 2(14) (iii) [as it stood after 1-4-1970], of the Income-tax Act, 1961 - Capital gains - Chargeability - Whether parliament has legislative competence to levy capital gains tax on profits arising from sale of agricultural land even though situate within areas specified in section 2(14)(iii)(a) and (b) - Held, no

Section 2(14)(iii) of the Income-tax Act, 1961 [as amended by the Finance Act, 1970 with effect from 1-4- 1970] - Capital asset - Agricultural land - Whether impugned sub-clause:) (iii) of section 2(14) is beyond legislative competence of parliament and is piece of Colourable legislation - Held, no - Whether said impugned clause is void as it infringes article 14 of constitution inasmuch as classification made by it between lands situate. In paras (a) and (b) of impugned sub-clause (iii) and lands outside those areas is artificial. Having no reasonable nexus to purpose of enactment - Held, no - Whether impugned subclause (iii) is void as delegating unguided and excessive legislative power to executive authority - Held, no - Whether effect of impugned sub-clause (iii) is to levy tax on transfer of agricultural land and consequently tax on land - Held, no"

There appears no reversal of the said decision nor there appears any decision of the Hon'ble Apex Court on the issue and therefore, the severe income of LTCG

arising from the agricultural land may kindly be held as exempted u/s 10 (1) of the Act.

2. Reliance is also placed in the matter of Marigold Merchandise (P) Ltd. vs. Deputy Commissioner of Income Tax (2014) 164 TTJ (Del) (DPB 38-41) Hon'ble Delhi High Court held as under:

"Coming to the nature of agricultural land and its geography, it has not been disputed that the land in question was situated outside the specified municipal limits and as per the prescription of s. 2(14) it does not amount to an asset. In order to come under the ken of capital gains, the land has first to qualify as an asset as per IT Act. The income arising from the sale of agricultural land falls under s. 2(14)(iii) r/w s. 10(1) and is to be treated as agricultural income. The interpretation put by the lower authorities is outlandish and based on surmises and conjectures, divorced from the actual facts. (Para 5.5)"

Thus, the exemption may kindly be granted in the light of above facts and judicial precedents.

GOA 3: Rs.1,50,000/-: Agricultural income wrongly considered as Income from Other Sources:

Facts: The AO has dealt this issue at Pg. 10 Pr.6 The assessee declared agricultural income of Rs.1,50,000/- however the AO disproved the entire income and considered the same to be income from other sources by rejecting the claim so made on the plea that the subjected land owned by the assessee cannot be considered as agricultural land.

In the first appeal, the CIT (A) also confirmed the treatment so given by the AO in Para 5.3 at page 45 of the appellate order in the following words:

"The appellant in the appellate proceedings argued that assessee has provided copy of khasra and girdawari of the Agriculture land which is situated in rural area from which it is clear that the same is agriculture land and assessee has produced various crops at that land. It is argued that Assessee was owner of total 2.87 hector (Approx 18 beegha) on which she cultivated agriculture produce and sold the same in open market. During the year under consideration assessee earned Rs. 1,50,000/- (Net) from sale of Agriculture produce.

The argument of the appellant is twofold. One is ownership of land and another is location within rural and that the land is treated as agriculture land as per Khasra Girdawari. Both of these are compulsory element to prove the agriculture income. However, the appellant has not furnished any evidence to prove agriculture operations. There is no evidence of any expenditure on seed, tilling, fertilizers and manures, irrigation etc. Further, the appellant has not furnished any evidence of sale of agriculture produce sold. In the absence of these evidences, the claim of the appellant remains only an assertion. Only ownership of the land does not prove that agriculture operations were really done by the appellant. Further, in the absence of sale bills it is not proved that any agriculture produce was successfully harvested and sold by the appellant. The claim of the appellant is therefore not found to be acceptable.

This ground of appeal is therefore treated as dismissed."

From the above facts, the grounds of rejection raised by the lower authorities can be summarized that the appellant failed to produce any evidence to prove the

carrying out of agricultural operations and no voucher showing the expenditure receipt were produced before them.
Hence, this ground.
Submission:
1. Agricultural activities-fully established: At the outset, it is submitted that Khasra Girdhavri is a document wherein entries are made by the Girdhavar and shows the agricultural operations carried out in a particular cycle of Kharif, Ravi etc. In the present case the Khasra Girdhavri (PB-7-8) for the relevant period i.e. Vikram Samvat 2071 and the equivalent F.Y. being 2014-15, the assessee cultivated dhaniya, mehti and soya crop in the irrigated and unirrigated land both. Thus, Girdhavri is the conclusive evidence to show the fact of the owner or the farmer having cultivated the land, in absence of any contrary evidence brought on record, if any and cannot be ignored. Moreover, the claim of assessee is further supported by independent and credible evidence being Parcha Lagan by Land Management Department of Government of Rajasthan(PB 13) showing her right, title and possession in the said property as per Revenue records. Therefore, the fact of carrying out of agriculture operation on the subjected land has been wrongly denied.

2. Having established that the appellant did carried out agricultural activities in the relevant financial year as stated above, the next question comes is the quantum of the income. The law is well settled that where assessee is not maintaining day-to-day books of accounts, or accounts maintained are rejected, then only course left is the estimation of agricultural income. In the cases of agricultural income, more so the legislature itself do not statutorily require the assessee to maintain regular books accounts, which may be a case u/s 44 AA r.w. Rule 6F of the Income Tax Rules, 1962 and therefore, a fair estimation is required.

3. Keeping in mind of no statutory requirement, the assessee do not keep each and every receipt and vouchers etc. in a systematic manner. Therefore, the Hon'ble Courts have taken a view that in such cases, a fair estimation should be made. Accordingly, in this case where total area of land was irrigated and cultivated with the crops of Mehti, Dhaniya and Soya. Keeping in mind the fertility and expected crop, one could reasonably estimate the income.

4. Supporting Case Laws:
4.1. Kamal Kishore Chandak (2006) 36 TW 6, wherein ITAT Jodhpur held that the assessee declared Agricultural Income and in support filed complete details of PAN holdings and other certificates including affidavits of the farmers to whom the land was given for cultivation. The amount was added only because sales vouchers were not available. This was partly reduced by the CIT(A) and the Tribunal deleted the entire addition holding that the Department has not been able to rebut the version of the assessee. This decision has been followed in the case of Dhanraj Khemraj v/s ITO in ITA no. 423/JU/07 for A.Y. 2004-05 vide order dated 24.06.2008 by Jodhpur ITAT, where also the assessee was having the

papers of land holding and affidavits but the department was not able to rebut the material . Hence the addition was deleted.

4.2. Here a useful reference may be made to a decision of Jaipur Bench of ITAT in ITA No. 12 & 18/JP/2000 in the case of Shri Prabhu Lal Bairagi wherein it has been held vide pg. 33 pr. 24 that where the assessee was having agricultural lands, the fact of carrying out agricultural operations thereon are admitted, then what required was mere estimation of agriculture income. The Hon'ble Tribunal accordingly, directed average income @ Rs. 2,000/- per Bigha for Bundi Area.
Applying the ratio laid down and considering the facts of lapse of almost 15years, presently 15,000/- per bigha being earned for 11-12 bigha of land shall be around 1.60 lakhs.
4.3. In DCIT v/s Smt. Santosh Baheti 38 TW 148 (JD) it has been held that when all the evidences in support of agriculture income are on record, agriculture income cannot be treated as non-genuine simply because of evidence for sale has not been produced and the AO has not contradicted any of the evidences produced by the assessee.

4.4. CIT v/s S.R.M. Cotton & Oil Mills 174 Taxman 503 (P&H), held that when the sale consideration of tree was received through account payee cheque, which was deposited in regular bank account of assessee and assessee has also files the sale bill, merely because after three-four years, purchaser of tree had left his business and assessee could not furnish his correct address, it could not be said that transaction of sale was not genuine one.

Thus, in the light of above factual submissions and judicial guidelines, the impugned addition deserves to be deleted in full.
Additional GOA 5: Rural agricultural land is not a Capital Asset u/s 2(14)(iii) of the IT Act: Following Add. GOA was submitted on 05.04.2024:
"The Ld. AO and CIT(A) erred in law as well as on the fact of the case in considering the subjected agricultural land as a "capital asset" u/s 2(14) (iii) by placing wrong interpretation and ignoring the material placed on record. The subjected land being beyond the limits prescribed under the statute hence, was not a capital asset. The treatment so given by taxing the long term capital gain being contrary to the provisions of law and facts, the said land be declared as not a case of a capital asset, quashing the levy of long term capital gain tax".
Facts: Apart from claiming complete exemption u/s 10, in the alternate, one of the major contention has been that the subjected land sold is not a capital asset within the meaning of S. 2(14) (iii) rejected by the authorities below. The ld. CIT(A) got some inquiries made on his own and got certificates from the Tehsildar and Patwari, Kota and concluded that this subjected land was situated within the limits prescribed reckoning from the municipal limits of Kota.
Hence this ground.
Submissions:
1.1 The main dispute involved in this case is, whether in view of the provisions defining the term "*capital asset"* u/s 2 (14), can the subjected property sold being

the land situated at Khasra no.508, Raqbah 2.87, is a capital asset liable for LTCG. Certain undisputed jurisdictional facts are as under:

- That the subjected land is a rural agricultural land.
- The nature of the land has been shown as agriculture in the revenue record.
- There has been no application or effort made by the appellant (nor so alleged) for getting the land use changed from agriculture to commercial or residential.
- There is no development on the land by the buyer.
- It is not the case of the revenue that it is a barren/dry land, having no agricultural activity at all thereon nor any evidence has been brought on record to that effect by the authorities below.

1.2 Another set of undisputed facts are:

- That the land does not at all fall within the jurisdiction of Kota Nagar Nigam and rather it is located at the distance of 8 to 10 km from Nagar Nigam area or 1,200 mtr. away from the limits of the Kota Nagar Nigam. This is evident from the last certificate no.7434 dated 03.07.2023 issued by office of the Tehsildar, Ladpura, Kota and reproduced at page 33 of the CIT(A) Order, based on the certificate given by the Patwari, reproduced at page 34 of the CIT(A) Order.
- Prior thereto there are two more certificates of dated 24.03.2023 issued by the office of Tehsildar and the Patwari. However, one fact which is commonly admitted in all the certificates is that the present land do not fall within the jurisdiction of Kota Nagar Nigam but it falls within the jurisdiction of a Gram Panchayat, which fact is clearly mentioned in the certificate number 5716 dated 23.06.2023 given by the office of Tehsildar, Ladpura, Kota based on the certificate of event date given by Patwari, reproduced at pages 36 and 37 of the CIT(A) Order. This vital fact has not been disputed by the authorities below.

1.3 S.2(14) for the relevant point in time is reproduced here for ready reference:

"S.2(14) capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—
(iii) agricultural land in India, not being land situate—
(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand ; or
[(b) in any area within the distance, measured aerially,—
(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or
(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or
(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;]"

2.1 Keeping these facts in mind, if one applies the provision of S.2(14), it can be observed that there are certain exclusions made from the definition of capital asset and one of them is enumerated in clause (iii), is an agricultural land in India. However, it is not any or every agricultural land but only an agricultural land which is not situated in an area, which comprises within the jurisdiction of a municipality or cantonment board, gram panchayat etc. and which has a population more than 10,000. In other words, the land must fall within the jurisdiction of some municipality, municipal corporation or town area committee etc, and secondly must have a population more than 10,000. Both the conditions must be satisfied cumulatively to hold any agriculture land as a Capital Asset. Now applying these facts, it is clear that the land in the instant case admittedly did not fall within the jurisdiction of Kota Nagar Nigam but it falls within the jurisdiction of Brijeshpura (Gram Panchayat being Tather) which had a census of 382 persons only, based on the last census (PB 09-10). Thus, the present land is not a capital asset within the meaning of S.2 (14) at this stage itself and one was not required even to refer the alternate provision contained in clause (iii)(b). In other words, the case of the present assessee was covered within S.2 (14) (iii)(a) itself hence, one was not required to look at 2(14)(iii)(b).

2.2 Even if applying S. 2 (14) (iii)(b)(i), one has to firstly see the jurisdiction within which the subjected land falls and one has to measure 2 kilometres from the local limit of such a municipality or town area committee. In the present case, land was situated within the jurisdiction of Brijeshpura's Gram Panchayat as aforesaid and was within 2 kilometres. Another condition was that such area must have a population of more than 10,000 but not exceeding 1 Lakh. However, in this case as per the last census 2011 by Government of India, there was population of 382 only which is much below 10,000.

2.3 In view of these facts, there appears no valid reason as to why the ld. CIT(A) should have referred 2(14) (iii)(b) and to consider the issue w.r.t Kota Nagar Nigam only, once the land does not admittedly fall within the jurisdiction of Kota Nagar Nigam. In fact, the law has not contemplated a situation which is a situation like the present one. Therefore, the Honourable Delhi High Court, which had an occasion to decide a similar situation, in the case of CIT v. Sheo Ram [2001] 169CTR180, 117 TAXMAN347 (DELHI) (DC 49-50) where it was held as under the tribunal recorded the following finding

"The Tribunal recorded the following finding.

"The net result is that at best it can be said that the agricultural land in question was situated in an area which is comprised within the jurisdiction of municipality of Delhi, known as Delhi Municipal Corporation as also within the jurisdiction of municipality of Nangal Dewat known as Gaon Sabha Nangal Dewat. Whereas the population of the area comprised within the jurisdiction of Gaon Sabha Nangal Dewat is less than 10,000 the population of the area comprised within the jurisdiction of DMC is over 10,000. Obviously, such a situation could not be said to have been provided for in section 2(14)(iii)(a), otherwise the Parliament would

have enacted some guideline for making appropriate choice for including or not including in the definition of 'capital asset' such an agricultural land. We, accordingly, refuse to interfere with the finding of the Commissioner (*Appeals*)*."*
*In view of the aforesaid finding of facts, the Tribunal's conclusions could not be faulted. Accordingly, it was to be held that the Tribunal was right in law in holding that the land in question was not agricultural land within the meaning of section 2(*14*)(*iii*)."*
In this view of the matter, it is clear that the ld. CIT(A) has misdirected himself by applying a wrong provision and going against the admitted jurisdictional fact of the case.

3. Rural Land – not intended: The interpretation placed by the appellant also find support from the legislative intent in as much as while making amendment of prescribing distance from the local limits by Memorandum explaining the Finance Bill, 1970 reproduced hereunder (at page 10 para 24 onwards):

"24. Extension of the levy of tax to capital gains arising from transfer of agricultural lands in urban areas.-Presently, capital *gains arising from the transfer of a capital asset are chargeable to income-tax, The definition of "capital asset" excludes from its scope, inter alia, agricultural land in India. Accordingly, no liability to tax arises on gains derived from transfer of agricultural land in India. This exemption of agricultural land from the scope of the levy of tax on capital gains has a historical origin and is not due to any bar in the Constitution on the competence of Parliament to legislate for such levy. Agricultural land situated in municipal and other urban areas is essentially similar to non-agricultural land in such areas in its potentialities for use due to the progress of urbanisation and Industrialisation. It is accordingly proposed to bring, within the scope of taxation, capital gains arising from the transfer of agricultural land situated within the limits of any municipality or cantonment board which has a population of not less than 10,000 according to the latest census for which the relevant figures have been published. Power is also being taken to the Central Government to bring within the scope of the levy (by notification in the Official Gazette), capital gains arising from transfer of agricultural lands situate outside the limits of any such municipality or cantonment board up to a maximum distance of 8 kilometers, where this is considered necessary having regard to the extent of and scope for urbanization of that area and other relevant considerations. Agricultural land which is situated in rural areas will continue to be outside the scope of the above mentioned provision. Accordingly, no liability to tax will arise in respect of gains derived from transfer of agricultural land in rural areas."*

Thus, what was intended was that capital gains arising from transfer of agriculture lands situated in rural areas will continue to be outside scope of capital asset except agriculture land in urban areas and municipality /cantonment board upto prescribed limit.

Therefore, placing any other interpretation shall be against the legislative intent and the purposive construction of the statute. If the contention raised by the authorities below or the interpretation placed by them is taken as correct, then the Department will try in each and every case to link the agricultural land with the

nearest one or more municipality and then to apply the provisions so as to frustrate the legislative intent.

3.2 To repeat, once the land is found to fall in any of the municipality whether known as municipality, municipal corporation ,notified area committee, town committee etc. or by any other name for example in this case Tather Gram Panchayat, there is no reason to contend that although the land fall within the jurisdiction of a particular Gram Panchayat but yet it also falls within the jurisdiction of some Nagar Nigam or Municipality and therefore the prescribed limits are to be reckoned from the limits of said Nagar Nigam or from such municipality. Such an interpretation, on the face of it, appears to be an absurd interpretation and against the legislative intent and purpose of construction both.

4. Gram Panchayat not a municipality hence not a capital asset u/s 2(14): Another aspect to be considered is that section 2(14) does not speak of any Gram Panchayat. The Gram Panchayat cannot be equated with the Municipality. A careful perusal of s. 2(14)(iii) which provides exception to the general rule that agriculture land situated anywhere in the country, is not a capital asset, does not use the word Panchayat or Gram Panchayat but it only speaks of municipality whether known as municipality, municipal corporation, notified area committee, town committee etc. However, this expression does not include gram panchayat which is entirely a different concept. Whereas municipality refers to urban local self-government, panchayat is rural self-government whether town panchayat or village panchayat so keeping in mind the legislative intent and unambiguous interpretation of the provision, any land situated within the jurisdiction of a gram panchayat cannot be subjected to LTCG not being a capital asset but being an agricultural land. Thus, once the land situated in Brijeshpura falls within the jurisdiction of Tather Gram Panchayat, which has been established under the provisions of the State Panchayat Act Namely “The Rajasthan Panchayati Raj Act, 1994” then such asset can't be treated as a capital asset u/s 2(14).

4.2 Supporting case laws: To support our contention, a useful reference can be made to the decisions in the cases of

4.2.1 K. Parameswaran vs. ITO [1979] 7 TTJ 194 Madras it was held (DPB 42-48):

"The historical evolution of local self -Government in the State shows that ‘municipalities’ are governed by the Municipalities Act while the panchayats are governed by the Panchayats Act and the concept of the former relates to urban local self- Government whereas the later relates to rural self- Government. The terms ‘municipality’, ‘notified area committee’. ‘town area committee’ and ‘town committee’ used in section 2(14)(iii)(a) have legal conceptions and must, therefore, be given their legal meaning and consequently, they would be entirely different concepts from the term ‘panchayat’, be it a village panchayat or a town panchayat. The rule of ejusdem generis, relied upon by the revenue to bring the panchayat under the category of ‘any other name’ would also not apply since panchayats are a distinct genus by themselves, Panchayats cannot, therefore, be treated as municipalities under section 2(14)(iii)(a) and, hence, sale of the impugned lands could not attract capital gains tax."

The facts of our instant case are on much stronger footing in as much as, even the population, in our case is mere 382, whereas in the above case, the population

was admittedly more than 10,000, it was held not to be a case of capital asset as the land was situated in Gram Panchayat but not in any municipality.
Very recently the Hon'ble ITAT Chandigarh Bench in case of Avtar Singh vs. ITO (2024) 166 taxman.com 278(Chandigarh) vide its order dt.03.04.2024 followed the principle laid down by the K. Parameswaran vs. ITO *(supra)*.
4.2.2. ITO v. P. Venkatramana, (1993), 47 TTJ 549, (Hyderabad) (DPB 27-32) where it was held as under:
"*A plain reading of s. 2(14) demonstrates that agricultural land in India is not an asset within the meaning of the said section of the Income- tax Act. However, the section itself has provided the exception to this general rule and according to this exception, agricultural land in India would be a capital asset under s. 2(14) if such land is situated within a municipality, municipal corporation or cantonment board which has a population of not less than 10,000 according to the last preceding census of which the relevant figures have been published before the first day of the previous year. To take an agricultural land away from s. 2(14), therefore, it is essential that the municipal limits or cantonment board limits which has a population of not less than 10,000 according to the last census. If the land is situated in a village or under a Gram Panchayat or Panchayat, in our view, such agricultural land will not be held as a capital asset within the meaning of the said section"*.
There appear no further appeals by the department before the Hon'ble High Court therefore, the issue appears to have attained, finality.
5. Lastly, reliance is placed on the Apex Court decision in CIT vs. Vegetable Products Ltd. 1973 CTR (SC) 177 : (1973) 88 ITR 192 (SC) which states that where there are two reasonable constructions of a statute ,the construction favouring the assessee should be adopted.
Thus, in the light of above factual submissions and judicial guidelines, the impugned addition deserves to be deleted in full.
GOA-4 Charging of Interest u/s 234A/B/C: It is submitted that such levy is contrary to the provisions of law and hence may kindly be quashed."

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S No.	Particulars	Page No.
1.	Copy of Return of Income u/s 139 dated 22.07.2015 with Computation of Total Income for A.Y. 2015-16	1-2
2.	Copy of ITR filed u/s 153A dated 27.02.2019 with Computation of Total Income for A.Y. 2015-16	3-6
3.	Copy of Khasara &Girdawari No. having Samvat 2071- 2072 for A.Y. 2014-15	7-8
4.	Copy of Population Census of Brajeshpura	9-10

5	Copy of Population Census of Tather	11-12
6.	Copy of Parcha Lagan	13
7.	Copy of Assessment Order u/s 153A dt.09.12.2019 for AY 2016-17 along with Demand order u/s 156 and Computation of Tax Liability	14-19

Case laws relied upon:

S No.	Particulars	Pg No.
1.	Manubhai A. Sheth *v.* N.D. Nirgudkar, Second ITO [1980] 4 Taxman 381 (Bombay)	1-26
2.	ITO v. P. Venkatramana, (1993), 47 TTJ 549, (Hyderabad)	27-32
3.	Srichand Dembla vs. DCIT , CC-2 , Udaipur (2013) 39 taxmann.com 180	33-37
4.	Marigold Merchandise (P) ltd. Vs.DCIT (2014) 164 TTJ (Del) 448	38-41
5.	K. Parameshwaran v. ITO [1982] 2 ITD 371 (Madras)/[1979] 7 TTJ 194 (Madras)[	42-48
6.	CIT vs. Sheo Ram (2001) 169 CTR (Del) 180 : (2001) 117 Taxman 347 (Del)	49-51

7. The payer made by the assessee as per rule 29 reads as under:

"1. In the above case, the humble applicant-assessee prays for admission of following Additional Evidences as under:

a. Copy of Population Census of Brajeshpura (PB 9-10)/

b. Copy of Population Census of Tather (PB 11-12)

2. The reason behind not filing these papers before the ld. CIT(A) was that the ld. Lower authorities did not judiciously applied their mind on the facts and law applicable on the issue involved in this case in as much as they confined themselves only to the issue that the land was situated within the municipal limits

of Kota, but did not consider the other aspect that the land was factually not situated within that limits but it was situated within the limits of other gram panchayat etc. To support our contention, these evidences are being submitted.

3.1 There can't be any dispute over the settled legal proposition that Rule 29 enables the Tribunal to admit the additional evidence in its discretion if such additional evidence would be necessary to do substantial justice in the matter. Kindly refer CIT v/s Text Hundred India (P) Ltd. (2011) 239 CTR (Del) 263, ITO v/s B.N. Bhattacharya (1978) 112 ITR 423 (Cal). Prabhavati S. Shah vs CIT 1998 231 ITR 1 (Bom.)

3.2 In this case, these evidences goes to the root of the issues and consideration thereof is must for a just decision thereon.

4. Otherwise also, such details which are extracted from Government portal (https://www.censusindia.gov.in) which is in the public domain and hence, cannot be said to be an additional evidence.
Hence, under the totality of facts and circumstances, it is very humbly prayed that such evidence/s kindly be taken on record, considered and obliged."

8. The ld. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee the assessee has raised additional ground in the interest of substantial justice. Ld. AR also filed additional evidence in the form of census of the areas of the property in dispute so as to decide the issue on hand. That additional evidence being already in public domain does not in fact be considered as additional evidence but it is in furtherance to the contention already on record. The primary issue raised in the ground no. 2 raised by the assessee is to decide whether the property sold by the assessee was an agricultural land or not?

In support of the claim the assessee submitted while filling the return of income in response to notice u/s. 153A of the Act the assessee has declared the income on account of the agricultural land owned and sold by the assessee as not chargeable to tax. Ld. AO at page 5 contended that the assessee herself offered the income out of this sale as chargeable to tax in A. Y. 2016-17 and computed the capital gain. But he has not considered the fact that ITR has been revised by the assessee on 30.03.2018 and in that revised return the assessee has not considered capital gain on the sale of immovable property. During the course of search loose paper was found wherein the consideration of the property was mentioned at Rs. 3,13,90,625/-. Since the assessee has not offered that consideration and has only shown capital gain considering the amount at Rs. 65,00,000/- balance amount of Rs. 2,48,90,625/- was declared by the assessee as income but at the time the assessee was unaware about the fact that the asset that she has sold is not capital assets and the income so earned on that sale is not chargeable to Income Tax Act therefore, since that aspect of the assets being capital assets or not is not considered by the AO only on the reason that the assessee could not proved the land as agricultural land and therefore, the addition of Rs. 3,10,99,395/- was made which is far from truth the assessee has placed on record all the details which are required to

prove that the land is agricultural land. As the assessee sold the land in assessment year 2016-17 the Id. AO has not made any addition in that year but made the addition in the assessment year 2015-16. As regards the exemption claimed by the assessee, Id AR of the assessee relied upon the written submission for the distance of the land as to how the claim is covered. The Id. AR also relied on the decision of Bombay High Court in the case of Manubhai A. Sheth (supra) and Marigold Mercandise (Supra) the exemption be granted to the assessee. As regards the issue of agricultural income of Rs. 1,50,000/- the assessee has placed on record Khasra and Girdavri wherein the agricultural activity is duly reported. In the year under consideration the assessee cultivated Dhaniya, methi and soya crop. In the absence of any contrary record the record already on record be considered. Ld. AR also relied upon the judicial decision on that aspect of the matter.

9. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR also filed a report received from the AO vide letter dated 15.04.2024. The Id. AO filed detailed report on the submission made by the assessee. The report of the Id. AO is reproduced herein below:

“Sub:- Appeal before Hon’ble ITAT, Jaipur in ITA No. 628/JP/2023 (A.Y 2015-16) in the case of Vinaya Sharma-reg.

Kindly refer to your office letter no. 18 dated 05/04/2024 on the above mentioned subject.

In this connection it is submitted that it has been directed by your good office to submit report whether paper book/submission was submitted before AO during the course of assessment proceedings or this is a additional evidence. The details of paper book/submission submitted by the assessee before the Hon’ble ITAT is as under:-

S. No.	Particulars	Page No.
1	Copy of Return of Income u/s 139 dated 22.07.2015 with computation of Total Income for A.Y 2015-16	1-2
2	Copy of ITR filed u/s 153A dated 27.02.2019 Computation of Total Income for A.Y 2015-16	3-6
3	Copy of Khasra & Girdwari No. having Samvat 2071-2072 for A.Y 2014-15	7-8
4	Copy of Population Census of Brajeshpura	9-10
	Copy of Population Census of Tather	11-12
	Copy of Parcha Lagan	13

Further, on perusal of the assessment record of the assessee for the A.Y 2015-16 it is found that during the assessment proceedings, the assessee has submitted documents mentioned at S. No 1, 2 and 3 of the above said table of paper book i.e Copy of Return of Income u/s 139 dated 22.07. 2015 with computation of Total Income for AY 2015-16, Copy of ITR filed u/s 153A dated 27.02.2019 with Computation of Total Income for AY 2015-16 and Copy of Khasra & Girdwari No. having Samvat 2071-2072 for A.Y 2014-15. Further on perusal of the assessment records of the assessee it is noticed that during the assessment proceedings, the assessee has not submitted documents mentioned at S. No 4.5 & 6 of the above said table of paper book i.e Copy of Population Census of Brajeshpura. Copy of Population Census of Tather and Copy of Parcha Lagan.

Further, it is pertinent to mention here that during the search action it was found that the assessee during the year under consideration has sold an immovable property at Rs. 3,13,90,625/ When asked about this transaction during post search enquiry the assessee stated that this amount is related to agricultural land sold in FY 2015 1 and actual sale consideration received was Rs. 3,13,90,625/ She further stated that she had paid capital gain considering the sale value of Rs. 65,00,000/- for the AY 2016 17 and remaining amount of Rs. 2,48,90,625/- was never offered for taxation. The assessed considered the sale in FY 2015-16 based on the realization of cheques in bank account in the month of April 2015, however the registries of the sale was done on 25.01.2015 te AY 2015-16. The assessee herself calculated the capital gain on the sale consideration

and furnished ITR for the AY 2016-17 on 21.06.2016 at the total income of Rs 8,20670/- and agriculture income NIL.

Further, after the search conducted on 07.09.2017 the assessee revised the return on 30.03.2018. In revised return the assessee had neither considered capital gain on the sale of immovable property nor claimed any exemption on agriculture income in previous years also In the ITR for AY 2016-17, the assessee claimed indexation on the cost and improvement of immovable property in computation and shown capital gain of Rs 2,60,407/- These facts of the case affirm that the assessee had considered this asset as capital asset and paid tax on capital gain before filing of return of income for AY 2016- 17 on 21.06.2016, however after search action, the assessee revised the return for AY 2016-17 on 30.03.2018 and not shown any capital gain. Further, the assessee claimed exemption of total sale consideration u/s 10 of the IT Act in ITR filed u/s 153A for AY 2015-16 on 27.02.2019, however the same was not claimed in original ITR filed for AY 2015-16 on 22.07.2015.

Apart from this, during the assessment proceedings, the assessee accepted in submission dated 26.11.2019 that she has sold immovable property at Rs.3,13,90,625/- and mentioned the immovable property as agriculture land but no document was provided to confirm the immovable property is a culture land covered under definition of IT Act.

Since, the assessee failed to prove that sand immovable property is agriculture land covered under definition of IT Act, hence the AO has disallowed the exemption claimed by the assessee on sale consideration of 3.13.90,625) and addition of Re 3.10.99.395 was added to the total income of the assessee after giving credit of purchase value and cost of inflation.

Further, the Ld CIT(A)-2 Udaipur has called for the remand report in this ease vide letter no 534 dated 24/02/2023 whether the said immovable property is within municipal limits or not

In compliance to said letter of Ld CIT(A)-2, Udaipur, a letter was sent to the Tehlildar. Ladpura, Kota through ITBA on 05/06/2023 with a request to provide out distance the above agricultural land is situated from the outer boundary of Kota Municipal UIT as on 25.03.2015) and also requested to provide the aerial distance front the periphery (outer boundary) of Kota In response to this letter, the Tehsildar Ladpura, Kota has submitted reply in this office on 03/07/2023 in this regard. As pe the report of the Tehsildar, Ladpura. Kota the distance of the sold agricultural land f the assessee

which was situated at Village-Brajeshpura. Tehsil Ladpura, Kota is 1,200 Km from the Municipality limit of Kota

In view of above, it is submitted that the agricultural land of the assessee which was situated at Village Brajeshpura, Tehsil Ladpura, Kota is covered within the municipality limit of Kota & covered in the definition of capital assets.
Submitted for kind perusal and necessary direction"

10. We have heard the rival contentions and perused the material placed on record. So far as the ground no. 1 raised by the assessee challenging the proceeding under section 153A of the Act, ld. AR of the assessee not pressed that ground and therefore, the same is dismissed as not pressed.

11. Ground no. 2 raised by the assessee is related to the addition of Rs. 3,10,99,958/- made by the ld. AO and sustained by the ld. CIT(A) denying the benefit of exemption u/s. 10 on the sale consideration of agricultural land and considering that land as capital assets. The assessee also raised the additional ground contending that the Ld. AO and CIT(A) erred in law as well as on the fact of the case in considering the subjected agricultural land as a "capital asset" u/s 2(14) (iii) by placing wrong interpretation and ignoring the material placed on record. The subjected land being beyond the limits prescribed under the statute hence, was not a capital asset. The treatment so given by taxing the long term capital gain being contrary to the provisions of law and facts, the said land be declared as not a case of a

capital asset, quashing the levy of long term capital gain tax. Since this additional ground and ground no. 2 being related to property is decided together.

12. Brief facts related to the disputes are that the assessee a search & seizure operation under section 132(1) of the Income Tax Act, 1961 was carried out on 07.09.2017 at the various premises of "Resonance Group, Kota" to which the assessee belongs. A number of persons / premises covered u/s 132 of the IT Act, 1961. The search action was carried out on the assessee on 07.09.2017. Assessee is an individual and derives Income from salary, capital gain and other sources. Consequent to search notice u/s 153A of the Act was issued to the assessee and was duly served. In response to notice issued u/s 153A, the assessee furnished her return of income on 27.02.2019, declaring total income of Rs. 5,31,100/- and agriculture income of Rs. 1,50,000/-. Earlier the assessee had filed her return of income u/s 139 of the Act on 22.07.2015 at the total income of Rs. 2,70,850/- and agriculture income of Rs. 1,50,000/-.

13. During the search action it was found that the assessee has sold an immovable property at Rs. 3,13,90,625/-. When asked about this

transaction during post search enquiry, the assessee has stated that this amount is related to agriculture land sold in FY 2015-16 and actual sale consideration received was Rs. 3,13,90,625/-. She further stated that she had paid capital gain considering the sale value of Rs. 65,00,000/- for the AY 2016-17 and remaining amount of Rs. 2,48,90,625/- was never offered for taxation. The assessee considered the sale in FY 2015-16 based on the realisation of cheques in bank account in the month of April 2015; however the registries of the sale was done on 25.03.2015 i.e. in FY 2014-15. The assessee herself calculated the capital gain on the sale consideration and furnished ITR for AY 2016-17 on 21.06.2016 at total income of Rs. 8,20,670/-and agriculture income NIL. Further, after the search conducted on 07.09.2017 the assessee revised the return on 30.03.2018. In revised return the assessee the assessee has not considered capital gain on the sale of immovable property. It is also mentioned that assessee has not claimed any exemption on agriculture income in previous years also. The assessee in computation submitted along with ITR for AY 2016- 17 claimed indexation on the cost and improvement of immovable property and arrived at capital gain of Rs. 2,60,407/-.

14. In the assessment proceeding, the assessee was asked to produce documents supporting the claim of exemption u/s 10 of the Act vide show cause notice dated 23.11.2019. The assessee submitted the reply contending that she has sold an agricultural land amounting to Rs. 3,13,90,625/-. The entire amount of Rs. 3,13,90,625/- has been shown in the income tax return filed u/s. 153A of the Act as exempt income. Copy of Khasra & Girdawari was placed on record. Ld. AO noted that assessee has not furnished documents to confirm that the immovable property is an Agriculture land and hence the exemption claimed by the assessee was denied and addition of Rs. 3,10,99,395/- [3,13,90,625/- less 2,91,230/- (indexed cost of purchase)] was made in the hands of the assessee.

Assessee challenged this finding before the ld. CIT(A) who has also confirmed that addition by holding that the distance of the sold agricultural land was situated at village Brijeshpura, Tehsil-Ladpura, Kota and the distance of the land with the Municipality limit of Kota is 1.200 km only the assets was considered as capital assets. Even the population of kota was more than 10 lac as per census of 2011 the assets the benefit was denied to the assessee.

15. The bench noted that for the dispute relating the charging of income of property, the assessee considered the sale in F. Y. 2015-16 i.e. 2016-17 based on the realization of cheques in bank account in the month of April 2015; however the registries of the said sale was done on 25.03.2015 i.e. F. Y. 2014-15 i.e. Assessment year 2015-16. The assessee herself calculated the capital gain on the sale consideration based on the document value and filed the ITR for A. Y. 2016-17 on 21.06.2016 at total income of Rs. 8,20,670/- and agricultural income at Nil. After the search conducted on 07.09.2017, the assessee revised return on 30.03.2018 for A. Y. 2016-17 and in that return the assessee has not considered the capital gain. In the assessment proceeding [copy of order filed] 2016-17 the said income was not considered. But assessee while filling the ITR as per provision of section 153A of the Act considered the capital gain sale of this land as exempt which the assessee in the original return has not considered for A. Y. 2015-16. Thus, the dispute survives for assessment year 2015-16 and that fact is not disputed by the revenue.

16. The first and foremost issue to decide is that whether the land which is sold is capital assets or not. For that we refer to the provision of section 2(14) which defines the term capital assets which reads as under :

(*14*) "capital asset" means—

(*a*) property of any kind held by an assessee, whether or not connected with his business or profession;

(*b*) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*c*) any unit linked insurance policy to which exemption under clause (*10D*) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof,

but does not include—

(*i*) any stock-in-trade [other than the securities referred to in sub-clause (*b*)], consumable stores or raw materials held for the purposes of his business or profession ;

(*ii*) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—

(*a*) jewellery;

(*b*) archaeological collections;

(*c*) drawings;

(*d*) paintings;

(*e*) sculptures; or

(*f*) any work of art.

Explanation.—For the purposes of this sub-clause, "jewellery" includes—

(*a*) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(*b*) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

(*iii*) **agricultural land in India**, not being land situate—

(*a*) **in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or**

(*b*) in any area within the distance, measured aerially,—

(*I*) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and

which has a population of more than ten thousand but not exceeding one lakh; or

(*II*) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than one lakh but not exceeding ten lakh; or

(*III*) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

(*iv*) 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;

(*v*) Special Bearer Bonds, 1991, issued by the Central Government ;

(*vi*) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

Explanation 1.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Explanation 2.—For the purposes of this clause—

(*a*) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (*a*) of the *Explanation* to section 115AD;

(*b*) the expression "securities" shall have the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

Before us in support of the contention that the land is not capital assets we note that (i) subjected land is a rural agricultural land, (ii) Revenue records shows the land as agricultural land, (iii) the use of the land was agricultural land and land was not dry land. As regards the distance of the land first it has to be factually ascertained that whether the land is falling within the

jurisdiction of Kota Nagar Nigam or in the Gram Panchayat. We note from the page 36 of the order of the ld. CIT(A) wherein he has extracted the certificate Tahsildar, Ladpura, District Kota dated 24.03.2023. That certificate makes two thing clear that the land is away of about 8 to 10 KM from the relevant nagar nigam. It falls in the Gram Panchayat.

17. Keeping in mind the facts as cited herein above and definition of the capital assets we note from the provision of Section 2(14) that there are certain exclusions made from the definition of capital asset and one of them is enumerated in clause (iii), is an agricultural land in India. The said exemption is not for any or every agricultural land but only an agricultural land which is not situated in an area, which comprises within the jurisdiction of a municipality or cantonment board, gram panchayat etc. and which has a population more than 10,000. In other words, the land must fall within the jurisdiction of some municipality, municipal corporation or town area committee etc, and secondly must have a population more than 10,000. Both the conditions must be satisfied cumulatively to hold any agriculture land as a Capital Asset. Now applying these provision of law in the facts of the present case that the land in the instant case admittedly did not fall within the jurisdiction of Kota Nagar Nigam but it falls within the jurisdiction

of Brijeshpura (Gram Panchayat being Tather) which had a census of 382 persons only, based on the last census (PB 09-10). Thus, the present land is not a capital asset within the meaning of Section 2(14) of the Act.

18. Alternatively even if we also see the provision of section 2(14) (iii)(b)(i), one has to see the jurisdiction within which the subjected land falls and one has to measure 2 kilometres from the local limit of such a municipality or town area committee. In the present case, land was situated within the jurisdiction of Brijeshpura's Gram Panchayat as aforesaid and was within 2 kilometres. Another condition was that such area must have a population of more than 10,000 but not exceeding 1 Lakh. However, in this case as per the last census 2011 by Government of India, there was population of 382 only which is much below 10,000. In the light of this fact even on this condition there appears reason as to why the ld. CIT(A) referred 2(14) (iii)(b) and to consider the issue w.r.t Kota Nagar Nigam only, once the land does not admittedly fall within the jurisdiction of Kota Nagar Nigam as per the certificate placed on record. We get strength of our view as taken from the decision of the Delhi High Court in the case of CIT Vs. Sheo Ram [117 Taxman 347] wherein the high court has confirmed the following finding of the tribunal

> "The net result is that at best it can be said that the agricultural land in question was situated in an area which is comprised within the jurisdiction of municipality of Delhi, known as Delhi Municipal Corporation as also within the jurisdiction of municipality of Nangal Dewat known as Gaon Sabha Nangal Dewat. Whereas the population of the area comprised within the jurisdiction of Gaon Sabha Nangal Dewat is less than 10,000 the population of the area comprised within the jurisdiction of DMC is over 10,000. Obviously, such a situation could not be said to have been provided for in section 2(14)(iii)(a), otherwise the Parliament would have enacted some guideline for making appropriate choice for including or not including in the definition of 'capital asset' such an agricultural land. We, accordingly, refuse to interfere with the finding of the Commissioner (Appeals)."
> In view of the aforesaid finding of facts, the Tribunal's conclusions could not be faulted. Accordingly, it was to be held that the Tribunal was right in law in holding that the land in question was not agricultural land within the meaning of section 2(14)(iii)."

Thus, we are of the view that ld. CIT(A) has not cited as why he has ignored the fact that the said land falls in Gram panchayat and not in nagar nigam and thereby we do not sustain that finding of the ld. CIT(A). Thus, what was intended was that capital gains arising from transfer of agriculture lands situated in rural areas will continue to be outside scope of capital asset except agriculture land in urban areas and municipality /cantonment board up to prescribed limit. In the light of the discussion so recorded herein above ground no. 2 and additional ground raised by the assessee stands allowed.

19. Ground no. 3 raised by the assessee relates to the addition made by the ld. AO and sustained by the ld. CIT(A) being the agricultural income of Rs. 1,50,000/- treated as other income, while doing so ld. AO contended

that assessee could not justify the income with cogent evidence and even the assets was not considered as agricultural land, said income was considered as other income of the assessee.

20. As it is not disputed that assessee submitted Khasra Girdhavri before the assessing officer. These documents are document wherein entries are made by the Girdhavar and shows the agricultural operations carried out in a particular cycle of Kharif, Ravi etc. In the present case the Khasra Girdhavri (PB-7-8) for the relevant period the assessee cultivated dhaniya, mehti and soya crop in the irrigated and unirrigated land both. Thus, Girdhavri is the conclusive evidence to show the fact of the owner or the farmer having cultivated the land, in absence of any contrary evidence brought on record, if any and cannot be ignored. Moreover, the claim of assessee is further supported by independent and credible evidence being Parcha Lagan by Land Management Department of Government of Rajasthan (PB 13) showing her right, title and possession in the said property as per Revenue records. Therefore, the fact of carrying out of agriculture operation on the subjected land has been wrongly denied.The law is well settled that where assessee is not maintaining day-to-day books of accounts, or accounts maintained are rejected, then only course left is

the estimation of agricultural income. In the cases of agricultural income, more so the legislature itself do not statutorily require the assessee to maintain regular books accounts, which may be a case u/s 44 AA r.w. Rule 6F of the Income Tax Rules, 1962 and therefore, a fair estimation is required. Keeping in mind of no statutory requirement, the assessee do not keep each and every receipt and vouchers etc. in a systematic manner. Therefore, the Hon'ble Courts have taken a view that in such cases, a fair estimation should be made. Accordingly, in this case where total area of land was irrigated and cultivated with the crops of Mehti, Dhaniya and Soya. Keeping in mind the fertility and expected crop, one could reasonably considered the income from that activity at Rs. 1,50,000/-. In the light of these observations the we direct the ld. AO delete the addition of 1,50,000/- made in the case of the assessee under the income from other sources. Thus, Ground no. 3 raised by the assessee is allowed.

21. Ground no. 4 raised by the assessee is related to the charging of interest u/s. 234A/B&C of the Act which consequential in nature and does not require our adjudication.

22. Ground no. 5 raised by the assessee being general in nature does not require our adjudication.

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

Order pronounced in the open court on 17/10//2024.

Sd/-	Sd/-
(डा० एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 17/10/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Vinaya Sharma, Kota
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Kota
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 628/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar