IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER
AND
DR MITHA LAL MEENA, ACCOUNTANT MEMBER

ITA No. 712/Jodh/2024
(ASSESSMENT YEAR- 2013-14)

Smt. Shanaj W/o Shri Aslam Khan Near Bherudan Ji Well,Ward No. 22 Sardarshahar,Churu – 331 403	Vs	The ITO Ward-2, Churu, Churu
(Appellant)		**(Respondent)**
PAN NO. FPMPS 3570 D		

Assessee By	Shri Aman Saxena Advocate
Revenue By	Shri Karni Dan, Addl. CIT-DR
Date of hearing	05/10/2024
Date of Pronouncement	01/01/2025

O R D E R

PER: DR S. SEETHALAKSHMI , JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 23-08-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2013-14 raising therein following grounds of appeal:-

''1. The Lower Authorities have grossly erred in taxing the sale of land even though the agricultural land is situated beyond the Municipal Limits.

2. The ld AO has grossly erred in not taking into consideration the Govt Notification dated 01-07-1988 holding that the said land is beyond the municipal limits of Sardarshahar.

3. That the ld.AO has grossly erred in not allowing the benefit of Section 54F of the Act.''

2.1 Apropos Ground of appeals of the assessee, it is noted that the ld.CIT(A) has dismissed the appeal of the assessee by observing as under:-

8. Decision:

All the information available on record alongwith the impugned assessment order, the grounds of appeal and submission filed by the appellant in this case has been considered. The additional documents submitted during appellate proceedings were forwarded to the JAO calling for remand report. Remand report dated 10.04.2019 has been taken on record. The appellant's comments on the remand report have also been considered. The ground wise issues raised in this appeal are discussed as under:

8.1 Grounds of appeal number 1 and 8:

Vide ground no 1 and 8 of this appeal, the appellant has challenged the action of AO in initiating reassessment proceeding U/s 147 of the Act without obtaining proper satisfaction and sanction from the superior authority U/s 151 of the Act. I have carefully considered the facts and submissions of the Learned AR and the decisions relied on by him. This is

the case where originally the appellant had not filed return u/s 139 (1) of the Act but subsequently filed return of income in response to notice u/s148 of the Act on 02.11.2017. The AO had received credible information regarding sale of land by the appellant during AY 2013-14, which is situated within the municipal limits as per the Office of Municipality, Sardarshahar letter no 1836 dated 24.08.2016. Considering this fact, the appellant's submission that notice u/s 148 of the Act was issued on the basis of suspicion is not accepted. Accordingly, the ground nos 1 and 8 are dismissed.

8.2 Grounds of appeal number 2 and 3:

Vide ground no 2 and 3 of this appeal, the appellant has challenged the action of AO in treating the alleged agricultural land as capital asset and applying the provision of section 50C of the Act. A perusal of record reveals that the appellant had sold a piece of land for a consideration of Rs. 4,76,000/- whose valuation as per Stamp and Registration Authority was at Rs. 1,21,44,000/- during AY 2013-14. Further the Office of Municipality, Sardarshahar had confirmed vide letter no 1836 dated 24.08.2016 that the alleged land was situated inside the municipal limits of Sardarshahar. Further, during the appellate proceedings, the appellant has submitted a letter no 8771 dated 28.02.2019 from Municipality Office, Sardarshahar, wherein it has been stated that the alleged land is not situated in the municipal limits of Sardarshahar. Subsequently, during remand proceedings, the Municipal Office Sardarshahar vide letter 44 dated 04.04.2019 had conveyed to the AO that the alleged land is situated outside the municipal limits of Sardarshahar but has not conveyed the distance of alleged land from the municipal limits of Sardarshahar. After receipt of appeal in faceless mode the remand report received in faceless mode was shared with the appellant. The appellant had submitted reply on 24.02.24 arguing that the alleged land is not situated in Municipal area of Sardarshahar notified as per Notification 9447 and 11186 and submitted that the alleged land is situated beyond 6 Km from the Municipal Limits. However, the appellant has not filed any documentary evidence in this regard. Therefore, in the absence

of any documentary evidence about exact location of the alleged land, it cannot be treated as agricultural land. Accordingly, it is held that the AO is justified in invoking provisions of section 50C of the Act treating the land as capital asset. Hence, the ground nos 2 and 3 are dismissed.

8.3 Grounds of appeal number 4:

Vide ground no 4 of this appeal, the appellant has challenged the action of AO in not referring the issue for valuation to determine the correct market value even after a specific request U/s 50C(2) of the Act. A perusal of record reveals that during the course of assessment proceedings, the AO had referred the matter to valuation officer but the valuation report was not received till the date of finalization of assessment proceedings u/s 143(3) rws 147 of the Act on 28.12.2017. However, on receipt of valuation report, the AO passed the necessary rectification order u/s 154 of the Act on 28.11.2018 reducing the taxable income from 6,05,20,557/- to Rs. 72.14 057/-. Accordingly this ground does not survive and hence is dismissed.

8.4 Grounds of appeal number 5:

Vide ground no 5 of this appeal, the appellant has challenged the action of AO in not allowing the deduction U/s 54F of the Act. The claim of the appellant has been considered and it is noticed that the appellant has not claimed any deduction u/s 54F of the Act for the AY 2013-14. The Hon'ble Apex Court vide order dated 24.03.2006 in the case of Goetze (India) Ltd. Vs CIT in CIVIL APPEAL NO. 1761 of 2006, held that the claim of deduction not made in the return cannot be entertained by the assessing officer otherwise than by filing a revised return. In view of the judgment of the Hon'ble Apex Court and facts of this case, no merit is found in the submission of the appellant and it is held that the AO is justified for not entertaining the claim of the appellant of deduction u/s 54 of the Act not made in the return of income. Therefore, it is held that

the claims made by appellant in ground no 5 are devoid of merit. Accordingly, the ground no 5 of this appeal is dismissed.

8.5 Grounds of appeal number 6 and 7:

Vide ground no 6 and 7 of this appeal, the appellant has challenged the action of AO in not accepting the affidavit filed by her and has also claimed that she was not provided the opportunity of cross examination of the Executive Officer Municipal Board Sardarshahar. A perusal of record shows that the Office of Municipality, Sardarshahar vide letter no 1836 dated 24.08.2016 had confirmed that the alleged land was situated within the municipal limits of Sardarshahar. Considering the confirmation letter from the Office of Municipality, Sardarshahar, no infirmity is found in the action of the AO in rejecting the appellant affidavit in this regard. Further, the question of opportunity for cross examination of the Executive Officer Municipal Board Sardarshahar does not arise as the office of Municipal Board Sardarshahar is a public office. The appellant could have approached the office directly seeking correct information during the assessment proceedings which she has done during the course of the appellate proceedings and submitted the letter from municipality as additional evidence. The additional evidence submitted by the appellant has been considered during the appellate proceedings but in the absence of information about the distance of alleged land from municipal limit of Sardarshahar is not found sufficient to establish the nature of alleged land as an agricultural land and not a capital asset. Therefore, it is held that the claims made by appellant in ground nos 6 and 7 are devoid of merit. Accordingly, the ground nos 6 and 7 of this appeal are dismissed.

8.6 Grounds of appeal number 9:

Vide Ground No 9 of the appeal, the appellant has requested to add to, alter. amend, modify, substitute, delete and/or rescind all or any of the ground of appeal on or before the final hearing. Since, the appellant has not submitted any

request to amend the appeal; therefore, this ground of appeal is not entertained.

9. In the result, the appeal is dismissed.''

2.2 During the course of hearing, the ld.AR of the assessee submitted that the lower authorities erred in not allowing the benefit of Section 54F of the Act to the assesee. To this effect, the ld. AR of the assessee has repeated the same arguments as were made before the ld.CIT(A) and thus he has filed the detailed written submission to counter the orders of the lower authorities and the same is reproduced as under:-

1. The assessee is a lady dependent on her husband for her livelihood, and since she did not have any taxable income, no return of income had been filed for the year under consideration or past years.
2. On the basis of AIR information, the Assessing Officer (AO) noted that the assessee sold four pieces of land situated at RohiMauja, Sardarshahar during the FY 2012-13 on 18-02-2013, and one piece of land situated at RohiMauja, Sardarshahar during the FY 2012-13 on 19-02-2013 for a total consideration of Rs. 24,00,000/-, the value of which was determined at Rs. 6,18,28,000/- by the Stamp Authority.
3. The AO noted that the assessee, despite having substantial taxable capital gains, did not file a return of income for the AY 2013-14 and accordingly initiated proceedings u/s 147 of the Income Tax Act by issuing notice u/s 148.
4. During the course of assessment proceedings, the assessee challenged the issuance of notice and stated that the pieces of land sold by her did not fall under the definition of 'capital assets' as they were situated beyond the prescribed limit of the nearest municipality.
5. However, the AO did not accept the assessee's claim and, based on a letter (No. 1836 dated 24-08-2016) from the Executive Engineer of Nagar Palika, Sardarshahar, concluded that the pieces of land sold by the assessee fell within the definition of capital assets.
6. While finalizing the assessment proceedings, the AO also did not accept the assessee's claim of deduction u/s 54 of the Income Tax Act amounting to Rs. 15,00,000/-.
7. Finally, the AO passed the assessment order u/s. 143(3)/147/148 of the Act dated 28-12-2017 whereby the assessee's income was determined at Rs. 6,05,20,560/- by making addition to this extent on

account of LTCG by taking value of the properties sold as per provisions of sec. 50C of the Act subject to DVO's report.

8. Against the said order, the appellant preferred present appeal before your honour.
9. Meantime, the AO received DVO's report dated 17-09-2018. On the basis of this report, the AO rectified his earlier order dated 28-12-2017 by passing order u/s. 154 of the Act dated 28-11-2018. In the said rectification order, the AO adopted the value of the properties sold at Rs. 85,21,500/- and after reducing the cost of acquisition of Rs. 13,07,443/-, the LTCG was determined at Rs. 72,14,057/-.

10. While narrating the sequence of events, the appellant would also like to state that the appeal filed against the assessment order passed u/s. 143(3)147 of the Act dated 28-12-2017 was fixed and notice u/s. 250 of the Act was received by the appellant. In response, the appellant has filed her reply along with certificate of Municipal Board, Sardarshahar dated 28-02-2019 which is latest one (may be treated as additional evidence). In the said letter dated 28-02-2019, it was specifically stated that Khasra No. 230 is outside the Municipal Limit of Sardarshahar.
11. Since this latest certificate of Municipal Board, Sardarshahar dated 28-02-2019 being additional evidence, it was informed to the appellant a remand report from the AO may be called for. However, it is not clear whether any remand report is called for or not or if called for the same is certainly not provided to the appellant for rebuttal.
12. Sir, even after the AO's rectification order dated 28-11-2018, the issue of dispute remains the same that pieces of land sold by the assessee were agricultural land and not fall in the definition of capital assets, hence, no addition on account of LTCG should be made in our case. Thus, we still rely on our grounds of appeal raised which are reproduced as under:-

I. On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in initiating reassessment proceeding U/s 147 of the Income tax Act 1961.
II. On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in taxing the sale of alleged land as the alleged land is an agricultural land situated out of limit of Municipal Board hence not a capital assets.

III. On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in applying the provision of section 50C of the Income Tax Act as the alleged rights are Khatedari Rights and not land or a building. Moreover the alleged Khatedari Rights on land are even not a Capital Assets.

IV. On the facts and circumstances of the case Learned Assessing Officer rossly erred in not referring the issue for valuation to determine the correct market value even after a specific request U/s SOC(2) of the Income Tax Act 1961.

V. On the facts and circumstances of the case Learned Assessing Officer grossly in not allowing the deduction U/s 54F of the Income Tax Act 1961.

VI. On the facts and circumstances of the case Learned Assessing Officer &rossly erred in not accepting the affidavit filed by the assessee without proving it wrong.

VII. On the facts and circumstances of the case Learned Assessing Officer grossly erred in not providing the opportunity of cross examination of the Executive Officer Municipal Board Sardarshahar.

VIII. On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in initiating reassessment proceeding without obtaining proper satisfaction and sanction from the superior authority U/s 151 of the Income Tax Act 1961.

IX. That the applicant craves his indulgence to add, amend, alter any or all of the grounds of appeal before the decision of appeal.

After discussing the facts of the case, the appellant very humbly and respectfully begs to submit the following facts and submissions in support of the grounds of appeal raised in the above appeal before your honor for your kind consideration and allowing appropriate relief:

Grounds of Defence:

(Ground No 1)

On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in initiating _ reassessment proceeding U/s 147 of the Income tax Act 1961.

Your appellant humbly contends that the AO while holding that five pieces of land sold by the appellant were capital assets, the AO did not any his own mind and acted on the AIR information. The AO adopted the DLC value of the lands as actual value of the land, ignoring the fact that this land was situated beyond 6 KM of Municipal limits of the Sardarshahar thus, was not capital assets. Accordingly,

the addition so-made is erroneous, arbitrary and for the sake of making addition to the returned income. Had the material available on record examined judicially by an unbiased person in light of judicial pronouncement on the subject matter, no addition on account of invocation of sec. 50C would have been made. While making unwarranted addition contrary to the material on record Ld. AO denied to consider true nature of land and the judgments of Supreme Court and Jurisdictional High Court of Rajasthan on the issue. The denial to consider the binding judicial Pronouncement without recording any finding as to why such decision not at all applicable in the case under consideration itself demonstrate that the assessment was framed in capricious and arbitrary manner contrary to the law governing the issue under consideration.

Your appellant wishes to submit that in the instant case also, there were no enquiries conducted to ascertain the correct facts regarding actual sale consideration of the lands and whether the land fall under the definition of capital asset or not and only on the basis of AIR information, the AO reopened the assessment and issued notice u/s. 148 of the Act.

It is submitted that the reasons recorded merely reflect the suspicion of the AO and not the satisfaction recorded before issuance of notice under s. 148 of the Act and on mere suspicion reopening is not permissible in the light of the following decisions:

(i) CIT v. Smt. Paramjit Kaur [2008] 168 Taxman 39 (P&H);
(ii) CIT v. Atul Jain [2007] 212 CTR 42 (Delhi) .

In the case of Atul Jain above the Delhi High Court observed that the expression "information" connotes something more than a mere rumor or a gossip or a hunch and thus after foundation based on information is set up, there must still be some reasons which warrant the holding of a belief so as to necessitate the issuance of a notice under s. 148 of the Act; since the reopening was based on vague information the reassessment was held to be not valid in law. Further, it is to contend that that the reopening of assessment is bad in law for the reasons:

a) That the information on the basis of which the Assessing Officer had initiated proceedings U/s 147 of the Act was vague and uncertain and could not be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. CIT Vs. Insecticides (India) Ltd (2013) 357ITR 330 (Delhi)
b) That the learned Assessing Officer had acted on suspicion and assumption that the income chargeable to tax had escaped

assessment. Information on which the Appellant's case was reopened was not reliable and specific.
Durga Prasad GoyalVs ITO (2006) 101 TTJ 1 (Amritsar)

c) Reassessment—Validity—Grounds alleged in notice under s. 148 incorrect or non existent—ITO's jurisdictions is ousted the moment this situation comes to his knowledge.

Commissioner of Income Tax Vs Atlas Cycle Industries (1989)
180ITR 319 (P&H).

On the basis of the aforesaid legal precedents it is clear that simply mentioning certain facts without application of mind and without bringing on record the impact thereof on assessed income, will not be sufficient reason to believe that any income chargeable to tax has escaped assessment.

It is further submitted that the sufficiency of reasons cannot be questioned. However, the appellate authorities have jurisdiction and authority to satisfy themselves as to whether the AO had reason to believe taking into consideration whether the reason so given has a rational connection or relevance for formation of that belief. The rational connection postulated in section 147 must have a direct nexus or live link with the material coming to the notice of the AO and the formation of his belief regarding escaped income. There must be tangible material on record for the formation of opinion, which is a prerequisite for initiation of action u/s 147. There should be facts before the AO, which should reasonably give rise to the belief that income has escaped assessment. The facts should have relevant bearing to the formation of the belief at the time of issue of notice. It is thus, trite that when challenge is made to the action u/s 147 what the appellate authority is required to do is to examine as to whether there is some material on record for the AO to form the requisite belief and whether the reason for the belief has a rational nexus or relevant bearing to the formation of Such belief. In the instant case, there was no material on record nor there was any nexus between the reasons recorded and the facts on record on the basis of which it could be said that the income has escaped assessment.

The duty of the assessee does not extend beyond making a full and true disclosure of primary facts. Once he has done so, his duty ends. It is for the AO to draw the correct inference from the primary facts and it is not the responsibility of the assessee to advice the AO with regard to the inference, which he should draw from the primary facts. If the assessing authority draws an inference, which appears to him, subsequently, to be erroneous, mere change of opinion with regard to that inference will not justify initiation of action for reopening of assessment. The power to reopen assessment proceedings would only be

available if the AO has reason to believe that any income chargeable to tax had been under-assessed and also that he has reason to believe that such assessment had occurred by reason of either omission or failure on the part of the assessee to make a return of income his or omission of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. The above view gets support from the decision in the case of JCIT Vs. George Williamson Limited — reported in 258 ITR 126.

Sir, in our case, the AO had not at all recorded the requisite satisfaction as tegards escapement of income. The word "belief" is qualified by the word "reason", meaning thereby the belief has to be based on some basis / material. The word "belief? has to be understood in contradistinction to suspicion or opinion. The word "belief" indicates something concrete or reliable (130 ITR 1 — SC). The belief relating to escapement of income should not be a product of imagination or speculation. There must be reason to induce the belief (80 ITR 467 — SC). The reopening should not be for investigations or finding out the probabilities of escaped income (79 ITR 603). In other words, the AO issued the notice u/s 148 only on suspicion. In other words, in the present case, the Ld. AO did not have any material, direct of circumstantial; to have any basis for his belief that income has escaped assessment. There was no concrete material at all in the possession of the AO to arrive at the conclusion that income has escaped assessment. A mere mention of a belief, without disclosing the reasons on which such belief has been based, cannot be permitted.

In view of the above, it is requested to kindly quash the assessment proceeding based on non-application of mind of the Assessing Officer while recording the reason to believe.

(Ground No. 2)

On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in taxing the sale of alleged land as the alleged land is an agricultural land situated out of limit of Municipal Board hence not a capital assets.

Before arguing this ground of appeal and giving reply on AO's various allegations while making the unwarranted addition of Rs. 6,05,20,557/- which was subsequently reduced to Rs. 72,14,057/- vide order passed u/s. 154/143(3) r.w.s. 147/148 of the Act dated 28-11-2018 after receipt of DVO's report, your humble appellant would like to point out that AO's entire action in treating the pieces of land sold by the appellant as "capital assets" is based on report dated 24-08-2016 Executive Engineer of Municipal Board of Sardaharshar.

If your honor go through, this letter dated 24-08-2016 of Executive Engineer of Municipal Board of Sardaharshar, it never state about any specific distance of properties in question from Municipal Board of Sardaharshar.

Moreover, it is totally silent on aerial distance Municipal Board of Sardaharshar. Thus, this letter cannot be said to be conclusive of proof of distance of properties in question from Municipal Board of Sardaharshar.

Thus, in view of above, the appellant humbly contends that the Id. AO has erred in law as weil as on facts while making arbitrary addition of Rs. - 6,05,20,557/- which was subsequently reduced to Rs. 72,14,057/- vide order Passed u/s. 154/143(3) r.w.s. 147/148 of the Act dated 28-11-2018 after receipt of DVO's report on account of sale of lands by invoking provision of section 50C of the Act. The addition made is illegal, contrary to the facts and not in conformity with the law. Sir, in the instant case, the AO has totally ignored that the lands in question were agricultural lands and as per law it does not fall under the category of capital asset. Further, it is necessary to clarify when is Agricultural Land a Capital asset?

As per the definition section 2(14) of the Income Tax Act, if any of the following conditions are satisfied, the said agricultural land shall be treated as capital assets. For the sake of clarity, the relevant provisions of section 2(14)(iii) are reproduced as under:-

"(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;]]

From the language of section, the definition about agriculture land is as under :-

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 according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;

In simple terms, what aforesaid provisions state is that if any of the following conditions is fulfilled the agriculture land will be treated as capital asset under Income Tax Act .

1. Agriculture land is situated within a municipality or cantonment and the population of such municipality or cantonment is more than 10,000 as per last census. Or
2. Agriculture land is situated within an area from local limit of municipality or cantonment are as notified by government in this regard. 7

Notification by Government for Capital Asset Purpose

The government issued Notification No. [SO 9447] (File No. 164/3/87-ITA.|)], dated. 6-1-1994 based on urbanization of the area (attached)

The list of cities of Rajasthan state as per the above stated notification is discussed as under:-

19.	Rajasthan	1. Ajmer	Areas up to a distance of 8 kms. from the municipal limits in all directions,
		2. Alwar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		3. Beawar	Areas up to a distance of 8 kms. from

			the municipal limits in all directions.
		4. Bharatpur	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		5. Bhilwara	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		6. Bikaner	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		7. Jaipur	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		8. Jodhpur	Areas up to a distance of 8 kms from the municipal limits in all directions.
		9. Kota	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		10. Pali	Areas up to a distance of 8 kms. from the the municipal limits in all directions.
		11. Sikar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		12. Sriganganagar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		13. Tonk	Areas up to a distance of 8 kms. from the municipal limits in all directions.
		14. Udaipur	Areas up to a distance of 8 kms. from the municipal limits in all directions.

What if the agriculture land is not falling within any municipality named in the Notification by Government?? In that case, the agriculture land is not capital asset if it is not within any municipality.

Summing Up on agricultural land

To determine whether agriculture land, try to answer following question

1. Whether it is situated in any municipality or cantonment population of which is more than 10000.

2. Whether it is situated within distance from notified municipality as given in Notification 9447 and 11186.

if answer of any of the above is YES, the said agricultural land is capital asset, otherwise not.

In the instant case, admittedly, the agricultural lands of the assessee was Not situated in Municipal Area of Sardarshahar and even not situated within distance from notified municipality as given in Notification 9447 and 11186. In fact, as per newly notified of area Municipal limit of Sardarshahar, the lands are

beyond 6 Km 'from the Municipal Limits. This fact can be verified from Google Map of Sardarshahar Municipality and distance of Village RohiMauja from Municipal Limit of Jodhpu, which is enclosed herewith along with the latest report/certificate dated 28-02-2019 of Municipal Board, Sardarshahar.

Sir, it is clarified that our case is not covered by section 2(14)(iii)(b) of the Act. Reference is again invited to sub-clause(b) of section 2(14)(iii)

"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"

Sir, it may be noted that right from the original assessment proceedings, the AO's contention has been that village RohiMauja which assessee's properties are situated fall within the Municipal Limit of Sardarshahar, Distt. Churu. While holding so, the AO's just kept concreted on establishing that village RohiMauja falls within 8 Kms of Municipal Limit of Sardarshahar. However, the AO failed to take note of the fact that as per census of 2011, the population of Sardarshahar was 9,60,252 which certainly in year FY 2012-13 must have not increased to 10 lacs which means its population ranges between one lakh — less than ten lakh. Thus, in such case, limits shall be 6 Kms rather than 8 Kms. Certainly, the appellant's properties which are in question situated beyond 6 Kms, hence do not fall in the definition of capital assets.

Identical issued has been covered by Hon'ble ITAT, Kolkata in the case of DCIT Cir 8 vsArijitMitra [2011] 16 taxmann.com 66 (Kol.) where in the Tribunal allowed appeal of assessee. In that case, it was held by the Tribunal that if land is not situated within the municipality and also not within the area of any municipality mentioned in said Notification, the agriculture land is not capital asset. The concluding portion of Hon'ble ITAT, is reproduced as under:-

> *The agricultural land situated in areas lying within a distance not exceeding 8kms from the local limits of Municipalities or Cantonment Boards are covered by the amended definition of 'capital asset', if such areas are, having regard to the extent of and scope for their urbanization and other relevant considerations, is notified by the Central Government in this behalf. Central Government in its Notification No. 11186 dated 28-12-1999 clearly clarifies that agricultural land situated in rural areas, areas outside the municipality or cantonment board etc., having a population of not less than 10,000 and also beyond the distance notified by Central Government from local limits, i.e. the outer limits of any such municipality or cantonment board etc ., still continues to be excluded from the definition of 'capital asset'. Accordingly, in view of sub-clause (b) of section 2(14)(ili) even under the amended definition of expression 'capital asset', the agricultural land situated in rural areas continues to be excluded from that definition. In the instant case, admittedly, the agricultural land of the assesse was outside the municipal limits and that also 2.5 km. away*

from the outer limits of the said Municipality, assessee's land did not come within the purview of section 2(14)(iii) either under sub-clause (a) or (b), hence the same could not be considered as capital asset within the meaning of this section: Hence, no capitalgain tax could be charged on the sale transaction of this land entered by the assessee. [Para 7].

Sir, it is to submit that Central Government in its Notification No. 9447 dated 06.01.1994 and 11186 dated 28-12-1999 clearly clarifies that agricultural land situated in rural areas, areas outside the municipality or cantonment board etc., having a population of not less than 10,000 and also beyond the distance notified by Central Government from local limits, i.e. the outer limits of any such municipality or cantonment board etc ., still continues to be excluded from the definition of 'capital asset'. Accordingly, in view of sub-clause (b) of section 2(14)(iii) even under the amended definition of expression 'capital asset', the agricultural land situated in rural areas continues to be excluded from that definition.

In the instant case, admittedly, the agricultural lands of the assessee was not situated in Municipal Area of SARDARSHAHAR and even not situated within distance from notified municipality as given in Notification 9447 and 11186.

In view of above discussed case, if the agricultural land is not falling within any municipality and not situated within distance from notified municipality as given in Notification 9447 and 11186. The land cannot be held as capital asset.

First issue:-

Explicit from the Above.

It is pertinent to mention here that the previous owner/the assessee had been doing agricultural activities on the same lands till the date of sale of lands and still the lands have been using for agricultural purpose. In the said deeds dated 18-02-2013 & 19-02-2013, it is clearly mentioned that in a year, one crop is grown thereon. In support of this claim the GIRDAVARI REPORT and JAMABANDI is enclosed herewith. :

We place our reliance on case where similar issue has been decided by HIGH COURT OF BOMBAY in the case of Commissioner of Income-tax, Panaji-Goa vs. Smt. Debbie Alemao[2011] 331 ITR 59 (Bombay) :- In this case court has observed that:

"It was apparent from records that land in question was entered in revenue records as an agricultural land and no permission was ever obtained for non-agricultural use by assesses"

Further HIGH COURT OF GUJARATDr. Motibhai D. Patel vs. CIT127 ITR 671 (Gujarat) held that

"If agriculture operations are being carried on in any land at the time of its sale and if the entries in the revenue records shows that the impugned land is agricultural land, then a presumption, unless it is positively rebutted, arose that the land is agricultural in character. The fact that permission has been obtained under the Bombay Tenancy Act does not mean that the land ceased to be agricultural in character. On the contrary, non-compliance with the conditions laid down for the permission would automatically make the sanction null and void and the land would again resume its agricultural character.

In the instant case, right from 1946 when the impugned land was purchased till its sale in March 1969, it was under cultivation yielding various crops. The agricultural operations could not, therefore, be said to be carried on in the land by way of stop-gap arrangement pending the arrival on the scene of a willing purchaser. Accordingly, impugned land was agricultural in character."

Thus, the assessee's lands are agriculture in character and do not come within the purview of section 2(14)(iii) either under sub-clause (a) or (b), hence the same could not be considered as capital asset within the meaning of this section.

lssue-2:- Provisions of section 50C are applicable to capital asset not on agriculture land. For better appreciation, the relevant provisions of sec. 50C are reproduced as under:-

"50C. Special provision for full value of consideration in certain cases.- (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority') for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

(2) Without prejudice to the provisions of sub-section (1), where-
(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;
(b) the value so adopted or assessed by the stamp valuation authority under sub-section) has not been disputed in any appeal or revision or no reference has been made ime any other authority, court or the High Court,
the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2),

(3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 344A, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation- For the purposes of this section, "Valuation Officer' shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

Since, provisions of section 50C of the Act are applicable on Capital Assets and agriculture lands are not capital assets.

In the case in hand the land in question had been using for agricultural purpose and still being used for the agricultural purpose. Also, the agricultural land is not falling within Jodhpur Municipality and not situated within distance from notified municipality as given in Notification 9447 and 11186. Thus, the land cannot be held as capital asset. And provisions of section 50C and 56(2)(vii) of the act are applicable on Capital Assets and not on agriculture land.

It is further to submit that according to the definition of 'capital gain' in section 45 of the Income-tax Act, 1961, the capital gain is chargeable on the transfer of 'capital asset' only and not otherwise. Hence, if the transfer is not of a capital asset as defined in section 2(14) of the Act, the question of any capital gain does not arise. Our concern is with section 2(14)(iii)(a) and (b) which are produced hereunder for the sake of clarity:

"Section 2(14)(ifi)-" 'Capital asset' means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include 'agriculture land' in India, not being land situate-

(a) in any area which is comprised: within the jurisdiction of a municipality (whether known as 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 according to the last preceding census of

which the relevant figures have been published before the first day of the previous year; or

(b) In any area within such distance, not being more than eight kilometres from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of and scope for urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette."

Thus, from the definition of capital asset, agriculture land is excluded. But what is 'agriculture land' is not defined in the Act. Only 'agriculture income' is defined in section 2(1A) of the Act which means "any rent or revenue derived from land in India which is used for agricultural purposes and any income derived from such land by agriculture, etc." However, every land whether used for agriculture or not or an urban land has been held as a capital asset if it is situated within the municipal limits as defined in section 2(14)(ii)(a) and (b) of the Act. In other words, every land situated in the municipal limits (as defined above) is covered under the definition of the words 'capital asset' and, accordingly, liable to capital gain on its transfer. But there is a distinction in the land situated beyond Municipal limits. The land which is beyond six/eight kilometres of Municipal limits and performing agriculture operations or not or is lying vacant, is outside the definition of "capital asset". However, the land which is beyond municipal limits of any municipality in India (as defined above) is also exempt from the definition of "capital asset', if that municipality is not specified by a notification as per section 2(14)(iii)(b) of the Act. As discussed above, even less than eight kilometres has been specified for certain Municipalities (Refer to Notification No. 9447, dated 6-1-1994), but it cannot be more than eight kilometres unless the Act is amended.

Sir, for want of justice, your humble appellant again reiterates that in the latest certificate issued my concerned authority i.e. Municipal Board, Sardarshahar dated 28-02-2019, it is specifically stated that Khasra No. 230 where properties in question are situated is outside the Municipal. Limit of Sardarshahar.

Thus, from this certificate also, the land in dispute is situated beyond 6 Km from Municipal limits of Sardarshahar. Here we wish to place reliance upon the lastet decision of the Hon'ble ITAT Chennai 'B' Bench in the case of **Mohideen Sharif Inayathulla Sharif vs. ITO** [2022] 139 taxmann.com 551 (Chennai - Trib.) wherein it was specifically held that where assessee sold land situated at village Eachankaranaiand claimed same as agricultural land as per Notification No. SO 9447, dated 6-1-1994 issued for Chenglepet Municipality area upto 5 Kms. from municipal limits was to be considered and since assessee's

land was situated beyond 5 kms. fromChenglepetMunicipality, it could not be considered as non-agricultural land. The head note is reproduced as under:-

"Section 2(14), read with section 45, of the Income-tax Act, 1961 - Capital gains –
Capital asset (Agricultural land) - Assessment year 2011-12 - Assessee sold certain land situated at village Eachankaranai for Rs. 137 lacs and did not offer any capital gain on ground that land was an agricultural land - Assessing Officer treated land in question as non-agricultural land (capital asset) on plea thatdistance between nearest municipality, namely, Chenglepet Municipality and land was less than 8 Kms. and computed long-term capital gains of Rs. 132.89 lacs – It was noted that as per Notification No. SO 9447, dated 6-1-1994 issued for Chenglepet Municipality area upto 5 Kms. from municipal limits in all directions was to be considered - Whether since assessee's land was situated beyond 5 Kms. from Chenglepet Municipality, it could not be considered as non-agricultural land and same would be out of ambit of capital asset as defined under section 2(14) - Held, yes [Paras 5 and 6] [In favour of assessee]

Since population of Sardarshahar is less than 10 lacs therefore, 6 Km limits shall be considered instead of 8 Kms and in our case certificate dated 28-02-2019 confirmed that Khasra No. 230 where properties in question are situated is outside the Municipal Limit of Sardarshahar. Thus it is clear the land is not capital asset as per sec. 2(14)(iii) of the Act and therefore surplus arising on its sale does not attract capital gains tax. There is plethora of decisions ratio of which held that the surplus arising on sale of agricultural lands was treated as exempt income as per sec. 10(1) of the Act.

1. CIT_v. Lal Singh [2010] 325 ITR 588/ 8 taxmann.com 114(Punj. &Har.):- In

this case, one late Pushpa Devi sold her agricultural land for Rs. 89,75,000 in the assessment year 1996-97. In response to notice under section 148, the return was filed by the legal heir on net taxable income of Rs. 37,000 and the long-term capital gain was shown as NIL. In order to claim that agriculture land owned and sold by the assessee did not fall in the definition of 'capital asset' as defined in section 2(14)(iii) of the Income-tax Act, 1961, the assessee produced a certificate from the Tehsildar, Gurgaon to the effect that the land in question was situated beyond 8 kms. from the Gurgaon municipal limits. The Assessing Officer did not accept the assessee's contention and the said report of the Tehsildar. However, he accepted the report given by the Inspector and determined the capital gain to the tune of Rs. 86,65,900 in the assessment order. The assessee went in appeal against the said order. The CIT (Appeals) allowed the appeal by observing an important fact on record not mentioned by the Assessing Officer in his order. The relevant extract of observation is as under :-

"I find that the assessee's contention is correct that the Assessing Officer had written to the Tehsildar vide his letter dated January 9, 2004, requesting him to furnish the distance certificate of the nearest Municipal limits of Gurgaon. The Tehsildar had reported on January 16, 2004, that the land was at a distance of 8.2 Km. The above copy of the letter as well as the Tehsildar's report are available in the assessment records. A copy of this letter and the report was also furnished by the assessee. It isnot understood why this fact does not find mention in the assessment order. The Assessing Officer has not given any reason why he considered the report not to be adequate and directed the Inspector to submit the report regarding distance. It is a well established fact that it is the Tehsildar working under the State Government, who is competent to measure the distance of the land, more competent than the Inspector of the Department. If the Assessing Officer was not satisfied as to the distance certificate, he should have recorded the reasons and requested the higher authorities to the Tehsildar of the State Government for measurement of the same."

The Department filed the appeal against this order before the Income Tax Appellate Tribunal which was dismissed by the Tribunal vide order dated January 12, 2007, observing as under :-

"We are of the opinion that the Assessing Officer erred in computing the long-term capital gain on the basis of the report of the Inspector and he did not believe the report of the Tehsildar. We agree with the opinion of the learned CIT(Appeals) that he should have requested the higher authorities of the State Government if he did not believe his report to be correct or he could have summoned the Tehsildar under section 131 of the Income-tax Act in order to verify the veracity of the report. He is not justified in brushing aside the report of the Revenue official who is competent to measure the distance of the land. Thus, we do not find any infirmity in the order of Commissioner of Income-tax (Appeals) and the same is sustained for the reasons given therein."

The Department filed the appeal before the High Court against the order of the Tribunal under section 260A of the Income-tax Act. The substantial question of law raised besides others was “whether the learned Income-tax Appellate Tribunal failed to appreciate that the report of the income tax inspector was elaborate and descriptive giving the distance from the municipal octroi to the location of the land and simply believed the report of the Patwari countersigned by the Tehsildar". After hearing the parties and considering the three reports - one filed by the assessee on the basis of Tehsildar, the other by the Inspector and the third by the Tehsildar on the application of the Assessing Officer in which Khasra number of the land was also given, the Hon'ble High Court held that the "CIT (Appeals) has rightly relied upon the report dated January 16, 2004, given

by the Tehsildar on the application of the Assessing Officer himself and the same cannot be discarded." Thus, the Court held that a pure finding of fact had been recorded by both the authorities below on the issue of distance after considering the evidence available on record. The said finding could not be said to be perverse, illegal or contrary to the evidence available on record. Thus, no question of law arose from the order of the Tribunal, hence, the appeal was dismissed.

In instant case also facts are quite similar to the case of CIT vs. LalSingh (supra). The revenue authorities having jurisdiction on the area wherein the land under consideration is situated, have certified the distance of the land beyond 8 Km from the outer limit of Jodhpur Municipal Corporation and therefore, as per sec. 2(14)(iii) of the Act the land is not a “capital asset”. Hence, the AO is not justified in taxing the capital gains on the sale of the said land.

2. CIT vs. Satinder Pal Singh [2010] 188 TAXMAN 54 (PUNJ. & HAR). In this case Hon'ble P&H High Court held as below:-

“Section 2(14) of the Income-tax Act, 1961 - Capital gains - Capital asset – Whether distance of land for purpose of section 2(14)(iii) has to be taken in terms of approach by road and not as per straight line distance on a horizontal plane or as per crow flight distance - Held, yes
HELD

A perusal of the order passed by the Tribunal showed that the principle of measuring distance had been settled, namely, that the distance of the agricultural land belonging to the assessee had to be measured in terms of the approach by road and not byastraight line distance on a horizontal plane or as per crow flight distance. The Tribunalhad placed firm reliance on a judgment delivered by the Mumbai Bench of the Tribunal in the case of Laukik Developers v. Dy. CIT [2007] 105 ITD 657, wherein the aforesaid principle has been accepted. [Para 4

A perusal of section 2(14 (iii) shows that ‘capital asset’ would not include any agricultural land which is not situated in any area within such distance as may be specified in this behalf by a notification in the Official Gazette which may be issued by the Central Government. The maximum distance prescribed by section 2(14)(ili)(b) which may be incorporated in the notification cannot be more than 8 kms. from the local limits of the municipal committee or cantonment board, etc. The notification has to take into account the extent of and scope for urbanization of that area and other relevant considerations. The reckoning of urbanization as a factor for prescribing the distance is of significance which would yield to the principle of measuring distance interms of the approach road rather than by a straight line on a horizontal plane. If principle of measurement of distance is considered as straight line distance on a horizontal plane or as per crow flight distance, then it would have no relationship with the statutory requirement of keeping in view the extent of

urbanization. Such a course would be illusory. It is in pursuance of the aforesaid provision that the Notification No. 9447, dated 6-1-1994 has been issued by the Central Government. In respect of the State of Punjab, at item No. 18, the sub-division Khanna has been listed at serial No. 19. It has, inter alia, been specified that area up to 2 kms. from the municipal limits in all directions has to be regarded other than agricultural land. Once the Statutory guidance of taking into account the extent and scope of urbanization of the area hasto be reckoned while issuing any suchnotification, then it would be incongruous to the argument of the revenue that the distance of land should be measured by the method of straight line on a horizontal plane or as per crow flight distance, because any measurement by crow's flight is bound to ignore the urbanization which has taken place. Moreover, the judgment of the Mumbai Bench appears to have attained finality. Keeping in view the principle of consistency, the opinion expressed by the Tribunal did not suffer from any legal infirmity warranting interference of the Court. [Para 6]"

3. **SrinivasPandit (HUF) vs. ITO**, [2010] 39 SOT 350 (HYD.): The ITAT Hyderabad Bench 'B' in the case of SrinivasPandit (HUF) vs. ITO, [2010] 39 SOT 350 (HYD.) considered a similar question, the head note is reproduced as below:-

"Section 2(14) of the Income-tax Act, 1961 - Capital gains - Capital asset – Assessment year 2003-04 - During relevant assessment year, assesseesold agricultural land owned by him - He claimed exemption from payment of capital gain tax on ground that agricultural land could not be considered to be a capital asset under section 2(14) - Revenue authorities rejected assessee's claim holding that agricultural land was located within radius of 8 Kms. from limits of municipality 'H' - Whether since entire transaction was made through revenue authorities located in municipality 'R', it was to be held that jurisdictional municipality was municipality 'R' and not municipality 'H' - Held, yes - Whether since assessee's land was situated beyond radius of 8 Kms. From limits_of municipality 'R' and moreover said municipality was not notified by Central Government, it was to be held that land in question was not capital asset within meaning of section 2(14)(iii)(b) - Held, yes - Whether, therefore, impugned order passed by lower authorities was to be set aside - Held, yes"

4. Smt. SupriyaKanwar Vs. ITO (2014) 163 TTJ (Jd/TM)_1: The. Hon'ble Jurisdictional Tribunal i.e. Jodhpur ITAT in the case of Smt. SupriyaKanwar Vs. ITO (2014) 163 TTJ (Jd/TM) 1 considered the issue regarding sale of agricultural land situated beyond 8 Km from the Municipal Limits in great detail, the relevant paras 15, 16 & 17 of the order are reproduced hereunder:

"15. If it is not considered as an adventure in the nature of trade the next issue that arises for consideration is whether sale of agricultural land gives rise to 'agricultural income' or it "is assessable to tax under the head 'capital gains'. Admittedly, the expression "agricultural income" is not comprehensively defined in the Income Tax Act, though it was explained, under

section 2(1A), that any revenue derived from land, which is situated in India, can be considered as agricultural income. Section 2(14) of the Act defines capital asset, which was substituted by Finance Act, 1970 and thereafter in 1989 whereby only such agricultural land which is located within eight kilometres from the municipal limit should be treated as capital asset. In other words, agricultural land situated beyond eight kilometres from the nearest municipal limit cannot be treated as capital asset and sale proceeds thereof may be treated as revenue derived from land which is situated in India and is used for agricultural purposes. The Apex Court in the case of SinghaiRakesh Kumar v. Union of India [2001] 247 ITR 150/115 Taxman 101 explained the meaning of the expression 'agricultural income As well as the expression 'capital asset'. In the said case the issue was whether the profit arising out of sale of agricultural land gives rise to capital gains, within the meaning of income Tax Act, 1961. A writ petition was filed by the assessee asking the High Court todeclare as unconstitutional the Explanation to clause (1A) & sub-clause (iii) of clause (14) of section 2 of Income Tax Act, 1961 to declare that capital gains arising from sale of agricultural land within the municipal area were not liable to capital gain tax under the Income Tax Act, 1961. The Hon'ble High Court of Madhya Pradesh having dismissed the writ petition the matter came up before the Hon'ble Supreme Court. The Apex Court observed that the Parliament is empowered to legislate to say what "agricultural income" means. What Parliament says in this regard is that the meaning given under Income-tax Act should be taken as the correct meaning of the expression 'agricultural income' and in regard to such agricultural income the state may legislate. In the aforementioned case the court observed that the land being situated within the municipal limits income arising from transfer of agricultural land falls within the terms of items (a) and (b) of sub-clause (iti) of clause 14 of section 2 and falls outside the ambit of revenue derived from land, therefore, outside the ambit of 'agricultural income' and consequently liable to capital gain tax under section 45 of the Act.' The learned counsel for the assessee placed reliance upon the aforecited decision to submit that the impugned land sold by the assessee was situated beyond eight kilometres from the nearest municipal limit and hence the income arising from transfer of agricultural land falls within the ambit of revenue derived from land and, therefore, has to be treated as agricultural income in which event it has to be considered for rate purposes only.

16. The Hon'ble Bombay High Court in the case of Gopal C. Sharma v. CIT [1994] 209 ITR 946/72 Taxman 353, on the other hand, observed that the expression 'agricultural land' is not defined in the Income Tax Act and, going by the intention of the Legislature, i.e. encouraging cultivation, sale of agricultural land gives rise to capital gains. It may be noticed that the court was not concerned with the case of agricultural land situated outside the municipal limits and had not specifically dealt with the provisions of section 2(1A) r.w.s.2(14)(iii) (a) and (b). On the contrary, the Apex Court in the case of SinghaiRakesh Kumar (supra) observed that agricultural land situated within eight kilometers from the municipal limit, upon sale thereof, is liable to tax and underlined the principle that definition given under Income Tax Act has to be taken as correct. Thus it has to be inferred that land situated beyond

eight kilometers from the municipal limits has to be excluded from the expression 'capital asset', consequently upon sale of such land, it has to be treated as agricultural income.

17. The fact that the land was failing outside the municipal limit was never disputed by both the Members and in fact a specific ground was raised before the Tribunal that the revenue received on sale of land is exempt under section 2(1A) of the Act. The learned counsel filed a detailed written submission wherein he pointed out that the assessee treated the sale proceeds as agricultural income under section 10(1) and offered the same for rate purpose. On an appeal the CIT(A) observed that the income which results from sale of agricultural land is not agricultural income as per sec. 2(1A) of the Act overlooking a specific ground before him that income arising on transfer of agricultural land used for cultivation (subject to land revenue and located beyond eight kilometers of municipal limits) cannot be assessed to tax under the Income Tax Act, 1961. The learned counsel referred to the amendments brought out by the Finance Act, 1970 and by the Finance Act, 1989 with retrospective effect to highlight that the intention of the Legislature was to tax income from transfer of agricultural land situated in the specified area only and cautiously excluded such land from the scope of agricultural income. He also relied upon the decision of the Hon'ble Bombay High Court in the case of Manubhai A. Sheth v. ITO [1981] 128 ITR 87/[1980] 4 Taxman 381 in support of his contention that profits or gains on sale of agricultural land will be revenue within the meaning of section 2(1) (now 2(1 A) of the Act). This principle was reiterated by the Hon'ble Bombay High Court in the case reported in 208 ITR 98 (sic). By virtue of the amendments to section 2(14)(ili) of the Act, only agricultural land situated within the municipal limits gets excluded from the definition of agricultural land. Per contra, agricultural land situated outside the municipal limits, upon sale, gives rise to agricultural income only."

Sir, you would find that the ratio laid down in the above cases is squarely applicable to the case of your appellant. The land is agricultural in nature at the time of sale, it is situated beyond 6 kms. from municipal limits and is therefore not a capital asset attracting capital gains tax as per Section 2(14) of the Act. Moreover, the property /land was not covered by definition of asset under the sec. 2(ea) of Wealth-tax Act, 1957 as this land was an agricultural land.

Sir, the appellant very humbly requests that the surplus arising on sale of the impugned agricultural land gives rise to agricultural income and is not assessable to tax. The addition made by the AO at Rs.7214057/- treating the same as capital assets may kindly be directed to be deleted. Since it is established that the said lands were a rural agricultural land and do not fall under the definition of capital asset or urban land as given in Income tax Act or Wealth tax Act, therefore, provisions of sec. 50C are not applicable.

(Ground No. 3)

On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in applying the provision of section 50C of the Income Tax Act as the alleged rights are Khatedari Rights and not land or a building. Moreover the alleged Khatedari Rights on land are even not a Capital Assets.

The Appellant Further beg to submit that assessee has sold lease hold lands/ Khatedari Rights as assessee had only a "Khatedar' ie. tenant of agricultural lands owned by the Government: of Rajasthan and it is well settled law position by various Tribunals including Jaipur Tribunal that Provisions of Section 50C of the Income Tax Act, 1961 does not apply to the transfer of Lease Hold Land. For better appreciation of law in this regard, the provisions of sec. 50C are reproduced as under:-

"[Special provision for full value of consideration in certain cases.

(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted [or assessed or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so.adopted [or assessed or assessable] shall, for the Purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where-

(a) the assessee claims before any Assessing Officer that the value adopted [or assessed or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted [or assessed or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, Court or the High Court,the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections

(2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act."

Sir, from the plain reading of Sec. 50C, it is evident that it is a deeming provision and it extends only to land or building or both. Section 50C can come into play only in a situation where the consideration received or accruing as a result of the transfer by an appellant of a capital asset, being land or building or both is less than the value adopted or assessed or assessable by any authority of State Government for the purpose of payment of stamp duty in respect of such transfer. It is settled legal proposition that deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of the section. Clearly 'therefore, it is essential that for application of Sec.50C, the transfer must be of a capital asset, being land or building or both. If the capital asset under transfer cannot be described as "land or building or both" then section 50C will cease to apply. From the facts of the case narrated above, it is clear that the assessee has transferred tenancy right. In the said transactions, no actual transfer of land or building took place and only tenancy rights of the appellant were transferred. Tenancy right was no doubt a capital asset but the same could not be considered as land and building. Therefore, provisions of section 50C were not applicable. Transfer of tenancy tights cannot be said to be akin to ownership right and therefore the AO was not justified in adopting the value as per section 50C of the IT Act.

To support our view, we wish to place reliance upon following judicial

The Hon'ble ITAT Kolkota Tribunal (B) in the case of DCIT vs. Tejinder Singh (32 CCH 0058 KotTrib) and | find that issue is squarely covered by this decision. The Hon'ble Kolkota Tribunal held as below:-

"A plain look at the undisputed facts of this case clearly shows that the assessee was a lessee in the property which was sold by the KSCT; there is no dispute on this aspect of the matter. Yet, the Assessing Officer has treated the assessee a seller of property apparently because the assessee was a party to the sale deed, and because, according to the Assessing Officer, "consideration is paid on sale of the property for giving up right of the owner of the property" and that "in the case of leasehold Property, the right of owner is divided between lessor and lessee". We are unable to share this line of reasoning. It is

not necessary that consideration paid by the buyer of a property, at the time of buying the property, must only relate to ownership rights. In the case of tenanted property, as is the case before us, while the buyer of property pays the owner of property for ownership rights, he may also have to pay, when he wants to have possession of the Property and to remove the fetters of tenancy rights on the property so purchased, the tenants towards their surrendering the tenancy rights. Merely because he pays the tenants, for their surrendering the tenancy rights, at the time of purchase of property, will not alter the character of receipt in the hands of the tenant receiving such payment. What is paid for the tenancy rights cannot, merely because of the timing of the payment, cannot be treated as receipt for ownership rights in the hands of the assessee. This distinction between the receipt for ownership rights in respect of a property and receipt for tenancy rights in respect of a property, even though both these receipts are capital receipts leading to taxable capital gains, is very important for two reasons ~ first, that the cost of acquisition for tenancy rights, under section 55(2)(a), is, unless purchased from a previous owner ~ which is admittedly not the case here, treated as 'nil'; and, - second, since the Provisions of section 50C can only be applied in respect of "transfer by an assessee of a capital asset, being land or building or both", the provisions of section 50C will apply on receipt of consideration on transfer of a property, being land or building or both, these Provisions will not come into play in a case where only tenancy rights are transferred. or surrendered. It is, therefore, important to examine as to in what capacity the assessee received the payment. No doubt the assessee was a party to the registered tripartite deed dated 20th July 2007 whereby the Property was sold by the KSCT, but, as a perusal of the sale deed unambiguously shows, the assessee has given up all the rights and interests in the said Property, which he had acquired. by the virtue of lease agreements with owner and which were, therefore, in the nature of lessee's rights; these rights could not have been, by any stretch of logic, could be treated as ownership rights. It has been specifically stated in the sale deed that the lessee, which included this assessee, had proceeded to, inter alia, "grant, convey, transfer and assign their leasehold rights, title and interest in the said premises". There is nothing on the record to even remotely suggest that the assessee was owner of the Property in question. The monies received by the assessee, under the said agreement, were thus clearly in the nature of receipts for transfer of tenancy rights, and, accordingly, as the learned CIT(A) rightly holds, section 50C could not have been invoked on the facts of this case. Revenue's contention that the provisions of section 50C also apply to the transfer of leasehold rights is devoid of legally sustainable merits and is not supported by the plain words of the statute. Section 50C can come into play only in a situation "where the consideration received or accruing as a result of

the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government ..... for the purpose of payment of stamp duty in respect of such transfer", Clearly, therefore, it is sine qua non for application of section 50C that the transfer must be of a "capital asset, being land or building or both", but then a leasehold right in such a capital asset cannot be equated with the capital asset per se. One is, therefore, unable to see any merits in revenue's contention that even when a leasehold right in "land or building or both" is transferred, the provisions of section 50C can be invoked."

Similarly, the Hon'ble Jaipur ITAT in the case of M/s Jaipur Time Industries vs. ITO in their order dated 26-02-2014 in respect of ITA No. 429/JP/2012 for AY 2007-08 held that section 50C of the Act applies only to capital asset being land or building or both but it cannot apply to lease rights in a land and since the assessee transferred the lease right for 99 years in the plot and not ownership in land itself, the provisions of Section 50C cannot be invoked.

Similar view has been expressed by the Hon'ble ITAT Ahmedabad in the case of ITO vs. Chandrakant R. Patel as referred to by the appellant in his written submission.

Thus, from the above decisions, it is clear that provisions of sec 50C does not apply to the transfer of the lease hold land. In the instant case, there is no dispute regarding the fact that the appellant has sold lease hold lands. On his account alone, the AO's order deserves to be quashed.

Ground No. 4

On the facts and circumstances of the case Learned Assessing Officer grossly erred in not referring the issue for valuation to determine the correct market value even after a specific request U/s 50C(2) of the Income Tax Act 1961.

Since the AO referred the matter to DVO and on the basis of DVO's report, he subsequently, revised his earlier order, therefore, this is ground is withdrawn and being substituted with the ground which reads as under:-

On the facts and circumstances of the case Learned Assessing Officer grossly erred in taking value of the Properties sold as per report of the DVO without giving any opportunity to the assessee.

Sir, it is submitted that the DVO determined the value of Properties sold at Rs. 85,21,500/-. However, while preparing his report, the AO has not provided any opportunity to the assessee to present her case nor has furnished any material which was considered while determining the value of properties in question. Thus, any report prepared by the DVO without providing any opportunity to the assessee is gross violation of principle of natural justice and such cannot be relied upon by the AO. Sir, DVO's suffers from lacunae as no comparable instances have either discussed either by the DVO or by the AO and therefore the valuation made by the DVO cannot be accepted as a reasonably correct determination of value of the properties. It is not the case of the DVO that he has provided any opportunity before submitting the valuation report. Moreover, the AO has also not provided any opportunity to the assessee before adopting the value-as reported by the DVO. In the case of Manvendra Singh Vs. CIT (2014) 42 taxmann.com 149, the Hon'ble Allahabad High Court held that a proper opportunity is required to be provided to the assessee to raise objections pertaining to the report submitted by the DVO, non-provisioning of opportunity is violation of the principle of natural justice.

Further, it is submitted that whether a valuation report which is not based on Proper appreciation of the facts relating to the property, can be held as valid or whether the CIT(A) is bound to accept the valuation report. In this regard, we may refer to the decision of Hon'ble High Gujarat High Court in the case of Indrajeet Singh Rathore vs. ACIT feported in (2016) 76 taxmann.com 186 (Gujarat) wherein Hon'ble Court observed that Valuation report of a property u/s. 50C is correct or not cannot be subject matter of writ petition, however, assessee can peruse appellate authority with regard to issues relating to such property. Further, In the case of Suresh C. Mehta vs. ITO, reported in [2013] 35 taxmann.com 230 (Mumbai — Trib.), the Hon'ble Mumbai Tribunal held that where AO in terms of provisions of sec. 50C(2) referred valuation of property to valuation officer, he was bound by valuation officer's report, whereas said report was not binding upon commissioner (Appeals) or Tribunal.

(Ground No. 5)

On the facts and circumstances of the case Learned Assessing Officer grossly in not allowing the deduction U/s 54F of the Income Tax Act 1961.

Sir, the appellant begs to submit that she claimed deduction u/s. 54 of the Act on account of investment in house property at Rs. 15,00,000/-, but the AO denied by the same by stating that the construction of house made on the Property which is owned by Sh. Mohammed Ashif (son of the assessee). While denying the assessee's claim, the AO referred to the decision of the Hon'ble Rajasthan High Court rendered in the case of Kalya vs. CIT.

Sir, deduction u/s. 54 of the Act cannot deny merely on the fact that Property was owned by assessee's son. Only fact that needs to be checked whether the assessee has invested any money for construction of house property where she resides out of sale consideration of original assets. In the instant case before your honour, it is not the case where the assessee invested in Construction on the property any stranger; she invested in construction in property which is owned by her son.

As far as facts of the judicial pronouncement quoted by the AO in the assessment order is concerned, the facts of this case, do not match with the present case. In the Case of "Kalya" the assessment was made under section 144 of the Act. In other rulings, it is not proved that investment was made by the assessee as in these cases property was purchased prior to sale. There is plethora of decisions, ratio of which Clearly states that while allowing deduction u/s. 54B or 54F it is not necessary that one cannot construct or purchase Property or register the property in his son/ wife's/mother name as long as other conditions are fulfilled. Few of them are discussed as under:-

i. The Hon'ble Madras High Court in other case C. V. Ramanathan vs. CIT, reported in 125 ITR 191 held that the assessee is entitled for exemption u/s 54 even after considering sale deed was executed in favour of his son who is being assessed as legal heir after demise of the assessee.

ii. The Hon'ble A. P. High Court in case of Lt. Mir Gulam Ali Khan vs. CIT , reported in 165 ITR 228 held that the object of granting exemption u/s 54 is that an assessee who sells a residential house for purchasing another house must be given exemption so far as capital gain is concerned. The word "assessee" must be given.a wide and liberal interpretation so as to include his legal heir also. There is no warrant for giving too strict an interpretation to the word 'assessee' as that would frustrate the object of granting the exemption and what is more, in the instance case, the very same assessee, immediately after the sale of the house, entered into an agreement for purchasing another house and paid earnest money and subsequently, the legal representative completed the transaction within the period of one year from the date of sale. It is therefore, held that exemption u/s 54 is available even if the transaction relating to purchase of another residential house is completed by the assessee's legal representatives within the stipulated time.

iii. The Hon'ble Karnartaka High Court in case of CIT &Anrs. vs. P. R. Seshadri, reported in 33 DTR 128 held that assessee was entitled to

exemption u/s 54F in respect of investment in the construction of the house property on the land owned by his wife.

vi. The Punjab & Haryana High Court in the decision dated 1-4-2008 in case of CIT vs. Gurnam Singh held that purchase of another agricultural land in joint names of the assessee and his son is entitled for exemption u/s 54B. In the appellant's case also the appellant's mother is totally depended upon him. Even under the provision of sec. 64, any income which arises directly or indirectly to any person from assets transferred otherwise than for adequate consideration from the said asset to the spouse of for the immediate or deferred benefit of his or her spouse is assessable in the hands of his spouse who has transferred otherwise than for adequate consideration.

v. The Hon'ble Rajasthan High Court in case of Manshika Bros. P. Ltd. vs. CIT has held that when two views are possible in assessability of income, the view favorable to assessee for exemption provisions may be taken in his favour.

Sir, it may be noted that the purpose of deduction u/s 54/54F is to give impetus for construction of residential houses. The Supreme Court in case of CIT vs. Vegetable Products Ltd. [1973] 88 ITR 192 has observed that if a Statutory provision is capable of more than one view, then the view which favours the taxpayer should be preferred. Therefore, section 54, being a beneficial provision enacted for encouraging investment in residential houses, should be liberally interpreted. The Hon'ble Supreme Court held that a provision for exemption or relief in a fiscal statute should be construed liberally and in favour of the assessee — Maharajadhiraj Sir Kameshwar Singh v. CIT [1957] 32 ITR 687 (SC).

In view of the above facts and judicial Precedents, the appellant very humbly requests your honour to kindly direct the AO to allow deduction u/s. 54 of the Act.

(Ground No. 6)

vi. The Punjab & Haryana High Court in the decision dated 1-4-2008 in case of CIT vs. Gurnam Singh held that purchase of another agricultural land in joint names of the assessee and his son is entitled for exemption u/s 54B. In the appellant's case also the appellant's mother is totally depended upon him. Even under the provision of sec. 64, any income which arises directly or indirectly to any person from assets transferred otherwise than for adequate consideration from the said asset to the spouse of for the immediate or deferred benefit of his

or her spouse is assessable in the hands of his spouse who has transferred otherwise than for adequate consideration.

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In view of the above facts and judicial Precedents, the appellant very humbly requests your honour to kindly direct the AO to allow deduction u/s. 54 of the Act.

(Ground No. 6)

On the facts and circumstances of the case Learned Assessing Officer grossly erred in not accepting the affidavit filed by the assessee without proving it wrong.

Sir, the appellant submits that she had furnished an affidavit before the AO to confirm that what was sold by her was agricultural land, but the same was rejected holding that an affidavit is a self serving document with no evidential value. These observations made by the Assessing Officer are without any basis and not supported with any cogent evidences. We strongly contend the AO's action in rejecting the affidavits. It is not the case where the statement was given on plain paper, the statement given in the affidavits are duly corroborated with the facts narrated by the appellant. In the case of Dr. Prakash RathiVs. ITO reported in 36 TW 1 it was held that "Contents of an affidavit have to be accepted as correct unless the same are rebutted by evidence. In the case of M/s Krishna Fruit Company Vs. DCIT reported 36 TW 280 it was held that contents of a duly sworn affirmed affidavit have to be taken as a proof of its contents. The same contentions were further confirmed in the case of Anand Prakash Gupta vs. ACIT reported in 32 TW 221. The Hon'ble Tribunal in the case of Kuldeep Chand

Gargee reported in 37 TW 127, held that contents of a duly sworn affidavit has to be accepted as such unless such person is cross examined to establish fallacy of the contents. Sir, in the instant case, the Assessing Officer has not brought anything contrary on record to prove that the facts asserted in the affidavits were false.

Further, it appears from the assessment order the AO was in hurry to complete the assessment order. If the AO was not satisfied with the evidences submitted by the assessee and required any explanation from assessee for assertion made in the affidavits, he could have and should have asked the assessee to explain the same or could have asked for more details.

The Ld. Assessing Officer was in very hurry to complete the assessment without knowing appellant's reply and pleadings with regard the assessment proceedings. Therefore assessment completed as one sided judgement and passed order without giving proper opportunity which is against the law of natural justice principle of the law. The opportunity has to be an effective opportunity and not a mere pretence. Our above submissions are well supported by the following judicial decisions: ;

i. [TCN MemonVs. ITO (1974) 96 ITR 148 (Ker)
ii. [State of U.P. VsShatrughanLal, JT 1998 (6) SC, 55, 56]
ii, [Rajasthan Cereals Pvt Ltd Vs ACIT, Circle 15(1) New Delhi] 2019 ITL 2525
iv. [Shri Om Prakash Singh Vs ACIT, Circle-3, Mathura]2019 ITL 6104, 201 TTJ. 27
v. [Allumilite Architectural Pvt Ltd Vs ITO 1(1), Mumbai DCIT]2017 ITL 3139
vi. [SuvarnaArun Desai Vs ITO (CIB) Kolahpur]2017 ITL 3192
vii. [Shubhani Engineering & ConsultantsPvt Ltd Vs Income Tax Officer] DEL-ITAT 2019 ITL 7151viii, [Badri Prasad Ram GopalDall Mill Vs ITO, Ward 2(2) Alwar
ix. Jaipur ITAT 2016 ITL 2724:, 2016 51 ITR (TRIB) 290

In view of the above and judicial precedents cited supra, entire assessment order may be held as invalid and may be quashed.

(Ground No. 7)

On the facts and circumstances of the case Learned Assessing Officer grossly erred in not providing the opportunity of cross examination of the Executive Officer Municipal Board Sardarshahar.

Sir, it is submitted that that entire AO's action in treating is based on report of the Executive Officer Municipal Board Sardarshahar, but the AO did not Provide any opportunity to cross examine the official who adversely commented. The Hon'ble Calcutta High Court in its decision in the case of CIT Vs, Eastern Commercial Enterprises — reported in 210 ITR 103 — observed that if the AO relies on the testimony of a witness or some other evidences, the assessee is to be afforded an opportunity to cross-examine such witnesses. Itis not open to the AO to get over this hurdle on any plea. A re-assessment made onthe basis of entries in the records of a auctioneer without giving the assessee an opportunity to cross-examine the auctioneer has been held violating the principle of natural justice and the assessment was not valid and liable to be quashed [PS Abdul Majid Vs. AGIT — STO — reported in 209 ITR 821].

Since in the assessment proceedings, procedure of law is not followed, therefore, the same should be held as null and void.

(Ground No. 8)

On the facts and circumstances of the case and law also Learned Assessing Officer grossly erred in initiating reassessment proceeding without obtaining proper satisfaction and sanction from the superior authority U/s 151 of the Income Tax Act 1961.

Without prejudice to above, Sir, it is submitted that in number of cases the Principal Commissioner of Income Tax given approval in a mechanical way, without application of mind. Here it is imperative to reproduce provisions of sec. 151(1) which clearly states that:

In a case where an assessment under sub-section (3) of section 143 of section 147 has been made for the relevant assessment year, no notice shall be issued under section 148{by an assessing officer, who is below the rank of Asstt. Commissioner or Dy. Commissioner unless the Jt.CIT is satisfied on the reasons recorded by such A.O. that it is a fit case for the issue of such notice}

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the {Principal Chief Commissioner or} Chief Commissioner or {Pr. Commissioner or} Commissioner is satisfied, on the reasons recorded by the AO aforesaid, that it is a fit case for the issue of such notice.

Since in the instant case, 'the assessment has been reopened for the Assessment Year after within 4 years from the end of the relevant assessment year, the provisions of section 151(1) of the Income-tax Act, 1961 required the Assessing Officer prior to issue notice u/s 148 to obtain approval of the joint commissioner. The purpose of section 151 of the Act is to introduce a supervisory check over the work of the Assessing Officer, particularly, in the context of reopening of assessment. The law expects the Assessing Officer to exercise the power under section 147 of the Act to reopen an assessment only after due application of mind. If for some reason, there is an error that creeps into this exercise by the Assessing Officer, then the law expects the superior officer to be able to correct that error. This explains why section 151(1) requires an officer of the rank of the Joint Commissioner/Commissioner to oversee the decision of the Assessing Officer.

Further the concerned authority, while granting approval, is expected to examine the entire material before approving the assessment order. It is also been laid down that whenever any statutory obligation is cast, upon any authority, such authority is legally required to discharge the obligation by application of mind. The circumstances of our case indicate that the Add. CIT granted approval in a day in a mechanical manner without proper application of mind.

Thus, the appellant humbly prays that the impugned order may kindly be held to be invalid because approval was not granted in accordance with the requirements of law.''

It is also noteworthy to mention that the ld.AR of the assessee has filed the following documents -

S.N.	Particulars	Page No.
1.	Written submissions	1-31
	Judicial Precedents	
2.	Shri Srinivas Pandit (HUF) vs ITO, Ward 7(4), Hyderabad (ITA No.56/Hyd/2007 dated 23-04-2010)	32-41

3.	Mohideen Shariff Inayatulla Sharif vs ITO (ITA No.658/Chny/2020 dated 07-03-2022)	42-47
4.	Motibhai D patel vs CIT,Gujarat (Income Tax Reference No. 74 of 1976 dated 06-10-1080 9 Hon'ble Gujarat High Court)	48-51
5.	DCIT vs Arijit Mitra (ITA No. 1679/Kol/2010 dated 12-08-2011)	52-81
6.	CIT vs Atul Jain (ITA No. 1384 of 2006 dated 23-05-2007 – Hon'ble Delhi High Court)	59-63
7.	CIT vs Paramjit Kaur (MANU/PH/1277/2007 dated 06-08-2007 –Hon'ble P&H HighCourt)	64-66
8.	CIT vs Debie Alemao (MANU/MH/1099/2010 dated 09-09-2010 [ITA No. 1 of 2006 – Hon'ble HighCopurt of Bombay at Goa)	67-70
9.	CIT vs Satinder Pal Singh (MANU/PH/0012/2010 dated 07-01-2010 – Hon'ble P&H High Court)	71-73

2.3 On the other hand, the ld.DR supported the order of the ld. CIT(A).

2.4 We have heard both the parties and perused the materials available on record including the orders of the lower authorities and written submission of the assessee. At the very outset the preliminary grounds on which the appeal is contested as that the authorities below have erred in addition of Rs. 72,14,060/- to income of the Assessee in as much as the land in question was situated beyond the Municipal Limit on Sardarsahar. The bare perusal of the record reveals that the Assessing Authorities have relied on the letter no.1836 dated 24.08.2016 issued by the Office of Nagar ParishadSardarsahar confirming that the alleged land was situated within the Municipal Limits of Sardarsahar. Further, it has been

specifically noted in the order passed by the ld. CIT(A) while considering the Appeal in para 8.5 of the order dated 23.08.2024 which is under challenge. It is noted that primarily as to why the letter dated 04.04.2019 issued by the same office of Nagar Parishad is discredited and neither endorses the finding nor considered to its practical application. To the contrary of this, the ld.CIT(A) has noted that though the letter no.44 dated 04.04.2019 stands received by the Assessing Officer yet the land being not situated at a distance beyond the 6 km of municipal limit is a burden to be discharged by the Assessee. It is before going into the finding towards the implication of letter dated 04.04.2019 and it is firstly to be seen that under the present statutory scheme, it is the best judgment of the Assessee on the basis of which the return is filed and anything contrary to the effect of addition of income or to the levy of taxes or to the denial of exemption would be a burden of the Revenue Authority, laying the burden on the assessee which already stands discharged, only thing that was probable was the rebuttal of such evidence. Hence, the finding arrived at by the ld.CIT(A) to the effect of the assessee unable to prove it, has come in the absence of any documentary evidence and it could not be said to be correct view. It is further relevant to note that it is in the light of the aforementioned burden being discharged and the matter was remanded to the appropriate Assessing Officer by means of calling remand report dated 10.04.2019 in detail which has been noted specifically by ld. CIT(A) in the order impugned.

The Objection as to the dis-credibility of the letter dated 04.04.2019 has been required to be met out by the AO which remains absent from perusal of the record. It was within the ambit of AO that it was required to ascertain the distance of land as against the letter dated 04.04.2019 issued which was against the very letter relied upon by the Revenue Authority. In fact the letter dated 04.04.2019 clearly mentions the Rajasthan State Gazette dated 14.07.1988 which sets the boundary limits under the Rajasthan Nagar Palika Act, 1959. Further, it is from the letter dated 04.04.2019 which clearly specified that the letter relied by the AO, i.e. letter dated 24.08.2016 was issued without considering the aforementioned Gazette and hence, as to why this letter from the same dis-credibility is not part to the discussion or reason given by the ld. CIT(A). Hence, on this count the burden which is required to be discharged by the Assessing Authorities simply remains absent. Now coming to the effect of the letter dated 04.04.2019 wherein it now clearly establishes that the land in question was not situated within the municipal limits of Sardarsahar, the basis of the Rajasthan Gazette dated 14.07.1988 could not be ignored. It arrived at a conclusion that while issuing the letter dated 24.08.2016, the Gazette seems to have been ignored and on realizing the same, the effect of the Rajasthan Gazette could not been ignored. Now this bench is of the view that the order passed by the Assessing Officer dated 28.12.2017 as well as the order upholding the same which passed by the ld. CIT(A) dated 23.08.2024 is

hereby set aside and the addition of the income of Rs. 72,14,060/- and the capital gain Tax levied thereon is also set aside as per the settled principles of law. Hence, in view of the all the discussions made hereinabove, we do not concur with the findings of the ld.CIT(A) and thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-	Sd/-
(Mitha Lal Meena)	(Dr. S. Seethalakshmi)
Accountant Member	Judicial Member

Dated : 01/01/2025

**Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench