

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3237/Del/2024
Assessment Year: 2017-18

Income Tax Officer, C.R. Building New Delhi	Vs.	M/s. DPAG Infrastructure Pvt. Ltd., C-28, 2 nd Floor, Panchsheel Marg, New Delhi
PAN: AADCD5880H		
(Appellant)		(Respondent)

Assessee by	Sh. Manpreet Singh, CA
Department by	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of hearing	23.04.2025
Date of pronouncement	21.05.2025

ORDER

PER SATBEER SINGH GODARA, JM

This Revenue's appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2024-25/1064902670(1), dated 15.05.2024, involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.
3. Coming to the Revenue's sole substantive grievance seeking to revive the Assessing Officer's action adding the capital gains in the assessee's hands of Rs. 3,11,34,640/-; we note that the CIT(A)/NFAC's lower appellate discussion to this effect reads as under:

"3. I have examined the facts of the case and have perused both the assessment order passed by the Assessing Officer as well as the detailed submissions of the appellant. The sole ground of appeal raised relates to the denial of the claim of exemption of capital gains tax on the sale of agricultural land by the appellant on the grounds that the land in question was not agricultural land and also that the plot in question constituted a capital asset within the provisions of Section 2(14) of the I.T Act, 1961. In brief the facts are that the assessee was in possession of land in village Sehsaula in Taoru Tehsil, District Mewat (Now renamed as Nuh district), Haryana-122105 and the same was sold by it on 26.5.2016 and the resultant gain of Rs.3,11,34,637/- was claimed as exempt on the ground that the Land in question did not constitute a capital asset. While undertaking the scrutiny assessment of the assessee for A.Y. 2017-18, the A.O. disallowed this claim on the following two points:

- i) The Assessing Officer stated that the land in question had never been used for agricultural purposes. In support of this contention, the A.O. placed reliance on an inspection carried out by the I & CI wing of the department on 9.12.2019 wherein physical inquiry was carried out by Inspectors of the department which revealed that the land in question was not agricultural land. A few villagers were also questioned who stated that the land had been lying uncultivated for some time.*
- ii) On the basis of Google Maps, the A.O. computed the aerial distance of village Sehsaula from the Municipalities of Tauru and Sohna and concluded that the land in question constituted a capital asset as it did not fulfill the conditions for exemption laid down in Section 2(14) of the I.T Act, 1961.*

Now, the first point that needs to be examined is whether the land in question is 'agricultural land'. The important point to be kept in mind here is that the definition of 'Capital asset' in section 2(14)

of the I.T Act, 1961 excludes from the definition of capital asset any agricultural land in India' irrespective of whether any income is derived from it or not. Hence, the question of whether a particular land is agricultural cannot be answered merely by examining if crops are being cultivated on that piece of land. Instead this issue has to be decided on a totality of relevant facts and circumstances. From the submissions filed by the assessee it is seen that even during the assessment proceedings before the A.O., the appellant had filed a certificate issued by the Tehsildar, Tauru that the land in question was fit for agricultural use till the year 2017 i.e. the year in which the plot of land was finally sold by the appellant company. The Tehsildar, Tauru has issued this certificate after duly examining the revenue record for the period "Fasal Kharif 2013 to Fasal Rabi 2017". Various courts have held that if the land is not actually appropriated for agricultural purposes, the minimal requirement is that it should be set apart for being used for agricultural purposes and should be such as could reasonably be so used without alteration of its character, entries in revenue records being good evidence. This has been held in CIT Vs Lilavati Thakorelal Patel (152 ITR 565, Gujarat High Court), Combined Industries (P)Ltd. Vs CIT(115 ITR 358 Madras High Court) and Motibhai D. Patel Vs CIT(127 ITR 671, Gujarat High Court).

The report obtained from the Tehsildar states that in certain 'Killas' of the land owned by the appellant there is a record for the cultivation of mustard. The 'fasli' year has also been established by the Tehsildar's report as 2013-14. Hence, the picture which emerges is that the land was being appropriated for agricultural use in 2013-14 and was then sold off in 26.5.2016 without there being any change of land use (CLU) in between. The land remained fit for agricultural use throughout this interval never ever having been used even once for commercial or non-agricultural purposes. It is also seen from the submissions of the appellant that both the purchase deed for land dated 20.10.2010 and the sale deed of land dated 26.5.2016 clearly mentions the land as being 'Agricultural land'. The A.O in his assessment order places reliance on a report submitted by the I & CI wing of the Income Tax department to the effect that this land had never been used for agricultural purposes. However, this report is dated 9.12.2019 i.e nearly 9 years after the plot in question was acquired by the appellant in 20.10.2010 and more than 3 years after it was sold by him on 26.5.2016. Hence, this report has little evidentiary value as it was prepared at a time when the land in question was no longer in the possession of the appellant. Further, the A.O. places reliance on the statements of a few villagers which were recorded by the Inspector of the I.&CI wing. However, no opportunity was granted by the A.O. to the appellant to cross examine these persons. The Hon'ble Supreme Court in Andaman

Timber Industries Vs. Commissioner of Central Excise, Kolkatta (2015) has held that not allowing the assessee to cross examine the statements of those persons which have been made a part of the order and have been used against the assessee reduces the order to a nullity as it amounts to a violation of the principles of natural justice. Hence, in the appellant's case the failure of the A.O. to allow the cross examination of the villagers whose statements have been used against the appellant tantamount to a violation of the principles of natural justice and reduces the evidentiary value of these statements to a nullity.

Therefore, in view of the preceding factual arguments, it becomes clear that the appellants land was 'agricultural' in nature. It has now to be ascertained whether this agricultural land falls within the definition of 'Capital Asset' as given in Section 2(14) of the I.T Act, 1961.

A perusal of the provisions of section 2(14) shows that with effect from 1.4.2014, Clause 2(14)(iii)(b) has been introduced which states that the following will not be 'Capital Assets' within the definition of Section 2(14):

- 1. Agricultural land which is situated more than two kilometers from the local limits of any municipality which has a population of more than ten thousand but not exceeding one lakh, or*
- 2. Agricultural land which is situated more than six kilometers from the local limits of any municipality which has a population of more than one lakh but not exceeding ten lakh, or*
- 3. Agricultural land which is situated more than eight kilometers from the local limits of any municipality which has a population of more than ten lakh.*

Now, the land of the appellant is situated in Village Sehsaula which is closest to the municipalities of Tauru and Sohna. As per the population census of India of 2011, the population of Tauru stood at 22,589 while the population of Sohna stood at 36,552. Since the population of both these municipal committees does not exceed one lakh, the relevant clause for determining whether the said agricultural land is a 'capital Asset' would be section 2(14)(iii)(b)(I) i.e whether the agricultural land is situated at a distance of less than two kilometers from the local limits of the municipalities of Tauru and Sohna. As per the certificate issued by the Tehsildar Tauru, the distance of the appellant's agricultural land from Tauru is more than eight Kilometres. Further, the appellant's land is situated at a distance of 5 kms from the local limits of Sohna Municipality. Hence, the appellant's agricultural land is situated at a distance of more than two Kms. from both Tauru Municipality as well as Sohna Municipality. Hence, the appellants agricultural land is not a

‘Capital Asset’ within the meaning of section 2(14)(iii)(b)(I) of the I.T Act, 1961. Hence, in light of the above discussion it is held that the assessee’s agricultural land at Village Sehsaula was not a capital asset within the meaning of Section 2(14) and was, therefore, exempt from capital gains tax. Accordingly, the tax levied by the A.O. on the profit of Rs.3,11,34,637/- on the sale of this land is deleted. The assessee’s appeal is allowed.”

This is what leaves the Revenue aggrieved.

4. We have given our thoughtful consideration to the Revenue’s and the assessee’s respective vehement contentions against and in support of the CIT(A)’s above extracted findings deleting the capital gains’ addition in the latter’s hands. The Revenue’s sole substantive argument is that the assessee has in fact sold/transferred the land in question situated in the Revenue’s estate of village-Sehsaula, tehsil- Taoru, district-Mewat (now re-named as Nuh district, Haryana), which formed a “capital asset” u/s 2(14) of the Act. And that the learned Assessing Officer appears to have assessed the impugned capital gains in assessee’s hands, inter alia, on two counts that it’s lands sold were not agricultural and the same was also formed a capital asset; as the case may be.

5. The Revenue could hardly dispute that the learned CIT(A) has taken note of the corresponding revenue records upto the relevant financial year to hold that the assessee’s lands were indeed agricultural which could not be allowed to be treated as non-

agricultural merely on the basis of a report filed much later in the year 2019 i.e. after nine years of acquisition thereof.

6. So far as the Revenue's endeavour to invoke section 2(14)(iii)(b) is concerned (supra), it has come on record that the assessee's lands do not satisfy the corresponding statutory guidelines since not situated within the specified distance either from Touru or Sohna municipality, as the case may be. There is no rebuttal coming from the Revenue side against the foregoing twin clinching findings recorded in the lower appellate discussion. We thus see no merit in the Revenue's instant sole substantive ground seeking to revive the impugned capital gains' addition. Rejected accordingly.

7. This Revenue's appeal is dismissed.

Order pronounced in the open court on 21st May, 2025

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 21st May, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi