

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
BEFORE SHRI YOGESH KUMAR U.S., JUDICIALMEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER
ITA No.5168/Del/2015
(ASSESSMENT YEAR 2011-12)**

Asst. Commissioner of Income Tax, Circle-47(1), Room No. 107, Drum Shape, Building, I P. Estate, New Delhi.	Vs.	M/s. Guptajee & Company, 1831, Bhagirath Palace, Delhi-110006. PAN-AAAFG1846Q
(Appellant)		(Respondent)

**C.O. No.07/Del/2016
Arising out of ITA No.5168/Del/2015 (A.Y 2011-12)**

M/s. Guptajee & Company, 1831, Bhagirath Palace, Delhi-110006. PAN-AAAFG1846Q	Vs.	Asst. Commissioner of Income Tax, Circle-47(1), Room No. 107, Drum Shape, Building, I P. Estate, New Delhi .
(Appellant)		(Respondent)

**ITA No.4761/Del/2015
(ASSESSMENT YEAR 2011-12)**

M/s. Guptajee & Company, 1831, Bhagirath Palace, Delhi-110006. PAN-AAAFG1846Q	Vs	Joint Commissioner of Income Tax, Range-29 Drum Shape Building, New Delhi
(Appellant)		(Respondent)

Appellant by	Shri Akshat Jain, CA and Shri Rajat Jain, CA
Respondent by	Shri Sumer Singh Meena, CIT-DR

Date of Hearing	11.12.2025
Date of Pronouncement	23 .01.2026

ORDER
PER YOGESH KUMAR U.S., JM:

The captioned appeal in ITA 5168/Del/2015 is filed by the Revenue, ITA No. 4761/Del/2015 and the Cross Objection

No.7/Del/2016 are filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-XVI, New Delhi ("Ld.CIT(A)", for short], dated 09/06/2015 pertaining to Assessment Year 2011-12.

2. Grounds of appeal of the Revenue in ITA No.5168/Del/2015 are as under:

"1. "On the facts and the circumstances of the case the Ld. CIT(A) has erred in deleting the addition made by AO of Rs.21,13,44,015/- by observing that the property comes in category type-1 i.e. for agricultural/residential not for commercial type-3."

2. "The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 89,75,917/-(out of Rs. 95,75,917/-) made by the AO on Packing expenses. These expenses were incurred in cash and also violating the provision of Sec.40(a)(ia) of the Act".

3. "The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.9,66,284/-(out of Rs. 10,66,284/-) made by the AO on Loading and unloading, cartage outward etc. These expense were incurred in cash without any documentary evidence.

4. "The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

Grounds in Cross Objection No. 07/Del/2016 filed by the Assessee are as under:

"1. That on the facts and in the circumstances of the case and the legal position, the learned CIT(Appeals) has erred in holding that the provisions of section 50C are applicable in the case of appellant firm when

a) the property falls in 'extended laldora'.

b) the property falls in non-confirming clusters of industrial concentration.

2. That the appellant craves to add/alter/delete/amend any ground(s) of appeal before or at the time of hearing."

Grounds of Appeal of the Assessee in ITA No.4761/Del/2015(A.

Y 2011-12) are as under

“1. That the impugned order of the Ld. CIT(A)-16, New Delhi is bad in law and wrong on the facts and in the circumstances of the case And legal position.

2. That on the facts and in the circumstances of the case and the legal position, the Ld. CIT(A) has erred in confirming the disallowance of packing expenses to the extent of Rs. 6,00,000/- on ad-hoc basis.

3. That on the facts and in the circumstances of the case and the legal position, the Ld. CIT(A) has erred in confirming the disallowance of loading and unloading, cartage outward, general expenses, staff welfare, business promotion and printing and stationery to the extent of Rs. 1,00,000/- on adhoc basis.

4. That on the facts and in the circumstances of the case and the legal position, the Ld. CIT(A) has erred in confirming the disallowance of 1/10th of telephone expenses and conveyance expenses amounting to Rs. 81,818/- for alleged personal use.”

3. Brief facts of the case are that, the Assessee sold “Lal Dora Property’ at Badli, Samepur, Delhi, built on an agriculture land during the year under consideration through an agreement to sell dated 31/03/2011 for Rs. 16,75,00,000/- on which capital gain was earned. Assessee filed return of incomedeclaring income at Rs. 16,68,42,034/- which was processed u/s 143(1) of the Income Tax Act, 1961 ('Act' for short). The case of the Assessee was selected for scrutiny and an assessment order came to be passed u/s 143(3) of the Act on

27/03/2014, wherein A.O. made addition of Rs. 21,13,44,015/- of capital gains on sale of land by substituting the sale consideration received by the Assessee with assumed stamp duty value by invoking the provision of Section 50C of the Act. The Ld. A.O. made a valuation of land by applying circle rate prescribed in the said area by taking multiplicative factor of '3' as applicable for commercial land in the place of multiplicative factor of '1' as applicable for residential/agricultural property. The Ld. A.O. has also relied on the Inspector Report dated 20/03/2014, which stated that the property was Go-down of the Assessee and used for commercial purpose. The A.O. also made addition of Rs. 95,75,917/- on account of disallowance of packing expenses due to non-deduction of tax at source u/s 194C of the Act, addition of Rs. 10,66,284/- on account of ad-hoc disallowance of 10% of various expenses and also made addition of Rs. 81,818/- on account of ad-hoc disallowance of 10% of telephone and conveyance expenses.

4. Aggrieved by the assessment order dated 27/03/2014, Assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 09/06/2015, deleted the addition of Rs. 21,13,44,015/-, restricted the disallowance of packing expenses to Rs. 6,00,000/- from 95,75,917/-, by granting relief of Rs. 89,75,917/- further restricted the disallowance

of various expenses to Rs. 1,00,000/- from Rs. 10,66,284/- and the Ld. CIT(A) sustained the disallowance of telephone and conveyance expenses of Rs. 81,818/-.

5. As against the order of the Ld. CIT(A) dated 09/06/2015, the Revenue preferred an Appeal and the Assessee has also filed Cross-objection before the Tribunal. The Tribunal after hearing both the parties, vide order dated 24/02/2020 upheld the findings and the conclusion of the Ld. CIT(A) and dismissed Appeals filed by the Revenue and also dismissed the Cross Objection filed by the Assessee.

6. By challenging the order of the Tribunal dated 24/02/2020, Revenue preferred an Appeal before the Hon'ble High Court of Delhi in ITA No. 136/2021 by framing following question of law

“i. Whether the ITAT was correct in affirming the order of CIT(A) holding that multiplicative factor of 1 is applicable to property sold by assessee.

ii. AO-pleading Xii. Whether the ITAT was correct in rejecting the suggestion of the AO-pleading for disallowance of expenses u/s 14A of the Act.

iii. Whether ITAT was correct in affirming the order of CIT(A) reducing the disallowance of Rs. 95,75,917 made by the AO with respect to packaging expenses to 6,00,000.

iv. Whether ITAT was correct in affirming the order of CIT(A) reducing the disallowance from Rs. 10,66,284 to Rs. 1,00,000.”

7. It is relevant to note that vide order dated 17/08/2022, the Hon'ble Jurisdictional High Court recorded the submission of the Revenue wherein the Revenue has not press the substantial question of law No. ii and vi mentioned above and vide order dated 11/09/2023, the Hon'ble High Court has decided that no substantial question of law arises in respect of Question No. iii (supra) and allowed the Assessee to file Cross Objection whether provision of Section 50C of the Act are applicable or not. Ultimately, the Hon'ble High Court vide order dated 06/08/2024, remanded the matter to the file of the Tribunal for fresh adjudication on the issue as to whether the Ld. CIT(A) is right in holding the multiplicative factor '1' on the property sold by the Assessee.

8. Before us, the Ld. Departmental Representative submitted that during the assessment proceedings inspector has visited the property and found that the entire property has been used as Go-down for storage for electrical items such as cables and fans of Havells Company and the entire property has been used for commercial purpose by the Assessee, even the said Street No. 9 found with Factories and Industries and there was no residential premises baring one or two. Thus, the Ld.

Department's Representative submitted that the Ld. CIT(A) committed error in applying multiplicative factor No. '3', thus, sought for sustaining the addition made by the A.O. by setting aside the impugned order passed by the Ld. CIT(A).

9. Per contra, the Ld. Assessee's Representative submitted that the revenue documents of the property in question is agriculture/residential, therefore, multiplicative factor '1' applied by the Ld. CIT(A) requires no interference. Further contended that mere violation of the use of property by an Assessee will not change the nature itself for the purpose of calculating the stamp duty until and unless the same is recognized by the authorities and changing the nature of the property in revenue documents. The Ld. Assessee's Representative relying on the order of the Ld. CIT(A) sought for dismissal of the Appeal of the Revenue.

10. We have heard both the parties and perused the material available on record. During the assessment proceedings, A.O. computed the capital gains u/s 50C of the Act relying on the circle rate of the property based on the usage of the property and by applying multiplicative factor '3' and made the addition of Rs. 21,13,44,015/- u/s 50C of the Act. Admittedly the property in question is a "Laldora" property and as per the Revenue record, the same has been identified as agriculture land wherein the building has been erected. However, the said building has

been used for other than agriculture purpose i.e. commercial purpose for the sake of Godown for which no sanction has been issued by the competent authority and admittedly the competent authority has not levied any penalty or find for such misuse of land by the Assessee, therefore, in our considered opinion, since, the property in question is identified as residential/ agricultural property in the Revenue records maintained by the State Government, the multiplicative factor '1' has to be taken.

11. As long as the Revenue records maintained by the Authorities remains agriculture in nature there could be no dispute about the character of the land which in the instant case was agriculture/residential. There cannot be any deemed conversion of land based on the usage of the property until and unless it is recognized by the revenue authorities, therefore, the multiplicative factor in the present case would be the '1' which was prescribed by the Delhi Government for permissible/sanctioned use of lands either as agriculture or residential or industrial or commercial. Usage of agricultural/residential land to commercial purpose will be at the most subject to action by government for misuse of permissible use and consequential action but for the purpose of circle rate, the nature of the property has to be seen based on the revenue record maintained by the authorities. Since, the subject

property being an agriculture/residential in the revenue records and also in the agreement to sell, the multiplicative factor of '1' requires to be applied and the Ld. CIT(A) rightly held that factor of '3' applied by the A.O. is contrary to the revenue records.

12. In view of the above, we find no reason to interfere with the finding and the conclusion of the Ld. CIT(A) that application of multiplicative factor of '3' by the A.O. as invalid and consequently we find no error or infirmity in the order of the Ld. CIT(A) in directing the A.O. to work out the value of the land by applying the factor as of '1'. Accordingly, we dismiss the Appeal in ITA No. 5168/Del/2015 filed by the Revenue.

13. Since, we have dismissed the appeal of the Revenue in ITA No. 5168/Del/2015 and in view of the Orders of the Hon'ble Jurisdictional High Court dated 17/08/2022 and 11/08/2024 passed in ITA No. 136/2021, the Cross Objection No. 7/Del/2016 and the Appeal in ITA No. 4761/Del/2015 filed by the Assessee rendered in-fructuous. Accordingly, Cross Objection No. 7/Del/2016 and the Appeal in ITA No. 4761/Del/2015 filed by the Assessee are dismissed.

Order pronounced in open Court on 23rd January, 2026.

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER
Dated: 23.01.2026
Pk/ R. N Sr.PS.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI