

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-4457/Del/2014
(ASSESSMENT YEAR-2010-11)**

Ganpati Concast Pvt.Ltd., 29, Sangam Vihar, Muzaffarnagar PAN-AACCG4569P (APPELLANT)	vs	ITO, Ward-1(1), Muzaffarnagar (RESPONDENT)
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Appellant by	Sh. M.P.Rastogi, Adv.
Respondent by	Sh. Farhat Khan, Sr.DR.

Date of Hearing	22.06.2016
Date of Pronouncement	19.08.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 31.03.2014 of CIT(A), Muzaffarnagar pertaining to 2010 -11 assessment year on the following grounds:-

- 1) *“That the CIT (A) has erred on fact and under the law in sustaining the order of AO taxing the profit on sales of agricultural land which is not a capital Asset in terms of section 2(14) of the Income Tax Act 1961.*
- 2) *That the CIT (A) has ought to have taken into consideration the nature of agriculture land on the date of sale 30th November 2009 and not the present character of the land at the time of assessment consequently the taxation of capital gain on sale of agricultural land is arbitrary, unjust and bad in law.*
- 3) *That the disallowance of interest of Rs. 63,844/- out of interest is arbitrary, unjust and at any rate very excessive.*
- 4) *That the assessee denies his liability to pay interest charged u/s 234B, of the Income Tax Act 1961 at Rs. 3,68,424/-.*
- 5) *The above grounds of appeal are independent and without prejudice to one another.*
Your appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing.”

2. The relevant facts of the case are that the assessee in the year under consideration showed NIL taxable income and claimed net loss of Rs.93,448/- be carried forward to be set off in following years. In the scrutiny assessment it was

seen that the assessee carried no business activity and only agricultural land was purchased on 29.11.2007 for setting of business activities was sold for a consideration of Rs.65,95,000/- on 30.11.2009. The AO considering the fact that the land which was sold was never used for farming required the assessee to furnish reasons for not showing profit of Rs.33,41,573/-. The assessee explained that agricultural land was purchased and agricultural land was sold. It was further submitted that in the circumstances the profit is not taxable as per the Act. Relying on section 2(14)(iii) it was submitted it was not an asset.

2.1. The explanation of the assessee was not accepted by the AO holding that the specific land purchased was industrial land as per information made available by the Revenue Department of the State.

3. The assessee came in appeal before the First Appellate Authority contending that the Khasra & Khatauni of agricultural land showed that it was converted into non-agricultural land and mutated only on 06.01.2010 i.e. after the sale and was declared by SDM, Khatauli as per order dated 19.04.2010. However the claim of the assessee was rejected.

4. The assessee is in appeal before the ITAT. The Ld. AR inviting attention to the reasons prevailing with the AO to hold that it was an industrial land and not an agricultural land, which have been extracted by the CIT(A) submitted that it refers to the information received on 23.03.2013 i.e much after the sale was made. It was submitted that instead of considering the status of the land at the time of the sale, the Revenue has wrongly considered the status of the land as on the date of the assessment order. The Revenue it was submitted was required to adjudicate upon the issue considering the status of the land on the date when it

was sold by the assessee which as per documents made available to the AO and the CIT(A) it was submitted admittedly demonstrated that it was an agricultural land. Relying on the submissions recorded at pages 4 & 5 of the CIT(A)'s order and the reasons of the AO extracted at page 4 of the impugned order, it was his submission that irrelevant facts have been taken into consideration for deciding the issue. Accordingly a prayer was made that considering the evidence the appeal of the assessee may be allowed.

4. The Ld. Sr.DR placed reliance upon the orders of the authorities below. On being confronted with the copies of the Khasra & khatauni considered by the tax authorities and relied upon by the assessee made available once again wherein in the second page of the Khatauni, recording is made that the ownership of the specific piece of land was with Chakradhar Chemicals by SDM, Khatauli u/s 143 and the land was converted from agricultural land on 13.04.2010 to non-agricultural land no argument in support of the orders was advanced.

5. Having heard the rival submissions and perused the material available on record, I am of the view that in the peculiar facts and circumstances of the case, the tax authorities have mis-directed themselves by taking into consideration the status of the land as on the date on which the queries were made by the AO. The relevant date for deciding the issue would have been the status of land as per the land revenue records, on the date of the sale of the said property. The status of the land has to be considered as per the classification done by the Land Revenue authorities and not as per the whim & fancies of the parties. Accordingly the issue is set aside and restored back to the AO with the direction to verify the correctness

of the assessee's claim in support of which photocopies of Khasra & kahatuani have been filed.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 19th August 2016.

**Sd/-
(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR,
ITAT NEW DELHI