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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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ITA 714/2015

COMMISSIONER OF INCOME TAX

..... Appellant

Through: Mr Rohit Madan and Mr Zoheb Hossain,
Standing Counsel.

versus

SRI VIJAY SINGH KADAN

..... Respondent

Through: Mr Piyush Kaushik, Advocate.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.09.2015

CM No.19310/2015

1. For the reasons stated in the application, the delay of 65 days in re-filing the appeal is condoned.
2. The application stands disposed of.

ITA 714/2015

3. This is an appeal filed by the Revenue against the order dated 12th December, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4733/Del/2011 for the Assessment Year ('AY') 2006-07.

4. During the course of the assessment proceedings, the Assessing Officer ('AO') noted that on 9th September, 2005, the Assessee had sold a property admeasuring 5.9625 acres located at Village Ghata, Tehsil Sohna, District Gurgaon. The stand of the Assessee was that the capital gain from the sale of the said land is not taxable because the land was agricultural land which did not fall within the definition of capital asset under Section 2(14) of the Act.

5. According to the Assessee, the land did not fall within a distance of 8 km from the outer limit of the Gurgaon Municipality. The Assessee produced a certificate of the *patwari* in terms of which "in the year 2006 Ghata Village was approximately 9 Kms. away from Gurgaon Municipal Committee." The Assessee also produced the certificates of two architects to the effect that the distance between the land and the outer limits of Gurgaon municipality was 9.645 Kms. The AO, however, rejected the certificates produced by the Assessee since the "scientific mode of determining the distance by a straight line method has not been employed" by the said architects. The AO preferred the certificate of the Tehsildar, Sohna District and of the Engineer of the Gurgaon Municipal Corporation which stated that the distance was 6.6 Kms. The AO interpreted the Circular of the CBDT which clarified that for the purpose of Section 2(14)(iii)(b) of the Act, agricultural lands that would be exempt from the definition of 'capital asset' were those that were located in

"areas upto a distance of 8 Kms from the municipal limits in all directions as under:

"The language used in the notification of the CBDT which has been referred at Page 6 of this order, is "Areas upto a distance of 8 kms from the Municipal limits all direction" the meaning of the above terms is that the point from which the distance has to be measured is the point beginning with outer limit of the Municipality of Gurgaon to the land in question by adopting the straight line method, but not a zig-zag or circuitous method or even the distance by road. the PWD was of the view that the distance had to be calculated from the outer limit of Gurgaon municipality to Village Ghata where the land was located."

Accordingly, the AO held that as per Section 2(14)(iii)(b) of the Act, the agricultural land sold by the Assessee was a capital asset. He accordingly made an addition of Rs 7,75,12,500/- to the income of the Assessee as long term capital gains.

6. The CIT (A) rejected the certificates relied upon by the AO and the Assessee. He concluded that "the distance of agricultural land, in terms of Section 2(14)(iii)(b) has to be measured along the road and not as per crow's flight/ aerial distance." However, the CIT (A) observed that "the distance is to be taken from the local limits from the Municipal Corporation to the 'area' in which the land is situated and not up to the land as mentioned in the report of

the Patwari." The CIT (A) rejected the certificate furnished by the AO from the Directorate of Survey (AIR) and the DGDC Data Centre, New Delhi and concluded that the "shortest distance along the road from IFFCO Junction on the Municipal boundary up to Northern outer limit of Ghata, the Village in which the land is situated is 7.17 Kms. along the road." Consequently, the CIT (A) affirmed the order of the AO that the land sold by the Assessee was a capital asset.

7. Aggrieved by the said order of the CIT(A), the Assessee preferred an appeal before the ITAT. The question that arose for consideration by the ITAT in the Assessee's appeal was: "Whether distance up to the land should be considered or up to the village within which such land is situated?" The ITAT referred to Section 2(14)(iii)(b) and held:

"The presumption of the Assessing Officer as well as CIT(A) that the 'area' means the village in which such land is situated is without any basis. In fact, the correct interpretation of the word 'in any area within such distance not being more than 8 Kms. from the local limits of any municipality' would mean the land should be within such area which is not more than 8 Kms. from the local limit of the municipality."

8. The ITAT concluded that the land had to be within the distance of 8 Kms. from the outer limit of the Gurgaon municipality and not from the outer limit of

the village Ghata in which the land was located. On the strength of the certificate produced by the Assessee from the former Additional Director General, CPWD that the distance of the land from the outer limit of the Gurgaon Municipality was 10.4 Kms, the ITAT held that the land owned by the Assessee did not fall within Clauses (a) or (b) of Section 2 (14) (iii).

9. In *Commissioner of Income Tax v. Lal Singh 325 ITR 588 (P&H)* a report had been given by the Tehsildar measuring the distance of the land, with reference to its *khasra* number, from the outer limit of the municipality. The Punjab and Haryana High Court was of the view that there was no justification for the AO ignoring the said report of the Tehsildar and going by the Report of the Inspector in which neither had the *khasra* number been given nor had it been explained how the distance was measured. In *Commissioner of Income Tax v. Nitish Rameshchandra Chordia (2015) 57 taxmann.com 394 (Bom)* the Bombay High Court held that "The distance between municipal limits and assessed property/asset is to be measured having regard to the shortest road distance and not as per the crow flies i.e. straight line distance as canvassed by the Revenue." The Madhya Pradesh High Court in *Commissioner of Income Tax v. Shabbir Hussain Pithawala (2014) 226 Taxman 174* decided the question likewise and held that the "distance of the agricultural land belonging to the Assessee within the meaning of Section 2(14)(iii)(b) has to be

measured in terms of the approach road and not by the straight line distance on horizontal plane or as per crow's flight."

10. The Court is of the view that for the purposes of Section 2 (14) (iii) (b) of the Act, the distance had to be measured from the agricultural land in question to the outer limit of the municipality by road and not by the straight line or the aerial route. The distance has to be measured from the land in question itself and not from the village in which the land is situated.

11. Consequently, this Court is of the view that the impugned order of the ITAT suffers from no legal infirmity.

12. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 14, 2015

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