



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.28/LKW/2016  
Assessment Year: 2011-12

|                                                                                 |    |                        |
|---------------------------------------------------------------------------------|----|------------------------|
| Harvinder Kumar Sahni<br>Punjabi Colony<br>Gola Gokaran Nath<br>Lakhimpur Kheri | v. | The Dy. CIT<br>Sitapur |
| TAN/PAN:AUTPS9076M                                                              |    |                        |
| (Appellant)                                                                     |    | (Respondent)           |

|                        |                         |
|------------------------|-------------------------|
| Appellant by:          | Shri K.R. Rastogi, C.A. |
| Respondent by:         | Shri Ajay Kumar, D.R.   |
| Date of hearing:       | 16 03 2020              |
| Date of pronouncement: | 19 03 2020              |

**ORDER**

**PER A.D. JAIN, V.P.:**

This is assessee's appeal against the order of the ld. CIT(A), Bareilly dated 30/9/2015 for assessment year 2011-12, taking the following grounds:

1. The Ld. C.I.T. (A), Bareilly erred on facts and in law in upholding Long Term Capital Gain on Sale of Agriculture Land without appreciating that the Agriculture Land is not an asset u/s 2(14) of I. T. Act.
2. The Ld. C.I.T. (A) fails to appreciate that only on a part of entire agriculture land the rice mill was installed. On remaining agriculture land, agriculture operations were carried out till the date of sale and it is incorrect that the land ceased to be agriculture land for I.T. purpose.
3. The addition confirmed is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by him.

2. During the year, the assessee sold land measuring 1.425 hectares. On about 8800 sq. ft. of this land, a rice mill was located. On query from the Assessing Officer, the assessee submitted that the total sale price was of Rs.90 lakhs, out of which, sale of agricultural land was of Rs.71,25,056/-, sale of building was of Rs.18,74,944/- and sale of machinery was of Rs.5 lakhs. Reducing the WDV of the building and the machinery, amounting to Rs.8,59,467/-, the assessee stated net short term capital gain of Rs.15,15,467/-. The Assessing Officer observed that the land was not agricultural land; that it had been defined as industrial land in the sale deed; that a rice mill was located above the said land and commercial activity was being conducted thereat. The assessee filed reply dated 23/1/2014, stating that the rice mill was not in a running condition; that the nature of the land had never changed from that of agricultural land; that right from the date of its acquisition, till the date of its sale, it had been registered in the land revenue record as agricultural land.

3. Rejecting the assessee's stand, the Assessing Officer observed that when the land had been used for rice mill plant, the nature of the land obviously had got changed; that the building, godown and plant & machinery existed on the land; that no agricultural activity stood carried out on the land; and that the land was a capital asset, transfer whereof was liable to tax. The Assessing Officer calculated the long term capital gain at Rs.62,76,446/- and the short term capital gain at Rs.20,90,544/-.

4. Dismissing the appeal of the assessee, by virtue of the impugned order, the Id. CIT(A) confirmed the assessment order. Aggrieved, the assessee is in further appeal before us.

5. Before us, the ld. Counsel for the assessee has contended that the authorities below have failed to consider that the land under consideration was an agricultural land and not an asset under section 2(14) of the Act; that it was only on a part of the entire agricultural land, that the rice mill stood installed; that it was also not appreciated that on the remaining agricultural land, agricultural operations had been carried out till the date of sale and that the land had not ceased to be an agricultural land; and that in fact, the land use was changed in the subsequent year.

6. Per contra, the ld. D.R. has placed strong reliance on the impugned order. It has been contended that since the rice mill stood installed on a part of the land, the land could not, under any circumstances, be described as agricultural land; that as correctly observed by the ld. CIT(A), the land has not been used for agricultural purposes for quote a long time; that there was no force in the claim that the land use was changed in the subsequent year; that undisputedly, the nature of the land was also shown as commercial in the relevant sale deed; and that the factum of the rice mill plant and plant & machinery having been sold during the year goes to prove that the land was not agricultural in nature.

7. Heard. The details of the land purchased, as given by the assessee are as follows:

| Sr. No. | Date of purchase | Financial Year | Assessment Year | Gata No. | Rakba in Hectare | Amount    |
|---------|------------------|----------------|-----------------|----------|------------------|-----------|
| 1       | 26/03/1996       | 1995-96        | 1996-97         | 375      | 0.582            | 100000.00 |
| 2.      | 18/10/1994       | 1994-95        | 1995-96         | 372      | 0.130            | 18000.00  |
| 3.      | 18/10/1994       | 1994-95        | 1995-96         | 373      | 0.130            | 18000.00  |
| 4.      | 18/10/1994       | 1994-95        | 1995-96         | 374      | 0.125            | 18000.00  |

|    |            |         |         |     |       |           |
|----|------------|---------|---------|-----|-------|-----------|
| 5. | 30/03/2001 | 2000-01 | 2001-02 | 375 | 0.348 | 70000.00  |
| 6. | 18/04/2001 | 2001-02 | 2002-03 | 377 | 0.220 | 100000.00 |

8. It is the assessee's contention that after consolidation, the land got converted into two gatas, i.e., gata nos.748 and 751, having a total area of 3.52 acres, or 1.425 hectares. The rice plant along with godown was installed in an area of approximately 15000 sq. ft. APB:7&8 is a copy of the Khatauni, showing agricultural operations in the aforesaid gata nos. 748 and 751, over an area of 1.2050 + 0.2200 hectares. Thus, agricultural operations have been depicted over a total area of 1.4250 hectares, which comprises the total land belonging to and sold by the assessee.

9. In the sale deed (APB:11-37), dated 28/5/2010, the rice mill is shown to exist over 8800 sq. ft. Further, as per the order (APB:10) of the Tehsildar, Bhu Rajsva stands deposited for the years 2008 to 2011.

10. In view of the Khatauni/Khasra, the presumption with regard to which revenue record has not even been referred to, much less rebutted by either of the taxing authorities, and Tehsildar's order, the cultivation of crops over the land cannot be doubted. The objection of the authorities below is that immediately on setting up of the rice mill plant, the land use got automatically changed. It is pertinent to mention here that even the assessee himself does not dispute the levy of capital gain. It is, however, his contention that this long term capital gain should be restricted to the land lying beneath the rice plant and godown, and it should not be levied, as has wrongly been done by

the taxing authorities, on the whole of the land measuring 1.425 hectares.

11. The ld. CIT(A) has observed that the entire agricultural land was used for the rice mill plant. The ld. D.R. has staunchly supported the ld. CIT(A)'s order, contending that even the sale deed itself shows the nature of the land to be non-agricultural land.

12. Now, it is not in dispute that the total land purchased by the assessee was measuring 1.425 hectare, or 153331 sq. ft. Out of this, the land covered under the rice mill and godown is 8800 sq. ft. The assessee submits that on this land, measuring 8800 sq. ft. and on his residence, covering 700 sq. ft., totaling to 9500 sq. ft., long term capital gain is leviable as follows:

Sale consideration of 9500 sq. ft

|                           |                               |                |
|---------------------------|-------------------------------|----------------|
| <u>Sale value at hand</u> | <u>Rs.71,25,056.00 X 9500</u> | Rs.4,41,450.00 |
| Total area                | 153331 sq. ft.                |                |

*Less: cost of acquisition as determined by the Assessing Officer in the assessment order:*

|                                  |                              |              |
|----------------------------------|------------------------------|--------------|
| <u>Total cost of acquisition</u> | <u>Rs.8,48,609.00 X 9500</u> | Rs.52,577.00 |
| Total area                       | 153331 sq.ft.                |              |

|                                |                |
|--------------------------------|----------------|
| Long term capital gain taxable | Rs.3,88,873.00 |
|--------------------------------|----------------|

13. As per the revenue record, as above, the crops of wheat and paddy are cultivated on the agricultural land. There is no adverse finding recorded by the either of the authorities below qua this, though, without basis and in oblivion of this revenue record, the Assessing Officer observed that no agricultural activity was carried out. Even in the sale deed, at page 12

(APB:22) thereof, the factum of carrying on of agricultural activities, is noted.

14. Further, the sale deed is dated 28/5/2010. The conversion of the land for non-agricultural purposes was applied for on 5/8/2011, as contended by the assessee. The assessment order, however, is dated 22/12/2011.

15. In 'CIT, Chennai vs. Ashok Kumar Rathi', 89 taxmann.com 406 (Madras), where the land sold was entered in the Revenue records as agricultural land and the Assessing Officer had rejected the assessee's claim of sale of land being exempt from capital gain, observing that no evidence of agricultural activity has been produced, it was held that the land sold was to be regarded as agricultural land.

16. In 'CIT, Meerut vs. Smt. Sanjeeda Begu', 154 Taxman 346 (Alld.), where the Assessing Officer computed the capital gains, holding that the land was under the regulated area of the District, for which, circle rate had been fixed and was situated very near to the city, and that the land had been converted into non-agricultural land before the date of agreement to sell, it was held that the land not being within 8KM of the Municipal limit and agricultural operations have been carried on thereat till the date of transfer, the land was agricultural land and not exigible to capital gain.

17. In 'CIT vs. Smt. Debbie Alemao and Another', 331 ITR 59 (Bombay), it was held that where the land had been shown in the Revenue records as agricultural land and no permission had been taken by the assessee for its conversion of land use, no agricultural income having been shown in the return, was not material and that the gains from sale were exempt from tax.

18. In the present case, as in the above referred cases, the land is agricultural land, as depicted in the revenue records. No contrary decision has been cited before us. It is only the land beneath the rice mill, measuring 8800 sq. ft., on which long term capital gain is exigible. The contention of the assessee, regarding land of 700 sq. ft. covering his residence, has been brought up only at the present stage. It did not see the light of day at any earlier stage before any of the authorities below, nor is any evidence with regard thereto forthcoming. Therefore, this claim is not available to the assessee.

19. In view of the above, we accept the grievance of the assessee, to the above extent, to be justified. The long term capital gain is, therefore, directed to be calculated and levied as under:

Sale consideration of 8800 sq. ft

|                           |                               |                |
|---------------------------|-------------------------------|----------------|
| <u>Sale value at hand</u> | <u>Rs.71,25,056.00 X 8800</u> | Rs.4,08,922.00 |
| Total area                | 153331 sq. ft.                |                |

*Less: cost of acquisition as determined by the Assessing Officer in the assessment order:*

|                                  |                              |              |
|----------------------------------|------------------------------|--------------|
| <u>Total cost of acquisition</u> | <u>Rs.8,48,609.00 X 8800</u> | Rs.48,703.00 |
| Total area                       | 153331 sq.ft.                |              |

*Long term capital gain taxable* Rs.3,60,219.00

20. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 19/03/2020.

Sd/-  
[B.R.R. KUMAR]  
ACCOUNTANT MEMBER

Sd/-  
VICE PRESIDENT  
[A. D. JAIN]

DATED:19/03/2020  
JJ:1603

Copy forwarded to:

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

By order

Assistant Registrar