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Rental income of godown constructed on an agricultural land couldn't be termed as agriculture income.

Summary – The Delhi ITAT in a recent case of New Jain Godowns., (the Assessee) held that where assessee-firm having constructed a godown on agricultural land received from partners as their capital contribution, gave it on rent for tenant's business purpose, rental income arising from said godown building could not be regarded as agricultural income.

Facts

- The assessee partnership firm comprised of three partners, having 1/3 share each. As per the Partnership Deed, the said parties had agreed to carry on business of constructing godowns and renting them to the Government and other parties and earn rental income.
- During relevant year, the assessee-firm constructed a godown on agricultural land belonging to its partners. The godown was given on rent and rental income so derived was declared as agricultural income.
- The Assessing Officer passed assessment order under section 143(3) accepting assessee's claim relating to agricultural income.
- The Commissioner found that the agricultural land was not owned by the firm and the assessee firm, during the year, did not carry out any agricultural activity thereat in accordance with Section 2 (1A). He further found that, the tenants were using the godown for business purposes.
- In view of above, the Commissioner passed a revisional order holding that rental income from godown could not be treated as agricultural income within meaning of section 2(1A)(c).
- On appeal:

Held

- It is evident that jurisdiction under section 263 was invoked by the Commissioner for the reason that in his opinion, the view entertained by the Assessing Officer regarding the treatment of the rental income earned by the assessee firm as agricultural income, was not in accordance with the provisions of section 2(1A) (c).
- Now, it stands well settled that it is only if the Assessing Officer has taken a view patently unsustainable in law, that power under section 263 can be exercised, where the taking of such an erroneous view results in loss of revenue, thereby satisfying the twin requisite conditions of erroneous assessment order and prejudicial to the interests of the revenue, for invocation of section 263. On the other hand, if the view taken by the Assessing Officer is a view possible in law, power under section 263 cannot be exercised.
- It goes without saying that if the view taken by the Assessing Officer is a possible view and the Commissioner does not agree with such a view, the assessment order cannot be treated as an erroneous order prejudicial to the interests of the revenue.

- In the present case, what is to be seen is as to whether the view arrived at by the Assessing Officer is a view which is possible in law.
- Sections 2(1A)(a) and (b) deal with income derived from land. The income in the present case, however, needs to be considered under section 2(1A)(c), since it is income by way of rent from letting out of godown.
- The first requirement of the section is 'any income derived from any building owned and occupied by the receiver of the rent or revenue of such land'. Therefore, any income derived from any building owned and occupied by the receiver of the rent or revenue of any land situated in India and used for agricultural purposes means 'agricultural income' within the meaning of first phrase of section 2(1A)(c). Now, admittedly, the assessee firm was not the receiver of the rent or revenue of the land beneath the godown building.
- The requirement of the phrase is that the income should be derived from any building owned and occupied by the receiver of the rent or revenue of the land. Now, the relevant word here is 'and'. The building should be owned as well as occupied by the receiver of the rent or revenue of the land. Here, neither is the assessee receiver of the rent or revenue of the land, nor is the building occupied by it. Thus, the Commissioner is found to have correctly held that the assessee is not covered under the first limb of section 2 (1A) (c).
- The second phrase employed in section 2(1A)(c) states: - "or occupied by the cultivator or the receiver of the rent-in-kind of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on." Thus, the requirement of this limb of the section is that the building must be occupied by the cultivator or the receiver of rent-in-kind of any land with respect to which or with respect to the produce of which, any process which is ordinarily employed by a cultivator or receiver of rent in kind, so as to render the produce raised or received by him fit to be taken to the market, is performed. Here also, the assessee fails. Firstly, as noted by the Commissioner in the godown building was occupied by 'K' and 'I', who were the assessee's tenants during the year under consideration and were not either cultivators, or receivers of rent in kind of any land.
- Further, it had also not been shown by the assessee that either the land beneath the godown building, or the produce thereof was subjected to any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to the market. Further, it has also not been shown by the assessee that it sold, as a cultivator or receiver of rent in kind, the produce raised or received by it, with respect to which, no process other than one ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to the market, was performed i.e. the requirement of section 2(1A)(b)(iii), as envisaged by section 2(1A)(c).
- As such, the Commissioner has also correctly observed that the first part of second limb is not satisfied. Neither firm nor tenant is receiver of rent in kind of any land also and, hence, the second

part of second limb is also not satisfied. Against this finding of the Commissioner also, no challenge has been raised by the assessee.

- The main section 2 (1A)(c) is subject to the two Provisos. That is to say, that the income described in the main provision of section 2(1A)(c) shall be agricultural income subject to the two Provisos appended to the section. This means that the requirements of only the main provision of section 2 (1A)(c) are not sufficient to be met so as to enable the income to be termed as agricultural income. Even the requirements of the two Provisos need to be fulfilled and this is not an either/or situation. All the requirements of the composite section 2(1A)(c), i.e., the main provision and both the Provisos, need must be fulfilled.
- It cannot be disputed that a Proviso is subservient to the main provision of a section. That being so, once the assessee does not fall within the main provision of section 2(1A)(c), it would also, consequently, not fall under either of the Provisos to that section. However, since the assessee has, in its submissions all through, sought to place reliance on the first proviso, this argument needs to be met.
- As per proviso (i) to section 2(1A)(c), the building has to be at or in the immediate vicinity of land situated in India and used for agricultural purposes and it has to be a building which is required by the receiver of the rent or revenue, or the cultivator, or the receiver of rent in kind, as a dwelling house or as a store-house, or either out-building, by reason of his connection with the land. Both the requirements are essential to be met, since the operative word is 'and' and not 'or'.
- The assessee's contention in this regard remains that the godown building stands constructed on agricultural land belonging to the partners of the assessee firm. This, however, does not help the case of the assessee, since the full requirement of Proviso (i) to section 2(1A)(c) is not only of the building being in the immediate vicinity of the land, but also that the building is required by the receiver of the rent or the revenue, or the cultivator, or the receiver of the rent-in-kind, by reason of his connection with the land, as a dwelling house, or as a store-house, or other out-building.
- Now, as noted, neither is the assessee the receiver of the rent or revenue, or the receiver of rent-in-kind, or the cultivator of the land, nor does the assessee require the building either as a dwelling house, or as a store-house, or as other out-building. Further, as discussed above, Proviso (i) is subservient to the main provision of section 2(1A)(c) and since the assessee does not fulfil the conditions of the main provision of section 2(1A) (c), the factum of the building being in the immediate vicinity of the land, by virtue of being constructed thereon, does not bring the income earned by the assessee within the ken of 'agricultural income' as defined in section 2(1A)(c).
- Now, coming to Proviso (ii) to section 2(1A)(c). As per this Proviso, the land should either be assessed to land revenue in India or it should be subject to a local rate and where it is not so assessed, it should not be located within any urban area, as defined in clauses (A) and (B) of Proviso(ii).
- The stand of the assessee in this regard is that the land in question is situated away from the city. However, this is insufficient to show either that the land is not situated in an urban area within the

jurisdiction of a Municipality, etc., as envisaged by clause (A) to Proviso (ii), or that it is not situated within a distance of eight Kms. from the local limits of any Municipality, etc., as given in clause (B) to Proviso (ii).

- Thus, besides not being covered under the main provision of section 2(1A) (c), the assessee has also not been able to make out the fulfilment of the two Provisos thereto.
- As per *Explanation 2* to section 2(1A), income derived from any building referred to in section 2(1A)(c) arising from the use of such building for any purpose other than agriculture falling under section 2(1A)(a) or section 2(1A)(b) shall not be agricultural income.
- According to the assessee, *Explanation 2* to section 2 (1A) is attracted since the godown building has been used by the assessee for agricultural purpose, falling under section 2 (1A) (b). As per section 2(1A)(b) (ii), 'agricultural income' means any income derived from land situated in India and used for agricultural purposes, by "the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to the market."
- According to the assessee, it performs the same function that ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to the market, since it helps in the storage of agricultural produce so that it remains fit to be taken to the market.
- It is seen that the assessee has taken two mutually divergent stands. Before the Commissioner, it stated that it stood covered under *Explanation 2* to section 2(1A). On the other hand, before Tribunal, it states that *Explanation 2* cannot be invoked, since it (the assessee) passes the test of section 2(1A)(b)(ii) and (iii).
- As already held that the assessee does not pass the test of section 2(1A)(ii)/(iii). Now, as to the applicability or otherwise of Explanation 2 to section 2 (1A), it is seen that this Explanation is with regard to income derived from any building referred to in section 2(1A)(c). 'Building' as referred to in section 2(1A)(c) is any building owned or occupied by the receiver of the rent or revenue of any land situated in India and used for agricultural purposes, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in sections 2(1A)(b)(ii) and (iii) is carried on.
- This definition of 'building', does not get attracted to the present case. Since the godown building in question does not come within the definition of 'building' as contained in section 2(1A)(c), the income therefrom cannot be held to be agricultural income with the help of Explanation 2 to section 2 (1A).
- Then, the assessee's contention that the assessee performs the same function as that performed by a cultivator, as it helps in the storage of agricultural produce so as to keep it fit to be taken to the market, and so, the income derived is agricultural income, is also of no aid to the assessee. Section 2 (1A) (c) also states - "…. Any process mentioned in paragraph (ii) and …. of sub-clause (b)…. ."

- As per section 2(1A)(b)(ii), the performance of the process has to be by a cultivator or receiver of rent-in-kind and the assessee, as held hereinabove, is neither a cultivator, nor receiver of rent-in-kind of the land. It is trite that each and every phrase, down to its very last word, of a relevant provision needs necessarily be carefully complied with to ensure a just, fair and proper conclusion on a given fact-situation. Sans that, what would come about is a stark violation of the provision. And that is just what has happened here.
- The unequivocal requirement of section 2(1A)(b)(ii) is that the performance of "any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to the market" must be by a cultivator or receiver of rent-in-kind.
- Thus, clearly, in the interpretation of section 2(1A)(b)(ii) in its favour by the assessee, the operative portion 'the performance by a cultivator or receiver of rent-in-kind' has gone left out, rendering such interpretation vitiated in law. That which cannot be done directly because of the specific mandatory prohibition imposed by a provision of law cannot be allowed to be done indirectly by permitting the non-consideration of a relevant and applicable portion of such provision.
- The assessee has further contended that it is not the requirement of law that the owner of the godown must use the godown, as the same is neither their intent, nor the object of section 2 (1A) (c), as an owner cannot receive rent from himself. Even this argument is not well founded. section 2 (1A) (c) envisages the building to be owned and occupied by the receiver of the rent or revenue of land situated in India and used for agricultural purposes. The building in question is owned by the assessee firm, but the assessee is not the receiver of the rent or the revenue of the land beneath it, even though the land was brought to the firm as capital by its partners. So, this argument of the assessee is also rejected.
- From the above discussion, it is seen that the explanation offered by the assessee before the Assessing Officer was accepted by the Assessing Officer without dealing with as to how such explanation was acceptable.
- Thus, the assessment order is a non-speaking order. The Commissioner's Order, is a detailed order, evincing how the view taken by him is a view which is in accordance with law, as against the Assessing Officer's view, which is not a possible view in law, much less a plausible one. Therefore, the grievance of the assessee in this regard is rejected and the action of the Commissioner in holding the assessment order to be an erroneous order prejudicial to the interests of the revenue is confirmed.
- In the result, assessee's appeal is dismissed.