A land couldn't be treated as agricultural land just because it was situated beyond 8 km. from municipal limits

Summary – The Nagpur ITAT in a recent case of Inder Sunderdas Sethiya, (the Assessee) held that Commissioner (Appeals) having observed on facts that there being no agricultural activity on land sold by assessee, said land was to be treated as capital asset for purpose of tax, his view on basis of certain case laws, that land in question was beyond 8 kms. on road from municipal limits and, therefore, could not be considered as capital asset, could not be approved; he should have analysed and scrutinised both aspects, i.e., distance and agricultural activity

Facts

- The assessee had sold an agricultural land during year under consideration and claimed short-term capital gain arising thereon as exempt from tax.
- On investigation, the Nagpur Improvement Trust had informed the Assessing Officer that the land in question was 6.875 kms. from the limits of Nagpur Municipality.
- The Assessing Officer held that the land being not an agriculture land and it being within 8 kms. of the municipal limits, the amount of profit on sale of land was to be taxed as short term capital gain.
- On appeal, the Commissioner (Appeals) observed that the land in question was to be treated as capital asset. However, after referring few decisions of the Tribunal as well as the High Courts, he held that the land in question was beyond 8 kms. on road from the municipal limits of Nagpur and it was not capital asset. Accordingly, the Assessing Officer was directed to allow exemption under section 2(14) in respect of the agricultural land as claimed by the assessee.
- On revenue's appeal before the Tribunal:

Held

- The Commissioner (Appeals) has grossly erred in ignoring all the facts and adopted a contrary view that too by taking a 'turtle turn' simply on the pretext that the case laws of higher forum were binding upon him. It is a well established law that an appeal is to be decided on its own facts as available on record. In this appeal, it is evident that although the facts of this case were found to be not matching with the facts of certain precedents, but still the Commissioner (Appeals) had decided not only to follow but to apply the view taken in those cited cases so as to give relief on the pretext that those case laws being pronounced by the higher forum were binding upon him. It is incorrect way of following or applying a precedent. Law does not permit to blindly follow a precedent. A precedent is an authority only for what it actually decides. Hence, a judgment must be read as a whole. An observation in a judgment should be considered in the context in which they are made that too in the light of the facts/circumstances of that case. It is not desirable to pick few words

from the judgment which is otherwise divorced from the context in which it was used. Reliance should not be placed on a decision without discussing how the factual situation fits in, with the factual situation of the decision on which reliance is to be applied. This much caution ought to be exercised before relying upon a precedent. A precedent is to be followed if the facts are identical.

- The decision which were discussed by Commissioner (Appeals) were based upon certain facts such as the nature of the agricultural land along with the distance from the municipal limit. If on one hand the Commissioner (Appeals) has given a finding on certain facts, that there were number of real estate projects in that area and that there was International Cricket Stadium located very near to the said land, and therefore, in the absence of any agricultural activity it was a 'capital asset' for the purpose of levying tax as per the provisions of Income-tax Act, it is very strange that even after recording those facts of the case, the Commissioner (Appeals) has taken a view that because few decisions of the Tribunal and the High Courts have taken a view that distance is to be measured through approach road and not by straight line distance, the land in question was exempt from the tax. Such an order of an appellant authority cannot be approved. It was at least expected from him to analyse and scrutinize both the aspects, *i.e.*, the distance and the agriculture activity. Therefore, it is proper to restore the issue back to him with a direction to provide a reasonable opportunity of hearing to both the sides.