

## ITAT remanded matter to examine certificate issued by authority specifying aerial distance of land from municipality

**Summary – The Mumbai ITAT in a recent case of Rita Rajkumar Kochhar, (the Assessee) held that Distance as per item (b) of section 2(14)(iii) is to be measured aerially with effect from 1-4-2014**

### Facts

- The assessee had sold two agricultural lands one at village Kon, and the other at Village Vadoli. She had not offered any capital gain claiming that the land sold being agricultural in nature, were not capital asset as defined under section 2(14)(iii).
- The Assessing Officer made enquiries with MMRDA. MMRDA stated that village Vadoli and Kon were situated within the limits of MMRDA. On the basis of information obtained from MMRDA, the Assessing Officer concluded that the assessee's claim that the agricultural land could not be treated as capital asset under section 2(14)(iii), was not acceptable. Accordingly, rejecting the assessee's claim of exemption from capital gain, the Assessing Officer proceeded to compute long term capital gain.
- The Commissioner (Appeals) also confirmed the addition.
- On appeal:

### Held

- The MMRDA has stated that Village Kon and Vardoli are located approximately 1.9 kms. and 4.8 kms. away from Panvel Municipality Council. Subsequently, in response to a letter written by the assessee to clarify the method on the basis of which the distance was measured MMRDA in letter, has stated that the distance was measured by crows flight method (aerially). Again, in response to the another letter of the Assessing Officer to furnish the exact distance of the villages from a nearby municipality, MMRDA had stated that to clarify the exact distance, he may approach the competent authority. The sub-divisional engineer, who according to the assessee is the competent authority has stated that Vardoli Village is situated at a distance of 11 kms. from Panvel Municipality and Village Kon is situated at a distance of 5 kms. from Panvel Municipality Council. It is stated that the aforesaid distance measured by the competent authority is by the method of shortest road distance.
- On a reading of section 2(14)(iii), the distance as per sub-clause (b) of section 2(14)(iii) is to be measured aerially with effect from 1-4-2014. By way of further clarification, the CBDT has issued [Circular No. 17 of 2015 dated 6-10-2015](#), to effect that the measurement of the distance aerially is to be applied from the assessment year 2014-15 and not to the prior assessment years. Thus, the agricultural land situated at Village Vardoli may not be coming within the definition of capital asset in terms of section 2(14)(iii). Therefore, the assessee's claim of exemption, at least, in respect of the

agricultural land situated at Village Vardoli appears to be valid. However, since the certificate issued by the competent authority specifying the distance had not been examined keeping in view the CBDT circular, the impugned order of the Commissioner (Appeals) is set aside and the matter is restored back to the file of the Assessing Officer to verify the assessee's claim on the basis of the certificate issued by the competent authority as well as CBDT Circular No. 17 of 2015.