

Exemption on sale of agricultural land rightly denied as sale deed suggested that it was residential land: ITAT

Summary – The Delhi ITAT in a recent case of Girdhari Lal, (the Assessee) held that where assessee sold a piece of land claiming it to be in nature of agricultural land, in view of fact that no agricultural activity was carried out on said land during relevant year and, moreover, land in question was situated within 8 km. of local municipal limits, Assessing Officer was justified in making addition to assessee's income under head 'Capital gain' by invoking provisions of section 50C

Facts

- During relevant year, assessee sold a piece of land claiming it to be in nature of agricultural land. In course of assessment, the Assessing Officer received report of Inspector as per which no agricultural activity was carried out on said land during relevant year. Moreover, the land in question was situated within 8 km. of local municipal limits as per report of the Tehsildar.
- The Assessing Officer further noted that land in question was mentioned as 'residential land' in the sale deed. The Assessing Officer thus invoked provisions of section 50C and made addition to assessee's income under head 'long term capital gain'.
- The Commissioner (Appeals) confirmed said addition.
- On second appeal:

Held

- The test for determining whether the impugned land is agriculture bears mainly on the nature or character of the land, and not merely on the actual user or non-user at a particular point of time. If the land is not actually appropriated for agricultural purposes, the minimal requirement is that it should be set apart for being used for agricultural purposes and should be such as could reasonably be so used without alteration of its character, entries in the revenue records being *prima facie*, but not conclusive evidence.
- In order to qualify for exemption, it is not enough that the land was once agricultural land, it must be agricultural land at the time of sale. The Assessing Officer collected several evidences at assessment stage and confronted the same to the assessee seeking explanation as to how assessee claimed the impugned land as agricultural land. However, assessee did not file any explanation before Assessing Officer and whatever documents were confronted to the assessee have not been rebutted by the assessee. Therefore, the material evidence collected by the Assessing Officer at assessment stage clearly prove that no crops grown during financial years 2005-06 to 2006-07 in the impugned land. Meaning thereby, prior to the sale on 15-4-2006 and at the time of sale, no agricultural activities were carried out on the said land. This fact is corroborated by the sale deed in question, copy of which shows that circle rate of the property in question was Rs. 44,60,000/- which

could not be of agricultural land and property under sale was residential property, on which, six residential rooms have been constructed along with guard room and generator room.

- Further construction was also going on in the impugned land. The sale deed is produced by the assessee on record. Therefore, it amounts to admission on the part of the assessee that the impugned land was being used for residential purposes on which massive construction have been raised prior to the sale. According to the reports of the PWD and Income Tax Inspector, the impugned land falls within the local limits of 8 KM of municipal authority.
- The sale deed also confirmed that it is a constructed property, when it was sold. The assessee declared long term capital gains, meaning thereby, assessee himself admitted that the said land to be non-agricultural land when he has filed the return of income. Even as per revenue records, no agricultural activity were carried out by the assessee in the impugned land. As per evidence collected on record, the land falls within the Municipal limits. The nature and character of impugned land would not show it to be agricultural land. The assessee has no intention to do any agricultural operation on impugned land. It, therefore, appears that assessee did not file any explanation before Assessing Officer that property in question is agricultural land.
- In view of the above, there is no merit in the appeal of the assessee and the same is accordingly dismissed.