

Distance between particular land and municipality isn't criterion to define agricultural land

Summary – The Jaipur ITAT in a recent case of Rakesh Garg, (the Assessee) held that As per section 2(14)(iii)(b), distance from Municipal limits to area in which land is situated is to be considered and not distance between particular land and municipal limit

Facts

- During relevant year under consideration, the assessee sold agricultural land situated at Jaipur with his two brothers for a consideration of Rs. 1.62 crores. Thus the assessee's 1/3rd share in the sale consideration was Rs. 54 lakhs. The assessee in its return of income claimed deduction under section 54F in respect of three new assets purchased by the assessee at three different locations.
- The Assessing Officer allowed the deduction under section 54F only in respect of one new asset of Rs.12.05 lakhs as against claim of the assessee of Rs. 54 lakhs, the total investment made by the assessee in three separate housing plots.
- On appeal, the assessee challenged the action of the Assessing Officer and also raised a ground that the agricultural income in question did not fall in the definition of capital asset as per the provisions of section 2(14) as the agricultural land in question was situated beyond 8 KM of Municipal limits of Jaipur. However, the Commissioner (Appeals) did not accept this objection of the assessee and held that when the assessee himself had declared the capital gain in the return of income arising from sale of agricultural land in question and no submission whatsoever had been made before the Assessing Officer to this effect, then this issue did not emanate from the order of the Assessing Officer.
- On appeal to the tribunal:

Held

- The issue raised by the assessee whether the agricultural land in question is capital asset or not involves both factual as well as legal question. Whether the land situated in any area within the distance not more than 8 KM from the local limits of Jaipur Municipality or in the area beyond 8 KM from the local limits of Municipality is a question of fact and only once this question of fact is decided then the question of law comes into play. There is no dispute that the assessee himself has declared the capital gain arising from the sale of agricultural land in question and claimed deduction under section 54F. However, before the Commissioner (Appeals) the assessee raised this issue of not chargeable to capital gain due to the reason that the land in question situated in the area which is beyond 8 KM from the local limits of Jaipur Municipality. Thus for considering the issue whether the agricultural land in question situated in the area which is beyond 8 KM from the local limits, a proper enquiry and investigation is required. The assessee filed certain documents in support of the claim before the Commissioner (Appeals). However, there was no further verification and enquiry

conducted by any authority as the Commissioner(Appeals) rejected the claim of the assessee as not maintainable on the ground that the same was not raised before the Assessing Officer. It is found that though the issue raised by the assessee involves question of fact as well as law, however, the Commissioner (Appeals) having the coterminous power as that of Assessing Officer, could have verified the facts by calling a remand report from the Assessing Officer and, therefore, the issue could have been decided on merits. Further, it is found that the documents produced by the assessee are not sufficient to adjudicate the issue as the assessee has filed only a Google map as well as certain reports of the Municipal Corporation which are not directly on the point of distance. Further, the assessee has claimed the distance of particular land from the Municipal limits whereas as per the provisions of section 2(14)(iii)(b) the distance has to be measured from the Municipal limits and the area in which the agricultural land situate.

- Thus it is clear from the clause (iii) and sub-clause (b) of section 2(14) that the agricultural land will be excluded from the definition of capital asset if the same is situated in an area which is beyond 8 KM from the local limits of the Municipal/Cantonment Board. Therefore, for determining the issue of the land in question is not falling in the definition of capital asset but falling in the exclusion clause of section 2(14), the distance from the Municipal limits to the area in which the land is situated is to be taken into consideration. It is pertinent to note that the phrase 'agricultural land' not being land situate in any area 'within the distance' is purposefully used in this provision to avoid the confusion and a situation where one part of a land can fall within the distance of 8 KM and another part can be beyond 8 KM and, therefore, in case when the assessee is selling the land by division in different parts, then one part of the land will be excluded from the definition of capital asset and other part of the same land will be treated as capital asset. Therefore, instead of a particular land, the distance from the Municipal limit to the area in which the land is situated is to be taken into consideration. Accordingly, the issue raised by the assessee requires a proper investigation of facts and also determination of the fact whether the particular land is situated in the area which is beyond 8 KM from the Municipal limits. Hence, in the facts and circumstances of the case and in the interest of justice, this issue is set aside to the record of the Assessing Officer for proper verification and giving the finding about the distance from the Municipal limits to the area in which the land is situated. It is clarified that the terms used in the provision refers to the particular revenue state in which the agricultural land is situated and, therefore, the distance from the Municipal limit to the particularly revenue state has to be considered for the purposes of deciding the issue.