

Agricultural land whether held as capital asset or stock-in-trade is covered under ambit of sec. 56(2)(vii)(b)

Summary – The Jaipur ITAT in a recent case of Trilok Chand Sain., (the Assessee) held that Agricultural lands fall under definition of an immovable property, hence, covered under ambit of section 56(2)(vii)(b), it is immaterial whether they fall under definition of capital asset or stock-in-trade

Facts

- The assessee purchased three plots of land during the year under consideration and claimed that these plots of land were agricultural land and did not fall in the definition of capital asset as per the provisions of section 2(14).
- The Assessing Officer, however invoked the provisions of section 56(2)(viib) and made an addition of Rs. 1.74 crores which included an amount of Rs. 1.51 crores being difference between the sale consideration as per the sale deeds and the stamp valuation determined by the Stamp Valuation Authority, and Rs. 23 lakhs as unexplained investment in purchase of these properties.
- On appeal, the Commissioner (Appeals) held that the land in question being an agricultural land was not a capital asset as per the provisions of section 2(14) and therefore, not being a capital asset, the transaction did not attract the provisions of section 56(2)(viib). Further, the Commissioner (Appeals) held that the assessee was in the business of sale/purchase of property and the land so purchased was his stock-in-trade and since the stock-in-trade was also excluded from the definition of capital asset, on this account as well, the provisions of section 56(2)(viib) were not attracted. Accordingly, he deleted the addition of Rs. 1.51 crores in the hands of the assessee and granted the necessary relief.
- On appeal by revenue to the Tribunal:

Held

- The provisions of section 56(2)(vii)(b) provides that where an individual receives in any previous year, from any person or persons on or after the 1-10-2009 but before 1-4-2017, any immovable property for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be income chargeable to tax under the head 'Income from other sources'.
- On reading of provisions of section 56(2)(vii)(b), it is found that it refers to any immovable property and the same is not circumscribed or limited to any particular nature of immovable property. It refers to any immovable property which by its grammatical meaning would mean all and any property which is immovable in nature, i.e, attached to or forming part of earth surface. In the instant case, the assessee has purchased three plots of agricultural land and such agricultural land is clearly an immovable property. Whether such agriculture land falls in the definition of capital asset under section 2(14) or whether such agriculture land is stock-in-trade of the assessee, are issues

which cannot be read in the definition of 'any immovable property' used in context of section 56(2)(vii)(b) and are thus not relevant. In the result, the order of the Commissioner(Appeals) is set aside to this extent and the order of the Assessing officer is upheld. In the result, said ground of the revenue's appeal is allowed.