
**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203 **ITA No.496 of 2010 (O&M)**
Date of decision: December 04, 2017

The Commissioner of Income Tax, Faridabad ....Appellant

versus

Khacheru Singh (since deceased) through his LRs
....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr. Tajender K. Joshi, Sr. Standing Counsel
for the appellant-Revenue.

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AJAY KUMAR MITTAL, J. (Oral)

1. The appellant-Revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 30.11.2009 (**Annexure A-III**) passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi in ITA No.2953/Del/2009, for the assessment year 2006-07, claiming the following substantial questions of law:-

> "(i) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the Ld. CIT(A) in deleting the addition of Rs.1,25,78,000/- made by the Assessing Officer on account of short term capital gain even though the lands in question was situated within eight kilometers from the municipality (i.e. 7275 meters) and also the land in question falls in the Gurgaon Manesar Urban Complex in Sector-83, which is an urban

area as such was a capital asset not exempt within the meaning of Section 2(14) and Section 54B of the Income Tax Act, and hence was liable for capital gain tax u/s 45?

(ii) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the Ld. CIT(A) in deleting the addition of Rs.1,25,78,000/- made by the Assessing Officer on account of short tem capital gain by relying upon the judgment of Hon'ble Pune Tribunal in the case of Manglam Inorganics (P) Ltd. vs. ACIT and of Hon'ble Mumbai Tribunal in the case of Laukik Developers V/s DCIT (2008) 303 ITR 356 (Mumbai) disregarding the fact that facts in the cited cases were different from the facts of the present case?

(iii) Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the Ld. CIT(A) in holding that the road distance method is the correct yardstick for the measurement of agricultural lands from the concerned Municipality limits instead of crow fly i.e. straight line method which is the most scientific, logical and in accordance with the spirit of the Income Tax Act, 1961?

(iv) Whether, on the facts and circumstances of the case, the Ld. ITAT was right in law in upholding the findings recorded by the Ld. CIT(A) that the Assessing Officer had failed in confronting the evidence of the District Town Planner, Gurgaon with the assessee as such it cannot be used against the assessee as it was gathered at his back are perverse and contrary to the evidence available on record as for the said purposes case was fixed for 26.08.2008 and 12.09.2008 and 15.09.2008 and Sh. K.C. Gupta, assessee's Counsel attended and confronted with the letter of District Town Planner, Gurgaon?"

2. At the outset, learned Sr. Standing counsel for the

appellant-Revenue submitted that the issue involved in this appeal relates to whether for calculating the distance of 8 kms. from any municipality for an agricultural land to be considered as capital asset, the straight line method has to be applied or road distance method is correct. It was stated that similar issue had been adjudicated by the Nagpur Bench of the Mumbai High Court in ITA No.151 of 2013 titled as **The Commissioner of Income Tax-III, Nagpur vs. Smt. Maltibai R. Kadu** wherein it has been held that the amendment to Section 2(14)(iii) by the Finance Act, 2013 effective from 01.04.2014 prescribing distance to be measured aerially, applies prospectively i.e. in relation to assessment year 2014-15 and subsequent assessment years. According to the learned counsel, the present case relates to assessment year 2006-07 and therefore, the said amendment is not applicable. He pointed out that in the light of Circular No.17/2015, dated October 06, 2015 issued by the Central Board of Direct Taxes, Ministry of Finance, Government of India, he has instructions to withdraw the present appeal.

3. Dismissed as withdrawn.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

December 04, 2017
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Whether speaking/reasoned? Yes

Whether reportable? Yes