

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2286/DEL/2018  
[Assessment Year: 2009-10]

Smt Vimlesh Devi  
Gali No. 4, Kankerkhera  
Meerut, Uttar Pradesh

Vs.

The I.T.O  
Ward - 2(4)  
New Delhi

PAN: AIRPD 0703 E

[Appellant]

[Respondent]

Date of Hearing : 20.10.2021

Date of Pronouncement : 20.10.2021

Assessee by : Shri Ramit Kakkar, CA

Revenue by : Shri Sanjiv Mahajan, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals], Meerut dated 29.01.2018 pertaining to assessment year 2009-10.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in sustaining the view of the Assessing Officer that the impugned property is a capital asset.

3. Briefly stated, the facts of the case are that as per TEP information, the Assessing Officer came to know that the assessee has sold a certain piece of land situated at Khatauli District, Muzaffarnagar for a consideration of Rs. 11,31,540/- on which stamp duty value was determined at Rs. 18,85,900/-. When this information was confronted to the assessee asking her to explain as to why capital gains tax liability should not be determined on the sale of land along with construction, the assessee, in her reply, strongly objected claiming that there was no construction on the said piece of land.

4. The Assessing Officer confronted the valuation report by the DVO who has determined the FMV of the impugned land at Rs.18,85,900/- on which stamp duty paid is Rs. 94,300/-.

5. Being not satisfied with this reply of the assessee, the Assessing Officer computed long term capital gains on the sale of the said piece of land at Rs.17,71,850/-.

6. The assessee carried the matter before the Id. CIT(A) and vehemently contended that the said piece of land is situated beyond 8 kms from the municipal corporation limits and therefore, does not come within the purview of the definition of 'capital assets' and being an agricultural land, is not subjected to capital gains tax.

7. The Id. CIT(A) called for remand report directing the Assessing Officer to conduct detailed enquiry to verify whether the impugned property was beyond 8 kms of municipal limits.

8. A detailed enquiry was conducted by the Assessing Officer on the directions of the Id. CIT(A) and reported that the office of the Municipal Corporation Parishad has stated that the impugned property is located in Pargana Khatauli Budhana Road, Khatauli and was actually on 500 metres from the municipal limit. The Id. CIT(A), referring to the documents received from the office of Nagar Palika Parishad, Khatauli came to the conclusion that the findings of the Assessing Officer remained uncontroverted and therefore, no interference is called for in the order of the Assessing Officer.

9. Before me, the Id counsel for the assessee vehemently contended that the Assessing Officer and the Id. CIT(A) have proceeded in the wrong direction in as much as they have considered the distance from outer limit of Pargana Khatauli, Budhana Road, Khatauli. It is the say of the Id counsel that both the parties who have considered the distance from municipal corporation limit of Muzaffarnagar from where the impugned piece of land is situated is more than 8 km.

10. Per contra, the Id. DR strongly supported the findings of the Assessing Officer/CITA.

11. I have carefully considered the orders of the authorities below. I find that before the Assessing Officer, the assessee had a taken a different stand and before the Id. CIT(A), the assessee has taken another stand. It is true that the Id. CIT(A) had called for a remand report and on the directions of the Id. CIT(A), the Assessing Officer did make some enquiry.

12. However, I find that the letter stating that the impugned piece of land is situated 500 mtrs is from the office of Nagar Palika Parishad Khatauli and the contention of the assessee is that the distance should

have been considered from the municipal limits of Muzaffarnagar which has been notified by the government. Since the facts are not coming out properly from the orders of the authorities below, I deem it fit to restore the issue to the file of the Assessing Officer. The assessee is directed to furnish necessary documents/ evidences to demonstrate that the said piece of land is actually situated beyond 8 kilometres from the Municipal Corporation limit and the Assessing Officer is directed to consider the evidences and decide the issue afresh after giving reasonable opportunity of being heard to the assessee.

13. In the result, the appeal filed by the assessee in ITA No. 2286/DEL/2018 is allowed for statistical purposes.

The order is pronounced in the open court in the presence of both the representatives on 20.10.2021.

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 20<sup>th</sup> October, 2021.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	