INCOMETAX NOTES

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AGRICULTURAL INCOME A TO Z

'Agriculture' in its primary sense denotes the cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. These are basic operations and require the expenditure of human skill and labour upon the land itself. Operations which the agriculturist has to resort to and which are absolutely necessary for the purpose of effectively raising produce from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowth, and all operations which foster the growth and preservation of the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, would all be agricultural operations when taken in conjunction with the basic operations. The human labour and skill spent in the performance of these subsequent operations cannot be said to have been spent on the land itself. The mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations, would not be enough to characterise them as agricultural operations.

Agriculture comprises within its scope the basic as well as the subsequent operations described above regardless of the nature of the products raised on the land. These products may be grain or vegetable or fruits - CIT v. Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466 (SC). n The word 'agriculture' means the performance of operations like tilling of the land, sowing of the seeds or planting in order to raise products of some utility. The nature of the products raised on the land is immaterial. The word 'agricultural' means 'of or pertaining to agriculture; connected with husbandry or tillage of the ground' - Smt. Manyam Meenakshamma v. CWT [1967] 63 ITR 534 (AP)/Syed Rafiqur Rahman v. CWT [1970] 75 ITR 318 (Pat.).

The essence of agriculture, even when it is extended to include 'forestry', is the application of human skill and labour. Without that it can be neither art nor a science - Beohar Singh Raghubir Singh v. CIT [1948] 16 ITR 433 (Nag.).

AGRICULTURAL INCOME - ENTRY 82 OF THE UNION LIST AND ENTRY 46 OF THE STATE LIST OF SEVENTH SCHEDULE TO THE CONSTITUTION

Reading entry 82 of the Union List and entry 46 of State List of the Seventh Schedule of the Constitution, it is clear that the Parliament is not competent to tax agricultural income. The expression 'agricultural income' occurring in the said entries has to be understood in the manner and in the sense defined in clause (1A) of section 2 - J. Raghottama Reddy v. ITO [1987] 35 Taxman 298 (AP).

DEFINITION

(*1A*)] "agricultural income" means

A - RENT OR REVENUE

1. any rent or revenue
2. derived from land
3. which is situated in India (i.e the land should be situated in India)
4. and the land is used for agricultural purposes.

B. INCOME FROM AGRICULTURE OR PROCESSING ACTIVITY OR SALE

any income derived from such land by— (Such land means land which is situated in India and is used for agricultural purposes)

(*i*) agriculture; or

(*ii*) **the performance of any process** ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised by the cultivator or received by receiver of rent in kind fit to be taken to market by

1. a cultivator or
2. receiver of rent-in-kind

[This means the process performed by cultivator or receiver of rent in kind which is performed by them to make the produce fit for the market should be of ordinary nature. If the activity performed is not an ordinary activity, income there from cannot be considered as agricultural income.]

(iii) A sale of agricultural produce becomes agricultural income if the following conditions are satisfied.

1. the sale should be by a cultivator or receiver of rent-in-kind
2. In the case of a cultivator he should sell the produce that he raised.
3. In the case of a receiver of rent in kind, he should sell the produce that he received as rent.
4. in respect of the goods raised or received as rent only one type of processing is allowed and that process is the one which is performed ordinarily to render the produce fit to be taken to market as mentioned in clause (ii) above. Income from any other processing shall not be treated as agricultural income.

C – INCOME FROM FARM BUILDING

any income derived from any building

- owned and occupied by the receiver of the rent or revenue of any such land,
- or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which,
- or the produce of which,
- any process mentioned in paragraphs (*ii*) and (*iii*) of sub-clause (*b*) is carried on :

It means

1. If any income from building is to be claimed as agricultural income by receiver of rent or revenue mentioned in A – above, he should **both own and occupy** the building.
2. In case of

a. Cultivator or

b. receiver of rent in kind →

who processes agricultural produce to make it marketable, or who sells agricultural produce that he cultivated or received as rent in kind, any income from building occupied by him can be claimed as agricultural income even if he is not the owner. We can see that in clause (c), the term used against receiver of rent or revenue is "owned and occupied " and against cultivator or receiver of rent or revenue who sells or processes the agricultural produce that he raised or received as rent in kind as the case may be as "occupied"

The building mentioned here should have following features.

1. the building is on or in the immediate vicinity of the land, and
2. it is a building which
   - the receiver of the rent or revenue or
   - the cultivator, or
   - the receiver of rent-in-kind,
   - by reason of his connection with the land,
   - requires as a dwelling house, or as a store-house, or other out-building

AND

3. the land is assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such.
4. If land is **not** assessed to land revenue or subject to a local rate, it **should not be** situate in specified area. Specified area means

   (*A*) any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; OR

(*B*) any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (*A*), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.]

From the above interpretation we can conclude that an income from building situated in a specified area can become agricultural income if it is assessed to land revenue or is subject to a local rate. If it is not so assessed or subject to a local rate, income will be agricultural income only if it is not situated in specified area.

If any agricultural land is situated in specified area mentioned above, it will be a capital asset and any capital gain arising from transfer of such land will be capital gain chargeable to tax, whether or not such land is assessed to land revenue or subject to a local rate in India.

Any income derived from any building or land referred to in sub-clause (*c*) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (*a*) or sub-clause (*b*) shall not be agricultural income. Any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (*a*) or item (*b*) of sub-clause (*iii*) of clause (*14*) of this section.

MEANING OF CERTAIN TERMS

RENT/REVENUE - SUB-CLAUSE (a)

The word 'rent' means payment of money in cash or in kind by any person to the owner in respect of grant of right to use land. The expression 'revenue' is, however, used in the broad sense of return, yield or income and not in the sense of land revenue only - Raza Buland Sugar Co. Ltd. v. CIT [1980] 123 ITR 24 (All.).

REVENUE - SUB-CLAUSE (a)

That the word 'revenue' in section 2(1A)(a) has been used in a very wide sense is shown by that sub-clause itself. That sub-clause states, 'any rent or revenue derived from land...'. The word 'any' qualifies not merely the word 'rent' but also the word 'revenue'. The word 'any' when used affirmatively means 'whichever, of whatever kind, of whatever quantity'. Thus, the expression 'any revenue' would mean income of every kind - Manubhai A. Sheth v. N.D. Nirgudkar, Second ITO [1981] 128 ITR 87 (Bom.).

DERIVED - SUB-CLAUSE (a)

The word 'derived' is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition - CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325 (PC).

REVENUE DERIVED FROM LAND - SUB-CLAUSE (a)

To give the words 'revenue derived from land' the unrestricted meaning apart from its association or relation with the land, would be quite unwarranted - Mrs. Bacha F. Guzdar v. CIT [1955] 27 ITR 1 (SC).

SUCH LAND - SUB-CLAUSE (b)

The expression 'such land' in section 2(1A)(b) refers back to the land mentioned in clause (a) and must have the same quality - Raja Mustafa Ali Khan v. CIT [1948] 16 ITR 330 (PC).

'MARKET' AS OCCURRING IN RULE 7 OF 1962 RULES

'Market' in the context of rule 7 does not mean an open market where buyers and sellers get together for the purpose of purchase and sale of goods - Thiru Arooran Sugars Ltd. v. CIT [1997] 93 Taxman 579/227 ITR 432 (SC).

PRODUCED ORDINARILY SOLD IN THEIR RAW STATE - RULE 7(2)(a) OF 1962 RULES

'Produce ordinarily sold in their raw state' must only mean the kind of produce which are ordinarily sold. The phrase is not to be applied according to the individual fact-situation of each case, but according to the nature of the produce - CIT v. Thiru Arooran Sugars Ltd. [1983] 144 ITR 4 (Mad.).

The onus lies on the assessee to prove whether an income is agricultural income or not.

The word 'revenue' used in Section 2(1A)(a) should be interpreted in broadest sense to include yield or income and not the source of land revenue - **Durga Narain Singh v. CIT (1947) 151 ITR 235 (All.).** Section 2(1A)(b) stipulates there should not be any difference between sale of a commodity and what is cultivated and processed.

Following are the instances which are treated as **Agricultural Income**:

(i) Income from the sale of replanted trees- **CIT v. Benoy Kumar Sahas Roy**[1947] 32 ITR 466 (SC).

(ii) Grazing Fees paid by the owners of the cattle- **CIT v. Tamil Nadu Forest Plantation Corporation [2003] 130 Taxmann 306 (Mad.).**

(iii) Income from growing flowers and creepers.

(iv) Interest on capital received by a partner from the firm engaged in agricultural operation- **CIT v. M.L. Mahindra [1976] 112 ITR 323 (Guwahati).**

(v) Income derived by growing special quality grass required for creating golf course is agricultural income- **CIT v. P.Z. Estates (P) Ltd., [2005] 2 SOT 563 (Del.).**

The following are the instances of **non-agricultural income**:

(i) Income from sale of forests trees, fruits and flowers growing on land naturally and spontaneously and without intervention of human agency-**Mustafa Ali Khan v. CIT [1948] 16 ITR 330 (PC).**

(ii) Interest received by a money lender in the form of agricultural produce-**Hajee Casim Tayoob Surj v. CIT 61 ITR 41 (Rangoon).**

(iii) Dividend paid by a company out of his agricultural income-**Bacha F. Guzdar v. CIT [1955] 27 ITR 1 (SC).**

(iv) Income from Fisheries-**Emperor. V/s Probhat Chandra Barua ITC 284 (Cal.)**

(v) Income from sale of hybrid/germ plasm plant seeds is not treated as agricultural income-**Proagro seeds Co. Ltd. CIT [2003] 126 Taxmann 37 (Mag.).**

Partial integration of tax on Non-agricultural income with income derived from agriculture:

The Partial integration is made if the following conditions are fulfilled:

Condition 1 : Assessee is either individual or HUF or AOP or BOI or Artificial Judicial Person.

Condition 2 : Assessee has non-agricultural income exceeding the exemption limit which is for the Assessment Year 2008-09, is Rs.1,45,000 (in case of women below 65 years), Rs.1,95,000 (in case Senior Citizen above 65 years) and Rs.1,10,000 (in case of individual or HUF).

Condition 3: The agricultural income of the tax payer exceeds Rs.5,000.

Computation of Net Agricultural Income (Rules) :

- Compute Agricultural Income [u/s 2(1A)(a)]-as 'Income from other sources' (Sections 56-59).
- Agricultural Income [u/s 2(1A)(b)]-as 'Profits and Gains of business or profession' (Sections 30-43C).
- Compute Agricultural Income [u/s 2(1A)(c)]-as 'Income from House Property' (Sections 23-27).
- Income from Tea grown and manufactured by assessee- 60% of total income of such business, will be treated as Agricultural Income.
- Assessee, if member of AOP or BOI, in the previous year has non-agricultural within the exemption limits but has Agricultural Income. Such Agricultural Income or share of loss of such AOP or BOI will be construed as Agricultural Income.
- Only in case of individual assessee, loss in Agriculture can be set-off against profit from Agriculture.
- Any levy imposed on Agricultural Income by the State Government is allowed as deduction.
- Unabsorbed loss from Agricultural Operations will be set-off against profit from agricultural operations in chronological order.
- In case of loss from Agricultural operations from various sources, such loss will be disregarded.
- The Net Agricultural Income of the assessee will be rounded off to the nearest multiple of Rs.10.

Computation of tax under the Scheme of Partial integration of Tax :

At First - Net Agricultural Income is to be computed as if it were income chargeable to income tax.

Secondly - Agricultural and non- Agricultural Income of the assessee will then beaggregated and income tax is calculated on the aggregate income as if such aggregate income were the total income.

Thirdly: The Net Agricultural Income is their increased by the first slab of income on which tax is charged at nil rate (i.e., as mentioned in Condition 3 above) and income tax calculated on such amount as if such income is total income of the assessee.

Fourthly - Tax will be deducted from such Income.

Fifthly - Rebate under section 88E shall be deducted.

Sixthly - Add education cess to the balance.

Finally - Amount arrived will be the tax payable by the assessee.