THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F
'F' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI H.S. SIDHU,
SIDHU, JUDICIAL MEMBER

	ASSESEE	ASSESSING OFFICER
1	That the land does not fall within the jurisdiction of the municipality viz. Sohna Municipality.	That the distance of the land is to be considered from the outer limit of Gurgaon municipality and not Sohna municipality.
2	That the distance of the land is more than 8 Kms. from Sohna Municipality and therefore, it does not fall in clause (a) or (b) of Section 2(14)(iii).	That for the purpose of determining the distance of the land from the limit of municipal corporation, the aerial distance is to be considered.
3	That the distance of the land from Gurgaon municipality is also more than 8 Kms.	
Following letters/certificates were produced as an evidence		
1	Certificate dated 22.12.2008 issued by Patwari, Tehsil Sohna that the distance of village Ghata was mentioned as approximately 15 Kms from Market Committee Sohna and approximately 9 Kms from Gurgaon Municipal Committee	Certificate dated 10.11.2008 issued by Executive Engineer, Municipal Corporation, Gurgaon, that the distance of the land from the outer limits of Municipal Corporation, Gurgaon was 6.6 Kms
2	Certificate dated 27.12.2008 from PWD, Road & Buildings, Gurgaon, that distance of village Ghata from Gurgaon Bus Stand was mentioned at 10.20 Kms.	Letter dated 24.12.2008 issued by Tehsildar, Village Sohna that the distance of land was held to be 6.6 Kms.
CIT(A) JUDGEMENT		
1	CIT(A) did not accept the Assessing Officer's view that the distance is to be measured as per aerial distance. He also rejected both the certificates relied upon by the Assessing Officer.	
2	That the distance is to be measured along the road from the local limits of Gurgaon Municipality of the area in which the land is situated	
3	He also did not accept any of the certificates furnished by the assessee.	
4	That the distance mentioned is from Gurgaon Municipality, not from any specific point i.e from local limits of the Municipality	
Following letters/certificates were produced as an evidence		
	Assessee furnished before him one certificate from Patwari, Tehsil Sohna, District Gurgaon which was countersigned by the Tehsildar and other one from Assistant Engineer, Municipality Gurgaon	The Assessing Officer filed a certificate from Officer Surveyor on behalf of Directorate, Survey, Air

CIT(A) JUDGEMENT	
1	CIT(A) rejected the certificates furnished by the assessee on the ground that the distance is to be taken from the local limits of the municipal corporation to the area in which land is situated and not up to the land as mentioned in the report of the Patwari.
2	He accepted the certificate furnished by the Assessing Officer which was from Directorate of Survey (Air) and DGDC Data Center, New Delhi. On the basis of the above certificate, he came to the conclusion that the land sold by the assessee was a capital asset in terms of provisions of Section 2(14)(iii)(b) of the Act.
IN THE INCOME TAX APPELLATE TRIBUNAL DECISIONS WERE TAKEN ON:	
1	Whether the distance of the land is to be considered only from Sohna Municipal Corporation or it can be considered from any municipal corporation viz. Gurgaon which is admittedly nearer to the land than Sohna Municipal Corporation.
2	Whether the distance is to be considered as per aerial distance or as per road distance.
3	Whether the distance is to be considered from the outer limit of the municipal corporation up to the land or up to the outer limit of the village in which such land is situated.
4	In the light of outcome on the above three issues in (1), (2) & (3) to determine whether the land in question is capital asset within the meaning of Section 2(14)(iii)(b).
DECISION	
1	what is intended to be covered in term 'Capital Asset' is agricultural land comprised within the jurisdiction of a municipality and within the specified distance from the local limits of municipality or other local bodies mentioned therein as specified in the notification. It is undisputed that the land in question is within the specified distance from Panchkula municipality which falls in the State of Haryana while land is in the State of Punjab. Thus land is urban land for the purpose of 8 ITA-4733 & 4603/D/2011 definition of 'capital asset' under Section 2(14).
	Thus, their Lordships have held the land in question to be capital asset which was within the distance of 8 Kms. from a municipality in Haryana while the land was situated in the State of Punjab. The ratio of the above decision would be squarely applicable to the case of the assessee. We, therefore, uphold the finding of the lower authorities that distance of the land under consideration can be measured from Gurgaon Municipal Corporation for the purpose of Section 2(14)(iii)(b).
2	We find that the learned CIT(A) has held that the distance is to be measured as per road distance and not as per aerial distance. While taking this view, the CIT(A) has relied upon the following decision of Hon'ble Punjab & Haryana High Court.
	Tribunal holds distance is to be measured in terms of road distance - held, since the 9 ITA-4733 & 4603/D/2011 municipal areas are notified based on urbanization, Sec 2(14) is very clear that it should be measured as per road distance - no infirmity in Tribunal's order
	The maximum distance prescribed by section 2(14)(iii)(b) of the Act which may be incorporated in the notification could not be more than 8 Kms. from the local limits of municipal committee or cantonment board etc.
	Moreover, the issue is covered by the decision of Hon'ble Jurisdictional High Court which is binding on the lower authorities within the jurisdiction of the High Court. We, therefore, respectfully following the above decision of Hon'ble Jurisdictional High Court, hold that the distance of the land is to be measured as per road distance and not aerial distance as per crow's

	flight.
3	The provisions of the Act in this regard, i.e. Section 2(14)(iii)(b) are very clear and unambiguous, "agricultural land in India, not being land situate-in any area within such distance, not being more than 8 Km from the local limit of any municipality...., wherein it is stated that the distance is to be measured from local limits of the Municipality to the area in which the land is situated. Therefore, it is held that the distance is to be measured from the local limits of the municipality to the area in which the land is situated."
	Therefore, in effect, the land should be within the distance of 8 Kms. from the local limit of the municipality and not from the outer limit of the village in which such land falls.
4	In the result, the appeal of the assessee is allowed while the appeal of the Revenue is dismissed.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **ITA 714/2015**

COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Rohit Madan and Mr Zoheb Hossain, Standing Counsel.

versus

SRI VIJAY SINGH KADAN ..... Respondent

Through: Mr Piyush Kaushik, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 14.09.2015

CM No.19310/2015

1. For the reasons stated in the application, the delay of 65 days in re-filing the appeal is condoned.

2. The application stands disposed of.

ITA 714/2015

3. This is an appeal filed by the Revenue against the order dated 12th December, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4733/Del/2011 for the Assessment Year ('AY') 2006-07.

4. During the course of the assessment proceedings, the Assessing Officer ('AO') noted that on 9th September, 2005, the Assessee had sold a property admeasuring 5.9625 acres located at Village Ghata, Tehsil Sohna, District Gurgaon. The stand of the Assessee was that the capital gain from the sale of the said land is not taxable because the land was agricultural land which did not fall within the definition of capital asset under Section 2(14) of the Act.

5. According to the Assessee, the land did not fall within a distance of 8 km from the outer limit of the Gurgaon Municipality. The Assessee produced a certificate of the *patwari* in terms of which "in the year 2006 Ghata Village was approximately 9 Kms. away from Gurgaon Municipal Committee." The Assessee also produced the certificates of two architects to the effect that the distance between the land and the outer limits of Gurgaon municipality was 9.645 Kms. The AO, however, rejected the certificates produced by the Assessee since the "scientific mode of determining the distance by a straight line method has not been employed" by the said architects. The AO preferred the certificate of the Tehsildar, Sohna District and of the Engineer of the Gurgaon Municipal Corporation which stated that the distance was 6.6 Kms. The AO interpreted the Circular of the CBDT which clarified that for the purpose of Section 2(14)(iii)(b) of the Act, agricultural lands that would be exempt from the definition of 'capital asset' were those that were located in

"areas upto a distance of 8 Kms from the municipal limits in all directions as under:

> "The language used in the notification of the CBDT which has been referred at Page 6 of this order, is "Areas upto a distance of 8 kms from the Municipal limits all direction" the meaning of the above terms is that the point from which the distance has to be measured is the point beginning with outer limit of the Municipality of Gurgaon to the land in question by adopting the straight line method, but not a zig-zag or circuitous method or even the distance by road. the PWD was of the view that the distance had to be calculated from the outer limit of Gurgaon municipality to Village Ghata where the land was located."

Accordingly, the AO held that as per Section 2(14)(iii)(b) of the Act, the agricultural land sold by the Assessee was a capital asset. He accordingly made an addition of Rs 7,75,12,500/- to the income of the Assessee as long term capital gains.

6. The CIT (A) rejected the certificates relied upon by the AO and the Assessee. He concluded that "the distance of agricultural land, in terms of Section 2(14)(iii)(b) has to be measured along the road and not as per crow's flight/ aerial distance." However, the CIT (A) observed that "the distance is to be taken from the local limits from the Municipal Corporation to the 'area' in which the land is situated and not up to the land as mentioned in the report of

the Patwari." The CIT (A) rejected the certificate furnished by the AO from the Directorate of Survey (AIR) and the DGDC Data Centre, New Delhi and concluded that the "shortest distance along the road from IFFCO Junction on the Municipal boundary up to Northern outer limit of Ghata, the Village in which the land is situated is 7.17 Kms. along the road." Consequently, the CIT (A) affirmed the order of the AO that the land sold by the Assessee was a capital asset.

7. Aggrieved by the said order of the CIT(A), the Assessee preferred an appeal before the ITAT. The question that arose for consideration by the ITAT in the Assessee's appeal was: "Whether distance up to the land should be considered or up to the village within which such land is situated?" The ITAT referred to Section 2(14)(iii)(b) and held:

> "The presumption of the Assessing Officer as well as CIT(A) that the 'area' means the village in which such land is situated is without any basis. In fact, the correct interpretation of the word 'in any area within such distance not being more than 8 Kms. from the local limits of any municipality' would mean the land should be within such area which is not more than 8 Kms. from the local limit of the municipality."

8. The ITAT concluded that the land had to be within the distance of 8 Kms. from the outer limit of the Gurgaon municipality and not from the outer limit of

the village Ghata in which the land was located. On the strength of the certificate produced by the Assessee from the former Additional Director General, CPWD that the distance of the land from the outer limit of the Gurgaon Municipality was 10.4 Kms, the ITAT held that the land owned by the Assessee did not fall within Clauses (a) or (b) of Section 2 (14) (iii).

9. In ***Commissioner of Income Tax v. Lal Singh 325 ITR 588 (P&H)*** a report had been given by the Tehsildar measuring the distance of the land, with reference to its *khasra* number, from the outer limit of the municipality. The Punjab and Haryana High Court was of the view that there was no justification for the AO ignoring the said report of the Tehsildar and going by the Report of the Inspector in which neither had the *khasra* number been given nor had it been explained how the distance was measured. In ***Commissioner of Income Tax v. Nitish Rameshchandra Chordia (2015) 57 taxmann.com 394 (Bom)*** the Bombay High Court held that "The distance between municipal limits and assessed property/asset is to be measured having regard to the shortest road distance and not as per the crow flies i.e. straight line distance as canvassed by the Revenue." The Madhya Pradesh High Court in ***Commissioner of Income Tax v. Shabbir Hussain Pithawala (2014) 226 Taxman 174*** decided the question likewise and held that the "distance of the agricultural land belonging to the Assessee within the meaning of Section 2(14)(iii)(b) has to be

measured in terms of the approach road and not by the straight line distance on horizontal plane or as per crow's flight."

10. The Court is of the view that for the purposes of Section 2 (14) (iii) (b) of the Act, the distance had to be measured from the agricultural land in question to the outer limit of the municipality by road and not by the straight line or the aerial route. The distance has to be measured from the land in question itself and not from the village in which the land is situated.

11. Consequently, this Court is of the view that the impugned order of the ITAT suffers from no legal infirmity.

12. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 14, 2015
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