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Direct Tax (Article)

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Taxation of Agricultural Land

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Taxation of Agricultural Land

Introduction

- No man created the earth, but to a large extent all take from the earth a portion of it and mould it into useful things for the use of man. Agricultural land has not been defined in the Income Tax Act but in common parlance, agricultural land is a land on which agricultural activities are carried out. Agricultural activity has been held to be an activity where human effort has resulted in growing crops.

- Sale of land can result in two kinds of incomes, business income or capital gain. If the land is held as stock in trade then the sale of such lands results in business income and no exemption/ deduction under the Income Tax Act is available.

- In case, the land is held as an investment and not as stock in trade, then it is necessary to determine that whether the land sold is agricultural land or not. This is important because as per Section 2(14) of the I.T. Act, agricultural lands which are not situated in specified areas are not Capital assets. On sale of such agricultural land, no capital gain arises. However, on sale of any other land including the agricultural land situated in specified areas, capital gain arises which is liable for tax under the I.T Act, 1961.

Agricultural Land- Held as Stock-in-trade

- If the agricultural land is held as stock-in-trade, then the sale of such land would result into business income and the provisions of section 43CA of the IT Act would be applicable.

- According to section 43CA, if the consideration received by an assessee on transfer of immovable property is less than the stamp duty value, then, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration (FVOC) for the purposes of computing income under the head "Profits & gains of Business and Profession".

- Provisions of sec. 50C(2) & 50C(3) shall apply for determination of value. Therefore, in a case where actual consideration is say Rs.10 lacs but for stamp duty purpose its value is assessed/ assessable at Rs. 15 lacs, profits in business would be computed with reference to Rs. 15 lacs and not Rs. 10 lacs.

Agricultural Land- Held as an Investment

- If the agricultural land is held as an investment and it does not qualify the definition of capital asset, then the gain arising on transfer of such land would be capital receipt not liable to tax at all. However, if the agricultural land qualifies as capital asset, then the gain arising on transfer of such land would attract capital gain tax.

- Section 2(14) of the Income Tax Act, 1961 defines Capital Asset. This section provides that capital asset does not include agricultural land in India. However, the following agricultural land are considered as capital asset:-

(a) agricultural land situated within the jurisdiction of municipality or cantonment board and having a population of 10,000 or more

(b) agricultural land situated within the following distance from the local limits of Municipality or Cantonment Board to be measured aerially.

Distance of agricultural land from Municipality or Cantonment Board to be measured aerially	Population of the Area
Upto 2 kilometres	Between 10,001 to 1,00,000
Upto 6 kilometres	Between 1,00,001 to 10,00,000
Upto 8 kilometres	Exceeding 10,00,000

- For the purpose of this subclause “population” is defined to mean population according to the last preceding census of which the relevant figures have been published before the first day of the financial year.

- The distance from municipality is required to be measured aerially i.e. by crow’s flies and not by approach road. Therefore, even if by approach road the distance is more than specified limit but when measured aerially it is less than the specified limit, it will be treated as agricultural land.

- Therefore, any agricultural land situated within the above area and held as investment is a capital asset liable for capital gain tax.

Special provisions for determining the FVOC on transfer of agricultural land held as an investment

- Section 50C similar to section 43CA is applicable on transfer of immovable property, held by the transferor as investment.

- Thus, if the sales consideration received by an assessee on transfer of agriculture land is less than the stamp duty value, then, the value so adopted or assessed or assessable shall be deemed to be the FVOC.

- However, if the assessee claims that such stamp duty value exceeds the FMV and such value has not been disputed before the stamp authority then the AO may refer the valuation of such land to the DVO.

- DVO can ascertain the value lower than the stamp duty but if ascertains the value in excess of stamp duty value such value is to be ignored. If DVO determines the value lower than stamp duty value, such value would be deemed to be the FVOC for working out capital gain.

Deductions in respect to sale/transfer of Agricultural Land held as an investment

- **Section 54B** of the Income Tax Act, 1961 provides for deduction to an individual or a HUF in respect of any capital gain arising from the transfer of land used for agricultural purposes. The condition for claiming this deduction and the amount of deduction is as under:-

  - The deduction is available if the land is used by the assessee or his parents or by HUF for period of two years prior to the date of transfer for agricultural purposes.

- The deduction is available to the extent such capital gain is invested in an agricultural land within period of two years from the date of transfer

- The lock-in period for transfer of new asset is 3 years from the date of its acquisition.

- In case the new asset is transferred within the lock-in period, the deduction on account of capital gain allowed earlier would be reduced from the cost of the new asset while computing the capital gain in respect of transfer of such new asset.

  The **ITAT Hyderabad Bench in case of ACIT Vs. N. Raghu Varma 142 ITD 421** has held that the expression 'used for agricultural purposes' referred in the section can only be regarded as such use as the lands are capable of with the aid of facilities available and assessee cannot be denied relief because he was actually unable to put the land to use due to vagaries of nature and non-availability of resources. It can hardly be the fault of assessee if lands are not actually put to use during the drought. Therefore, assessee is entitled to relief u/s 54B in such circumstances.

Section 54EC provides an option to save tax on capital gain arising from transfer of long term capital asset subject to fulfillment of certain conditions:-

- The assessee should within a period of 6 months after the date of transfer invest the long term capital gain in long term specified asset.

- Specified assets are the bonds redeemable after 3 years issued by the National Highway Authority of India or the bonds issued by the Rural Electrification Corporation Ltd.

- The deduction will be available to the extent such capital gain is invested in specified assets subject to the maximum limit of Rs. 50lacs.

- The specified assets cannot be transferred or converted into money within a period of 3 years from the date of its acquisition. If the assessee has taken any loan or advance on security of such specified asset, he shall be deemed to have converted such long term specified asset into money on the date on which such loan or advance is taken.

- In case such specified asset has been transferred or converted within the lock-in-period, then the amount of capital gain exempt u/s 54EC, shall be deemed to be the long term capital gain of the previous year in which such specified asset is transferred or converted into money.

- Therefore, if capital gain arising from sale of agricultural land is invested in specified bonds as above, assessee can claim deduction.

Section 54F of the Act provides deduction to an individual or HUF in respect of long term capital gains arising from the transfer of a any long term capital assets, other than a residential house. The asset transferred can be any long term capital asset like a plot of land, jewellery, commercial property, agricultural land etc. The condition for claiming this deduction and the amount of deduction is as under:-

- The deduction is available if the transferor purchase a residential house property within 1 year before or 2 years after the date of transfer or construct a residential house within a period of three years from the date of the transfer.

- The deduction from capital gain is available in proportion to the cost of the residential house which it bears to the net consideration.

- The deduction shall be available only when the assessee owns not more than one residential house property on the date of transfer of such asset exclusive of the one he has bought for claiming deduction.

- The assessee shall not purchase/ construct any residential house, other than the new residential house, within 2 years/ 3 years after the date of transfer of the original asset. If this condition is violated then the amount of capital gain for which deduction was claimed shall be deemed to be the income of Capital gain of the previous year in which such residential house is purchased or constructed.

- The deduction will be withdrawn if the new asset is transferred within 3 years of the date of its purchase/ construction and the deduction so allowed shall be deemed to be the income from Capital Gain of the previous year in which the new asset is transferred.

- Therefore, if the net consideration on sale of agricultural land is invested in purchase/ construction of residential house, assessee can claim deduction as above.

Exemption u/s 10(37) of Income Tax Act, 1961

With a view to mitigate the hardship faced by the farmers whose agricultural land situated in specified urban limits has been compulsorily acquired, the Finance Act 2004 has inserted clause(37) in section 10 so as to exempt the capital gains arising to an individual or a Hindu undivided family from transfer of agricultural land by way of compulsory acquisition where the compensation or the enhanced compensation or consideration, is received on or after 1-4-2004. The exemption is available only when:

- Such land has been used for agricultural purposes during the preceding two years by such individual or his parent or by such HUF.

- Such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India.

- Such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.Where the compulsory acquisition has taken place before 1-4-2004 but the compensation is received after 31-3-2004, it shall be exempt. But if part of the original compensation in the above case has already been received before 1-4-2004, then exemption shall not be available even though balance original compensation is received after 31-3-2004. However, enhanced compensation received on or after 1-4-2004 against agricultural land compulsorily acquired before 1-4-2004 shall be exempt.

TDS Compliances

Section 194IA of Income Tax Act, 1961

- The Finance Act 2013 has introduced a new section 194IA under Income Tax Act, 1961 w.e.f 1st June 2013. Under this section the responsibility is casted to deduct TDS @ 1% from every payment made on or after 1st June 2013 for purchase of Immovable Property (other than agricultural land) if total consideration paid/payable for the property is Rs. 50 lakhs or more.

- For the purpose of this section, “agricultural land” means agricultural land in India but exclude those agricultural land which has been held as capital asset in items (a) and (b) of section 2(14)(iii) of the Income Tax Act, 1961.

- Thus, no TDS is required to be deducted on the agricultural land which falls outside the specified area whether held as stock in trade or investment. However, TDS provision would be attracted on that agricultural land which falls in specified area.

Section 194LA of Income Tax Act, 1961

- As per this section, any person responsible for paying to a resident any sum, in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, of any immovable property (other than agricultural land), shall, at the time of payment deduct an amount equal to 10% of such sum. However, no TDS is required to be deducted if the aggregate amount of such payments does not exceed Rs.2,00,000/-.

- For the purpose of this section, “agricultural land” means agricultural land in India including agricultural land which is covered by items (a) and (b) of section 2(14)(iii) of the Income Tax Act, 1961.

- Thus, no TDS is required to be deducted from compensation paid on compulsory acquisition of agricultural land whether held as stock in trade or investme

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