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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI
BEFORE SHRI C.L. SETHI, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
I.T.A. No. 893/Del/2010
A.Y. : 2003-04

Income Tax Officer,
Coy. Ward 12(1),
R.No. 337, C.R. Bldg.,
New Delhi

vs. M/s Gahlot Farms Pvt. Ltd.,
S-Flat No. 75, Plot No. 6,
Manav Vihar,
New Delhi
(PAN: AABCG 0322 M)

(Appellant)

(Respondent)

Assessee by

: Sh. Ved Jain, CA & Sh. Venketesh
Chaurasia, CA

Department by

: Sh. R.P. Singh, Sr. D.R.

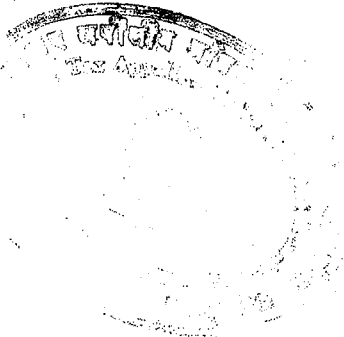
ORDER

PER SHAMIM YAHYA: AM

This appeal by the revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals) dated 24.12.2009 pertaining to assessment year 2003-04.

2. The issue raised is that Ld. Commissioner of Income Tax (Appeals) erred in deleting the addition of ₹ 34,78,055/- made by the Assessing Officer on account of capital gains on the sale of land.

3. The assessee in this case has sold land which was claimed to be agriculture land not liable for capital gain tax. Assessing Officer relying on the reply of Tehsildar Samalkha received vide letter no. 120/0-K dated 24.2.2006 held as under:-



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- (1) The said land is situated in Paatikalyana, Tehsil Samalkha Village – Pattikalyana does not fall under the municipal area.
- (2) The distance of said land from the area of municipal limit was approximately 6.5 kms. at the time of sale of land.
- (3) The said land is situated approximately 8 kms. From the bus stand.
- (4) The said land is situated approximately 8 kms from the Tehsil office.
- (5) The distance of 5 kms said in earlier letter was approximately. It could be marginally more or less."

Has observed that "that the land is very well within the meaning of "capital assets" as defined in section 2(14). Hence, the "capital gains" arising out of the sale of the land at ₹ 51,10,000/- after reducing the cost of land {after indexation. (Purchased during F.Y. 1998-99.)} during the year under consideration is accordingly taxed."

4. Upon assessee's appeal Ld. Commissioner of Income Tax (Appeals) held as under:-

"I have considered the submissions of the appellant, findings of the Assessing Officer and the facts on record. Circular No. SO-10 and SO-1302 which was submitted by the appellant were sent to the Assessing Officer for his comments. The Assessing Officer vide report dated 10.12.2009 has submitted that as per the Circular

mentioned above the municipal limit in the case of Samalkha, Distt. Karnal is "area upto a distance of 5 kms from the municipal limit in all directions." The Assessing Officer has quoted the report of Tehsildar, Samalkha wherein it has been clearly mentioned that the distance of the said land from the area of municipal limit was approximately 6.5 kms at the time of sale of land. It has also been mentioned that the said land is approximately 8 kms from the bus stand the Tehsil office. The report of Tehsildar, Samalkha dated 19.9.03 also confirms the facts that the land is situated at approximately 7 to 8 kms from Samalkha. As per section 2(14) "capital asset" means property of any kind held by the assessee, whether or not connected with his business of profession, but does not include:-

- (i)
- (ii)
- (iii) agricultural land in India, not being land situate:-
 - (a) in 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 population of not less than ten thousand according to the last

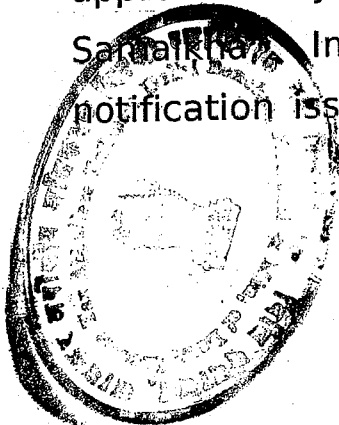
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preceding census of which the relevant figures have been published before the first day of the previous year, or

- (b) in any area within such distance, not being more than eight kilometer, from the local limit 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, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette."

As per the notification issued by the Central Government which has also been verified by the Assessing Officer the municipal limit in the case of Samalkha is the area upto a distance of 5 kms from the municipal limit in all directions. As per the Circular mentioned above the area outside a distance of 5 kms from the municipal limit will not be taken within the meaning of capital asset as defined in section 2(14) of the IT Act. The Assessing Officer has nowhere brought on record that the land is within 5 kms from the municipal limit. The report of the Tehsildar dated 24.2.2006 clearly mentioned that the land was situated approximately 6.5 kms from the municipal limit of Tehsil Samalkha. In view of the facts on record and the notification issued by the Government of India the land



will not fall in the purview of capital asset as defined in the I.T. Act. I am inclined to agree with the appellant that the sale proceed from the above land will not be liable to the taxed as capital gains. The disallowance made by the Assessing Officer is deleted. This ground of appeal is allowed."

5. Against this order the revenue is in appeal before us.

6. We have heard both the counsel and perused the records. We find that Ld. Commissioner of Income Tax (Appeals) has given a clear finding that there are circular no. SO-10 and SO-1302 which was sent to the Assessing Officer for his comments. The Assessing Officer vide report dated 10.12.2009 has submitted that as per the Circular mentioned above the municipal limit in the case of Samalkha, Distt. Karnal is 'area upto a distance of 5 kms from the municipal limit in all directions'. The Assessing Officer also quoted a report of Tehsildar, Samalkha, wherein it has been clearly mentioned that the distance from the area of municipal limit was approximately 6.5 kms at the time of sale of land. It was further mentioned that the said land is approximately 8 km from the bus stand and the Tehsil office. The report of the Tehsildar Samalakra dated 19.9.03 also confirms the facts that the land is situated at approximately 7 to 8 kms from Samalakra. Now as per notification issued by the Central Government which has also been verified by the Assessing Officer the municipal limit in the case of Samalkha, Distt. Karnal is 'area upto a distance of 5 kms from the municipal limit in all directions. As per the Circular mentioned above the area outside the distance of 5 kms from the municipal limit will not be taken within the meaning of capital asset as



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defined in section 2(14) of the IT Act. The Assessing Officer did not ^{he} controvert this fact and has not brought on record any material that the land is within 5 kms from municipal limit. Under the circumstances, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals) and accordingly, we uphold the same.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on/11/2010.

[C.L. SETHI]
JUDICIAL MEMBER

Date 16./11/2010

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

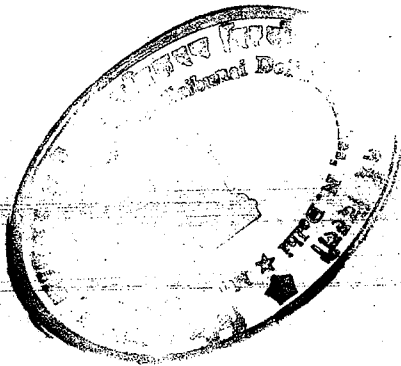
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1. Appellant 2. Respondent
5. DR, ITAT

3. CIT 4. CIT (A)

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By Order,

Deputy Registrar,
ITAT, Delhi Benches

Assistant Registrar

Income Tax Appellate Tribunal
New Delhi