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**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER  
AND SHRI K.D. RANJAN, ACCOUNTANT MEMBER**

**I.T. A. Nos.5304 & 5305/Del/2011  
Assessment Years : 2008-09 & 2009-2010**

Asstt. Commissioner of Income-tax,  
Central Circle-1, New Delhi.

~~Vs.~~ Smt. Manju Bansal,  
D-113, Preet Vihar,  
New Delhi.  
PAN: AGVPB6292Q

**I.T. A. Nos.5306 & 5307/Del/2011  
Assessment Years : 2008-09 & 2009-2010**

Asstt. Commissioner of Income-tax,  
Central Circle-1, New Delhi.

Vs. Smt. Nirmal Bansal,  
A-26, Preet Vihar,  
New Delhi.  
PAN: AFCPB7398R

(Appellant)

(Respondents)

Appellant by : Shri Raj Tandon, CIT-DR.  
Respondent by : Shri Ved Jain & Mrs. Rano Jain, CAs.

**ORDER**

**PER BENCH**

These appeals by the Revenue in the cases of two different assesseees arise out of separate orders of the learned Commissioner of Income-tax (Appeals)-III, New Delhi. These appeals were heard together and for the sake of convenience, are disposed of by this common order.



2. The common issue involved in all the appeals relates to levy of short term capital gain on sale of agricultural land. Except difference in figures the issue involved is identical. For sake of convenience the grounds of appeal in ITA No.5304/Del/2011 in the case of Smt. Manju Bansal are reproduced as under:-

*"1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.2,34,70,697/- made by the Assessing Officer on account of Short Term Capital Gain.*

*2. The order of the ld. CIT(A) is erroneous and is not tenable on facts and in law."*

3. The only issue for consideration relates to levy of short term capital gains on sale of agricultural land. The facts of the case stated in brief are that the assessee during the year under consideration had sold land at Village Hayatpur Distt. Gurgaon and claimed that the capital gains from sale of agricultural land was exempt because the lands were situated at a distance of more than 8 Kms. From outer limits of Gurgaon. In support of their contentions, the assessee had furnished certificate from Tehsildar of Gurgaon stating therein that lands in question were situated at a distance of 9 Kms. The AO also made enquiries from the District Town Planner of Gurgaon, who vide his letter Memo No.70954 dated 21.12.2010 intimated the AO that the distance of land from the outer limits of Municipal



Committee of Gurgaon was 8.5 kms. on the date of sale. However, the AO was of the view that distance given by the District Town Planner Gurgaon was very narrow as compared to the distance of 8 kms. mentioned in the Act. The AO therefore, came to the conclusion that the possibility of any other shortest route could not be ruled out. He therefore, treated the lands sold by both the assesseees as capital asset within the meaning of sec. 2(14) of the Income-tax Act, 1961 and brought the profits to tax as short-term capital gains.

4. Before the CIT(A) it was submitted by the learned AR of the assessee that the assessee had purchased lands jointly with four other persons. The said lands were sold along with other co-owners and surplus income was earned on sale of agricultural lands. The details of the share and surplus amount are given as under:-

<u>Sl. No.</u>	<u>Name</u>	<u>A.Y.</u>	<u>Amount</u>
1.	Smt. Manju Bansal	2008-09	Rs.2,34,70,697/-
2.	Smt. Manju Bansal	2009-10	Rs.2,97,94,499/-
3.	Smt. Nirmal Bansal	2008-09	Rs.2,34,70,697/-
4.	Smt. Nirmal Bansal	2009-10	Rs.2,97,94,502/-.

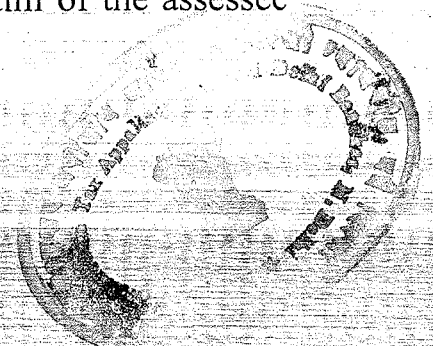
It was further submitted that assesseees have sold agricultural lands which were situated more than 8 kms. from outer Municipal limits of Gurgaon.

Therefore, the said agricultural lands were outside the definition of "Capital assets" as defined in sec. 2(14) of the Income-tax Act, 1961.



Consequently the capital gains arising on sale of such lands was not subject to any taxation under Income-tax Act, 1961. It was also submitted that the AO had made independent enquiries from the District Town Planner, Gurgaon, who had also certified that on the date of sale distance of said lands from the outer limits of the Municipal Committee of Gurgaon was 8.5 kms. The assessee had also filed certificate issued by Tehsil Gurgaon certifying that the lands were situated at a distance of 9 kms. from Municipal limits of Gurgaon. In view of above submissions, it was submitted by the learned AR of the assessee that the sale proceeds were not liable to tax as short term capital gains as held by the AO.

5. Learned CIT(A) on consideration of facts has observed that certificate issued by Tehsildar Gurgaon to the effect that lands whose particulars were given in the sale deed were situated at a distance of 9 kms. from the outer municipal limits of Gurgaon. The AO had also made enquiries from the District Town Planner Gurgaon who had also given a certificate that the lands sold were 8.5 kms away from outer limits of municipal limits of Gurgaon. Learned CIT(A) therefore, came to the conclusion that the apprehension of the AO that possibility of any other shortest distance could not be ruled out, was not based on any hard evidence. Such apprehension and possibility could not form basis for denial of the claim of the assessee



that the land in question was not a capital asset within the meaning of sec. 2(14) of the Act. The learned CIT(A) therefore, held that since lands were situated more than 8 kms. away from outer municipal limit of Gurgaon, the agricultural lands were not capital asset and therefore, the profits arising on sale thereof will be exempt from income-tax.

6. Before us, the learned CIT-DR submitted that two conditions are to be satisfied for claim of exemption i.e. it should be agricultural land and should be situated more than 8 kms. away from municipal limits. He further submitted that the learned CIT(A) has not examined whether the lands sold were agricultural lands. Therefore, CIT(A) should have examined the nature of lands. He, therefore, submitted that the matter may be set aside to the file of learned CIT(A) for deciding the nature of lands sold by both the assesseees. He placed reliance on the decision of ITAT, Cochin Bench in the case of M.K. Rehiman vs. DCIT [2011] 16 Taxmann.com 406 (Coch.). It was also submitted that Container Depot is being stipulated in the vicinity of said lands. Therefore, the nature of lands cannot be agricultural. He also submitted that the assesseees should have filed proof in support of their contention that the said lands were agricultural lands. On the other hand, the learned AR of the assessee submitted that the AO has himself carried out enquiries from the District Town Planner who had certified that the said



lands were situated more than 8 kms. away from Municipal Limits of Gurgaon. The AO has rejected the claim of the assessee merely on suspicion. He placed reliance on the decision of Hon'ble Supreme Court in the case of Umacharan Shaw & Bros vs. CIT, 37 ITR 271 for the proposition that suspicion, however, strong does not partake the character of evidence and hence, no addition/disallowance can be made on suspicion, surmises and conjectures. He also submitted that the issue whether impugned lands were agricultural or not, is not before the Tribunal. The AO has not disputed the fact that the said lands were agricultural. He also submitted that the said lands are situated more than 8 kms. away from outer limits of municipal corporation of Gurgaon. The Tribunal cannot adjudicate upon the issue which has been accepted by the AO. He therefore, submitted that no capital gain is chargeable on agricultural lands sold by both the assesseees.

7. We have heard both the parties and gone through material available on record. The AO had made disallowance merely on the ground that possibility of shortest distance less than 8 kms. from outer limits of Municipal Corporation could not be ruled out. The assessee had filed certificate from Tehsildar of Gurgaon that the lands sold by both the assesseees were situated 9 kms away from Municipal Corporation limits of Gurgaon. The AO had also obtained a certificate from the District Town Planner, who had also certified that the lands were situated at 8.5 kms on the date of sale. No other evidence was brought on record by the AO to prove



that the impugned lands were situated within 8 kms. from outer limits of Municipal Corporation of Gurgaon. The AO has not doubted the nature of agricultural lands. Before the CIT(A) the assessee in the grounds of appeal has specifically mentioned that both the assesseees have sold agricultural lands and therefore, the said lands did not constitute capital asset within the meaning of sec. 2(14) of the Income-tax Act, 1961. Since no material has been brought on record by the AO to support his contention that the impugned lands were situated within the 8 kms from the outer limits of Municipal Corporation of Gurgaon, in our considered opinion, the profits arising on sale of such lands would not constitute capital asset. Since the nature of land was not doubted by the AO, we are unable to accept the contention of the learned CIT-DR that the matter should be restored to the file of the learned CIT(A) for verification of the fact whether the lands were agricultural in nature or not. In view of above facts, we do not find any infirmity in the order passed by the learned CIT(A) allowing the relief to both the assesseees in both the assessment years.

8. In the result, the appeals filed by the Revenue in both the cases for both the Assessment Years are dismissed.

9. This decision is pronounced in the Open Court on 31<sup>st</sup> January, 2012.

*Sd/-*  
(R.P. TOLANI)  
JUDICIAL MEMBER

*Sd/-*  
(K.D. RANJAN)  
ACCOUNTANT MEMBER

Dated: 31<sup>st</sup> January, 2012.





ITA Nos.5304 to 5307/Del/2011

Copy of the order forwarded to:

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

*By Hand*

By Order

*[Signature]*

Deputy Registrar, ITAT.

\*mg



सहायक पंजीकार

Assistant Registrar

आयकर अपील अदालत

Income Tax Appellate Tribunal

नई दिल्ली/ New Delhi