

## **An agricultural land couldn't be treated as non-agricultural land just because it was situated near a highway**

**Summary – The Cochin ITAT in a recent case of Kalathingal Faizal Rahiman, (the Assessee) held that Mere situation of a land nearby a highway and appreciation in price would not alter character of land leading to conclusion that land was not an agricultural land**

### **Facts**

- The assessee sold a land. The assessee had not showed the sale consideration in the return of income, claiming the same to be an agricultural property and not being a capital asset within the meaning of section 2(14).
- The Assessing Officer opined that since the assessee had not returned any agricultural income during the last 4 years, prior to the sale of property and also the fact that in the spot enquiry report of the Inspector of Income-tax, it was stated that the land in question was very close to the industrial park, the property sold by the assessee could not be considered as agricultural property and was, therefore, liable for capital gains arising on its sale.
- On appeal, the Commissioner (Appeals) held that the land sold by the assessee could not be treated as capital asset within the meaning of section 2(14). Therefore, the sale was not liable to capital gains.
- On second appeal:

### **Held**

- Under section 45, there cannot be any levy of capital gains unless the asset transferred is a capital asset. The only question to be considered in the present appeal is whether the land in question is 'capital asset' within the meaning of section 2(14). It is not the case of the revenue that the assessee falls within the exceptions contained under section 2(14)(iii). Therefore, what is to be decided is whether the land in question is an 'agricultural land' or not. It is pertinent to mention here that the term 'agricultural land' or 'agricultural purpose' are not expressly defined under the Act. In the case of *CWT v. Officer-in-Charge (Court of Wards)* [1976] 105 ITR 133 (SC), the Supreme Court held that the agricultural land must be a land which could be said to be either actually used or ordinarily used or meant to be used for agricultural purpose, that is to say, it must have a connection with an agricultural user or purpose and mere potentiality of agricultural use is not enough. In view of the aforesaid judgment it is to be seen whether the land in question was used for agricultural purposes or had been connection with the agricultural purpose.
- The assessee has submitted that the land was used for the coconut plantation and for the same he has relied upon the certificate of the Village Officer certifying that the subject land was used for

coconut plantation and for growing other agricultural crops from 1981 onwards and the assessee was earning agricultural income out of it. In the absence of any record maintained by the State Government, there is no reason to disbelieve the certificate of the Village Officer and the same cannot be rejected solely on the basis that it was issued post the sale of land by the assessee. The certificate is clear and unambiguously states that the said land was used for coconut plantation, which leaves no manner of doubt that the land was used for agricultural purposes.

- The reliance placed by the Assessing Officer on the report of the Inspector of Income-tax to come to the conclusion that the land was not an agricultural land is misplaced. The inspection was done by the Inspector after the transferee had construed the building on the land. Even in the report of the Inspector, it is observed that there were some coconut trees on the land. Just because the transferee had not used the land for agricultural purposes, the land does not lose its character of being an agricultural land when the same is sold by the assessee. Moreover, the said inspection was done behind the back of the assessee and the assessee was not given an opportunity to rebut the same.
- The nearness of the land to highway also does not alter the character of the land and appreciation in the price of land cannot be seen in isolation and if agricultural operations were carried out by the assessee, the appreciation in the price of land alone would not lead to the conclusion that the land is not an agricultural land. The objection of the revenue that coconut plantation could not have been carried out on the soil which was present on the said land and the reliance placed on the letter of the Gram Panchayat Secretary cannot be accepted in view of the clear report of the Village Officer.
- Thus, in view of the aforesaid, the land in question cannot be treated as capital asset under section 2(14) and, therefore, capital gains cannot be assessed on the sale of the land.