

Jaipur ITAT holds agricultural land to be an ‘immovable property’ for the purpose of Section 56(2)(vii)(b)

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Summary

Jaipur bench of the Income Tax Appellate Tribunal (ITAT), in a recent case, has rejected taxpayer's argument that 'agricultural land' being excluded from the definition of 'capital asset' cannot fall within the ambit of notional income provisions¹. Thus, the ITAT held that the agricultural land purchased by the taxpayer would be taxable if the acquisition is made at less than the stamp duty value (SDV).

In this regard, the ITAT observed that whether agriculture land falls in the definition of capital asset or whether such agriculture land is stock-in-trade of the taxpayer are issues that cannot be read in the definition of immovable property used in the context of notional income provisions and are thus not relevant.

Facts of the case

- The taxpayer is an individual engaged in the business of purchase and sale of property.
- During Assessment Year (AY) 2014-15, the taxpayer purchased three plots of agricultural land for a total consideration of INR 23 lakh, having SDV of INR 1.74 crore.
- The tax officer invoked 'notional income provision' and made addition of INR 1.51 crore in the hands of taxpayer being the difference between the sale consideration as per the sale deeds and the SDV.
- The taxpayer filed an appeal against the order of the tax officer before the Commissioner (Appeals), contending that the plots of land are agricultural land and do not fall in the definition of capital asset².
- The Commissioner (Appeals) observed that agricultural land is not a 'capital asset' per se. Further, the land is a stock-in-trade for the taxpayer, which is again excluded from the definition of capital asset. Thus, it rejected tax

¹ Section 56(2)(vii)(b) of the Income-tax Act, 1961 (the Act)

² as per the provisions of Section 2(14) of the Act

officer's order and held that land in question is an agricultural land and would not fall within the ambit of notional income provisions.

- The tax department filed an appeal before the Jaipur ITAT.
- Before the ITAT, the tax department argued that the provisions clearly mention 'any immovable property'. Thus, even an agriculture land would fall under the definition of immovable property and the notional income provisions would get attracted.
- On the other hand, the taxpayer assailed Commissioner (Appeals) order where it was held that notional income provisions would not attract in the instant case because the agricultural land is not a capital asset per se and also because the land is a stock-in-trade [which is again excluded from the definition of the capital asset].

ITAT's observations and order³

- The ITAT observed that the provisions mention 'any immovable property' and the same is not circumscribed or limited to any nature of immovable property. Thus, it held that the plot of agricultural land purchased by the taxpayer is clearly an immovable property.
- The question about whether such agriculture land falls in the definition of capital asset or whether such agriculture land is stock-in-trade of the taxpayer, are issues which cannot be read in the definition of 'any immovable property' used in context of notional income provisions and are thus not relevant.
- Accordingly, the ITAT allowed the tax department's appeal.

³ Shri Trilok Chand Sain (ITA No. 449/JP/2018)

Our comments

The principal laid down by the Jaipur ITAT establishes that there is no nexus between a capital asset and an asset to which notional income provisions⁴ are applicable. The taxpayer has now filed an appeal before the Rajasthan High Court against the ITAT's order, and the same is pending for hearing.

In this regard, anomaly exists within the notional income provisions, where the term 'property' has been defined as "the following capital asset of the assessee, namely:" Therefore, literally reading, the definition of 'property' itself provides that the section shall be applicable only to capital assets. It should also be noted that while the definition of 'property' is ascribed, no definition of 'any immovable property' is provided in the provisions.

⁴ Section 56(2)(vii) [now Section 56(2)(x)]

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