

**(2002) 12 DEL CK 0063**

**Delhi High Court**

**Case No:** IT Ref. No. 243 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Lakhee

RESPONDENT

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**Date of Decision:** Dec. 12, 2002

**Acts Referred:**

- Income Tax Act, 1961 - Section 2(14), 45

**Citation:** (2003) 185 CTR 665 : (2003) 130 TAXMAN 507

**Hon'ble Judges:** Mahmood Ali Khan, J; D.K. Jain, J

**Bench:** Division Bench

**Advocate:** Ajay Jha, for the Appellant; None, for the Respondent

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### **Judgement**

1. The case is listed for appropriate Orders as the Revenue, at whose instance the reference has been made, has failed to file the paper books despite various opportunities. Since, in our opinion, the issue raised in the present reference is no longer rest integra, insofar as this Court is concerned, we dispense with the filing of the paper books and proceed to dispose of the reference at this stage itself.

2. The following questions have been referred by the Tribunal for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that provisions of Section 2(14)(iii)(a) of the IT Act, 1961, are not applicable to the rural area of Union Territory of Delhi ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the capital gain arising on transfer of the agricultural land in village Haiderpur cannot be charged to tax under the IT Act, 1961 ?"

3. As is evident from the format of the questions, the only issue arising for consideration is whether the agricultural lands in village Haiderpur constitute capital asset within the meaning of Section 2(14)(iii)(a) of the IT Act, 1961 and exigible to capital gain tax on its transfer.

4. A similar issue came up for consideration of this Court in CIT v. Surjan Singh and Ors. (IT Ref. No. 572/83 etc.) and vide order dt. 10th Oct., 2002, it has been held that sub-clause (a) of the said section postulates only two conditions namely, (i) that the agricultural land should be in an area within the municipality and (ii) the area should have a Population of more than 10,000. The controversy as to whether it was only the Population of the area concerned which was to be taken into account for the purpose of clause (ii) or the population of the municipality within whose jurisdiction the area falls, now Stands resolved in the aforementioned decision. Following the said decision, the questions referred are answered in the negative i.e., in favor of the Revenue and against the assessed.

The reference Stands disposed of with no order as to costs.