

(2001) 02 DEL CK 0152

Delhi High Court

Case No: IT Reference No. 212 of 1982 9 February 2001

Commissioner of Income Tax

APPELLANT

Vs

Sheo Ram

RESPONDENT

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**Date of Decision:** Feb. 9, 2001**Citation:** (2001) 117 TAXMAN 347**Hon'ble Judges:** Arijit Pasayat, C.J; D.K. Jain, J**Bench:** Full Bench**Advocate:** R.D. Joll and Ms. Prem Lata Bansal, for the applican, for the Appellant;

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### Judgement

Arijit Pasayat, C.J.

At the instance of revenue, the following questions have been referred by the Tribunal, Delhi Bench E, u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was, in law, right in holding that the land in question was not agricultural land within the meaning of section 2(14)(iii) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was, right in law in holding that the area covered by the Gaon Sabha concerned constituted an area which was comprised within the jurisdiction of "municipality" within the meaning of section 2(14)(iii)(a) of the Income Tax Act ?"

Dispute relates to the assessment year 1974-75. The issue before the authorities, as is evident from the questions, was whether the land which form the subject-matter of dispute was agricultural land within the meaning of section 2(14)(iii) of the Act. Though the assessing officer held that it was not agricultural land, the Appellate Assistant Commissioner and the Tribunal held in the reverse. On being moved for reference, the questions as set out above have been referred for opinion of this Court.

2. We have heard the learned counsel for the revenue. There is no appearance on behalf of the assessed in spite of service of notice.

3. The learned counsel for the revenue submitted that the true scope and ambit of section 2(14)(iii) have not been kept in view by the Tribunal. According to him, Delhi Municipal Corporation's population has to be taken note of and not that of the Gaon Sabha. We find that the Tribunal dealt with the matter in the following manner and recorded the following finding:

"The net result is that at best it can be said that the agricultural land in question was situated in an area which is comprised within the jurisdiction of municipality of Delhi, known as Delhi Municipal Corporation as also within the jurisdiction of municipality of Nangal Dewat known as Gaon Sabha Nangal Dewat. Whereas the population of the area comprised within the jurisdiction of Gaon Sabha Nangal Dewat is less than 10,000 the population of the area comprised within the jurisdiction of DMC is over 10,000. Obviously, such a situation could not be said to have been provided for in section 2(14)(iii)(a), otherwise the Parliament would have enacted some guideline for making appropriate choice for including or not including in the definition of "capital asset" such an agricultural land. We, accordingly, refuse to interfere with the finding of the Commissioner (Appeals)."

In view of the aforesaid finding of facts, the Tribunal's conclusions cannot be faulted. Accordingly, we answer the questions referred in the affirmative, in favor of the assessed and against the revenue.

4. The reference stands disposed of.