IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW

BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.44/Lkw/2021
Assessment Year:2015-16

M/s Ishwar Dewllings Pvt. Ltd., 11, Ratan Mahal, 15/197, Civil Lines, Kanpur. PAN:AABCI7030E	Vs.	Pr. Commissioner of Income Tax-I Kanpur.
(Appellant)		(Respondent)

Appellant by	Ms. Shweta Mittal, C. A.
Respondent by	Smt. Sheela Chopra, CIT, D.R.
Date of hearing	28/04/2022
Date of pronouncement	17/05/2022

O R D E R

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned Pr. CIT, Kanpur dated 30/03/2021 passed u/s 263 of the Act. In this appeal, the assessee has taken following grounds:

"1. On the facts and in the circumstances of the case and in law, the order made by the Ld. CIT under section 263 of the Income-tax Act, 1961 ('IT Act') is illegal, invalid and not sustainable in law:-

a. Because on the facts and in the circumstances of the case and in law, the Ld. CIT grossly erred in passing the order under section 263 even though the assessment order under section 143(3) dated 21 September 2017 was passed by the Assessing Officer (AO) after extensive enquiry and was neither erroneous nor prejudicial to the interest of the Revenue.

b. Because the learned CIT has erred in law and on facts by ignoring the relevant evidence and material on record, e.g. certificate from the Tehsildar and copy of Jamabandi of land in question which clearly showed that the land is "Khudkasht" i.e. the owner of land was doing agricultural activities itself on the land and "Girdavari" i.e. copy of crop inspection report maintained by Lekhpal of the village which clearly showed the name of crops grown on the land in last four years.

c. Because the learned CIT has erred in law and on facts in wrong appreciation of few words in the sale deed and the assessment order of earlier year to hold that the land sold was not agricultural land at the time of sale of land and no agricultural activities were ever carried on by the appellant upon said land since its purchase.

d. Because the order passed by the Ld. CIT is based on the irrelevant and biased considerations and without appreciating the facts and evidences on record."

2. Learned counsel for the assessee, at the outset, submitted that during the year under consideration the assessee had sold an agricultural land on which it had earned capital gain which was exempt as having been earned on an agricultural land. It was submitted that the assessment of the assessee for the year under consideration was completed u/s 143(3) of the Act and Assessing Officer, vide notice u/s 142(1) dated 20/06/2017, specifically required the assessee to explain the claim of capital gain being exempt and in response to that the assessee vide letter dated 16/08/2017 filed various documentary evidences to demonstrate that it had earned capital gain on the sale of agricultural land. In this respect our attention was invited to pages 66 & 67 of the paper book where the copy of reply to the Assessing Officer was placed. Our attention was further invited to page 73 of the paper book wherein again vide letter dated nil, the assessee in continuation of its earlier explanation had again clarified its position with regard to exempt capital gain. It was submitted that the Assessing Officer, after due application of mind and after verifying the documentary evidences,

rightly allowed the claim of the assessee of exempt capital gain being earned on agricultural land. Learned counsel for the assessee further submitted that after completion of the assessment, the Assessing Officer vide notice u/s 154 of the Act dated 02/05/2018, proposed rectification of the order passed u/s 143(3) of the Act by including profit on sale of agricultural land in the computation of book profits u/s 115JB of the Act. In view of the rectification notice the assessee again explained its case before the Assessing Officer and after considering the explanation offered and documents submitted by the assessee, the Assessing Officer dropped proceedings initiated u/s 154 of the Act vide order dated 14/06/2018. In view of the above, it was argued that the Assessing Officer twice verified the facts that the land sold by the assessee was not a capital asset and only after being satisfied with the submissions made before him drew the conclusion that the land was rural agricultural land which was not a capital asset by virtue of provisions of section 2(14) of Act and hence, the income arising from its sale was to be treated as exempt. In view of these extensive verification by the Assessing Officer, it was argued that the order passed by the Pr.CIT u/s 263 is not justified as the assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue. Learned counsel for the assessee submitted that the Pr.CIT treated the assessment order as erroneous and prejudicial to the interest of the Revenue by holding that the Assessing Officer did not carry any inquiry regarding actual distance of the land under consideration from the limits of the Municipal Corporation and also he had not done any verification to ascertain that the land in question was agricultural land and whether any agricultural activities were being carried out on such land. Learned counsel for the assessee submitted that another reason for holding the assessment order erroneous and prejudicial to the interest of Revenue is that the claim of the assessee for agriculture income of Rs.26,600/- for assessment year

2014-15 was denied as being from non-agricultural income. Learned counsel for the assessee submitted that in view of the detailed show cause notice by the Pr.CIT, the assessee filed detailed submissions and filed the documents filed during assessment proceedings and in addition also filed Google Map showing the arial distance of land which was more than six Kms. from the Village Hiranthla where the said land was situated. Learned counsel for the assessee submitted that a certified copy of Khasra Girdavri of crop sold on the on the land was also submitted wherein the details of crop produced on the above said land from the year 2012 to 2018 was mentioned. It was submitted that the Pr.CIT disregarded the submissions made and set aside the assessment order. Learned counsel for the assessee submitted that while setting aside the order u/s 143(3) dated 21/09/2017, the Pr. CIT made the following observations as noted in written submissions at page No. 6:

> "i. At the time of sale of land, the status of land was non-agricultural. The said conclusion was drawn from the line
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> ii. That neither during assessment proceeding nor during proceedings u/s 263 the appellant Company demonstrated to have used the land under consideration for agricultural purpose.
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> iii. The buyer of land is a construction company and hence, the nature of land should have been verified by the Ld. Assessing Officer. Mere classification of land in revenue records as agricultural land is not conclusive evidence to prove the nature of land.
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> iv. That there was failure on the part of Assessing Officer to make necessary inquiries with respect to usage of land for agricultural purpose in the past.

2.1 Learned counsel for the assessee submitted that it is wrong on the part of learned Pr. CIT to hold that agricultural land was not being used for agricultural purposes whereas the meaning of such line, mentioned in sale

deed, was that said land had not been given on oral agreement for cultivation to any person. Regarding the observation of learned Pr. CIT that assessee was not able to demonstrate that the land was being used for agricultural purpose, Learned counsel for the assessee submitted that the crop inspection report by Lekhpal was also filed which shows that the land was being used for agricultural purposes. In view of the above facts and circumstances, it was argued that since the Assessing Officer had twice carried out the verification and had held the land to be agricultural land therefore, the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue. In view of the above, Learned counsel for the assessee prayed that the order passed by learned Pr. CIT be set aside. Reliance in this respect was placed on an order of Chennai Tribunal in a bunch of appeals where under similar facts and circumstances, the Tribunal had held the land to be agricultural land.

3. Learned CIT, (D. R.), on the other hand, submitted that the purchaser of the land and seller of the land, both are private limited companies and the land in question cannot be classified as agricultural land as it was to be used for economic purposes and therefore, the Assessing Officer had wrongly allowed the claim of the assessee and learned Pr. CIT has rightly invoked the provisions of section 263 of the Act. learned CIT, D.R. in this respect heavily placed reliance on the order of the learned Pr. CIT.

4. We have heard the rival parties and have gone through the material placed on record. We find that during the year under consideration the assessee declared a profit on sale of agricultural land which the Assessing Officer verified after calling information from the assessee u/s 142(1). The Assessing Officer vide notice dated 20/06/2017 wanted the assessee to furnish details of exempt income claimed along with all the necessary

documents. In this respect the assessee filed reply vide letter dated 16/08/2017 wherein vide para 5, the assessee submitted as under:

> During the year, the assessee company has earned profit on sale of agricultural land of Rs.4,57,71,500/- which is exempt asset in the income Tax Act 1961 We enclose herewith a copy of purchase deed dtd Feb-2011 and sale deed dtd Apr-2014. Copy of knasra, jamabandi, khataunl and certificate of the Tehsildar of NUH district certifying the distance of the agricultural land more than eight kms. from the municipal corporation. Accordingly profit on sale of agricultural land is claimed as exempt.

4.1 On further clarification from the Assessing Officer, the assessee vide letter dated nil again submitted the following documents in support of its claim of having earned capital gain on agricultural land:

> "Please refer to our letter dated 16/08/2017, we submitted necessary details and documents as mentioned in serial no. 5 of such letter. We further submit as under:
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> 1. Original/certified copies of Khasra, Jamabandi, Khatauni in Form No. 10 and the Certificate of Tehsildar of NUH District. Certifying the distance of the agricultural land more than eight kms. from the municipal corporation are enclosed .
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> 2. We further enclose details of population in villages and towns in NUH Tehsil of Mewat, District-Haryana. This is down loaded from the web site of Census 2011 of India. It may be observed that the population of NUH Municipal Committee was only 16,260 as per last Census.
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> 3. We also enclose the location details of Hiranthla village as down loaded from the web site of Mewat, District-Haryana. It is mentioned that the NUH is the Sub-district head quarter of Hiranthla village and it is situated Ten kilometers away from the village.
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> 4. Since the population of NUH Municipal Committee as per last Census is less than One lac and the Village Hiranthla is situated more than Two kilometers from the Municipal Committee, the

land sold by us is an agricultural land as defined in Sec-2(14)(iii)(b) of Income Tax Act, 1961.

A copy of such reply is placed in paper book page 73.

4.2 From the above replies, filed by the assessee, we find that the Assessing Officer, to his satisfaction, has arrived at the conclusion that the land sold by the assessee indeed was agricultural land and allowed the claim of the assessee. Again, vide notice dated 02/05/2018 u/s 154 of the Act, the Assessing Officer wanted a rectification of the order passed u/s 143(3) as the profit on sale of agricultural was not included while computing book profit u/s 115JB of the Act. The assessee, in response to notice u/s 154, filed the reply and Assessing Officer, after going through the submissions of the assessee, dropped the proceedings u/s 154 , copy of order u/s 154 dated 14/06/2018 is placed at pages 10 and 11 of the paper book. From the above facts and circumstances, it is evident that the Assessing Officer twice carried out investigation regarding the character of land and held the same to be an agricultural land and took a plausible view. Therefore, the order passed by Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.

4.3 The Pr. CIT, vide show cause notice dated 15/03/2021 u/s 263, show caused the assessee as to why order u/s 263 be not passed by making following observations, in the show cause notice:

(a) The examination of records for A.Y. 2015-16 revealed that Assessee company had e-filed the return of income on 18.09.2015 vide acknowledgement number 803610891180915 admitting a total income of Rs.21,80,970/-. Subsequently the return was selected for Compulsory Limited Scrutiny on the reason "Large interest expenses relatable to exempt income u/s 14A" & "Purchase of property reported in Form 26QB". The assessment u/s 143(3) of the Act was completed on 21.09.2017 on accepting the returned total income of Rs.21,80,970/-.

(b) The assessee company has shown profit on sale of agricultural land of Rs.4,57,71,500/- under the head other income in profit & loss account and the same has been claimed as exempt income on account of sale of agricultural land in view of provision 2(14)(iii)(b)(I). The assessee company had sold a property situated at NUH municipal committee at Village Hiranthala for a consideration of Rs.6,32,90,000/- which was purchased by it in the year 2010-11 for a consideration of Rs.1,75,18,500/-. The profit on sale of this agricultural land amounting to Rs.4,57,71,500/- was credited in P & L Account. The assessee while computing income under normal provisions of Act claimed the gain not chargeable to tax treating the agricultural land as non-capital Asset. A certificate from Tehsitdar, NUH was also obtained by the assessee and was furnished during assessment proceedings.

2. From the assessment record, it is observed that the agricultural land sold by the assessee was a capital asset in terms of provisions of section 2(14) of the Income Tax Act, 1961 which says:

(i) In any area within the distances, measured aerially –

(ii) Not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh.

3. The certificate issued by Tehsildar, NUH does not specify the aerial distance of the assessee's land from the municipal limits hence the Assessing Officer should have questioned the veracity of the certificate given by the Tehsildar and included the profit on sale of agricultural land in Book Profit u/s 115JB of the Income Tax Act, 1961.

4. On going through the case record and assessment proceedings it is found that no inquiry regarding the actual distance of the land under consideration from the limits of the Municipal Committee has been made by the AO. It is also gathered that no verification to ascertain that the land under question was agricultural land and whether any agricultural activities were being carried out over the years has not been made. It is also pertinent to mention here that

during assessment proceedings for the A.Y. 2014-15, the claim of the assessee for agricultural income of Rs.26,600/- was denied being treated as non-agricultural income. In the present case, the assessee company failed to prove that the agricultural activities were being carried out by it on the land under question. In view of the facts that the agricultural income in the earlier year has been held to be not genuine, the case of the assessee fails the test of agricultural operation carried out in the said land. Therefore, the assessee company does not qualify for exemption u/s 10 of the I.T. Act, 1961.

5. In view of above, you are given an opportunity to explain as to why the assessment order passed on 21,09.2017 u/s 143(3) of the Income Tax Act, 1961 may not be held to be erroneous and prejudicial to the interest of the revenue and cancelled or modified by invoking the provisions of section 263 of the Income Tax Act, 1961. You can file your written submission along with supporting documents through online e-filng portal or send the same on official email id Kanpur.pcit2@incometax.gov.in on or before 22.03.2021 failing which the case would be decided on the material available on record."

4.4 In response to the notice issued by the Pr. CIT, the assessee filed detailed reply, a copy of which is placed at pages 57 to 84 of the paper book. However, the Pr. CIT rejected the contentions of the assessee and passed order u/s 263. The crux of observations made by Pr. CIT while passing order u/s 263 are as under:

1. In the sale deed dated 16/04/2014, it was specifically mentioned that the said land is not being used for agricultural purposes. I The learned Pr. CIT held that this line in the sale deed shows that at the time of sale of land the status of land was non-agricultural. Also the motive behind purchase of land was its economic utilization through development, which is evident from the fact that the purchaser company is involved in construction activity. He further held that assessee company was not able to demonstrate that after purchase on 17.02.2011 any agricultural activities were carried on by the assessee company itself.

2. In preceding assessment year 2014-15, the assessee company had declared agricultural income of Rs.26,600/- but was not able to justify the same therefore, the income of Rs.26,600/- was held and assessed as other income of the assessee.
3. Mere classification of land in revenue records, as agricultural land, will not conclusively prove that nature of land was an agricultural land. Hence, where no evidence was produced by the assessee to establish character of land sold by it as agricultural land, land cannot be treated as agricultural land for the purpose of computing capital gain.
4. Though, in the assessment order, the Assessing Officer has mentioned that as per provisions of section 2(14)(iii)(b)(1) of the Act, the land sold is not capital asset not chargeable to tax under the head capita gain, yet he completely ignored to verify and examine the nature and character of the land which was purchased by the assessee on 17.02.2011 with the motive of developing the land.

4.6 Regarding first observation of learned Pr. CIT regarding a line written in sale deed, we find from the copy of sale deed placed at pages 31 to 37 of the paper book, specifically at page 32, there is mention of the fact that the said land has not been given to any person orally for cultivation. The learned Pr. CIT has wrongly inferred from this line that the said agricultural land was not being used for agricultural purposes whereas the only purpose of writing this line in the sale deed is that the seller had not given any contract orally for cultivation on this land to any other person. The purpose of this line in sale deed is only to ensure that the land has not been given to any person for cultivation through an oral contract. Therefore, the first observation of learned Pr. CIT has no force which could be used to initiate proceedings u/s 263 of the Act.

4.7 As regards the second observation of having not accepted agricultural income declared by the assessee in assessment year 2014-15, we find that non acceptance of agricultural income from agricultural land by the Revenue authorities cannot be a reason to classify the said land as not being used for agricultural purposes. The fact of the matter is that the assessee filed

necessary evidences regarding cultivation of said land which is apparent from the copy of Khasra Girdwari placed at pages 40 to 42 of the paper book wherein it has been mentioned that the assessee is Khudcast. The detail of agricultural produce on such land from the years 2012-13 to 2017-18 is mentioned on copy of Khasra, a copy of which is placed in paper book pages 68 & 69. The said copy was filed with AO vide covering letter No. NIL dated NIL, placed in paper book page 73. This Khasra Girdwari clearly mentions that there was cultivation of Sarson during these years. Therefore, there was enough evidence before the Assessing Officer to hold that agricultural activities were being carried out on such land. The findings of Pr. CIT that evidence for agricultural activities was not filed before Assessing Officer is not correct. Such evidence of existence of agricultural activities was filed with Pr. CIT also which is part of submissions before him but which he ignored while holding that no agricultural activities were being carried out on such land.

4.8 Regarding the third observation of learned Pr. CIT that classification of land in revenue records, as agricultural land, will not conclusively prove that nature of land was an agricultural land is not correct as the character of land is ascertained from the classification in the Revenue records which undoubtedly in the Revenue record is agricultural land. The Hon'ble Supreme Court in the case of CWT vs. Officer-in-Charge (court of wards) 105 ITR 138 has held that entries in the Revenue records are considered as good prima facie evidence for classifying the land as agricultural land.

4.9 The fourth observation of learned Pr. CIT that the future land use is for economic utilization also has no force as held by the Chennai Bench of the Tribunal in a bunch of appeals in an order dated 05/04/2017 where the

Tribunal has held that the future scope of the area to use the land for non agricultural purposes do not reflect that the land is not an agricultural land. The Tribunal in a consolidated order dated 05/04/2017 in a bunch of appeals has relied on different decisions of Hon'ble High Courts to arrive at such conclusion. For the sake of completeness, few of the decisions relied on by the Tribunal, as contained in para 6.2 onwards, are reproduced below:

> "6.2. A reference could be made to the case of CWT vs. Officer-in-charge (Court of Wards) (105 UR 138) (SC) wherein the Constitution Bench of the Hon'ble Supreme Court stated that the term 'agriculture' and 'agricultural purpose' was not defined in the Indian IT Act and that we must necessarily fall back upon the general sense in which they have been understood in common parlance. The Hon'ble Supreme Court has observed that the term 'agriculture' is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and raising on the land all products which have some utility either for someone or for trade and commerce. It will be seen that the term 'agriculture' receives a wider interpretation both in regard to its operation as well as the result of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of its cultivation of the land in the sense of tilling of the land, sowing of the seeds, planting and similar work done on the land itself and this basic conception is essential sine qua non of any operation performed on the land constituting agricultural operation and if the basic operations are there, the rest of the operations found themselves upon the same, but if the basic operations are wanting, the subsequent operations do not acquire the characteristics of agricultural operations. The Constitution Bench of the Hon'ble Supreme Court in the aforesaid case observed that the entries in Revenue records were considered good prima facie evidence.
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> 6.3. The Hon'ble Gujarat High Court in the case of Dr. Motibhai D. Patel vs. CIT (1982) 27 CTR (Guj) 238 : (1981) 127 ITR 671 (Guj) referring to the Constitution Bench of the Hon'ble Supreme Court had stated that if agricultural operations are being carried on in the land in question at the time when the land is sold and further if the entries in the Revenue records show that the land in question is agricultural land, then, a presumption arises that the land is agricultural in

character and unless that presumption is rebutted by evidence led by the Revenue, it must be held that the land was agricultural in character at the time when it was sold. The Division Bench of the Hon'ble Gujarat High Court further held that there was nothing on record to show that the presumption rose from the long user of the land for agricultural purpose and also the presumption arising from the entries of the Revenue records are rebutted.

6.4. The Hon'ble Bombay High Court in the case of CWT vs. H. V. Mungale (1983) 32 CTR (Bom) 301 : (1984) 145 ITR 208 (Bom) held that the Hon'ble Supreme Court had pointed out that the entries raised only a rebuttable presumption and some evidence would, therefore, have to be led before taxing authorities on the question of intended user of the land under consideration before the presumption could be rebutted. The Court further held that the Supreme Court had clearly pointed out that the burden to rebut the presumption would be on the Revenue. The Hon'ble Bombay High Court held that the ratio of the decision of the Supreme Court was that what is to be determined is the character of the land according to the purpose for which it was meant or set apart and can be used. It is, therefore, obvious that the assessee had abundantly proved that the subject land sold by them was agricultural land not only as classified in the Revenue records, but also it was subjected to the payment of land revenue and that it was actually and ordinarily used for agricultural purpose at the relevant time.

6.5. We may also refer to the case of CIT vs. Manilal Somnath (1977) 106 ITR 917 (Guj), wherein the Division Bench of the Hon'ble Gujarat High Court observed that the potential non- agricultural value of the land for which a purchaser may be prepared to pay a large price would not detract from its character as agricultural land on the relevant date of sale.

6.6. We may also refer to the case of Gopal C. Sharma vs. CIT (1994) 116 CTR (Bom) 377 : (1994) 209 ITR 946 (Bom), in which, the case of Smt. Sarifabibi Mohamed Ibrahim & Ors. vs. CIT (supra) was referred to and relied, amongst other cases. In this case, the Division Bench of the Bombay High Court has stated that the profit motive of the assessee selling the land without anything more by itself can never be decisive for determination of the issue as to whether the transaction amounted to an adventure in the nature of trade. In other words, the price paid is not decisive to say whether the land is agricultural or not.

6.7 We may refer to a judgment of the Hon'ble Madras High Court in the case of CWT vs. E. Udayakumar (2006) 284 ITR 511 (Mad) where the Hon'ble Madras High Court has referred to the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Smt. Savita Rani (2004) 186 CTR (P&H) 240 : (2004) 270 ITR 40 (P&H) and has observed and held as under:

> "8. It is well settled in the case of CIT vs. Smt Savita Rani (2004) 186 CTR (P&H) 240 : (2004) 270 ITR 40 (P&H), wherein it is held that the land being located in a commercial area or the land having been partially utilised for non-agricultural purposes or that the vendees had also purchased it for non-agricultural purposes, were totally irrelevant consideration for the purposes of application of s. 54B.
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> 9. In the abovesaid case, the assessee an individual sold 15 karnals, 18 mar/as of land out of her share in 23 karnals, 17 mar/as land during the financial year 1990-91, relevant to the asst. yr. 1991-92, the sale was effected by three registered sale deeds. While filing her return of income, she claimed exemption from levy of capital gains under s. 54B of the Act on the ground that the land sold by her was agricultural land and the sale proceeds were invested in the purchase of agricultural land within two years. The AO rejected the claim of the assessee holding that the land sold by the assessee was not agricultural land and this was upheld by the CIT(A). On further appeal, the Tribunal accepted the claim of the assessee holding that the transaction in question duly fulfilled the conditions specified for relief. On further appeal to the High Court, the Punjab & Haryana High Court found that the finding that the land had been used for agricultural purposes was based on cogent and relevant material. The Revenue record supported the claim. Even the records of the IT Department showed that the assessee had declared agricultural income from this land in her returns for the preceding two years. The land being located in commercial area or the land having been partially utilised for non-agricultural purposes or that the vendees had also purchased it for nonagricultural purposes, were totally irrelevant consideration for the purposes of application of s.54B."

5. In the present case there is no denying of the fact that in the Revenue records the land has been classified as agricultural land. The evidence of agricultural activities being carried out on such land was filed

with the Assessing Officer. The copy of Jamabandi and Khasra Khatauni was filed with the Assessing Officer, a copy of covering letter submitting these documents, is placed in paper book pages 73. The copy of Khasra/Girdwari and crop inspection book was filed before the Assessing Officer which was again filed before Pr. CIT, a copy of which is placed in paper book pages 68 & 69 where from 2012-13 to 2017-18, Sarson has been mentioned to have been cultivated. The evidence of the land being situated at an ariel distance of 10 Kms., was also filed with the AO vide letter dated nil wherein the details of location, details of land as downloaded from web along with details of population as per census 2011 was submitted. The contents of such letter has already been reproduced in our order vide para 4.1. Therefore, keeping in view these documents and evidences the Assessing Officer took a plausible view and held such land to be agricultural land.

6. We further find that 154 proceedings were initiated against assessee for rectification of a mistake apparent from record. The proposed rectification, as mentioned in the notice u/s 154 proceedings, is as below:

> "The following discrepancies have been noticed from the perusal of Balance Sheet, Profit & Loss Account, Auditors report, Computation of Income and other relevant documents submitted by you for the A.Y. 2015-16. during the assessment proceeding. Therefore, the same is proposed to be rectified.
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> On perusal of records it was observed that the assessee had sold a property situated at NUH municipal committee at village Hiranthaila for a consideration of Rs.6,32,90,000/- which was purchased in the year 2010-11 for a consideration of Rs.1,75,18,500/- The profit on sale of this agricultural land amounting to Rs.4,57,71,500/- was credited in P & L account while computing income under normal provisions of act claimed the gain not chargeable to tax as the said property was not a capital asset. While computing the Book Profit u/s. 115JB, the gain of Rs.4,57,71,000/- cannot be reduced from Net Profit because the amount credited in

P&L is not exempt in section 10 as the gain is not an agricultural income which is restricted to the nature of income mentioned in section 2(1A) and the instant income is not covered therein.

In the light of the Book Profit comes to Rs.4,80,02,457/- and tax including surcharge, EC, SHEC & Interest comes Rs.1,22,83,111/- is short charge."

6.1 The assessee filed reply to section 154 proceedings and the proceedings were dropped vide order dated 17/06/2018. The contents of order u/s 154, as placed in paper book pages 10 & 11, are reproduced below:

"In this case, assessment u/s 143(3) of the Act was completed on 21.09.2017 at a total income of Rs.21,80,970/-. Subsequently, it was noticed that the assessee has not included profit on sale of agricultural land while computing tax in accordance with the provisions of Section 115JB of the I.T. Act, 1961. Accordingly, notice u/s 154 of the Act was issued on 02.05.2018 proposing the said rectification. In response to the notice u/s 154, the assessee submitted reply vide letter dated 14.05.2018.

The reply of the assessee has been considered. In view of the legal position, the amount of gain arising from sale of agricultural land has rightly been deducted from net profit while calculating the tax liability in accordance with the provisions of section 115JB of the Act. Further, Section 2(1A) of the Act defines the term 'agricultural income[1]. Explanation 1 to section 2(1A) reads as under:-

"Explanatran 1.- for the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of Sub-clause (iii) of clause (14) of this section.

Clause (14) of section 2 defines the term 'Capital Assets" and clause (iii) refers to agricultural land and item (a) and (b) defines the areas, the agricultural land situated therein will not be treated as 'agricultural land'.

In this case, it is an admitted fact that the agricultural land sold by the assessee company is not situated in the areas mentioned in

aforesaid item (a) or item (b) and accordingly the gain on sale of land is treated as non-taxable being a capital receipt. Therefore, to sum up, it is submitted that there is no dispute that the profit arising on sale of agricultural land, which does not fall in the category of 'capital asset[1] as defined under section 2(14), does not come under the purview of the Income-tax Act at all. For example, the profit arising on sale of personal effects is not exigible to Income tax Act. In the similar manner, the profit arising on sale of agricultural land, which is not a capital asset, is also not exigible to income tax. Hence, an item of income which does come under the purview of income tax cannot be subjected to tax under any of the provisions of the Act. Accordingly, the profit from sale of agricultural land, which is not a 'capital asset', cannot be included for the purpose of computing book profit under section 115JB of the I.T. Act, 1961.

In view of the above, proceedings initiated vide notice u/s 154 of the Act dated 01.05.2018 are hereby dropped."

7. In view of the above facts and circumstances, the order passed by learned Pr. CIT is not justified. The order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue nor the Assessing Officer has assumed wrong facts while arriving at the conclusion. In view of the above, the order passed by learned Pr. CIT u/s 263 is quashed.

8. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 17/05/2022)

Sd/.	**Sd/.**
(A. D. JAIN)	**(T. S. KAPOOR)**
Vice President	**Accountant Member**

Dated:17/05/2022
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar