



INCOME TAX NEWSLETTER

N. A. SHAH  
**BULLETIN**

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 N. A. SHAH ASSOCIATES LLP  
Chartered Accountants



### Executive Summary

- If the land (whether purchased or inherited) is entered as agricultural land in the records of the revenue may be characterized as non-agricultural land if there was no economic utilization of the land for earning income by carrying on agricultural operations.

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**Chennai ITAT: ITO v. Shri Vijay Shah and ITO v. Shri Rajesh Shah**

**ITA No. 2496/Mds/2016 and 2495/Mds/2016**

**Facts of the case:**

- i) The assessee an individual along with his four family member has sold a plot of agricultural land at Kunnukadu Village which was inherited by them from their father. The said agricultural land was purchased by the father of the assessee. The assessee has sold a part of the said land for a consideration of Rs 11.66 crores. Since it was treated as an agricultural land, no capital gain was shown in return of Income.
- ii) Before the AO, the assessee contended that the land sold was an agricultural land and it was situated beyond 8 kms from the municipal limits of the Chennai municipal corporation. The AO rejected the contention of the assessee on the following grounds:
  - No agricultural activity was carried out on that land
  - It was situated at 7.2 kms (i.e. within 8 kms) of the municipal limits of the Chennai municipal corporation

and concluded that the said asset is a capital asset as per section 2(14)(iii) of the Income Tax Act, 1961 ("the Act") and liable to capital gains tax.

- iii) Being aggrieved, the assessee preferred an appeal before CIT(A).

**Findings of the CIT (A):**

- iv) The CIT(A) observed that the assessee has done agricultural activities in the previous years as well as in this current year. Further, other members were looking after the agricultural land. The assessee has submitted various reports and documents like Chitta, Adangal, Patta, etc. and letters from Government Departments like VAO, Govt. Surveyor, SRO, BDO and also RTI Acts and proved that the concerned land is an agricultural land.
- v) With regards to whether the land is situated within 8 kms or not, the CIT(A) relied on the various government records submitted by the assessee such as reports of Revenue Inspector and Block Development officer certifying that the land of the assessee is an agricultural land and situated in rural area.

- vi) Accordingly, the CIT(A) deleted addition made on sale of agriculture land.
- vii) Aggrieved by the order, revenue preferred an appeal before ITAT.

**Issue:**

Whether the land sold by the assessee is agricultural land or not?

**Ruling of ITAT:**

ITAT allowed the appeal in favor of the department by holding that the concerned land is a non-agriculture land and chargeable to capital gain tax after observing the following facts:

- i) The land parcels at the time of purchase may have been classified in revenue records as agricultural land and the position continued in a religious manner without any annual verification of the nature of the property. But the statement given by the Tahsildar u/s 133(6) of the Act that the no agricultural activities were carried out in the current year as well as in past three years cannot be ignored.
- ii) It is necessary to see that the agricultural operations carried on by the assessee must be activity of economic gain. It must generate meaningful income to the person who is carrying on agricultural activities. If the agricultural activities carried on by the assessee as a hobby or casual or incidental, it is very difficult to hold a view that the land is agricultural in nature. In present case there was no economic utilization of the land for earning income by carrying agricultural operations (In the instant case the agriculture income reported was Rs. 11,760/- from a land having market value of Rs. 11.66 crore).
- iii) On the location of municipal limit, ITAT has held that when the basic nature of the land itself found to be non-agricultural, the arguments regarding status of the property, whether within metropolis or outside the limit of the metropolis, is irrelevant. A non-agricultural property, whether inside the municipality or outside the municipality or even in a remote village is a "capital asset" and transfer of the same may generate income liable for capital gains taxation.

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From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400  
013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: [info@nashah.com](mailto:info@nashah.com)