

Cit Vs. Lakhee

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Court : Delhi

Decided On : Dec-12-2002

Reported in : [2003]129TAXMAN507(Delhi)

Appeal No. : IT Reference No. 243 of 1984 12 December 2002

Appellant : Cit

Respondent : Lakhee

Advocate for Pet/Ap. : Ajay Jha,;for the Applican

Judgement :

ORDER

By the court

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 res 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 Income Tax 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 Income Tax 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 Income Tax 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 (IT Reference No. 572 of 1983, dated 10-10-2002), 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.

5. The reference stands disposed of with no order as to costs.

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