

NO INCOME TAX ON COMPULSORY ACQUISITION OF RURAL LAND

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The development works in the country are going on all over the country including widening of the existing as well as construction of new roads. For this purpose, land acquisition is the most important part of the process. The farmers and rural people who perhaps own substantial part of the rural land, are seldom interested to part ways with this long possessed treasure. Nevertheless, the reasons of handsome compensation and force of law might require them to accept the acquisition of their ancestral land by the government or say National Highway Authority of India (NHAI).

The lands acquired through the said compulsory acquisitions which are in the nature of agricultural land and being used for the agricultural purposes do not have tax implications, as the same does not fall in the nature of capital asset as defined under section 2(14)(iii) of the Income Tax Act, being agricultural land, and thus are exempt from taxation.

Section 2(14)(iii) of Income Tax Act, 1961 provides that;

2. In this Act, unless the context otherwise requires,—

(14) capital asset" means.... but does not include-

(iii) agricultural land in India, not being land situate—

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(b) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, 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; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

There are several decided case laws which also support the above, prominent among them being:

- a.) DCIT vs. Sh. Tarun Lamba (ITA No. 5079/Del/2012-order dated 15.06.2017 – ITAT, New Delhi)
- b.) ITO vs. Shri P.V. Abraham (ITA No. 508/Coch/2018 – order dated 06.02.2019 – ITAT Cochin Bench)
- c.) ITO vs. Shri Abraham Varghese Charuvil (ITA No. 30/Coch/2017 – order dated 26.04.2017 – ITAT Cochin Bench)
- d.) ITO vs. Dr. Koshy George (2010) 190 Taxman 4 (Cochin)(MAG)

Circular No. 36 of 2016 dated 25 October 2016 also provides for the said exemption in following words;

1. Under the existing provisions of the Income-tax Act, 1961 ('the Act'), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

2. The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, inter alio provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

It also needs to be elucidated here that no discrepancy has been made in respect of such compensation received for such compulsory acquisition of agricultural land and non-agricultural land in the matter of grant of exemption from income tax under the RFCTLARR Act, and the same has also been decided by the Hon'ble Patna bench of the Income Tax Appellate Tribunal (ITAT), in the matter of ITO Vs Suresh Prasad (ITAT Patna) I.T.A. No. 210/PAT/2018.

Following case laws may also be referred in support of the above;

| S. No. | Name and Citation | Decision in brief |
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| 1. | Parasnath Vinimay Pvt. Ltd. Vs CPC (ITAT Kolkata) I.T.A. No. 151/Kol/2023 | Hon'ble ITAT Kolkata ruled in favor of Parasnath Vinimay Pvt. Ltd., stating that the compensation received for the compulsory acquisition of agricultural land was exempt from income tax. The decision was based on the provisions of the RFCTLARR Act and the CBDT circular. |
| 2. | DCIT vs. M/s. Ganga Developers in ITA No. 2328/Mum/2021 | It was held that the sum received by the assessee is not taxable under the Income |

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| | <p>Tax Act.</p> <p>Relevant part of the said order is extracted below:-</p> <p>10. On careful perusal of the award dated 5/8/2016, it is clear that according to rule 18 (3) of the rights to fair compensation and transparency in land acquisition, rehabilitation and resettlement rules 2014 the Commissioner has granted approval to this award. The award was also passed after the land acquisition act 1984 stood repealed from 1/1/2014 which has been replaced by the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act of 2013.</p> <p>11. The provisions of Section 24 of the act clearly provides that that when no award u/s 11 of the said land acquisition act has been made, then all the provisions of the new act relating to the determination of compensation shall apply. It also excludes where the award is already been made u/s 11 of that act and for that particular purpose only the old act continue to apply. In this case the award has been made on 5/8/2016. Therefore the new act shall apply.</p> <p>12. According to Section 96 of that act income tax shall not be levied on any award agreement made Under that act except as provided u/s 46 of that act. This award/agreement is not u/s 46 of that act. Therefore the income arising in the form of</p> |
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| | | <p>compensation shall be governed by the provisions of Section 96 of the act. Accordingly the income is not chargeable to income tax.</p> <p>13. Further the issue is squarely covered in favour of the assessee by the decision of the honorable Kerala High Court in Vishwanatha M V Chief Commissioner 116 Taxmann.com 894, honorable Andhra Pradesh High Court in case of C nand Kumar 88 taxmann.com 526 as well as circular number 36/2016 dated 25/10/2016 which clarified in paragraph number 3 of the act that compensation received in respect of award agreement which is been exempted from levy of income tax as per provisions of Section 96 of that act shall also not be taxable Under the provisions of the income tax act.</p> <p>14. As the learned CIT – A has carefully considered all the above judgment as well as the provision of new law and the old law of acquisition of land and therefore held that sum received by the assessee is not taxable, cannot be found fault with. Accordingly we confirm the order of the learned CIT – A and dismiss ground number 1 of the appeal of the AO.”</p> |
| 3. | <p>ITO Vs Suresh Prasad (ITAT Patna)</p> <p>I.T.A. No. 210/PAT/2018</p> | <p>Hon’ble ITAT held that whole of the capital gain arising on transfer of land by way of acquisition by the State Government is not taxable and additions made by AO by computing LTCG and disallowing exemption u/s 10(37) of the Income Tax is not sustainable.</p> |

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