

# ***Taxability in the context of Agriculture and Related Activities.***

## ***Executive Summary: -***

Agricultural income is **exempt** from Income Tax and is not included in total income. The exemption clause is mentioned under Section 10(1) of the Income Tax Act, 1961. However, it is important to note that income from allied agricultural activities like poultry farming, wool rearing, etc. are not considered as agricultural income. Here in this article, some **interesting situations** have been considered in the context of agriculture and related activities. Secondly, the tax laws at the time of sale of Agricultural Land with respect to 'Capital Gain' head of income are also discussed here.

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## ***Situation (1): - Whether income received by assessee by sale of trees in his forests was agricultural income or not?***

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The following judgments may kindly be considered in this regard: -

The Hon'ble Supreme Court in the case of **CIT Vs Ramakrishna Deo** [1959] 35 ITR 312 (SC) held that in order to decide whether income received by assessee by sale of trees in his forests was agricultural income or not, crucial question to be answered is, were those trees planted by proprietors of estate, or did they grow spontaneously. Question viz., whether trees were of spontaneous growth or were products of plantation is essentially a question of fact. Burden is on assessee to prove that income sought to be taxed is agricultural income, exempt from taxation.

The Hon'ble Supreme Court in the case of **CIT Vs Jyotikona Chowdhurani** [1957] 32 ITR 705 (SC) held that since trees were of spontaneous growth and nothing was done by assessee to grow trees from soil itself, income derived by assessee from sale of said trees could not be said to be agricultural income and thus, it was not exempt from taxation.

The Hon'ble Supreme Court in the case of **Maharajadhiraj Sir Kameshwar Singh Vs CIT** [1957] 32 ITR 587 (SC) held that in regard to forest trees of spontaneous growth, which grow on soil unaided by any human skill and labour and where no basic operations in agriculture are performed upon soil itself by assessee, there is no cultivation of soil at all. Therefore, income from such forest trees cannot constitute agricultural income.

The Hon'ble Supreme Court in the case of **CIT Vs Raja Benoy Kumar Sahas Roy** [1957] 32 ITR 466 (SC) held that term 'agriculture' in its primary sense would be restricted only to cultivation of land in strict sense of term meaning thereby, tilling of land, sowing of seeds, plating and similar operations on land. Apart from aforesaid basic operations, certain other operations which are performed after produce sprouts from land, e.g. weeding, tending, pruning, cutting, harvesting and rendering produce fit for market, when taken in conjunction with basic operations, can also be regarded as agricultural operations. Mere performance of these subsequent operations on products of land, where such products have not been raised on land by performance of basic operations would not be enough to characterise said subsequent operations as agricultural operations. Products which grow wild on land or are of spontaneous growth not involving any human labour or skill upon land are not products of agriculture and income derived therefrom is not agricultural income even though certain subsequent operations like collecting and marketing said products are performed by assessee.

**High Court of Bombay in case of Commissioner of Income-tax V. Rajkumar Ashok Pal Singh Ji [1977] 109 ITR 581 (Bombay)**

- Whether therefore, entire sale proceeds of trees that had spontaneously grown on forest land would have to be regarded as revenue receipts in hands of assessee - **Held, yes**

**High Court of Allahabad in case of Shri Amarsingh V. Commissioner of Income-tax [1962] 45 ITR 573 (ALL.)**

- Assessee claimed income from sale of standing sal trees as agricultural income – There was no evidence about planting and growth of those trees – All skill and labour employed by assessee were after produce had sprouted from soil and there was no operation of nature of cultivation on forest land itself – Whether, on facts, income derived from sale of sal trees could not be treated as agricultural income – **Held, yes**

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***Situation (2): - Whether income derived from the sale of Plants and seedlings grown in a nursery is treated as agricultural income or not?***

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In short, the income from the sale of plants and seedlings grown in a nursery will be treated as agricultural income. The following material actually supports the statement.

**Explanation (3) in the section (2) of Income Tax Act, 1961 is inserted by the Finance Act, 2008, w.e.f. 1-4-2009; which reads as under: -**

“[Explanation 3. — For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.]”

**ITAT Delhi Bench ‘A’ in case of Sudisha Farm Nursery V. Income-tax Officer [2004] 88 ITD 638 (DELHI)**

- The Hon'ble ITAT held that where nursery is maintained by carrying out basic operations, and subsequent operations in pots are carried out in continuation of basic operations, then income from such nursery would be agricultural income not liable to tax - **Held, Yes**

**High Court of Madras in case of Commissioner of Income-tax V. Soundarya Nursery [2002] 123 Taxman 372 (Madras)**

- Whether all products of land, which have some utility either for consumption or for trade or commerce, if they are based on land, would be agricultural products - **Held, yes**
- Whether plants sold by assessee-nursery in pots could be said to be result of primary as well as subsequent operations comprehended within term 'agriculture' - **Held, yes**
- Whether, therefore, income from plants grown in pots and income from sale of seeds is agricultural income - **Held, yes**
- All the products of the land, which have some utility either for consumption or for trade or commerce, if they are based on land, would be agricultural products.
- If the plants sold by the assessee in pots were the result of the basic operations on the land on expending human skill and labour thereon and it was only after the performance of the basic operations on the land, the resultant product grown or such part thereof as was suitable for being nurtured in a pot, was separated and placed in a pot and nurtured with water and by placing them in the green house or in shade and after performing several operations, such as weeding, watering, manuring, etc., they were made ready for sale as plants, all these operations would be agricultural operations that involved human skill and effort. Thus, the plants sold by the assessee in pots were the result of primary as well as subsequent operations comprehended within the term 'agriculture' and they were clearly the products of agriculture.
- So far as the seeds are concerned, it is not possible for the seeds to exist without the mother plants, and the mother plant is grown on land. It was not the case of the revenue that the seeds were the result of the wild growth and not on account of cultivation by the assessee.

The seeds were clearly a product of agriculture and the income derived from the sale of seeds, was agricultural income.

**High Court of Gujarat in case of Puransingh M. Verma V. Commissioner of Income-tax [2015] 56 taxmann.com 218 (Gujarat)**

- Assessee had carried out operations such as tilling of land, weeding, watering, etc. upon land owned by it and when plants were established in soil they were shifted in suitable containers for sale - Whether sale proceeds from said business of nursery carried on by assessee constitute income from agriculture - **Held, yes** [In favour of assessee]

**ITAT Bangalore Bench in case of Jayanti Botanical Gardens V. Income Tax Officer, ward 4(3)(3), Bangalore [2021] 128 taxmann.com 178 (Bangalore - Trib.)**

- Whether by virtue of Explanation 3 to section 2(1A), income derived from sale of saplings and seedlings grown in assessee's nursery alone is deemed to be agricultural income - **Held, yes**

**ITAT Hyderabad Bench in case of Deputy Commissioner of Income-tax, Circle-2 (1), Hyderabad V. Inventaa Industries (P.) Ltd [2018] 95 taxmann.com 162 (Hyderabad - Trib.) (SB)/[2018]**

- Whether where in order to grow mushrooms, instead of horizontal use of soil, vertical space is used, still growth of mushrooms would not stand apart from agricultural operations - **Held, yes**
- Whether, therefore, income from production and sale of Mushrooms has to be regarded as agricultural income - **Held, yes**
- It is clear that one cannot restrict the word 'product' to 'plants', 'fruits', 'vegetables' or such botanical life only. The only condition is that the "product" in question should be raised on the land by performing some basic operations. Mushroom produced by the assessee is a product. This product is raised on land/soil, by performing certain basic operation. The product draws nourishment from the soil and is naturally grown, by such operation on soil which require expenditure of 'human skill and labour'. The product so raised has utility for consumption, trade and commerce and hence would qualify as an 'agricultural product' the sale of which gives rise to agricultural income.

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## ***Laws relating to taxability under the head 'Capital Gain' at the time of transfer of Agricultural Land?***

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**Rural Agricultural land** is not considered a capital asset. Therefore, any gains from its sale are not taxable under the head 'Capital Gains'. However, **Urban Agricultural Land** is a Capital Asset. And Capital gains/losses have to be ascertained at the time of sale of Urban Agriculture Land.

**The question that arises here is whether the Income Tax Law provides criteria for separating Agricultural Land into rural and Urban?**

The answer is Yes. Agricultural land in rural areas is defined by the following conditions:

- (a) It is situated within a municipality with a population of fewer than 10,000.
- (b) It is located outside the municipality and meets the following criteria:
  - Positioned at a distance greater than 2 km from the local boundaries of a municipality with a population exceeding 10,000 but not exceeding 100,000.
  - Positioned at a distance greater than 6 km from the local boundaries of a municipality with a population exceeding 100,000 but not exceeding 1,000,000.
  - Positioned at a distance greater than 8 km from the local boundaries of a municipality with a population exceeding 1,000,000.

### **Tax Rates on Sale of Urban Agriculture Land: -**

If long-term Capital Gain arise from the sale of Urban Agriculture Land, such gains are taxed at the rate of 20%. And if short-term capital gain is arising then such gains are taxed as per the slab rates. And, where Capital loss is arising, such loss is carried forward to the next 8 Assessment years.

Further, if any capital gain arises on the sale of Urban Agricultural Land **arising from the compulsory acquisition** of such land shall be exempt as per Section 10(37) subject to fulfilment of certain conditions.

### **Tax Exemption u/s 54B: -**

The exemption u/s 54B is available regarding capital gains arising from the transfer of agricultural land. This exemption is available when capital gain arises from the sale of urban agricultural land. The exemption under section 54B is available only to individuals and HUFs.

**Further, to claim exemption u/s 54B, the following condition of the said section need to be satisfied –**

- The first condition is that urban agricultural land needs to be transferred.
- The eligible assessee – Individual & HUF
- Such land must have been used for agricultural purposes by the individual or his parents, or HUF in the 2 years immediately preceding the date of transfer.
- Assessee shall purchase another agricultural land within two years from the date of transfer.
- Assessee can deposit the amount of capital gain from sale of agricultural land under CGAS if the investment is not made before the filing of the income tax return.
- The amount utilized by the assessee for the purchase of a new asset and the amount so deposited shall be deemed the cost of the new asset.
- Assessee shall purchase another agricultural land (urban or rural) within 2 years from the date of transfer.
- If the assessee sells the new land purchased within 3 years, then the exemption is withdrawn, and the taxpayer has to pay tax on sale of agricultural land.