

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI G. MANJUNATHA, AM AND SHRI RAVISH SOOD, JM**

ITA No. 2879/Mum/2016
(निर्धारण वर्ष / Assessment Year:2011-12)

Mrs. Shraddha Bagla 12, 7/11, Chunawala Bldg, Kosla Street Mumbai-400003	बनाम/ Vs.	ITO-13(1)(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN No.		AACP5554C
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri. Bhupendra Shah, A.R
प्रत्यर्थी की ओर से / Respondent by	:	Shri. Rajat Mittal, D.R

सुनवाई की तारीख / Date of Hearing	:	09.07.2018
घोषणा की तारीख / Date of Pronouncement	:	13.07.2018

आदेश / ORDER

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-28, Mumbai, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income tax Act, 1961 (for short 'Act'), dated 03.02.2014 for A.Y. 2011-12. The assessee has assailed before us the order passed by the CIT(A) on the following grounds of appeal:

- "1. The ld. A.O erred in making an addition of Rs. 90,19,000/- as Short term capital gains under Section 45 of the Act by treating the sold land as capital asset.

2. *The Ld. A.O. erred in allowing the interest on housing loan of Rs.2,93,656/- part to the extent of Rs. 1,50,000/- ignoring the facts that the said property is let out and full amount of Rs. 2,93,656/- is eligible for deduction u/s 24(b) of Act, 1961.*
3. *Further ld. A.O. also initiated the penalty provision u/s 271(1) (c) of the Act, the said penalty shall be dropped.*
4. *The Appellant craves leave to add, amend, alter, substitute and/or modify, withdraw in any manner what so ever all or any of foregoing grounds of appeal at or before the hearing of appeal.”*

2. Briefly stated, the assessee had e-filed her return of income for A.Y 2011-12 on 06.02.2012 declaring Nil income. The case of the assessee was thereafter selected for scrutiny assessment under Sec. 143(2) of the Act. The A.O assessed the income of the assessee at Rs. 96,78,070/- after making certain additions/disallowances, as under:

Sr. No.	Particular	Amount
1.	Addition on account of undisclosed short term capital gain on sale of land	Rs.90,19,000/-
2.	Disallowance of interest expenditure claimed by the assessee under Sec.24(b) of the Act	Rs. 6,59,066/-
	Total	Rs.96,78,070/-

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) being of the view that the A.O had rightly assessed the profit arising from the sale of land as Short Term Capital Gain (for short 'STCG'), thus, upheld the same. As regards the disallowance of the claim of deduction of the assessee in respect of interest on borrowed capital under Sec. 24(b), though the CIT(A) concluded that principally the claim of the assessee was as per the mandate of law, but by referring to the *second proviso* to Sec.24(b) he restricted the entitlement of the assessee to an amount of Rs.1,50,000/-. On the basis of his aforesaid deliberations the CIT(A) partly allowed the appeal of the assessee.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the lower authorities had erred in assessing the profit arising from sale of rural agricultural land situated at Village-Kurund, Taluka-Bhiwandi, District: Thane as STCG in the hands of the assessee. The ld. A.R submitted that as the land under consideration was a rural agricultural land, which was neither situated in any area comprised within the jurisdiction of a municipality or a cantonment board having a population of not less than ten thousand, nor within a distance of 8 Kms from the local limits of any such notified municipality or cantonment board, thus, the same did not fall within the sweep of the definition of 'Capital asset' as contemplated under Sec.2(14)(iii) of the Act. In the backdrop of his aforesaid averments, it was the claim of the ld. A.R that as the agricultural land under consideration was not a capital asset, hence the profit arising on the sale of the same had wrongly been brought to tax by the lower authorities by characterising the same as STCG in the hands of the assessee. The ld. A.R in order to fortify his aforesaid claim that the agricultural land under consideration was beyond a distance of 8 km from the nearest notified municipality, placed on record a copy of a map downloaded from 'google earth'. The ld. A.R further took us through a certificate issued by the Sarpanch, Gram Panchayat, Village: Kurund, wherein it was stated by him that the said village was located beyond a distance of 8 kilometres from the nearest municipality viz. (i) Kalyan Dombivali, Municipal Corporation; and (ii) Bhiwandi, Municipal Corporation. It is further stated in the certificate that the said village had a population of 1470 persons. The ld. A.R further submitted that the case laws relied upon by the A.O viz. (i) Smt. Sarifa Bibi Mohammad Ibrahim Vs. CIT (1993) 204 ITR 631 (SC); and (ii) CIT Vs. V.A. Trivedi (1988) 172 ITR 95 (Bom) having been rendered in context of the pre-amended definition of capital asset under Sec. 2(14) of the Act, therefore, the same were distinguishable and had wrongly been followed for drawing of adverse inferences in the hands of the assessee. The ld. A.R in support of

his aforesaid contention submitted that as both of the said case laws were rendered under the old provisions, thus the same were not applicable to the case of the assessee which was covered by the post-amended Sec. 2(14)(iii). The ld. A.R further in order to buttress his contention that the case laws relied upon by the A.O having been rendered under the old statutory provisions were distinguishable and not relevant to the case of the assessee, took us through the written submissions which were filed by the assessee before the CIT(A). The ld. A.R further took support of the judgment of the Hon'ble High Court of Bombay in the case of Manubhai A. Sheth & Ors. Vs. N.D. Nirgudkar, ITO & Anr. (1981) 128 ITR 87 (Bom) and submitted that for claim of exemption of profit on sale of rural agricultural land, it was not mandatory for the assessee to demonstrate that agricultural operations were being carried on the same. The ld. A.R further submitted that the exception carved out in Sec. 2(14)(iii) for excluding certain agricultural lands from the sweep of the definition of capital asset did not postulate the receipt of agricultural income by the assessee. In support of his aforesaid contention the ld. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of Shankar Dalal & Ors. Vs. CIT & Ors (2017) 247 taxman 170 (Bom). The ld. A.R further in order to drive home his contention that where agricultural land was neither within the municipal limits or the notified area limits, the same would not come within the purview of the definition of a capital asset as per Sec.2(14)(iii), relied on the order of a coordinate bench of the Tribunal viz. ITAT, Kolkata Bench 'C' in the case of DCIT, Circle-8, Kolkata Vs. Ajit Mitra (2011) 16 taxman.com 66 (Kolkata). The ld. A.R further assailed the restricting of the claim of deduction of interest on borrowed capital raised by the assessee under Sec. 24(b) to an amount of Rs. 1,50,000/- by the CIT(A). The ld. A.R submitted that though the CIT(A) had concluded that the assessee was entitled towards deduction of the interest paid on funds borrowed for purchase of a residential property, but by wrongly referring to the *second proviso* of Sec. 24(b) he had restricted the entitlement of the assessee towards such claim of deduction of the assessee to an amount of Rs.1,50,000/-. It was the claim of the ld. A.R that as the property under consideration was a rented residential property, therefore,

the CIT(A) was in error in relying on the *second proviso* of Sec. 24(b) and restricting the claim of the assessee to an amount of Rs.1,50,000/-. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R that as the land under consideration was not an agricultural land, thus the lower authorities had rightly declined the claim of the assessee that the profit arising on the sale of the same was not liable to tax on the ground that it was not a capital asset under Sec. 2(14)(iii) of the Act. The ld. D.R in support of his aforesaid contention took us through the relevant observations of the lower authorities. As regards the issue pertaining to the entitlement of the assessee towards claim of deduction under Sec. 24(b) the ld. D.R relied on the order passed by the CIT(A).

5. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We shall first take up the issue as to whether the CIT(A) was right in concluding that the profit arising on the sale of land under consideration was liable to be brought to tax under the head capital gains. We find that Sec.2(14)(iii) of the Act contemplates that agricultural land except for those which are 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 having a population of not less than ten thousand or within a notified distance, not being more than 8 kilometres from the local limits of any such notified municipality or cantonment board, was to be construed as a capital asset. We shall in the backdrop of the aforesaid position of law deliberate on exigibility to tax of the profit arising to the assessee on the sale of the land under consideration. We find that the assessee had sold various pieces and parcels of land situated at Village: Kurund, Taluka: Bhiwandi, District: Thane, vide registered agreement dated 31.01.2011 and 04.02.2011 to M/s Prakhyat Infra Projects Pvt. Ltd. for a sale consideration of Rs.1,14,56,250/-The profit arising on the said sale transaction was claimed by the assessee as exempt on the ground that the

land under consideration was a rural agricultural land covered by the exceptions carved out in Sec.2(14)(iii) of the Act. It was the claim of the assessee that as the land was not a capital asset within the meaning of the provisions of Sec. 2(14)(iii), thus the profit on sale of the same could not be brought to tax as capital gain in her hands. In the course of the assessment proceedings it was observed by the A.O that the land under consideration was notified by Government of Maharashtra for establishing industrial park. On a perusal of the facts as had unfolded during the course of the assessment proceedings, it was noticed by the A.O that the land was purchased by the assessee on 29.01.2010 and was sold after holding the same for a short span of one year to M/s Prakhyat Infra Projects Pvt. Ltd, vide registered agreement dated 31.01.2011 and 04.02.2011. The A.O further noticed that the nature of the land under consideration was changed to non-agricultural asset after the government had notified the same for development of an industrial park. On the basis of his aforesaid observations the A.O concluded that as the government notification for development of an industrial park had preceded the sale of the land under consideration, thus the same no longer remained an agricultural land and was transferred to M/s Prakhyat Infra Projects Pvt. Ltd. as a non-agricultural industrial land. The A.O in the backdrop of his aforesaid deliberations concluded that the profit arising on the sale of the land was liable to be brought to tax as the income of the assessee under the head capital gain. We find that the CIT(A) on appeal finding no infirmity in the order of the A.O in context of the issue under consideration, had upheld the same.

6. We have deliberated at length on the issue under consideration and find from the orders of the lower authorities that it is an admitted fact that the assessee had purchased agricultural land for a consideration of Rs.5,00,000/- on 29.01.2010. Rather, a perusal of the stamp duty valuation carried out at the time of purchase of the land under consideration reveals that the same was an agricultural land. Further, on a perusal of the 7/12 extracts it emerges that grass was grown on the said land. Prior to the

purchase, the government of Maharashtra had vide a notification dated 05.08.2009 accorded permission to a company, viz. M/s Prakhyat Infra Projects Pvt. Ltd to purchase this agricultural land. The permission was granted to the aforesaid company to establish an industrial estate for service industry and warehousing. Admittedly, the husband of the assessee viz. Sh. Sandeep Bagla was a director in the said company viz. M/s Prakhyat Infra Projects Pvt. Ltd. We find that in the backdrop of the aforesaid facts, it was observed by the CIT(A) that the company viz. M/s Prakhyat Infra Projects Pvt. Ltd. instead of purchasing the land directly in its name, had rather routed the purchase of the same through the assessee. The said land was thereafter within a short span of one year purchased by the aforementioned company viz. M/s Prakhyat Infra Project Pvt. Ltd. from the assessee for a consideration of Rs.1,14,56,250/-. On a perusal of the registered sale agreement dated 31.01.2011 and 04.02.2011, it emerges that the land which was sold by the assessee to M/s Prakhyat Infra Project Pvt. Ltd. was stated to be an industrial non agricultural land. It is in the backdrop of the aforesaid facts, that we shall now adjudicate as regards the validity of the order of the lower authorities in bringing the profit arising from the sale of the aforesaid land to tax under the head capital gains.

7. We find from a perusal of the aforesaid facts that the land under consideration as on the date of its sale by the assessee to M/s Prakhyat Infra Project Pvt. Ltd., vide a registered agreement dated 31.01.2011 and 04.02.2011 was an industrial non-agricultural land. The aforesaid fact stands established beyond any scope of doubt on a perusal of the aforesaid sale agreement, dated 31.01.2011 and 04.02.2011, which as observed by the lower authorities clearly refers to the land being transferred by the assessee to M/s Prakhyat Infra Project Pvt. Ltd. as an industrial non-agricultural land. We find that as per Sec.48 of the Act, the income arising from the transfer of a capital asset is to be brought to tax under the head capital gains. Thus, if an asset is found to be a capital asset on the date of its transfer, the profit arising from the transfer of the same would be liable to be assessed under the head capital gains. We find that as observed by us

hereinabove, as the land under consideration at the time of the execution of the registered sale agreement, dated 31.01.2011 and 04.02.2011 by the assessee in favour M/s Prakhyat Infra Projects Ltd. was a non-agricultural industrial land, therefore, the same was clearly a capital asset. We are of the considered view that as the land sold by the assessee, vide registered sale agreements dated 31.01.2011 and 04.02.2011 was not an agricultural land, but rather, clearly a non-agricultural industrial land, therefore, the contentions advanced by the ld. A.R in the backdrop of his claim that the assessee had sold agricultural land are found to be totally misconceived. We may herein observe that the entire chain of events and the material available on record viz. (i). that prior to purchase of land the Government of Maharashtra had vide a notification dated 05.08.2009 accorded permission to M/s Prakhyat Infra Projects Pvt. Ltd (in which company the spouse of the assessee was a director) to purchase the said land for establishing an industrial estate for service industry and warehousing; (ii). that a perusal of the 7/12 extracts revealed that grass was grown on the said land; and (iii). the transfer of land by the assessee to M/s Prakhyat Infra Projects Pvt. Ltd within a short span of one year, clearly reveals that the land under consideration was never intended by the assessee to be exploited for agricultural operations, but was intended from the date of its purchase for setting up of an industry. Be that as it may, we are of the considered view that as the assessee had sold a non-agricultural industrial land, therefore, the A.O had rightly brought the profit arising from the transfer of the same to tax as STCG in the hands of the assessee. We thus, not finding any infirmity in the order of the CIT(A) in context of the issue under consideration, thus uphold the same. The **Ground of appeal No. 1** is dismissed.

8. We shall now advert to the claim of the assessee that the CIT(A) had erred in restricting her entitlement towards deduction under Sec. 24(b) of the interest on housing loan to an amount of Rs.1,50,000/-. On a perusal of the records it was observed by the A.O that the assessee along with her spouse Mr. Sandip Bagla, both having equal $\frac{1}{2}$ share each, had jointly

purchased a Flat No. 1503/2A, Sidhanchal, Thane. It was observed by the A.O that the share of investment made by the assessee towards purchase of the aforesaid property amounted to Rs.32,61,305/-. In her return of income, the assessee had claimed interest on borrowed capital of Rs.6,59,065/- as against the rental income of Rs. 70,000/- derived from renting of the said property during the year under consideration. The A.O observed that the assessee had obtained unsecured loans from various parties totalling to Rs. 69,92,151/- on which interest of Rs. 6,59,066/- paid by her was claimed as deduction under Sec. 24(b) of the Act. It was noticed by the A.O that the assessee had out of the aforesaid unsecured loans of Rs. 69,92,151/-utilised only an amount of Rs. 31,15,000/- for purchase of the residential property. In the backdrop of the aforesaid facts, the A.O worked out on a proportionate basis the interest expenditure relatable to the investment made by the assessee in the residential property at Rs. 2,93,656/-. However, the A.O observing that as the assessee had not made any repayment of housing loan and the property had not been mortgaged in accordance with the provision of Sec.80C(2)(xviii)(c) of the Act, thus disallowed the entire claim of the assessee in respect of deduction of interest on housing loan. The CIT(A) on appeal concluded that the A.O had confused himself between two distinct provisions viz. Sec.24(b) and Sec.80C. In the backdrop of his aforesaid observations, the CIT(A) concluded that the assessee was entitled for deduction in respect of the interest paid on borrowed capital utilised for purchase of the residential property under Sec.24(b) of the Act. However, the CIT(A) referring to the *second proviso* to Sec. 24(b) restricted the entitlement of the assessee towards such deduction to Rs.1,50,000/-.

9. We have deliberated on the facts of the case and find substantial force in the contention advanced by the ld. A.R that as the property under consideration was not a residential property referred to in Sec. 23(2) of the Act, but was a residential property which was admittedly let out during the year to a third party, hence the applicability of the *second proviso* to Sec. 24(b) was not applicable in its case. We are persuaded to subscribe to the aforesaid claim of the ld. A.R and are of the considered view that as the

property under consideration viz. Flat No. 1503/2A, Sidhanchal, Thane was admittedly let out and had fetched a rental income of Rs. 70,000/- during the year under consideration, thus, the applicability of the *second proviso* of Sec. 24(b) stands excluded. We thus, set aside the order of the CIT(A) in context of the issue under consideration and direct the A.O to allow the claim of the assessee as regards interest paid on housing loan under Sec. 24(b) to the extent of Rs. 2,93,656/-. The **Ground of appeal No. 2** is allowed.

10. The assessee has vide **Ground of appeal no. 3** assailed the initiation of the penalty proceedings by the A.O under Sec.271(1)(c) of the Act. We being of the considered view that the said ground of appeal raised by the assessee is premature, therefore, dismiss the same.

11. The **Ground of appeal No. 4** raised by the assessee being general in nature is dismissed as not pressed.

12. The appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 13.07.2018

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 13.07.2018

Ps. Rohit

Sd/-

(RAVISH SOOD)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**