

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.3491/Ahd/2014
(Assessment Year : 2010-11)

Late Smt. Sushilaben
Chandulal Kansara,
3, Gazetted Office Society,
Opp. Arjun Complex, Near
Ratnamani Flat, Ghatlodia,
Ahmedabad-380 061.

Vs. Income Tax Officer,
Ward-6(5),
Ahmedabad.

[PAN No. BKOPK 2069 Q]

(Appellant)

..

(Respondent)

Appellant by :

Shri Pritesh Shah, A.R.

Respondent by :

Shri Jayant Jhaveri, Sr.D.R.

Date of Hearing

12.12.2018

Date of Pronouncement

30.01.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is against the order dated 17.09.2014 passed by the Commissioner of Income Tax (Appeals)-XI, Ahmedabad arising out of the order dated 28.03.2013 for the Assessment Year 2010-11 passed by the ITO, Wd.-6(5), Ahmedabad under section 143(3) r.w.s. 147 and 144 of the Income Tax Act, 1961 (hereinafter referred as to “The Act”) with the following grounds:

1. *“The Ld. CIT(A) erred in law and in facts confirming the addition made by AO of Rs.3,98,749/- as Short Term Capital Gain, which is requested to be deleted.”*

2. The brief facts leading to this case is this that the assessee sold out a property bearing Survey No.685 and 717/2 on 11.01.2010 to one Shri Kalaji Galaji Thakor for a consideration of Rs. 7,61,000/- in F.Y. 2009-10 relevant to A.Y. 2010-11. The Learned AO considered the details of the property for working of capital gains. Since no assistance was given by the assessee, as observed by the Learned AO taking into consideration, the land as not agricultural in nature show-cause notice was served upon the assessee to explain as to why “Short Term Capital Gain” should not be added to the total income. Ultimately, the Learned AO on the basis of the details furnished by the assessee considered that the property situated within the Municipal limit and “Short Term Capital Gain” of Rs.3,98,749/- was added to the total income of the assessee.

3. In appeal, the additional evidences were filed by the appellant in the form of certificate from Gram Panchayat so as to establish that the land in question is situated, not within the municipal limits with an added fact that the population of the village is less than 10,000 and thus the profit on sale of agriculture land is exempted u/s 2(14) of the Act. However, such additional evidences placed before the Learned CIT(A) were not considered on this particular ground that the assessee failed to explain the reason for non-filing of the said certificate at the time of assessment proceedings, neither the certificate is from the proper authority and ultimately the order passed by the Learned AO was confirmed. Hence, the instant appeal.

4. At the time of hearing of the appeal, the Learned Advocate appearing for the assessee taken us to the application for allowing the additional evidence so placed before the Learned CIT(A) being pages 20 to 22 of the Paper Book before us. Apart from that, the certificate issued by the authority being the Executive Engineer, R & D Division, Dehgam Village, Dist. Gandhinagar as also thus certified by the local authority i.e. Amrabhai na Muvada Village, Taluka Dehtam Dist. Gandhinagar dated 19.04.2014 was

also placed on record being part of the paper book. He, further contended that it appears from the certificate issued by the concerned authorities that the land in question is beyond the municipal limit as specified by the statute and the population thereof is less than 10,000 clearly categorized land as agricultural in nature and therefore exemption u/s 2(14) of the Act is to be granted to the assessee. In support of his argument he also relied upon the judgment of Hon'ble ITAT, Indore Bench in the case of ITO-vs-Ashok Shukla reported in [2012] 28 taxamann.com 112 (Indore) on the point that even any agricultural activity carried out by the assessee and the land situated was beyond 8 kms from the Municipal limit to be treated as non-agriculture land u/s 2(14)(iii) sub clause (b) of the Act while answering the controversy relating to the agricultural activity so raised by the authorities below. On the contrary, the Learned DR relied upon the order passed by the authorities below.

5. Heard the respective parties, perused the relevant materials available on record. It appears from the records that the assessee though failed to produce the documents in support of his claim arising out of the issue that the land in question is an agriculture one before the Learned AO duly placed the same before the Learned CIT(A) as additional evidences as appearing from pages 17-24 of the Paper Book before us. The application under Rule 46A of the Income Tax Rule for taking into consideration the additional evidence by the Commissioner of Income Tax is also on record at pages 20 & 21 of the Paper Book. Statement and/or explanation thereof for not placing the same before the Learned AO as also been sufficiently pleaded in Paragraph 2 & 3 which is as follows:

“2.2 I have carefully considered the rival submission. Perusal of assessment order reveals that the appellant sold immovable property situated at Village Amaraji Na Muvada, Tal. Dehgam, Dist. Gandhinagar, Survey No.685 and 717/2 to Shri Kalaji Galaji Thakor, Nikol, Ahmedabad for a sale consideration of Rs.7,61,000/- on 11/01/2010 i.e. in F.Y.2009-10 relevant to A.Y. 2010-11. During the assessment proceedings the A.O. asked the assessee to furnish the copy of sate deed and purchase deed of sold property in response to which the assessee

submitted copy of Hak Patrak and claimed purchase price for Rs. 4,53,000/-. On verification of the details it came to the notice of the A,O. that the assessee is in possession of land bearing Survey No.685, 717/1 and 717/2 out of which the assessee has sold out land bearing survey no.685 and 717/2.

The appellant has filed additional evidence in the form of certificate from Village Panchayat. The certificate has been filed at the time of appellate proceedings without explanation of reason of non filing of this certificate at the time of assessment proceedings. The certificate is also not from proper authority hence it cannot be considered at this stage.

2.3 The above facts clearly indicate that the A.O, has established the fact that the impugned property is situated in the Municipal limits of Ahmedabad Municipal Corporation. Since the immovable property sold by the appellant is situated in Ahmedabad Municipal Corporation, accordingly, I hold that the immovable property sold by the appellant is a capital asset as per the provisions of sec.2(14) of the I.T. Act, 1961. I have also gone through the computation of S.T.C.G. made by the A.O. and the same appears to be as per the provisions of I.T. Act, 1961 . In view of above, I am of the considered view that the A.O. had correctly worked out the Short Term Capital Gain of Rs.3, 98,749/- on sale of this immovable property. Accordingly, addition of Rs.3,98,749/- is confirmed. This ground of appeal is dismissed.”

6. It is a settled principle of law if the explanation in the application under rule 46A of the Income Tax Rule is found to be sufficient then the same should have been considered by the authorities below. In this particular case, the CIT(A), however did not consider the same without assigning any reason which was duly incumbent upon him under the statute which vitiates the entire proceedings before the first appellate authority. It is pertinent to mention that the reasons assigned by the assessee in the application Under Rule 46A of the Act for not been able to produce the same before the Learned AO is justified. In that view of the matter, we find it fit and proper to remit the issue to the file of the Learned CIT(A), directing him to consider the additional evidences placed by the assessee and to verify the issue on that basis and to pass a fresh order on the issue involved in this particular case. While doing so, the Learned CIT(A) is further directed to

taking into consideration any other evidence and/or judgment passed by the Court of law which the assessee may choose to file at the time of the hearing of the appeal. Thus assessee's appeal is allowed.

7. In the result, assessee's appeal is allowed for statistical purposes.

This Order pronounced in Open Court on

30/01/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 30/01/2019
Priti Yadav, Sr.PS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad