

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.1153/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Mr. Dilip Balchand Raison,
7, Guruganesh Society,
Bibwewadi, Pune – 411 037.

..... अपीलार्थी /
Appellant

PAN : AAQPR2983R.

बनाम v/s

The Income Tax Officer,
Ward 2(1), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri V.L. Jain.

Revenue by : Shri Rajesh Gawli.

सुनवाई की तारीख / Date of Hearing : 11.01.2019	घोषणा की तारीख / Date of Pronouncement: 10.04.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 4, Pune, dt.01.12.2016 for the assessment year 2008-09.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual who filed his return of income for A.Y. 2008-09 on 30.03.2009 declaring total income of Rs.2,13,847/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.24.12.2010 and the total income

was determined at Rs.26,70,897/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 01.12.2016 (in appeal No.PN/CIT(A)-4/ITO, Ward-6(3), Pune/274/2010-11) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following effective ground :

“The Learned CIT(A) erred on facts and in law in confirming agricultural land as non-agricultural land as a sequel in making an addition on sale thereof of capital gain at Rs.24,57,050/-.”

3. During the course of assessment proceedings, AO noticed that assessee has sold a land and the profits on its sale was not offered to tax. It was assessee's contention that the land that was sold was agricultural land and therefore gains are not taxable. The submissions of the assessee were not found acceptable to AO as he noticed that the aforesaid land was purchased in 1984 and was not cultivated as evident from 7/12 extract. He also noticed that assessee had not shown any agriculture income from the said land. He also noticed that the Zone Certificate issued by the Town Planning Department of Government of Maharashtra certified the land to be in industrial zone and the Talati as per the Certificate has stated the land to be “Pad Zamin”. He therefore held that the land sold by the assessee to be not an agricultural land but a capital asset within the meaning of Sec.2(14) of the Act. He thereafter, worked out the long term capital gains at Rs.24,57,050/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

“5.3.2. Before deciding the issue, it is of utmost importance of intention of legislatures while drafting a certain provision in the Act. If the land in question is used for the purpose of agriculture by the seller, the seller must not lose the benefits of exemption. The capital gain on sale of agricultural land as mentioned u/s 2(14) has been exempted from tax because of the nature of land. In the present case, the Ld. AR for the appellant has relied on various decisions favouring the appellant. I have carefully perused the assessment order and the material placed on record. I find that, firstly, the land in question forms a part of industrial zone declared at the time of sale, thereby affecting the price of consideration. Hence it is evident that the buyer has bought the land with an intention to use it for industrial use. Secondly, there does not exist any evidence to prove the income from the agricultural activities nor any evidence has been brought on record to prove the conduct of agricultural activities on the land. Thirdly, as brought on record by the AO, the land is classified as "Pad Jamin" thereby making the land worthless for carrying out the agricultural activities. The land is not capable of being cultivated. Only relying on the 7/12 extract submitted by the appellant, and ignoring the other facts of the case, I cannot conclude the land to be agricultural land as stated u/s 2(14) of the Act. Under such circumstances, I am inclined to agree with the findings of the AO in not granting the exemption. Accordingly, the Ground No. 1 raised by the appellant is dismissed.”

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

4. Before me, Ld.A.R. reiterated the submissions made before lower authorities and further submitted that the land that was purchased by assessee in 1984 was an agricultural land. He submitted that the land being an industrial zone does not change the character of land and for this proposition, he relied on the decision of Hon'ble Gurajat High Court in the case of CIT Vs. Smt. Lilavati Patel (152 ITR 565). He further submitted that when the land has been classified as agricultural land in land records and is subjected to land revenue then the land is agricultural land and for this proposition, he relied on the decision of Bombay High Court in the case of CIT Vs. Minguel Chandra Pais and another reported in (2006) 282 ITR 618. He further submitted that the land at the time of purchase was not in industrial zone but was brought in industrial zone subsequently on 25.11.1992 and to support his contention, he pointed to the translated copy of

Town Planning and Valuation Department letter placed at page 89 of the Paper Book. He further submitted the observation of Ld.CIT(A) that classification of land as “Pad Jamin” making the land worthless for carrying out the agricultural activities is not correct. He submitted that “Pad” means undeveloped but potentially useful land and unplowed and unseeded during a growing season. He, therefore, submitted that the conclusion of Ld.CIT(A) that the land cannot be cultivated is factually incorrect. He also placed reliance on the decisions in the case of CWT Vs. H.V. Mungale 145 ITR 208 (Bom.), Lavleen Singhal Vs. DCIT (Del. ITAT) 111 TTJ 326. He, therefore, submitted the addition be deleted. Ld. DR on the other hand supported the order of lower authorities.

5. I have heard the rival submissions and perused the material on record. The issue in the present ground is with reference to taxability of sale of land. It is assessee’s case that the land being agricultural land. The impugned land was purchased in 1984 has not been controverted by Revenue. The assessee’s contention that the land being classified as agricultural land in the land records and is subject to land revenue has also not been controverted by Revenue.

6. Before me, no material has been placed by Revenue to demonstrate that the land has been converted by assessee to non-agricultural land. I find that the courts have held that the entries in Revenue record raise a presumption of the land being agricultural land unless successfully rebutted by the Revenue. Further, in the light of the decisions cited hereinabove, I am of the view that AO was not

justified in treating the profit on sale of land as Capital Gains as against exempt income considered by assessee. I, therefore, direct that the land that was sold is agricultural land and therefore profit from its sale is exempt from tax. **Thus, the ground of assessee is allowed.**

7. In the result, the appeal of assessee is allowed.

Order pronounced on 10th day of April, 2019.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 10th April, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-4, Pune.
4. The Pr.CIT(3), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.