

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD òSMCö BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2867/Ahd/2017
Assessment Year 2009-10**

Chudabhai Laxmanbhai Desai, Mukam-Post, Modhera, Taluka, Bahucharaji, District Mehsana-384212 PAN: BXJPD0429H (Appellant)	Vs	The ITO, Ward-6(2), Ahmedabad [Revised jurisdiction with ITO, Ward 3(2)(1)], Ahmedabad] (Respondent)
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**Revenue by: Shri Keyur Patel, Sr. D.R.
Assessee by: None**

Date of hearing : 14-06-2019
Date of pronouncement : 27-06-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2009-10, arises from order of the CIT(A)-3, Ahmedabad dated 24-10-2017, in proceedings under section 144 r.w.s. 147 of the Income Tax Act, 1961; in short òthe Actö.

2. The assessee has raised following grounds of appeal:-

"1. The Ld. CIT (A) erred on facts and in law in upholding action of Assessing Officer in issuing notice u/s 148 which was without jurisdiction it being issued at Ahmedabad and appellant being located at Mehsana.

2. *The Ld. CIT (A) erred on facts and in law in upholding action of Assessing Officer in making assessment u/s 144 r.w.s. 147 without any valid jurisdiction and without appreciating that the appellant brought attention of Assessing Officer about invalid assumption of jurisdiction.*
 3. *The Ld. CIT (A) erred on facts and in law holding that land sold was an urban land within the meaning of section 2(14)(iii)(b) of the Act merely on presumptions and without verifying actual distance as on 06/01/1994 when facts and legal position brought on record and which has been accepted in principle.*
 4. *The Ld. CIT (A) erred on facts and in law in confirming addition of Rs. 11,81,746/-”*
3. The fact in brief is that the assessee has not filed return of income for assessment year 2009-10. On the basis of information that assessee had sold land for Rs. 72,50,000/- along with three co-owners situated in municipal limit of Ahmedabad, a notice u/s. 148 was issued as assessee has not paid any tax on capital gain. The notice u/s. 148 of the act was issued on 17-08-2012. The assessee has not made any compliance with notice u/s. 148 of the act and no return of income was filed. The assessing officer has also issued five notices u/s. 142(1) of the act on various dates but the assessee has not made any compliance . Thereafter, a show cause notice dated 14th Feb, 2014 was issued and served upon the assessee. The relevant part of the notice is reproduced as under:-

“2. On verification of the details available with this office was noticed that you have sold urban land for Rs. 72,50,000/- with three others and did not shown capital gain in respect of the said transaction. Notice u/s. 148 of the Act was issued which was duly served upon you by Speed Post. Thereafter, further notices were issued on different dates but all the notices were stands not complied. This being a time barring assessment and as a natural justice, you are hereby given one more opportunity by way of this show cause notice to furnish the reply/submission in connection with the subject matter. In the property sold being urban agricultural land at Survey No. 345, Chandiodia, Dist. Ahmedabad for Rs. 72,50,000/- you are having 20% share. After considering the purchase cost of the said property of Rs. 12,00,000/- as was considered in the connected case of Govindbhai Ramanlal Chaudhary having PAN AAHPC0832H as per order u/s. 143(3) of the Act passed on 21/12/2011, the net capital gain in your case would comes to Rs. 12,10,000/- (7250000 - 1200000 = 6050000 20% thereof comes to Rs. 12,10,000/-. You are therefore requested to show cause as to why the said amount of Rs. 12,10,000/- sho'tild not be treated as your income tinder the head capital gain on sale of immovable property for the year under consideration and added to your total income for the year under reference.

4. Your reply in this regard should reach the office of the undersigned by 21/02/2014 on which day the hearing is fixed at 04.00 P.M. If nothing is heard from you by the given date it will be presumed that you have nothing to say in the matter and necessary order shall be passed in your

case ex-parte on the basis of material available on record without giving any further opportunity - in the matter which may please be noted."

However, the assessee has also not made any compliance to the show cause notice. Thereafter, another show cause notice was issued on 14th Dec, 2014 however no compliance was made. Therefore, on the perusal of the detail available the assessing officer had noticed that the land sold was situated within the municipal limit of Ahmedabad corporation. The assessing officer has obtained details from the assessment proceedings carried in the case of the other co-owners Shri Govindbhai Ramanlal Chaudhary and on the verification of the said detail, it was noticed that assessee along with other members has purchased the impugned sold land as per purchase deed registered on 24th October, 2007. As per the sale deed, the said land was sold on 21st October, 2008 which indicate that the sold property was held for less than 36 months. It was also noticed that the sold land was situated at Chandlodia, Taluka Ahmedabad City falling in municipal limit of Ahmedabad Municipal Corporation. The assessing officer has also noticed that the Urban Development and Urban Housing Department Govt. of Gujarat vide notification no. KV/211/2006/AMN/902006/410/P dated 20th July, 2016 classified the sold land as urban area included within the limit of city of Ahmedabad. Consequently, the assessing officer has made addition of Rs. 12,10,000/- as share of the assessee from the said land as short term capital gain.

4. Aggrieved assessee has field appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee holding that the impugned

land was a capital asset as per provision of section 2(14)(iii) r.w.s. 45 of the act. The relevant part of decision of Id. CIT(A) is reproduced as under:-

"4.2 **Decision:** I have considered the facts mentioned in the assessment order and the submission filed by the appellant carefully. The additional ground though raised late in the day, is admitted for adjudication. The A.O while rendering the order u/s. 144 rws 147 dated 25.02.2014 has computed capital gains on premises:-

"5. As per AIR details available with the department the assessee along with three others sold land of Rs. 72,50,000/-. The assessee did not respond to the notices issued and/or filed reply giving the details in respect of working of capital gain. Therefore, as stated above, a show cause notice was issued on 14/12/2014 to the assessee in respect of capital gain. In this case, on perusal of details available, it was noticed that the land sold was situated within municipal limit of Ahmedabad Municipal Corporation. In respect of the sale of the land in question, as stated in the show cause notice that during the assessment proceedings in the case of the other co-owner Shri Govindbhai Ramanlal Chaudhary having PAN: AAHPC0832H, details have been obtained. Verification of the said details shows that the assessee along with other members have purchased the land as per purchase deed registered on 24/10/2007. As per sale deed, the said land was sold on 21/10/2008. Thus, the property was held by the assessee less than 36 months. The land of the assessee situated at Chandlodia, Taluha-Ahmedabad City and the same is falling in municipal limits of Ahmedabad Municipal Corporation. Further, the Urban Development and Urban Housing Department, Government of Gujarat vide its notification No. KV/211/2006/AMN/902006/410/P dated 20th July, 2006 classified the Chandlodia Municipality as large Urban Area and included within the limits of City of Ahmedabad. Hence, even if the assessee claim for the benefit of agricultural land and for exemption of capital gain, which would not be allowable in respect of this land. Based on the above capital gain in the hands of the assessee is computed as under:-

Sale consideration of the land	Rs. 72,50,000/-
Less Purchase cost	Rs. 12,00,000/~
Total Short Term Capital Gains	Rs. 60,50,000/-
20% share of the assessee	Rs. 12,10,000/-'

The main contention taken by the appellant was that the rural agricultural land situated at Village **Chandlodia, Taluka-Ahmedabad** is not a capital asset as per the provision of section 2(14)(iii) of the Act. The relevant part of submission dated 16-10-2017 is reproduced as under:-

2. The Assessing Officer while deciding as to whether agricultural land sold by the appellant was a capital asset within the meaning of section 2(14) of the Act misdirected himself by referring to the Notification dated 20th July, 2006 issued by Urban Development and Urban Housing Department of Government of Gujarat. Notification issued by State Government is not-a notification issued in terms of provisions of section 2(14)(iii)(b) of the Act and therefore, no reliance thereon could be placed. Addition made on the strength of inapplicable notification is liable to be deleted.

3. For this purpose provisions of section 2(14)(iii)(b) are reproduced here below:

" 2(14)(iii) agricultural land in India, not being land situate-

(b) 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 according to the last preceding census of which the relevant figures have been published before the first date of the previous year.

"(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item, (a), as the **Central Government may**, having regard to the **extent** of, an scope for, urbanization of that area

and other relevant considerations, specify in this behalf by notification in the Official Gazette."

From the language of provisions reproduced herein above it is apparent that only Central Government has been authorities to issue notification u/s 2(14)(iii)(b) of the Act and the State Govt.

4. Central Government through CBDT has issued two notifications under section 2(14)(iii)(b) of the Act specifying the limits of Municipal Corporation etc for measuring distance . (a) Notification No 9447 dated 06/01/1994 and Notification No. 11186 dated 28/12/1999. In the case of your appellant only Notification No. 9447 dated 06/01/1994 is applicable wherein limits of Ahmedabad Municipal Corporation were specified. Notification No. 11186 dated 28/12/1999 deals with limits for Goa etc and has no relevance with the appellant's case. Relevant extract of Notification No. 9447 dated 06/01/1994 is reproduced hereinbelow for better understanding:"

I have examined CBDT's notifications under section 2(14)(iii)(b) of the Act specifying the limits of Municipal Corporation etc. for measuring distance (a) Notification No.9447 dated 06.01.1994 and notification No.11186 dated' 28.12.1999 and seen that contention raised by the appellant has logic provided it is beyond 8 KM from the AMC limits. The relevant portion of jurisdictional ITAT decision in the case of ITO vs. Akash Deep Farms P. Ltd. (ITA No.2138/Ahd/2012 dtd.11.08.2015) is as under:

"8. We have duly considered rival contentions and gone through the record carefully. The definition of "capital asset" has been provided in section 2(14) of the Act. Sub-clause (a) and (b) of Section 2(14)(iii) contemplates that if an agriculture land is in India, and it is situated at a distance of more than 8 KMs. from the local limit of any municipality cantonment board, then, that land would not fall within the ambit of definition "capital asset". In other words, if the land which is not forming part of capital asset sold by an assessee, then, no gain as such would be considered, as accrued to the assessee. In the present case, the Id. AO has observed that if the distance of geographical situation of the assessee's land is being measured from municipality limit, by way of crow's flight, then, it is within the municipal limit.

10. Next objection of the AO was that the State Government has enhanced the municipal limit in 2006 and the distance is to be measured from new boundary of the Ahmedabad Municipal Corporation Limit. AMC limit was extended upto Sarkhej since 2006. The Id. CIT(A) has examined this aspect, and has observed that perusal of sub-clause (b) of section 2(14)(iii) would indicate that the municipal limit is to be taken from the area which has been notified by the Central Government in its gazette notification. Central Government has notified the area on 06.01.1994, and from that notification, the agriculture land of the assessee was situated beyond a distance of 8 KMs. This aspect has been lucidly considered by the Id. CIT(A) in the finding extracted supra. We do not see any reason to interfere in this finding. In view of the above discussion, we do not find any merit in the appeal of the Revenue. It is dismissed. "

Similar views also find place in following case laws:

CIT vs. Satinder Pal Singh 229 CTR 82 [P&H]

CIT Vs. Madhukumar N. HUF - 23 Taxmann.com 341 (Kar. HC)

CIT vs. Khoobsurat Resorts Pvt. Ltd. - ITA No.776 of 2011 dt.05.11.2012 (Delhi HC)

Smt. (Dr.) Tripathi Vs. Dy.CIT- 34 Taxmann.com 286 (ITAT, Jaipur)

Satya Dev Sharma Vs. ITO -46 Taxmann.com 149 (ITAT, Jaipur)

DCIT Vs. Arjit Mitra - 16 Taxmann.com 66 (ITAT, Kolkata)

*In view of above, it is decided to give the benefit to the appellant provided the land is factually not falling within 8 Kmtrs. from the outer limit of AMC as per CBDT Notification dated 06.01.1994. The appellant has submitted the google map which is about the distance of the impugned land **from Ahmedabad and not from the outer limit of Ahmedabad Municipal Corporation**. Therefore, the argument of the appellant that the sale proceeds are exempt fails on merits. Further, section 45 is the charging section and section 48 is the section for computation of capital gain and both provisions are integrated with each other and computation of capital gain in assessment order has been done as per provisions of the Act as the land parcel situated at Village **Chandlodia-Tal. Ahmedabad** is a capital asset as per the definition of section 2(14)(iii) of the Act and hence, the chargeability u/s. 45 would succeed. It is clear that the sales consideration received on sale of*

land at Chandlodia-Tal. Ahmedabad is not exempt as it is a capital asset being within 8 Kmtrs. from the outer limit of AMC as per CBDT notification dated 06.01.1994.

*The map placed on record has been examined and it is seen that the impugned land parcel is at about 9.2 KM from Ahmedabad and if the distance is taken from the outer limit of AMC (AMC Municipal limit as per CBDT notification dated 06.01.1994) then the distance is about 5-6 KMtrs. Therefore, even if CBDT notification dated 06.01.1994 is considered, the land does not fall beyond 8 KM from the outer limit of the AMC so as to be called as Rural Agricultural Land. **The lacunae in the argument of the appellant is that the distance from Ahmedabad and not from the outer limit of Ahmedabad Municipal Corporation is being considered.** This office is agreeing otherwise with the appellant that the Ahmedabad Municipal Corporation Limit and the distance there from to be considered as per CBDT Notification dated 06.01.1994. In other words, the appellant is not getting away from, taxability even if Gujarat Government notification 2006 for Municipal limit is ignored. In view of this it is my considered opinion that the impugned land at Village **Chandlodia-Tal. Ahmedabad** is a capital asset as per provisions of section 2(14)(iii) r.w.s 45 and the sales consideration is not exempt. In the circumstances, the ratio laid down by Hon'ble Apex Court in the case of CIT vs. B.C. Srinivasa Setty reported in 128 ITR 294 which is not applicable. Hence, ground No. 4A of appeal is dismissed."*

5. During the course of appellate proceedings before us, nobody has attended from the side of the assessee. The ld. departmental representative has supported the order of lower authorities.

6. We have heard the ld. departmental representative and perused the material on record carefully. Regarding two grounds of appeal of the assessee on the issue that notice u/s 148 of act was without jurisdiction, it is noticed that assessee has neither filed return of income nor made any compliance before the assessing officer therefore the assessment was completed u/s. 144 of the act. Even, the consultant of the assessee Shri Desai attended on 11th Sep, 2012, thereafter, has not made any compliance to a number of notices and show cause notices issued as mentioned above in this order. Regarding first two grounds of appeal of the assessee on the issue that notice issued u/s. 148 was without jurisdiction, we noticed that ld. CIT(A) has adjudicated this issue at para 3.2 of page 5 to 6 of his order. In this regard, we noticed that assessee has filed submission before the ld. CIT(A) reproduced at page 2 to 4 of the order of ld. CIT(A) stating that

notice u/s. 148 issued by the assessing officer was without any jurisdiction and without recording of reason. We have gone through the decision of Id. CIT(A) on this issue and the Id. CIT(A) has held that the question of validity of notice u/s. 148 was not tenable as per settled judicial pronouncement. However, it is noticed that Id. CIT(A) has not adjudicated the issue of validity in the jurisdiction of the assessing officer by a speaking order. It was mentioned in the submission made before the CIT(A) that case of the assessee comes under the territorial jurisdiction of the assessing officer located at Mehsana, however, the notice u/s. 148 and corresponding assessment was carried by the ITO, Ward-6(2), Ahmedabad. The Id. CIT(A) has not adjudicated this issue whether the assessing officer was having jurisdiction over the assessee or there was any assignment of the case of the assessee u/s. 127 of the act to the ITO, Ward 6(2), Ahmedabad. Considering above, we are of the view that order of the Id. CIT(A) as per provision of section 250(6) of the act shall state the points for determination, and the reasons for the decision. The order shall be self-explanatory. Such orders are to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decision.

In the light of the above facts and circumstances, we consider that as per section 250(6) of the IT Act, the order of the Commissioner (Appeal) disposing of the appeal shall state the points for determination, the decision thereon and reason for the decision. Therefore, we restore this issue to the file of Id. CIT(A) to re-adjudicate and pass speaking order with reasons for the decision as laid down u/s. 250(6) of the act.

6.1 Since the validity of issuing of notice u/s. 148 has been restored to the file of Id. CIT(A), therefore, other issues of earning long term capital gain is also restored to the file of Id. CIT(A) for adjudicating afresh.

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

Order pronounced in the open court on 27-06-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 27/06/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलअ अधकरण,
अहमदाबाद