

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**SURAT BENCH, SURAT**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND**

**SHRI O.P. MEENA, ACCOUNTANT MEMBER**

**ITA No.1130/AHD/2016  
Assessment Year: 2008-09**

The Income Tax Officer, Ward-3(3)(3), Surat.	Vs.	Shri Navinchandra Babubhai Nagarsheth, 11/497, Opp.Jain Temple, Kabutarkhana, Vada Chouta, Surat - 395 003.  <b>[PAN: AAPPN 6427 P]</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Sapnesh Sheth - CA
Department by	Shri R.P.Rastogi - Sr.DR
Date of Hearing	17.07.2019
Date of Pronouncement	18.07.2019

**ORDER**

**PER H.S. SIDHU, JM:**

This appeal filed by the Assessee against the impugned order passed by the Id.Commissioner of Income Tax(Appeals)-2, Surat dated 07.11.2016 pertaining to assessment year 2012-13.

**2. Ground raised by the Revenue reads as under:**

- "1. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not upholding the action of the AO in withdrawing the exemption claimed u/s.10(37) of the Act amounting to Rs.1,45,86,598/-.
2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate the fact that the assessee did not use the land for agricultural purpose during the period of 2 years immediately preceding the date of transfer. The assessee failed to submit documentary evidence to substantiate that the land was used for agricultural purpose for F.Y. 2006-07. The assessee had not showed any agriculture income offered for taxation in his return of income in the immediate previous years.

3. *On the facts and circumstances of the case and in law, the Ld.CIT(A) has not appreciated the fact that the SMC, Surat has intimated the fact that the land was acquired by negotiation and not by compulsory acquisition.*
4. *On the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate that fact that Form of 7/12 clearly proved that the land was not used for agricultural purposes during the period of last two years immediately preceding the date of transfer.*
5. *On the facts and circumstances of the case and in law, the Ld.CIT(A) ought to have upheld the order of the AO. It is therefore, prayed that the order of the Ld.CIT(a) Surat may be set aside and that of the AO's may be restored."*

3. At the time of hearing, the Id.Counsel for the assessee stated that the issue is squarely covered in favour of the assessee by the decision of ITAT Surat Bench, Surat in the case of Shri Rameshchandra Babubhai Nagarsheth Vs. ITO in ITA No.1939/Ahd/2015. He requested that appeal filed by the assessee may be allowed keeping in view of the order passed by the ITAT in the case mentioned above.

4. On the contrary, the Id.Departmental Representative relied upon the order passed by the Assessing Officer and did not oppose to the request of the Id.Counsel for the assessee keeping in view of the order of the Tribunal dated 30.08.2018.

5. We have heard both the sides and perused the relevant material available on record, especially the orders passed by the Revenue Authorities along the order dated 30.08.2018 passed by the ITAT Surat Bench, Surat in the case of Shri Rameshchandra Babubhai Nagarsheth Vs. ITO in ITA No.1939/Ahd/2015 which the assessee has

filed before us along with other case laws. The relevant portion of the same in para 7 to 9 of the ITAT order is reproduced as under :

7. We have heard the rival submissions and perused the relevant material on record. We find that the AO has disallowed the claim under section 10(37) of the Act on the ground that the assessee has sold the land voluntarily, and it is not case of compulsory acquisition of land by SMC and there was no agricultural operations carried out in 2 years immediately preceding date of sale of agricultural land. Hence, conditions of section 10(37) of the Act are not satisfied. We find that there is no dispute that land is situated with 8 km of Municipal limit hence, it was acquired by the SMC. The AO noted that after F.Y. 2006-07, there was no cultivation as per 7/12 extract placed at Page No. 11 & 12 of Paper Book shows that the Kharif crop being grown as on 30.01.2007 and (PB-11) and 30.01.2006 (PB-12). However Page No. 58 of Paper Book which is Extract of 7/12 also shows that Kharif crop being grown as on 04.02.2008. Thus, the land sold was an agricultural land, though the cultivation thereon was being done by Ganotias to whom the assessee has given the land on rent. The Hon'ble Gujarat High Court in the case of CIT v. Amaratbhai S. Patel [Tax Appeal No. 355 of 2013] (copy of order placed at Page No. 52 to 56 of Paper Book) held that for the purpose of section 10(37) it is not required that the assessee himself should carry out the agricultural operations on the land. The appellant referred para 8 of said order which states that "In view of the above provisions, as noted, the Revenue contended that the assessee would not be entitled to that exemption since the agricultural land was not cultivated by the assessee himself. We may recall that CIT (Appeals) was himself convinced that such exemption would be available even in case of a land situated in municipal area. But that the other conditions, namely of the cultivation of such land by the assessee would be crucial." Thus, we find that the land in question was being cultivated by the Ganotias on behalf of the assessee, but they have not paid any rent to the assessee hence, the agricultural income was not reflected in income-tax return of the assessee. But, this cannot be reason for disallowance on the ground that land in question was not agricultural land. We further find that these very Ganotias name is reflected in extract of 7/12 and have filed an application before the Hon'ble Gujarat High Court as SCA No.4807 of 2008 to claim part of sale consideration out of agricultural land sold by the assessee. Due to this very reason, the SMC has paid Rs. 1,00,000 directly to Ganotias out of total sale consideration of Rs. 6,04,00,000 as persons who did the agricultural operations. Therefore, there is sufficient evidence to indicate that the land in question was agricultural land even though agricultural operations were being carried out by someone else. But this fact will not change the nature of land being agricultural land and for this very land the assessee has received consideration. Hence, CIT (A) was not correct in holding that there is no evidence of agricultural operations in F.Y. 2006-07 and 2007-08 as the land was in possession of Ganotias. In view of this matter, we are of the considered opinion that the assessee is eligible for exemption under section 10(37).

8. So far the contention of the assessee that land was agricultural land and it was case of compulsory acquisition by SMC, it is noticed that as per letter no. ACT/SR/3161 dtd. 31.08.2010 (PB-9) it has been clearly mentioned by the SMC that nature of payment was "compulsory acquisition" (Land/ Building). It is

further seen from the perusal of letter no. TBT/OUT/ 4089/ 22 dtd. 23.09.2014 reproduced by the CIT (A) at Page No. 20 of appellate order, that land in question was placed under reservation by the Government of Gujarat vide order dated Notification No. GH/V/100 of 2004/DVP/1403/3307/L dtd. 02.09.2014 under the provision of section 20 of Gujarat Town Planning & Urban Development Act 1976 at the disposal of the SMC to acquire the land under section 77 of Bombay Provincial Municipal Corporation Act, 1949 for erection of Sewerage Treatment Plant. Thus, it was a case of compulsory acquisition of land for which the SMC under the instruction of Government of Gujarat for which the SMC has also given a certificate dated 12.08.2010 [letter no. ACT/SR/NO2861] wherein nature of payment to the assessee is described against compulsory acquisition of land at Dindoli. The Id. CIT (A) has not appreciated this letter submitted by the appellant before him in proper perspective. This view of us is also supported decision of CIT (A)-II, Surat, in his appellate order dtd. 19.11.2015 in the case of Smt. Urmi Nilesh Nagarsheth, CAS/2/248/2015-16 relative of the assessee and co-owner of the part of same land area situated at Dindoli, wherein the Id. CIT (A) has accepted the contention of the assessee that it is a case of compulsory acquisition and where agricultural operations were being carried on and allowed the appeal of that assessee in similar circumstances. (copy placed Page No. 36-43 of Paper Book). Similarly, the appellant relied in the case of Shri Navinchandra Babubhai Nagarsheth, another co-owner of same land wherein the CIT (A)-3, Surat vide his order dtd. 19.10.2016 has allowed the appeal by following decision of CIT (A) -II Surat in the case of Urmi Nagarsheth as well as decision of ITAT- D- Bench, Ahmedabad in the case of ITO v. Dipak Kalidas Pauwala in I.T.A.No. 2685/Ahd/2011 dtd. 14.08.2015 wherein the Tribunal has held the that said land in Dindoli ( at Block no. 305) was acquired by SMC for sewerage Treatment Plant are agricultural land which has been compulsory acquired by SMC under the provision of section 107 of GTP & UD Act, 1976 as the land needed for the purpose of Town Planning Scheme or Development Plan shall be deemed to be meaning for public purpose within the meaning of Land Acquisition Act , 1894 (I of 1894) and eligible for exemption under section 10(37) of the Act. This decision of Tribunal was also confirmed by the Hon`ble Jurisdictional High Court of Gujarat in Tax Appeal No. 249 of 2016 dated 28.03.2016. Therefore, respectfully following the decision of Co-ordinate Bench in the case of ITO v. Dipak Kalidas [I.T.A.No. 2685/Ahd/2011 dtd. 14.08.2015 (PB-44) which has been confirmed by the Hon`ble Jurisdictional High Court of Gujarat in Tax Appeal No. 249/ 2016 dtd. 28.03.2016, we hold that the land in question was compulsory acquisition by the SMC under the direction of Government of Gujarat. Hence, conditions stipulated in section 10(37) is satisfied. In view of above facts and circumstances, we hold that the land was being cultivated for agricultural purpose before 2 years of immediately preceding of date of sales by the tenants of land and land was compulsory acquired by SMC, hence, conditions as laid down in section 10(37) are duly satisfied. Accordingly, the assessee is eligible for exemption under section 10(37) of the Act. Consequently, the addition of Rs. 73,15,714 made by the AO on account of long-term capital gain is not taxable and is therefore, deleted. In view of this, ground of appeal of the assessee are allowed.

9. In the result, the appeal of the assessee stands allowed.

6. After hearing both the parties and going through the order passed by the Revenue Authority along with the order passed by the ITAT Surat Bench dated 30.08.2018 reproduced above, we are of the view that issues in dispute has already been adjudicated and decided in favour of the assessee by the ITAT Surat Bench reproduced above. Respectfully following the same the appeal of the assessee is allowed by holding that the assessee is eligible for exemption u/s.10(37) of the Income Tax Act, consequently the addition in dispute on account of long term capital gain is deleted, accordingly appeal of the Revenue is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced on 18-07-2019.

**Sd/-**  
**(O.P. MEENA)**  
**ACCOUNTANT MEMBER**

Dated: 18/07/2019 / "GANGADHARA RAO.S"

**Copy forwarded to:**

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR

**Sd/-**  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

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Asst. Registrar,  
ITAT, Surat