

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.3350/AHD/2014
Assessment Year: 2008-09**

Jagdishchandra Babubhai Nagarsheth, 11/497, Nagarsheth House, Nagarsheth Street, Vadachauta, Chowk Bazar, Surat - 395 003.	Vs.	The Income Tax Officer, Ward-9(2), Surat.
[PAN: AANPN 0554 H]		
(Appellant)		(Respondent)

Assessee by	Shri Hiren R. Vepari - CA
Department by	Shri R.P.Rastogi - Sr.DR
Date of Hearing	18.07.2019
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)-V, Surat dated 09.10.2014 pertaining to assessment year 2008-09.

2. Ground raised by the Assessee reads as under:

“(1) Validity of the order:

- (1) *The order passed by the learned Commissioner of Income-tax (Appeals) dated 09-10-2014 is not valid as it has not taken into consideration the facts, the evidences and the judgements brought before him.*
- (2) *On the facts and circumstances of the case, the order is required to be cancelled.*

(II) Reopening of assessment:

On the facts and circumstances of the case and as per law, the learned Commissioner of Income-tax (Appeals) ought to have held that the reopening was not justified.

(III) Taxability of capital gains of agricultural land acquired:

On the facts and circumstances of the case and as per law, the learned Commissioner of Income-tax (Appeals) ought to have held that the appellant was entitled to exemption u/s.10(37) of the Income-tax Act, 1961 in respect of compensation for agricultural land acquired by Surat Municipal Corporation as the conditions laid down u/s.10(37) were satisfied.

(IV) Miscellaneous:

(1) *The learned Commissioner of Income-tax (Appeals) ought to have deleted charge of interest u/s.234A, 234B, 234C of the Act.*

(2) *The appellant craves leave to add, alter or vary any of the grounds of appeal."*

3. At the time of hearing, the Id.Counsel for the assessee stated that the issue in dispute has already been adjudicated and decided in favour of the assessee by the ITAT Surat Bench, Surat in the assessee's own case it ITA No.1939/Ahd/2015 for A.Y. 2008-09. He, further stated that he has also filed a copy of the order dated 30.08.2018 passed by the ITAT Surat Bench, Surat. He requested that the appeal filed by the assessee may be allowed keeping in view of the order passed by the ITAT in assessee's own case.

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 for the assessment year 2008-09 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 within 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 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 orders 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 the issue in dispute has already been adjudicated and decided in favour of the assessee by the ITAT Surat Bench in the case of ITA No.1939/Ahd/2015 for A.Y. 2008-09 reproduced above and the addition in dispute is deleted by allowing the appeal filed by the assessee.

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

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

/ / **TRUE COPY** / /

Asst. Registrar,
ITAT, Surat