

आयकर अपील अाधकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
(CONDUCTED THROUGH E-COURT AT AHMEDABAD)

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

आयकर अपील सं./ITA No.30/RJT/2015
जधाण वष/Asstt. Year: 2009-2010

Madhubhai G. Lunagaria, 4, Ranchhodnagar Society, Street No.4, Opp. Akshar Maidan, Rajkot.	Vs.	Income Tax Officer, Ward-2(3), Rajkot.
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(Applicant)	(Respondent)
Assessee by :	Shri D.M Rindani, A.R
Revenue by :	Ms Nameeta Khurana, Sr.DR

सुनवाई क ताराख/Date of Hearing : 18/06/2019
घोषणा क ताराख /Date of Pronouncement: 01/08/2019

आदेश/O R D E R

PER Ms MADHUMITA ROY, JUDICIAL MEMBER:

The instant appeal preferred by the assessee is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-III, Rajkot (in short "Ld.CIT (A)"), under section 250 of the Income Tax Act 1961 (hereinafter referred to as the Act) dated 14.11.2014 arising out of the order dated 28.03.2013 passed by the I.T.O, Ward-2(3) Rajkot under section 143(3) r.w.s 147 of the Income Tax Act, 1961 for the Assessment Year 2009-10.

2. The assessee an agriculturist, inherited agriculture land admeasuring 1 acre in Rajkot Revenue survey No.105. The assessee is having only source of income from agricultural operation, neither having Permanent Account Number nor filing any return of income. The assessee sold his immovable property for a consideration of Rs.4,75,000/- dated 24.09.2009 wherein the Stamp Duty worth Rs.3,15,500/- was paid. This particular fact when came to the knowledge of the authorities, taking into consideration the stamp value paid by the assessee, the sale consideration of the property in question was determined at Rs.64,75,000/- and on the prima facie belief that the assessee has received an excess sale consideration to the extent of the balance amount of Rs.59,80,000/- (Rs.64,75,000 ó Rs.4,95,000), the case was re-opened u/s.147 of the Act by issuance of notice u/s.148 of the Act dated 06.02.2012. Since nothing was forthcoming and the Assessment was required to be finalized by 31.03.2013 within the stipulated time a showcause dated 22.03.2013 was issued and served upon the assessee proposing addition of Rs.64,75,000/- on account of suppression of consideration of land. The operative portion of the show casue issued is as follows:

“... You have executed the sale deed bearing no.15426 dtd. 24/09/2008 for selling land situated at Suvay no.105 paiki 1 admeasuring Acre 1.00 Guntha claimed to be received Rs.4,95,000/- on the sale of said land. As per the sale deed executed, it is noticed that you have paid stamp Duty worth Rs.3,17,500/- on sale consideration of Rs.4,95,000/- Accordingly, as per the value adopted for Stamp Duty purpose, the sale consideration comes to Rs.64,75,000/-. Thus, you were in receipt of excess of sale consideration to the extent of Rs.59,80,000/-. Since, you have neither filed your return of income disclosing therein the gain or profit on sale of said land, the undisclosed income comes to Rs.64,75,000/-

The Assessment Proceedings in your case have been going on since long. However, despites several reminders you have kept of raising various objections. In view of Hon'ble Court decision in the case of GKN Drive Shafts (India) Ltd. v/s. ITO(259 ITR 19). The objection raised were duly dealt with vide Premiminary Order dt.06-0302013. However, no return of income have been furnished by you. Again a final Notice dtd.11/03/2013 were issue fixing the hearing on 18/03/2013. However,

you have been remain unattended seeking in the hearing was given to appear before the undersign on 21/03/2013...

Since you have not filed your return of income not submitting any details which are barring upon the issue. In the circumstances, as the matter by limitation you are requested to show cause as to why not your assessment should be finalized treating the entire amount sale consideration received of Rs.64,75,000/- as suppressed sale consideration received on account of sale of the land.

Your explanation in the matter should reach this office on or before 25/03/2013. Otherwise it will be presumed that you have nothing to say in the matter and the assessment will be finalized on the basis of the material available on record..."

2.1 In reply to the show cause notice the assessee submitted as follows:

"...1. The alleged sale value Rs.4,95,000/- or value as per Jantri Rate Rs.64,75,000/- has not been sale value they are mer

- 1. e notional value no such amount has been received by the assessee.*
- 2. There was no actual sale it was sold according to Sec.8 of Prevention of Fragmentation and Consolidation Act 1947.*
- 3. The land in question is Agriculture land and as per I.T Act no any Long Term Capital Gain tax required to be paid..."*

2.2 However, such plea of the assessee was not found acceptable by the Assessing Officer. The Assessing Officer was of the opinion that since the assessee has relinquished all his rights in favour of the purchasers of the land namely Shri Bharat N. Talaviya and Shri Kanabhai K. Kambaliya by way of registered sale deed upon payment of Stamp Duty of Rs.3,17,500/-, the assessee actually received such amount and Long Term Capital Gain in terms of section 50C of the Act, have been assessed at Rs.64,75,000/- . The Assessing Officer therefore added the same to the total income of the assessee which was, in turn, confirmed by the First Apellate Authorities. Hence, the instant appeal before us.

3. It is the case of the assessee that the said land was covered under the provision of “ **Fragmentation and Consolidation Act 1947** ” as prevailing at that relevant point of time which prevented the assessee from making the sale of agricultural land to anyone other than adjacent owner of agricultural land; bar was also imposed for conversion from agricultural into non-agricultural land. The assessee therefore transferred the property to the adjacent owner in order to get it converted into non-agricultural land and to get the same back from the said adjacent owner upon such conversion being made. However, this understanding between the vendor i.e the assessee and the purchaser being the adjacent land owners was not in writing. Admittedly, the sale deed was executed on 24.09.2008 conversion whereof was done ultimately on 19.01.2011.

3.1 The assessee was served upon with the notice u/s.148 of the Act on 06.02.2012. Since the plot was not been handed over to the assessee in terms of the oral understanding as discussed above by the adjacent land owners a civil suit was filed by the assessee before the Principal Senior Civil Judge, Rajkot being a special case No.21/12 whereupon on 19.05.2012 a decree in favour of the assessee was passed. Ultimately, the assessee got back the land in question; documents in support of the same are also available at page 62 to 84 of the paper book before us. Thus the assessee received back the converted non agricultural land in the same proportion as to holding of his agriculture land by virtue of the deed of non-substitution of the plot. Since there was no transfer, virtually, took place the question of capital gain earned by the assessee does not and cannot arise as the case made out by the assessee before the authorities below particularly before the First Appellate Authority. The relevant documents in support of the contention of the assessee were also duly submitted

before the First Appellate authority which was not accepted and hence confirmation of addition was made.

3.2 The assessee before us has challenged the re-opening of the Assessment. According to him there was no escaping of assessment, neither any method was adopted by the assessee to evade tax and thus the formation of the opinion by the concerned authority for exercising Jurisdiction u/s.147 of the Act simultaneously issuing notice u/s.148 of the Act is not permissible.

3.3 There should not have been any reason to believe that any income chargeable to tax has escaped assessment for the year under consideration in case of the assessee particularly when no virtual transfer took place in the property; the right title interest so transferred initially for the reason of conversion as shown by the assessee was subsequently received back by way of deed of non-substitution of plot.

4. The learned counsel appearing for the assessee also submitted the same before us while arguing against re-opening of the Assessment in respect of his client. However, we are not inclined to accept such contentions made by him, in view of this particular fact that since the assessee has not filed any return of income it was not possible for the Revenue authorities to ascertain the veracity of the fact of transferring the plot of land at Rs.4,95,000/- or Rs.64,75,000/- as per the Jantri rate unless the matter is re-opened. We, therefore uphold such re-opening of Assessment.

4.1 So far as merit of matter is concerned we would like to point out certain defects on the part of the Revenue while adjudicating the matter on merit against the assessee in making addition of Rs.64,75,000/- u/s.50C of the Act.

4.2 It appears from the records that while coming to the conclusion of escaping assessment by the assessee and making addition of Rs.64,75,000/- being the jantri rate of the property in question the Revenue has failed to rely upon any cogent documents in support of their contention except the Stamp Duty of Rs.3,17,500/- paid by the assessee on the sale deed executed by the assessee and adjacent plot owner. It is a fact that the assessee has paid an amount of Rs.3,17,500/- in order to get the documents registered, perhaps in order to avoid further complication but it cannot be said to be a fact that the assessee actually had received Jantri value of the property of Rs.64,75,000/- as contended by the Revenue in the absence of any cogent documents in their support.

4.3 According to us it is nothing but on the basis of surmises and conjuncture which does not have any legal sanctity and thus addition as made by the Assessing Officer subsequently confirmed by the Ld.CIT(A) seems having no basis in the absence of any cogent evidence in support of the same.

5. Further that it is also a fact that when the assessee has not got back his property in terms of the agreement entered into by and between the assessee and the adjacent plot owner a Civil Suit being No.21/12 was filed before the Senior Civil Judge, Rajkot, which was finalized by and under a judgment and decree dated 19.05.2012 in favour of the assessee and by virtue of that particular judgment and decree the assessee ultimately received back his property in question.

5.1 Thus, virtually there was no transfer which took place. We must note that the reason for transferring such plot of land to the adjacent plot owner due to

the bar imposed by the “**Prevention of Fragmentatin and Consolidation Act, 1947** ” whereby the assessee was prevented from transferring said agricultural land to the third party except adjacent plot owner or making conversion of the said land into non agricultural land seems to be genuine and practical. The assessee had no other alternative but to take recourse which is not the case to be adjudicated by the Income tax Act 1961, particularly when there is no such documents available with the Revenue that the assessee practically and virtually received the said amount of Rs.64,75,000/- thereby escaped Assessment. We further cannot keep our eyes shut to the fact as pointed out by the Ld.Counsel for the assessee before us that all the cogent documents in support of assessee's case as discussed hereinabove though were placed before the First Appellate Authority were not accepted and addition was confirmed. It appears that in order to confirm the addition made by the Assessing Officer by hook or crook the Ld.CIT (A) has adopted such way which is not appreciated by us. However, in the absence of any valid document in the hands of the Revenue in support the case of receiving amount of Rs.64,75,000/- by the assessee the case of escaping assessment as made out by the Revenue cannot be agreed upon by us. Hence, the addition is deleted and appeal of the assessee is allowed.

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

Order pronounced in the Court on 01/08/2019 at Ahmedabad.

-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER

-Sd-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER

(True Copy)
Ahmedabad; Dated 01/08/2019
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