

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत

**IN THE INCOME TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

SN	I.T.A No.	A Y:	Appellant	V.	Respondent
1	1566/Ahd/2016	2009-10	Shri Satishbhai M Patel, Patel Falia, Dindoli Gam, Udhna, Surat [PAN: ABTPP 8620 R]	V.	DCIT, Circle-2(3), Surat
2	1562/Ahd/2016	2009-10	Shri Ishwarbhai M Patel, Anand Faliya, At & Post Dindoli, Tal-Choryasi, Surat [PAN: AVZPP 3614 P]		ITO, Ward-2(3)(2), Surat
3	1565/Ahd/2016	2010-11	Shri Pravinkumar M Patel, At & Post: Kudsad Taluka, Olpad, Surat [PAN: AZRPP 1151 F]	V.	DCIT, Circle-2(2), Surat
4	1567/Ahd/2016	2009-10	Shri Ambubhai C. Patel, 16, Tanki Falia, Dindoli, Udhna, Surat [PAN: AVZPP 9787 H]	V.	DCIT, Circle-2(3), Surat
5	1568/Ahd/2016	2008-09	Shri Sameerkumar J. Patel, Door-71, Patel Street, At & Post Dindoli, Choryasi, Dist. Surat [PAN: AVUPP 3574 H]	V.	DCIT, Circle-2(3), Surat
6	1569/Ahd/2016	2009-10	Shri Babubhai J. Patel, 120, Tekro Faliya, Dindoli, Surat [PAN: AUQPP 4342 Q]	V.	DCIT, Circle-2(3), Surat
7	1570/Ahd/2016	2009-10	Shri Navnitbhai M Patel, Patel Falia, Dindoli Gam, Udhna, Surat [PAN: AOKPP 4381 F]	V.	DCIT, Circle-2(3), Surat
8	1571/Ahd/2016	2009-10	Mohanlal M. Patel, Patel Falia, Dindoli Gam, Udhna, Surat [PAN: AOKPP 4382 G]	V.	DCIT, Circle-2(3), Surat
9	1572/Ahd/2016	2009-10	Shri Pradipkumar A Patel, G-20, Ramayan Park, Navagam, Dindoli, Udhna, Surat [PAN: AKFPP 0635 B]	V.	DCIT, Circle-2(3), Surat
10	623/Ahd/2017	2008-09	Shri Hashmukhbhai K. Patel, H No.227, S No.214, Patel Falia, Navagam, Dindoli, Via Udhna, Surat [PAN: ARGPP 2583 G]	V.	DCIT, Circle-2(3), Surat
11	624/Ahd/2017	2008-09	Shri Natvarbhai K. Patel, 17, Laxmi Nagar, S No.284, Nr. Ramayan Park, Navagam, Dindoli, Surat [PAN: ARGPP 2582 H]	V.	DCIT, Circle-2(3), Surat

12	625/Ahd/2017	2008-09	Shri Gamanbhai K Patel, 44, Laxmi Nagar, S No.284, Nr. Ramayan Park, Navagam, Dindoli, Surat [PAN: AOGPP 8396 C]	V.	DCIT, Circle-2(3), Surat
13	626/Ahd/2017	2008-09	Shri Champakbhai K Patel, 32, Patel Falia, Navagam, Dindoli, Via Udhna, Surat [PAN: AOMPP 3875 N]	V.	DCIT, Circle-2(3), Surat
14	453/Ahd/2017	2010-11	Shri Balwantray M Patel, Patel Faliya, Dindoli Gam, Udhna, Surat [PAN: AVUPP 9885 B]	V.	ITO, Ward-2(3)(1), Surat
15	518/Ahd/2017	2010-11	Jayantibhai Ambaram Patel (HUF), 67, Patel Faliya, Dindoli Gam, Udhna, Surat [PAN: AAFHJ 0354 R]	V.	DCIT, Circle-2(3), Surat
16	1563/Ahd/2016	2010-11	Shri Dineshchandra C. Pate, 248/4, Patel Falia, Dindoli Gam, Udhna, Surat [PAN: ACCPP 0163 H]	V.	ITO, Ward-2(3)(1), Surat
17	1690/Ahd/2016	2009-10	Vasantbhai Mohanbhai Bhandari, 106, Bhandari Faliya, Dindoli, Udhna, Surat [PAN: AQLPB 5283 F]		ITO, Ward-2(3)(4), Surat
18	1691/Ahd/2016	2009-10	Premilaben M. Bhandari, 106, Bhandari Faliya, Dindoli, Udhna, Surat [PAN: AQLPB 5335 N]	V.	DCIT, Range-2(3), Surat
19	1692/Ahd/2016	2009-10	Naresh M Bhandari, 106, Bhandari Faliya, Dindoli, Udhna, Surat [PAN: AIXPB 9702 D]	V.	DCIT, Range-2(3), Surat
20	476/Ahd/2017	2009-10	Chanchalben Mohanbhai Bhandari, 106, Bhandari Faliya, Dindoli Gam, Tal- Choryasi, Via Udhna, Dist. Surat [PAN: AQLPB 5284 C]	V.	ITO, Ward-2(3)(5), Surat
21	1445/Ahd/2016	2011-12	Shri Ishwarbhai Zinabhai Patel, Patel Falia, Navagam, Dindoli Road, Surat [PAN: APQPP 9457 F]	V.	ITO, Ward-2(3)(2), Surat
22	552/Ahd/2017	2010-11	Shri Gopalbhai H Patel, 55, Patel Faliya, Dindoli, Surat [PAN: AWAPP 1370 L]	V.	ITO, Ward-2(3)(5), Surat

23	448/Ahd/2017	2009-10	Amratlal Maganlal Desai, Brahman Falia, Dindoli, Choryasi, Surat [PAN: ANB PD 0258 K]	V.	ITO, Ward-2(3)(1), Surat
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निर्धारितकीओरसे /Assessee by	[Smt. Urvashi Shodhan, Advocate], [Purvin Shah, AR], [K. K. Shah, CA], [Shri Sapnesh Sheth, CA], [None]
राजस्वकीओरसे /Revenue by	Smt. Anupama Singla, Sr.(DR) & Sreenivas T. Bidari, CIT(DR)

सुनवाईकीतारीख/ Date of hearing:	09.12.2009
उद्घोषणाकीतारीख/ Pronouncement on	13.12.2019

आदेश / O R D E R

PER BENCH:

1. The above captioned appeals by the Assessee are directed against the common order of learned Commissioner of Income tax (Appeals)-1, Surat(in short “the CIT (A)”) dated 28.03.2016 pertaining to various Assessment Years as mentioned in above table of cause title.

2. These appeals were heard together as common issue is involved and common appeal order is passed by the CIT (A). We are taking up I.T.A.No.1566/AHD/20116 in the case of Shri Satish M Patel for assessment year 2009-10 as lead case whose finding would mutatis mutandis apply to other cases listed above.

3. The assessee has taken as many as 7 grounds of appeal stating that Ld. CIT (A) has erred in holding the appellant ineligible for exemption under section 10(37) on the basis of failure to qualify definition of “Compulsory acquisition” and ought to have held acquisition of impugned agricultural land by Surat Municipal Corporation (SMC) eligible for exemption under section 10(37) of the Act .The sum

in substance these grounds relates to not allowing long-term capital gain as exemption under section 10(37) of the Act arising in respect of land acquired under compulsory acquisition by Surat Municipal Corporation (SMC). In view of these facts and circumstances, these grounds of appeal are being considered together as common ground for the sake of convenience and brevity.

4. Brief facts are that the assessee along with other co-owners has sold immovable property on 29.09.2008 for Rs.3,80,40,000 in which assessee`s share was 1/3rd which worked out to Rs. 1,26,80,000.. Therefore, the AO has considered the long-term capital gain accrued in A.Y. 2009-10. The filed original return of income on 31.03.2012. A notice under section 148 of the Act was issued. The assessee replied the original return of income filed may be treated as filed in response to notice under section 148 of the Act of the Act. The assessee has claimed that land was compulsory acquisition by SMC hence, thereon is exempt under section 10(37) of the Act. However, the AO opined that agricultural land was actually purchased by the SMC and not compulsory acquired, because land was sold by executing sale deed between SMC and owners of the land. The AO therefore, held that by choosing route through execution of sale deed the assessee has forgone the choice / option for going through compulsory acquisition route which is eligible for exemption under section 10(37) of the Act. The AO also observed

that land was acquired by SMC at Dindoli for sewage treatment plant and was not under compulsory acquisition of land. The AO further noted that land was acquired u/s. 77 of BMC Act, 1949 hence; the said land was acquired by negotiation and purchased by sale deed and not by compulsory acquisition. Accordingly, the claim of the assessee that land is acquired by compulsory acquisition was rejected hence, capital gains was taxed. Accordingly, the claim of the assessee was rejected and long-term capital gain was brought to tax.

5. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). The CIT (A) observed that the exemption under section 10(37) is available where the assessee has been carrying on agricultural operation during the period of two years immediately preceding from the date of transfer and the land was acquired under compulsory acquisition. The assessee has filed a letter no. TBT/OUT/ 4089 /22 dated. 23.09.2014 and claimed that agricultural block situated at Dindoli Surat was kept under reservation by Government of Gujarat vide notification no. GH/100 of 2004 /DVP/1403/3307 dated. 02.09.2014 and has been acquired under provision of Section 20 of Gujarat Town Planning & Urban Development Act, 1976 and section 77 of Bombay Provincial Municipal Corporation Act, 1949(BPMC) for the public purpose by which it was conveyed that it was a case of compulsory acquisition. The CIT (A) observed that the AO has not debited the fact that the subject land

was put under Reservation for Sewage Treatment Plant to be erected by the SMC and proceedings for acquisition of land were initiated. However, in the meantime the land owners have entered into negotiation with SMC and sellers agreed to sell the subject land at negotiated price and conveyed their consent. Therefore, CIT (A) viewed that reservation per se cannot be termed as acquisition of land leave aside compulsory acquisition instead of purely sale and purchase transaction between SMC and the assessee / group of the assessee. The CIT (A) has also distinguished the decision of tribunal in the case of ITO v. Shri Dipak Kalidas Pauwala in the name 2685/Ahd/2011 relied by the assessee on the ground that there are contradictory certificate from Day Commissioner (P&D) SMC Resolution and negotiation. However, CIT (A) of the view as per hat section 77 of Bombay Provincial Municipal Corporation Act, 1949, the SMC is not competent to make compulsory acquisition and it only competent to make recommendation to government. Therefore, the assessee has neither done agricultural operations before two years nor the case if of compulsory acquisition hence, the assessee is held to be not entitled for exemption under section 10(37) of the Act.

6. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the agricultural land was compulsory acquired by the SMC under section 77

of BPMC Act and who had full power and authority given by the Central Government for acquisition of immovable property and was declared trustee & custodian of the said acquired property. The appellant has referred the letter no.TBT/OUT/4089/22 dated. 23.09.2014 by which the land was placed under reservation under Government of Gujarat vide Notification No. GH/V/100 of 2004/DVP/1403/3307/L dated. 02.09.2014 as reproduced by the CIT (A) in his appellate order. The appellant further relied on the letter No. ACT/SR/NO.286 dated 12.08.2010 from SMC wherein it has been clearly mentioned the TDS certificate dated 11.04.2008 bearing certificate No. 7195 wherein it is stated under "NATURE OF PAYMENT "as Contractor Bill may be read as "Compulsory acquisition" (Land/Building). Any inconvenience on account of same may kindly be excused. Therefore, it was contended that the agricultural land in question was acquired under compulsory acquisition hence; no long-term capital gain is chargeable on the same. The CIT (A) has wrongly observed that the sale of agricultural land to SMC under compulsory acquisition. In support of this contentions, the appellant has placed reliance in the case of CIT v. Amrutbhai S. Patel Tax Appeal No. 355 of 2013 dated 15.04.2013 of Hon'ble Gujarat High Court (copy of order placed at Page No. 35 to 40 of Paper Book) wherein it was 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 the 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, it was contended that exemption under section 10(37) would be available even if the land is situated in municipal area and being not cultivated by the assessee himself but by the tenants. The appellant further supported his view that by placing reliance on the order dated 19.11.2015 of CIT (A)-II, Surat, in the case of Shri Ramesh B Nagarsheth in I.T.A.No. 1939/Ahd/2015 date 30.08.2018, wherein the tribunal has held the sale of land as compulsory acquisition and allowed the exemption claimed under section 10(37) of the Act. in respect of land situated at Dindoli Similarly, the learned counsel for the assessee has relied in the case ITO v. Shri Dipak Kalidas Pauwaala in the name 2685/Ahd/2011 wherein the decision of it was held that the 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] .

7. The learned counsel for the assessee further relied in the case of Balakrishnan v. Union of India &Others [Civil Appeal No. 1607/2010 dated 11.01.2017 wherein it was held as under:

“It is in the aforesaid factual backdrop, this Court is to determine as to whether it can be treated that the land of the appellant was compulsorily acquired. From the facts mentioned above, it becomes apparent that the initiated by invoking the provisions of LA Act by the State Government. For this purpose, not only Notification under Section 4 was issued, it was followed by declaration under Section 6 and even Award under Section 9 of the LA Act. With the award the acquisition under the LA Act was completed. Only thing that remains thereafter was to pay the compensation as fixed under the award and take possession of the land in question from the appellant. No doubt, in case, the compensation as fixed by the Land Acquisition Collector was not acceptable to the appellant, the LA Act provides for making a reference under Section 18 of the Act to the District Judge for determining the compensation and to decide as to whether the compensation fixed by the Land Acquisition Collector was proper or not. However, the matter thereafter is only for quantum of compensation which has nothing to do with the acquisition. It is clear from the above that insofar as acquisition is concerned, the appellant had succumbed to the action taken by the Government in this behalf. His only objection was to the market value of the land that was fixed as above. To reiterate his grievance, the appellant, could have either taken the aforesaid adjudicatory route of seeking reference under Section 18 of the LA Act leaving it to the Court to determine the market value. Instead, the appellant negotiated with Techno Park and arrived at amicable settlement by agreeing to receive the compensation in the sum of Rs.38,42,489/-. For this I purpose, after entering into the agreement, the appellant agreed to execute the sale deed as well which was a necessary consequence and a step which the appellant had to take.

In our view, insofar as acquisition of the land is concerned, the same was compulsorily acquired as the entire procedure prescribed under the LA Act was followed. The settlement took place only qua the amount of the compensation which was to be received by the appellant for the land which had been acquired. It goes without saying that had steps not been taken by the Government under Sections 4 & 6 followed by award under Section 9 of the LA Act, the appellant would not have agreed to divest the land belonging to him to Techno Park. He was compelled to do so because of the compulsory acquisition and to avoid litigation entered into negotiations and settled the final compensation. Merely because the compensation amount is agreed upon would not change the character of acquisition, from that of compulsory acquisition to the voluntary sale. It may be mentioned that this is now the procedure which is laid down ever, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as per which the Collector can pass rehabilitation and resettlement award with the consent of the parties/land owners. Nonetheless, the character of acquisition remains compulsory."

8. *Per contra*, the ld. Sr. D.R. relied on the order of the lower authorities and contended that execution of sale deed with SMC. Does not amount to compulsory acquisition. Further, the sale was voluntary and not under compulsory acquisition as the SMC does not have power to acquire land under compulsory acquisition unless approval of state government is taken. Hence, CIT (A) was right in confirming the action of the AO in disallowing the exemption.

9. 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 a case of compulsory acquisition of land by SMC. Hence, conditions of section 10(37) of the Act are not satisfied. The Hon'ble Gujarat High Court in the case of CIT v. Amaratbhai S. Patel

[Tax Appeal No. 355 of 2013] (copy of order filed and placed on record) 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.”

10. 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 dated. 31.08.2010 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 dated. 23.09.2014 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 dated. 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 ITAT- D- Bench, Ahmedabad in the case of ITO v. Dipak Kalidas Pauwala in I.T.A.No.2685/Ahd/2011 dated. 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 Coordinate Bench in the case of ITO v. Dipak Kalidas [I.T.A.No. 2685/Ahd/2011 dated. 14.08.2015 (PB-26-34) which has been confirmed by the Hon`ble Jurisdictional High Court of Gujarat in Tax Appeal No. 249/ 2016 dated. 28.03.2016(PB-19-25), 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, land was compulsory acquired by SMC, hence, conditions as laid down in section 10(37) are duly satisfied. Reliance is placed on the judgements of Hon'ble Gujarat High Court in the case of CIT v. Amrutbhai S. Patel Tax Appeal No. 355 of 2013 dated 15.04.2013 of Hon'ble Gujarat High Court (copy of order placed at Page No. 35 to 40 of Paper Book). Similarly, Hon`ble Supreme Court in the case of Balakrishnan v. Union of India &Others[Civil Appeal No. 1607/2010 dated 11.01.2017 held that:

"It is in the aforesaid factual backdrop, this Court is to determine as to whether it can be treated that the land of the appellant was compulsorily acquired. From the facts mentioned above, it becomes apparent that the initiated by invoking the provisions of LA Act by the State Government. For this purpose, not only Notification under Section 4 was issued, it was followed by declaration under Section 6 and even Award under Section 9 of the LA Act. With the award the acquisition under the LA Act was completed. Only thing that remains thereafter was to pay the compensation as fixed under the award and take possession of the land in question from the appellant. No doubt, in case, the compensation as fixed by the Land Acquisition Collector was not acceptable to the appellant, the LA Act provides for making a reference under Section 18 of the Act to the District Judge for determining the compensation and to decide as to whether the compensation fixed by the Land Acquisition Collector was proper or not. However, the matter thereafter is only for quantum of compensation which has nothing to do with the acquisition. It is clear from the above that insofar as acquisition is concerned, the appellant had succumbed to the action taken by the Government in this behalf. His only objection was to the market value of the land that was fixed as above. To reiterate his grievance, the appellant, could have either taken the aforesaid adjudicatory route of seeking reference under Section 18 of the LA Act leaving it to the Court to determine the market value. Instead, the appellant negotiated with Techno Park and arrived at amicable settlement by agreeing to receive the compensation in the sum of Rs.38,42,489/-. For this I purpose, after entering into the agreement, the

appellant agreed to execute the sale deed as well which was a necessary consequence and a step which the appellant had to take.

In our view, insofar as acquisition of the land is concerned, the same was compulsorily acquired as the entire procedure prescribed under the LA Act was followed. The settlement took place only qua the amount of the compensation which was to be received by the appellant for the land which had been acquired. It goes without saying that had steps not been taken by the Government under Sections 4 & 6 followed by award under Section 9 of the LA Act, the appellant would not have agreed to divest the land belonging to him to Techno Park. He was compelled to do so because of the compulsory acquisition and to avoid litigation entered into negotiations and settled the final compensation. Merely because the compensation amount is agreed upon would not change the character of acquisition, from that of compulsory acquisition to the voluntary sale. It may be mentioned that this is now the procedure which is laid down ever, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as per which the Collector can pass rehabilitation and resettlement award with the consent of the parties/land owners. Nonetheless, the character of acquisition remains compulsory."

11. Accordingly, the assessee is eligible for exemption under section 10(37) of the Act. Consequently, the AO is directed to allow exemption under section 10(37) of the Act. In view of this, ground of appeal of the assessee is allowed.

Balance 22 appeals in ITA No's and A.Y. mentioned in cause title from Sl. No. 2 to 23:-

12. Both parties have agreed that facts are identical as given in the case of Shri Satish M Patel [ITA. No.1566/AHD/2016 A.Y. 2009-10]. Therefore, our finding as given above would apply *mutatis mutandis* in all remaining 22 cases listed at Sl. No. 2 to 23 in the cause title, hence appeal in these cases are allowed.

13. Further, the other grounds of appeal in some cases relating cost of indexation, interest, reopening of assessment and all other grounds, interest of penalty under section 271 (1) (C) etc. are

consequently in nature and become infructuous. In the light of decision, the appeal of the all above-mentioned assessee having been allowed. Therefore, no separate adjudication is required. In the light of these above facts, the appeals of all the assessee are allowed.

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

15. The order pronounced in the open Court on 13-12-2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

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

सुरत/ Surat, दिनांक Dated:13th December, 2019/S. Samanta, PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

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By order
Assistant Registrar, Surat