

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1055/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Balasaheb Vitthalrao Kadam,
18, Shukhwani Fortune,
Morwadi Road, Pimpri,
Pune - 411018

PAN : ABAPK8131B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 8(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri B.C. Malakar
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 22-01-2020

घोषणा की तारीख / Date of Pronouncement : 03-03-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 19-01-2017 passed by the Commissioner of Income Tax (Appeals)-9, Pune [‘CIT(A)’] for assessment year 2012-13.

2. The only issue to be decided is as to whether the CIT(A) justified in confirming the addition made by the AO on account of Short Term Capital Gain against the claim of assessee being not liable to tax on account of agricultural land in the facts and circumstances of the case.

3. The brief facts of the case as emanating from the record are that the assessee is an individual and engaged in the business of Manpower Supplier Services. The assessee conducts his business under the name and style of M/s. Sai Associates. On examination of individual transaction statement details, the AO observed that the assessee along with other four persons/entities had sold immovable property on 16-12-2011 for a consideration of Rs.5,90,00,000/-. The assessee furnished the copy of sale deed dated 13-12-2011. The assessee purchased said property vide purchase deed dated 15-04-2010. Accordingly, computed Short Term Capital Gain of Rs.87,81,842/- (Rs.99,36,842/- - Rs.11,55,000/-) vide its order dated 30-03-2015. The AO was of the opinion that the assessee along with M/s. Balsai Facilities Services India Pvt. Ltd. along with three other individuals sold the property in Gat No. 830, Sanswadi which is industrial zone admeasuring 1 H 90 Aar.

4. Being aggrieved before the AO, the assessee contended before the CIT(A) in First Appellate Proceedings that income arising from the transfer of agricultural land is not liable to tax and u/s. 45 of the Act. The agricultural land is not a capital asset. Further, if the land is more than 8 KM away from Municipal Corporation the agricultural land cannot be termed as capital asset. The provision u/s. 45 or section 2(14) of the Act does not recognize the location of industrial zone and the 7/12 extract filed by the assessee clearly shows the subjected property as agricultural land

prior to purchase and after the sale. Considering the submissions of assessee, the CIT(A) held that prior to 1070 agricultural income is exempted and after the amendment the capital asset was substituted in clause (iii) of section 2(14) of the Act and the property arising from transfer of agricultural land is capital gain. The entries in revenue records is prima-facie evidence but not conclusive prove to hold that the character of land is agricultural land. The assessee did not purchase the said land for the purpose of agricultural but for making profits motive. Further, he held on examination of record, the assessee's name is not entry in the revenue records and there were still the names of earlier owners were there. Therefore, it is a business asset confirmed the view of AO.

5. The ld. AR submits that the land was situated beyond 8KM from Dehuroad Cantonment Board and population of said locality (Sanaswadi) was less than the prescribed limit of 10,000 as per last Census. The land being an agricultural land both at the time of purchase and sale and argued that it is not at all capital asset taxable u/s. 2(14) of the Act and the findings of both the lower authorities are incorrect.

6. The CIT(A) erred in finding that the land admeasuring 1 Hector 90R was small piece of land and the assessee's share in the same was 32R and such a small piece of land was purchased and sold within a period of 2 years could not be said as purchased with an intention for agricultural purpose is a subjective imaginary. He submits that as even a small piece of land if acquired/purchased, cannot change or alter the very nature of the land as agricultural land as mentioned in the revenue records which was cultivated by the previous owner for the reason that the land was situated in the industrial zone. The assessee could not yield any

agricultural produces from the said land after it was purchased due to scarcity of water though the assessee had the intention to use the land for agricultural purpose. It is also not denied that for the purpose of investment also the land in question was purchased by the assessee and other four co-owners, merely because the land was purchased for the intention of the investment, the nature and character of the land as on date of purchase from the previous owner till the date of sale by the assessee and other four co-owners of the same being an agricultural land cannot change.

7. The ld. AR submits that necessary evidences regarding the land being situated beyond 8 Km at Sanaswadi from Dehu Road Cantonment Board were furnished before the CIT(A) along with 7/12 extracts of the concerned land showing the nature and character of the land purchased and sold as agricultural land. The decisions in the cases of DCIT Vs. Kalpana J. Jaikar (Supra) & CIT Vs. Debbi Alernao (supra) were also cited before the CIT(A) and the CIT(A) did not give any observation and findings as to how the said decisions were not applicable in the case of the assessee. The CIT(A) referred to many decisions which are not applicable on the facts of the case of the assessee.

8. The CIT(A) had discussed the position of the provisions of section 2(14) of the Act before the amendment by the Finance Act, 1970 and so also after the amendment from the said year inter-alia stating that up to and including the AY 1969-70, "agricultural land in India" was wholly excluded from the definition of capital asset. For and from AY 1970-71, a new sub-clause (iii) of section 2(14) was inserted bringing within the term

"capital Asset" agricultural land situated within the limits of any municipality etc.

9. The ld. DR submitted that the CIT(A) discussed the provisions u/s. 2(24) of the Act and held the nature of land is to be decided in terms of clause (iii) to section 2(14) of the Act. The clause (iii) was came into effect from 01-04-1970 and there was no evidence brought on record by the assessee that the said subjected land is beyond 8KM from local limits of any municipality or cantonment board and supported the order of CIT(A) prayed to dismiss the grounds of appeal raised by the assessee.

10. Heard both parties and perused the material available on record. There is no dispute with regard to facts and circumstances of the case. The contention of ld. AR is that at the time of purchase of the nature of subjected land has been shown as an agricultural land in the revenue records and that at the time of sale the same is remained as agricultural land. In support of his arguments the ld. AR referred to Annexure A at page 17 of the paper book and argued that in 7/12 extracts the land has been shown as agricultural land. We find a copy of stating it to be as 7/12 extracts in Annexure A is placed at page 17 and on perusal of the same we find the same as in Marathi language and further, a copy of stating to be sale deed in Annexure B at pages 18 to 46 of the paper book filed also in Marathi language. Therefore, we are unable to subscribe the arguments of ld. AR that the said land was shown as agricultural land at the time of purchase and sale.

11. Further, The ld. AR filed case laws from pages 47 to 60 and argued that though the lands are situated industrial zone and nature of land is to

be taking into consideration on the basis of revenue of records and no capital gain is taxable. The CIT(A) in its order discussed about the provisions of section 2(14) prior to 1970 and after 1970. We note that the CIT(A) observed the entries in revenue records may show prima-facie the nature of land but it is not a conclusive proof in terms of provisions under clause (iii) of section 2(14) of the Act and further, we held that the assessee did not purchase the same with an intention to use the land for agricultural purpose but purchased in an intention to gain profit.

12. We note that the definition of agricultural land is being provided in clause (iii) of section 2(14) of the Act wherein the definition relevant to the case on hand is section 2(14) clause (iii) (b) (III) of the Act which explains the agricultural land in India not be a land situated not being more than 8 KM from the local limits of any municipality or cantonment board. We note that the assessee raised his contention in terms of section 2(14) (iii) (b) (III) of the Act and filed necessary evidences regarding the subjected land being situated beyond 8 KM at Sanaswadi from Dehu Road Cantonment Board and it was contended before us no consideration has been given by the CIT(A). We note that no evidence supporting such contention filed before this Tribunal by the assessee. As discussed above in order to decide whether subjected land is agricultural land or not for the purpose of computing capital gains the definition of agricultural land is being provided in section 2(14) of the Act. We note that no discussion whatsoever made by the CIT(A) in this regard and therefore in our opinion that the issue requires examination by the CIT(A) in terms of provisions u/s. 2(14)(iii) of the Act. The assessee is liberty to file all the evidences in support of his claim to show that the subjected land is beyond 8 KM from

the local limits of municipality or cantonment board. Thus, ground No. 1 raised by the assessee is allowed for statistical purpose.

13. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 3rd March, 2020.

Sd/-
(D. Karunakara Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 3rd March, 2020
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune