आयकर अपीलीय अधिकरण

मुंबई पीठ "बी", मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "B", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री राजेशकुमार, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आअसं. 1067/मुं/2017 (नि.व. 2012-13)

ITA NO.1067/MUM/2017 (A.Y. 2012-13)

Navzer J. Irani,
142, Ashoka Apartments,
68, Nepean Sea Road,
Mumbai 400 006
PAN: AAAPI0625H ..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer 19(2)(4),
2nd Floor, Matru Mandir,
Opp. Bhatia Hospital, Tardeo,
Mumbai 400 034 ..... प्रतिवादी/Respondent

आअसं. 443/मुं/2017 (नि.व. 2012-13)

ITA NO.443/MUM/2017 (A.Y.2012-13)

Natasha Melwani,
142, Ashoka Apartments,
68, Nepean Sea Road,
Mumbai 400 006
PAN: AAAPI5937J ..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer 19(2)(4),
2nd Floor, Matru Mandir,
Opp. Bhatia Hospital, Tardeo,
Mumbai 400 034 ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Jehangir D. Mistri, Sr.Advocate

प्रतिवादी द्वारा/Respondent by : Shri S.K. Jain & Ms. Kavita Kaushik

सुनवाई की तिथि/ Date of hearing	:	03/01/2020
घोषणा की तिथि/ Date of pronouncement	:	05/06/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by two assessees (related to each other) for assessment year 2012-13 emanates from same transaction of sale of land and have identical facts, therefore, these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience, the facts are narrated from ITA No.1067/Mum/2017. This appeal by the assesse/appellant is directed against the order of Commissioner of Income Tax (Appeals)-30 (in short 'the CIT (A)') dated 30/11/2016 for assessment year 2012-13.

3. The assesse/appellant is an Architect and Interior Designer. The assessee had share in residential bungalow and land appurtenant there to situated at Village Awas, Tehsil Alibag. The aforesaid property was jointly sold by all the four co-owners vide registered sale deed dated 28-12-2011. The assesse in his original return of income declared his share of income from sale of aforesaid property as long term capital gain. Thereafter, the assessee filed revised return of income and claimed exemption on sale proceeds of land, claiming it to be agricultural land. In scrutiny assessment proceedings, the Assessing Officer rejected assessee's claim of exemption on proceeds from sale of land and held the same as taxable under the head 'capital gains'. Aggrieved against the assessment order dated

27/03/2015 passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act'). The assessee filed appeal before the CIT (A). The CIT (A) confirmed the findings of Assessing Officer in holding gain on sale of land as 'long term capital gain'. However, the CIT (A) granted benefit of exemption under section 54EC of the Act to the extent investment was made by the assessee in NHAI Bonds. Still aggrieved, against the order of First Appellate Authority, the assessee is in appeal before the Tribunal.

4. Shri Jehangir D. Mistri, Sr. Advocate appearing on behalf of the assessee submitted that the assessee along with three other co-owners viz. Ms. Natasha Navzer Irani, Smt. Sanober N. Irani and Shri Karl Navzer Irani entered into agreement for sale of agricultural land along with structure/building thereon situated at Village: Awas; Gram:Panchayat :Zirad; Taluk: Alibag Dist. Raigarh, Maharashtra on 28/12/2011 for a total consideration of Rs.4,90,00,000/-. As per mutually agreed terms and conditions, the total consideration towards sale of agricultural land was fixed at Rs.3,00,00,000/- and towards structure/building Rs.1,90,00,000/-. Admittedly, the assessee in original return of income for assessment year 2012-13 offered his share from sale of aforesaid property as 'long term capital gain'. Subsequently, the assessee filed revised return of income wherein the share in structure/building was offered as long term capital gain. Whereas, exemption was claimed on share in consideration received for sale of agricultural land. The ld. Counsel for the assessee submitted that the assessee furnished various documents before the Assessing Officer to substantiate that the land sold was agricultural land, situated beyond 13 Kms from the nearest Municipal limits of Alibag and the

population of Village Awas, where agricultural land was situated is less than 10,000 as on 11/11/2014. The ld. Counsel for the assessee referred to the certificate issued by Tahsildar, Alibag at page -7 (translated copy at page -6) of the Paper Book. The ld. Counsel further referred to Form -7,7A annexed to registered sale deed to show that the land in question is an agricultural land and rice was cultivated on the land. To further substantiate nature of land, the assessee filed copies of 7/12 Extracts as additional evidence. The ld. Counsel for the assessee asserted that additional evidences have been filed to counter the reasoning given by the Assessing Officer to reject claim that no agricultural activities were carried out on the land.

4.1. The ld. Counsel for the assessee submitted that the details of the land are given in First Schedule to the registered sale deed at page 47 and 48 of the Paper Book. The total area of the bungalow that was sold alongwith the land is approximately 8000 sq.ft. The area of the bungalow includes main building, cabana structure, parking structure, servant quarters and swimming pool. The total area of agriculture land comprising in Gut Numbers 364, 363, 366 and 365 is 1.33 acres. A perusal of 7/12 extracts would show that rice was cultivated on the land in question since long including the period in which land was sold.

4.2 The ld. Counsel of the assessee further contended that in the case of other two co-owners i.e. Smt. Sanober N. Irani and Shri Karl Navzer Irani the Department has accepted that the land is agriculture land and the gain arising from sale of said land is exempt from tax. The ld. Counsel for the assessee furnished copies of income tax returns of the aforesaid

co-owners and intimation of assessment under section 143(1) of the Act. The ld. Counsel of the assessee pointed that the fact that the property including bungalow and agricultural land is jointly owned by four persons was very much in the knowledge of the First Appellate Authority. The assessee in written submission made before the CIT (A) had highlighted this fact, however, the CIT (A) failed to take note of this vital fact.

4.3. The ld. Counsel of the assessee finally asserted that there is no evidence on record to show that there was conversion of land for non-agriculture purpose, therefore, it is immaterial that any income from agriculture is declared by the assesse in his return or not. To support his contentions, the ld. Counsel placed reliance on the following decisions:-

(i) CIT vs. Debbie Alemao , 331 ITR 59 (Bom)

(ii) Kallepu Sharath vs. ACIT, in ITA No.843/Hyd./2017 for A.Y 2005-06, decided on 30/05/2018

5. On the other hand, Shri S.K. Jain, representing the Department vehemently supported the findings of CIT (A) and prayed for dismissing the appeal of the assessee. The ld. Departmental Representative submitted that the assessee has bifurcated land from the building and offered the bungalow to tax. The provisions of section 10(37) does not allow bifurcation of land for claiming exemption. The ld. Departmental Representative further contended that no evidence has been filed by the assessee that basic agriculture operations were carried out on the land for cultivation. The CIT (A) has recorded a categoric finding that the land

admeasuring 1.33 acres includes structure consisting of main building, swimming pool, landscape lawns, servant rooms, parking structure, etc.

6. We have heard the submissions made by rival sides and have perused the orders of authorities below. The primary question for our consideration in this appeal is:

> 'Whether the land sold appurtenant to the bungalow is an agricultural land within the meaning of Section 2(14)(a)(iii) of the Act and hence, its sale proceeds are exempt from tax'.

7. The undisputed facts in the appeal are, the assessee is a joint owner of land admeasuring land 1.33 acres comprising in Gut No.364, 363 and 365 situated at Village Awas, Talukka Alibag, Dist. Raigad. The assesse had pre-defined share in aforesaid land and bungalow thereon admeasuring approximately 8000 sq.fts. The assessee in original return of income offered his share from sale of bungalow and land, under the head 'capital gains'. In revised return of income, the assessee offered his share from sale of bungalow under the head 'capital gains'. As regards income from sale of land appurtenant to said bungalow, the assessee claimed same to be exempt from tax on the ground that the land is agricultural land.

8. The assessee in order to substantiate that the land appurtenant to bungalow is an agricultural land and thus, income from sale of said land is exempt from tax furnished following documents.

> (i) Certificate dated 11-11-2014 from the Tahsildar, Alibaug certifying that the land of the assesse is at a distance of about 13 Kms from the nearest Municipal Council of Alibag and the

population of Village Awas, where the land is situated is less than 10,000.

(ii) 7/12 Extract to substantiate that the land was agricultural land and rice crop was cultivated on the same.

(iii) Registered sale deed to show the total area of land sold and details of Bungalow/super structure on the land.

9. The assessee has declared long term capital gain on sale of bungalow and has offered the same to tax. The dispute is only with regard to the agriculture land. A perusal of 7/12 extracts furnished by the assesse reveal that rice was cultivated on the land comprising in Gut No. 363, 364, 365 and 366. Even in Form No. 7,7A appended to the registered sale deed, cultivation of rice is shown during the year 2011-12. 7/12 and Form 7, 7A are part of revenue records maintained by the Authorities under State Government. Since, these are the records maintained by Government Authorities, some sanctity has to be attached to such records for ascertaining crop cultivated, nature of land, etc. Revenue records cannot be brushed aside altogether while determining nature of land. It is not the case of Revenue that the nature of land in question was changed from agriculture to non-agriculture. The assessee has also filed certificate from Tahsildar, Alibag certifying the distance of the land from the nearest Municipality and the population of the village. The Revenue has not rebutted the evidences filed by the assessee. After considering the material available on record, we have no hesitation in holding that the land admeasuring 1.33 acres comprising in Gut Nos.363, 364, 365 and 366 in the revenue estate of Village Awas is an agricultural land within the

meaning of Section 2(14)(a)(iii) of the Act and the sale proceeds of said land are exempt.

10. We observe that one of the reason for rejecting assesse's claim is that the assesse has not declared any income from agriculture operations. The Hon'ble Bombay High Court in the case of CIT vs Debbie Alemo (supra) has held that if a land is shown in the revenue records to be used for agriculture purpose and no permission was ever obtained for non-agriculture use, it is inconsequential whether any income from agricultural operation was declared by the assesse in the return of income or not. Thus, the objection of the revenue is without any merit.

11. We further observe that the Department in the case of other two co-owners of the land i.e. Smt. Sanober N. Irani and Shri Karl Navzer Irani has accepted their respective return of income wherein, the said co-owners have declared their respective share of income from sale of same agricultural land (as that of present assesse) as exempt. The Department cannot have two divergent views in case of two assessees who are on same footing, having common source of income germinating from same transaction.

12. Thus, in view of the facts discussed above, we find merit in the grounds raised by the assesse/appellant and direct the Assessing Officer to delete the addition qua sale of agriculture land, being exempt from tax.

13. **In the result, appeal of the assessee is allowed**.

ITA No.443/Mum/2017,2012-13.

14. The assessee in this appeal is one of co-owners of agriculture land, that was subject matter of dispute in ITA No.1067/Mum/2017 (supra). The appeal of the present assesse germinates from same set of facts and the assesse is on same pedestal. Therefore, the reasons given while adjudicating above said appeal, would mutatis mutandis apply to the present appeal. **The appeal of the assesse is allowed, in similar terms.**

15. These appeal were heard on 03-01-2020. As per Rule 34(5) of the Income Tax (Appellate Tribunal) Rules, 1963, (ITAT Rules, 1963), the order was required to be "ordinarily" pronounced within a period of 90 days from the date of conclusion of the hearing of appeal. The instant appeal was heard prior to the lockdown declared by the Hon'ble Prime Minister on 24-03-2020 in view of COVID-19 pandemic. The lockdown was forced due to extra ordinary circumstances caused by wide spread of COVID-19. Thereafter, the lockdown was extended from time to time. Therefore, the pronouncement of order beyond the period of 90 days from the date of hearing is not under "ordinary" circumstances. The Co-ordinate Bench of the Tribunal in the case of DCIT vs. JSW Ltd., ITA No.6264/Mum/2018 for A.Y 2013-14 decided on 14/05/2020, under identical circumstances, after considering the provisions of Rule 34(5) of the ITAT Rules, 1963, judgements rendered by the Hon'ble Apex Court and the Hon'ble Bombay High Court on the issue of time limit for pronouncement of orders by the Tribunal and the circumstances leading to lockdown held:-

"10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only inconsonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed ***"while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly"****. The extraordinary steps taken suo motu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which ITA No. 6103 and lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refix the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case."*

Thus, in light of above facts and the decision of coordinate Bench, the present order is pronounced beyond the period of 90 days.

16. These two appeals by two different assessees are allowed. Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Order pronounced on Friday the 5th day of June, 2020.

Sd/-	Sd/-
(RAJESH KUMAR)	(VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 05/06/2020
Vm, Sr. PS (O/S)
प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar)
ITAT, Mumbai