IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 170/AHD/2016

(Assessment Year: 2008-09)

(*Virtual Court)*

Deputy Commissioner of Income Tax, Circle-1(3), Surat	Vs.	Smt Urmi Nilesh Nagarseth, C-4, Dharam Palace, B/h. Sneh Sankul Hall, Anand Mahal Road, Adajan, Surat-395009. **PAN : ABRPN1596Q**
APPELLANT		**RESPONDEDNT**

Appellant by	Shri Ritesh Mishra – CIT(DR)
Respondent by	Ms Urvashi Shodhan - AR
Date of hearing	30/09/2020
Date of pronouncement	09/10/2020

O R D E R

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the revenue is directed against the order of ld. Commissioner of Income Tax (Appeals)-II, Surat [in short "the CIT(A)"] dated 19.11.2015 for the assessment year (AY) 2008-09. The revenue has raised following grounds of appeal:

> *"[1] Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by A.O. of Rs.6,04,00,0007- on account of rejecting the claim of Exemption Under section. 10(37) of the IT Act.*
>
> *[2] Whether purchase of land by SMC from the assessee through registered deed after thorough negotiation and without invoking Provision of Section 78 of the Guj. (Bombay) Provisional Municipal Corporation Act, 1949 is treated as compensation or consideration comes under the Purview of eligible exemption Under section.10(37) of the IT Act.*
>
> *[3] On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

[4] It is, therefore, prayed that the order of the CIT (A) may be set aside and that of Assessing Officer may be restored to the above extent."

2. Brief facts of the case are that the assessee filed her return of income for assessment year (AY) 2008-09 on 30.03.2009 declaring the total income Rs.1,31,558/-. In this case, the Assessing Officer (AO) received information from the office of Chief Commissioner of Income Tax, Surat [in short "the CCIT"] that the Surat Municipal Corporation (SMC) purchased land in Dindoli, Surat from the land owner for construction of Sewage Treatment Plant. The assessee was one of the persons who sold her land out of RS No.171/Block No. 270-B for Rs.6.04 Crores on 19.03.2008 to Surat Municipal Corporation (SMC). As per AO, the land falls within the limit of Surat Municipal Corporation (SMC) and it was a capital asset within definition under section 2(ea) of the Income Tax Act. On the basis of aforesaid reason, the AO recorded the reason for reopened under section 147. Notice under section 148 dated 29.03.2014 was served upon the assessee. In response, the notice under section148, the assessee *vide* her letter dated 15.04.2015 stated that original return filed by assessee on 30.03.2009 may be treated as return in response to notice under section.148. The assessee filed her objection on 31.05.2014 against the reopening. The objection of the assessee was disposed by AO *vide* order dated 26.12.2014. During the assessment proceedings, the assessee furnished the letter/certificate dated

03.03.2015 by Deputy Commissioner of Surat Municipal Corporation (SMC) certifying that agricultural land at village Dindoli was acquired by compulsory acquisition by the Surat Municipal Corporation (SMC) within the meaning of section 107 of the Gujarat Town Planning & Urban Development Act, 1976 for public purpose. The land of the assessee also falls in the said acquisition. The AO after serving the show cause notice to the assessee as to why the claim of assessee under section10(37) may not be disallowed.

3. The assessee filed her reply dated 25.03.2015 and retreated that certificate of Deputy Commissioner, Surat Municipal Corporation (SMC) certified that agriculture land of assessee along with other agricultural land/different land holder were acquired compulsory after negotiating regarding price only. It was further contended that the land of the assessee was acquired by SMC for its Sewage Treatment Plant. Though, SMC adopted conciliatory method and transfer of land registration and paying market price. The contention of assessee was not accepted by A.O. The AO took his view that land in question was not acquired by way of compulsory acquisition, but it was purchased from assessee after negotiating the rate. The AO disallowed exemption under section10 (37) and brought the entire said consideration for taxation.

4. On appeal before CIT(A), the action of AO was reversed by passing the following order:-

"6.1.1 I have considered the assessment order as well as the submissions of the appellant. The Grounds of appeal- **Ground No. 1 & 2** pertains to rejecting the claim of exemption under section 10(37) and It is therefore prayed that the above action of the Id. AO be quashed and he be directed to allow the exemption under section 10(37) as claimed by the appellant. On the basis of the information received from departmental sources, the AO found that the Surat Municipal Corporation has purchased a land at Dindoli, Surat from land owners for construction of Sewage Treatment Plant. The appellant had sold land for Rs.6,04,00,000/- on 19.03.2008 to Surat Municipal Corporation and the AO held this land to be capital asset and therefore reopened the assessment under section 147 r.w.s, 148 of the Act. During the course of assessment proceedings, the AO held that the sale of the transfer of this land was signed between Surat Municipal Corporation and the appellant with his family members and the land was transferred by negotiations- and was not under compulsory acquisition of Gujarat Town Planning Act 1976.The AO on the basis of the inquiries conducted from SMC held that the land was sold through negotiation and was not through compulsory acquisition and hence the appellant was not eligible for the benefits of section 10(37) of the Act and therefore added this amount of Rs. 6,04,00,000/- for LTCG. The appellant submitted that the agriculture land measuring 30200 sq. mtrs. situated at Village Dindoli along with other agriculture land was acquired by SMC by compulsory acquisition under the provision of section 20 of GTPU & UD Act and section 77 of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter BPMC Act) for erection of Sewage Treatment Plant at Village: Dindoli and it was the land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. The appellant's agriculture land along with surrounding other agriculture land measuring 534870 sq. mtrs. at Village Dindoli was compulsory acquired by the SMC for the Sewage Treatment Plant. The appellant submitted that in a recent judgment by. the Ahmedabad Tribunal in the case of Shri Dipak Kalidas Pauwala has ruled that the compensation received towards acquisition of land at Village Dindoli by SMC is exempt under section 10(37) of the Act. The copy of the ITAT judgment in the case of Shri Dipak Kalidas Pauwala in ITA No. 2685/Ahd/2011 for the AY 2008-09 has been perused. The Hon'ble ITAT in the aforesaid case vide its order dated 14.08.2015 have held that the acquisition of the land at village Dindoli by Surat Municipal Corporation for the purpose of Sewage Treatment Plant has been compulsory acquired by SMC under the provisions of section 107 of the GTP&UD Act, 1976, the land needed for the purpose of Town Planning Scheme or Development Plan shall be deemed to Land needed

for public purpose within the meaning of Land Acquisition Act, 1894(I of 1894).

6.1.2 Keeping in view that the land of the appellant at Dindoli is covered by the judgment of the Hon'ble ITAT wherein the land transfer has been held as compulsory acquisition and therefore the claim of the appellant under section 10(37) of the Act is allowable. The addition made by the AO of Rs. 6,04,00,000/-is deleted and the ground of appeal is allowed."

5. Aggrieved by the order of CIT(A), the revenue has filed present appeal before us.

6. We have heard the submission of ld. Departmental Representative (DR) for the revenue and the Authorized Representative (AR) for the assessee have gone through the order of the lower authorities. At the outset of hearing the ld. AR of the assessee submits that the grounds of appeal raised by the revenue is covered by the decision of Tribunal in case of Satishbhai M Patel, in ITA No.1566/Ahd/2016 dated 13.12.2019, wherein in the Tribunal adjudicated similar appeals filed by other 23 land holders of village Dindoli, whose land were also acquired for the Sewage Treatment Plant by Surat Municipal Corporation (SMC). The ld. AR for the assessee further submits that the Tribunal while granting relief followed the decision of jurisdictional High Court in CIT v. Dipak Kalidas Pauwala, in Tax Appeal No. 249 of 2016 dated 28.03.2016, wherein the Hon'ble High Court affirm the order of Tribunal in the case of Dipak Kalidas Pauwala in ITA No.2685/AHD/2011 for the AY.2008-09 dated 14.08.2015. The ld. AR of the assessee also furnished the copy of

order of Hon'ble jurisdictional High Court in the case of Dipak Kalidas Pauwala (supra). On the basis of aforesaid submission, the ld. AR of the assessee would submit that the grounds of appeal raised by revenue are thus is squarely covered up against the revenue.

7. On the other hand, the ld. CIT(DR) after going through the decision of Tribunal decision of Tribunal order dated 13.12.2019 in ITA No.1566/Ahd/2016, wherein the coordinate bench allowed similar relief to the 23 assessees, whose land were also acquired by Surat Municipal Corporation (SMC) for Sewage Treatment Plant. However, the ld. AR submits that strongly relied on the order of the AO.

8. We have considered the rival submissions of the parties and have gone through the order of similar authorities below. Considering the facts and circumstances of the case, we find that the ground of appeal raised by revenue are covered by the decision of Tribunal dated 13.12.2019 in ITA No. 1566/Ahd/2016 in Satishbhai M Patel v. DCIT. For completeness of this order, the relevant part of order in ITA No.1566/Ahd/2016 is extracted below:-

> "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 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 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. 23.09.2014that 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 the 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 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."

9. Considering the categorical finding of Tribunal on similar set of fact, we do not find any merit in the grounds of appeal raised by the revenue. No contrary fact or law is brought to our notice to take other view.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced on 09/10/2020, as per Rule 34 of Income Tax Appellate Tribunal, Rule 1963.

Sd/-	**Sd/-**
(DR. ARJUN LAL SAINI)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Surat, Dated: 09/10/2020
Samanta, PS

Copy to:
1. Appellant
2. Respondent
3. CIT(A)
4. Pr.CIT
5. DR

// True Copy //

By order

Assistant Registrar/Sr. PS/PS
ITAT, Surat