आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
'' B'' BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 1301/AHD/2017**
निर्धारण वर्ष/Asstt. Year: 2012-2012

Smt. Nima Somabhai Patel, 13, Shubhash Society, B/h. Ishwar Bhuvan, Navrangpura, Ahmedabad-380009. **PAN: ACMPP1832B**	Vs.	Income-tax Officer, Ward-1(1)(3), Ahmedabad.
(Applicant)		**(Respondent)**

Assessee by	:	Shri Karan Shah, A.R
Revenue by	:	Ms Pooja Parekh, Sr.D.R

सुनवाई की तारीख/**Date of Hearing : 23/03/2021**
घोषणा की तारीख /**Date of Pronouncement: 09/04/2021**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-1, Ahmedabad, dated 07/03/2017 (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

2. The only issue raised by the assessee is that the learned CIT (A) erred in confirming the action of Ld.AO in making an addition of Rs.1,37,28,168/- on account of short term capital gain u/s 50C of the Act on sale of agricultural land by observing that the land sold by the appellant are capital assets within the meaning of section 2(14)(iii) of the Act and liable for capital gains.

3. The facts in brief are that the assessee in the present case is an individual and declared income under the head capital gain and interest. The assessee in the year under consideration sold the land situated at " Mauje Gam Unali, Taluka Kalol, Gandhinagar" bearing survey No's 141, 160, 161 for Rs. 1,93,00,000/- and declared short term capital on the same.

3.1 The AO during the assessment proceeding found that the Jantari value/Market value of land transferred for purpose of stamp duty was of Rs. 3,13,00,568/- only. Accordingly the AO issued show cause notice to the assessee purposing to take the sale consideration as declared for the stamp duty as provided under the provisions of section 50C of the Act.

3.2 In response, the assessee contended that when the deal was negotiated for the transfer of the land with the purchaser, the Jantri value was at Rs. 1,93,00,000/- only. Therefore, the sale consideration cannot be substituted with the value of the property as provided under section 50C of the Act which was declared in the registered documents for the stamp duty purposes.

3.3 However, the AO rejected the claim of the assessee and worked out the short term capital gain of 2,75,19,343/- after taking Jantari value i.e. Rs. 3,13,00,568/- as sales consideration as per the provision of section 50C of the Act.

4. Aggrieved, assessee preferred an appeal to the ld. CIT-A.

5. The assessee before the learned CIT (A) submitted that the stamp value/jantari value of property is not a conclusive value of property. As such the same is an estimated value only. Accordingly the assessee claimed that in a situation where there is no information available with the AO that the assessee has received consideration over and above registered value, the actual sale consideration cannot be substituted with the stamp value as sale consideration for working out the capital gain as provided under the provision of section 50C of the Act.

5.1 The assessee further claimed that the land in question was agricultural land under the provision of section 2(14)(iii) of Act being situated beyond 8 km from the limit of the Municipal Corporation. The assessee in support of her claim filed a copy of certificate issued by the Talati along with revised computation of income. Accordingly the assessee contended that the transfer of property is exempted from the tax being agriculture land but due to bona fide mistake she paid tax on the same which was corrected in the revised computation of income.

5.2 The assessee also submitted that her brother Shri Alap Sombhai Patel also transferred the adjoining land bearing survey number 157, 158, 167 during the year. He also mistakenly offered short term capital gain on the same. But on realization of mistake committed by him, he revised the return of income which was accepted by the DCIT, circle 4(1)(1) while finalizing assessment under section 143(3) of the Act. The assessee also filed the copy of the assessment order in case of Shri Alap Sombhai Patel in support of her contention.

5.3 The learned CIT(A) forwarded the additional document furnished by the assessee to the AO for verification for his remand report. The AO in remand report submitted that the assessee sold the land within short period of time after purchase which establishes the fact that the investment in land was made for earning the income and not to hold the same as agricultural land. Furthermore, the assessee herself admitted that no agricultural activity was carried out on impugned land. Thus

the assessee failed to establish that at the time of transfer, the impugned land was agricultural in nature. The AO also submitted that assessee herself declared short term capital gain on such transfer of land and also did not object on the invocation of provisions of section 50C of the Act during the assessment proceeding. The AO further found that the area namely 'Gam Unali' where the impugned land was situated is covered under the jurisdiction of Ahmadabad Urban Development Authority (AUDA). The AO for this purpose referred the letter dated 02/02/2017 issued by AUDA. Accordingly the AO concluded that the impugned land is not an agricultural land under the provision of section 2(14) of the Act. The AO further submitted that entry of property as agriculture land in Land Revenue record is not a conclusive evidence that the such land in reality is an agricultural property, as such the assessee has proved that the property has not lost its character of agriculture at the time of transfer.

5.4 The assessee in rejoinder reiterated her submission and claimed that the village Unali where impugned land is situated is falling under the jurisdiction of Talluka Klol district Gandhi Nagar, therefore the distance limit should be calculated from Kalol instead of Ahmadabad Municipal Corporation.

6. The learned CIT (A) after considering the fact in totality upheld the addition made by the AO by observing as under:

> *2.10. It is seen that the total sales consideration as per sale deed of the property sold is Rs. 1,75,72,400/- in respect of property at Block No. 141, 160 & 161 of Gam Unali, Ta : Kalol. However, as perjantri rate/duty valuation of the said property market value was to the tune of Rs. 3,13,00,568/-, so there was a difference in value to the extent of Rs. 1,37,28,168/- and A.O has invoked the provisions of section 50C in the case of the appellant for making the impugned addition. On the basis of aforesaid observation and findings, the A.O has made the addition of Rs.1,37,28,168/- being difference in the full value of consideration as per section 50C of the Act. The appellant has erred in calculating the STCG on the sale the impugned land. Initially, the appellant has not taken the argument that the land is beyond the 8 Kms of Municipal limits. At the time of appellate proceedings, it has taken the ground that it is beyond the 8 Kms of Municipal limits. The same has been sent to the A.O. to verify the same and A.O. has further confirmed in the Remand Report that information gathered from the Ahmedabad Urban Development Authority (AUDA), it is found that Gaam: Unali, Block No. 160, 161 and 141 is in the*

jurisdiction of Ahmedabad Urban Development Authority (AUDA) limit and Gaam: Unali falls under AUDA limit as per Copy of letter dated 02/02/2017 received from Ahmedabad Urban Development Authority (AUDA). The A.O. further observed that the lands are situated within 8 kms from the limits of AUDA. Since, as on the date of transfer of lands, the extended limits of AUDA has been notified by the Govt. of Gujarat, the distance from the extended limits of AUDA has to be considered to determine whether the particular land is situated within 8 kms such distance or not. The appellant claims that the lands are agricultural lands and agricultural operations could not be carried out. It is the contention of the assessee that for the purpose of determination of distance, notified municipal limits of AUDA has not to be considered. It is to be seen whether the lands sold by the assessee are capital assets within the meaning of section 2(14) of the Act or agricultural lands not liable for capital gain tax. Admittedly, lands sold by the assessee are within 8 kms. from the distance of AUDA. I do not find any merits in the arguments of the Appellant, as per said notification, any land situated within 8 kms from the distance of AUDA is agricultural land coming within the definition of capital asset. It is further observed that the limits of AUDA have been extended by the State Government of Gujarat. Since, the lands sold by the assessee are situated within 8 kms distance from the newly incorporated boundary of AUDA, the distance should be measured from the limits of AUDA to determine whether a particular land is a capital asset or not for the purpose of section 2(14) of the Act. In the present case, it is no I doubt lands are situated within 8 kms. from the limits of AUDA. Therefore, in view of the above discussion and direct decision reported in 40 Taxmann.com 295 and 79 Taxmann.com 104(as discussed above), I am of the view that the lands sold by the I appellant are capital assets within the meaning of section 2(14) of the Act and liable for capital gains. The AO after considering the relevant facts, has rightly held that the lands I are capital assets and liable for capital gain tax. Therefore, the ground of the appellant I is rejected and the addition made by the A.O. is confirmed. ***The ground of the appellant is dismissed.***

7. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

8. The learned AR before us filed a paper book running from pages 1 to 440 and contended that the land in dispute is an agricultural land and therefore not capital asset within the meaning of section 2(14) of the Act. Accordingly, there is no question for charging the capital gain. The ld. AR in support of his contentions has filed written submission.

9. On the other hand learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The controversy that arises whether the land in dispute is an agricultural land and therefore the same is not liable to tax under the head capital gain. The term capital asset has been defined under the provisions of section 2(14) of the Act.

10.1 In the said definition, the agricultural land has been excluded from the meaning of capital asset provided under section 2(14) of the Act. The exclusion of agricultural land from the definition of capital asset is based upon the situation of the land in a particular area as provided therein. Before going to see the situation/location of the land, we have to judge whether the land in question is the agricultural land. To our mind this is the first hurdle that the assessee has to cross for proving that the land in dispute is the agricultural land and therefore not subject to tax being not a capital asset.

10.2 The term "agricultural land" has not been defined under the Act and therefore, in order to ascertain whether the land in question can be considered as agricultural land for the purpose of section 2(14) of the Act, the criteria laid down by the judicial precedents of Hon'ble High Courts and Supreme Court are to be taken into consideration. The meaning of the expression "agricultural land" was considered first time by the Hon'ble Supreme Court in case of *CIT* v. *Raja Binoy Kumar Sahas Roy* [1957] 32 ITR 466. The constitution bench of Hon'ble Supreme Court has considered the meaning of the expression "agricultural land" which was again considered by the Hon'ble Supreme Court in case of *Smt. Sarifabibi Mohmed Ibrahim* v. *CIT* [1993] 204 ITR 631/70 Taxman 301 as under :—

> *'On an appeal, a Constitution Bench of this Court held that:*
>
> *Inasmuch as agricultural land is exempted from the purview of the definition of the expression "assets", it is "impossible to adopt so wide a test as would obviously defeat the purpose of the exemption given". The idea behind exempting the agricultural land is to encourage cultivation of land and the agricultural operations. "In other words this exemption had to be necessarily given a more restricted meaning than the very wide ambit given to it by the Full Bench of the Andhra Pradesh High Court". (b) What is really required to be shown is the connection with an agricultural purpose and user*

*and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose, It is not the mere potentiality, but its actual condition and intended user, which have to be seen for purposes of exemption. (emphasis * added). (c) "The person claiming an exemption of any property of his from the scope of his assets must satisfy the conditions of the exemption." (d)"The determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case."(e) The fact the land is assessed to land revenue as agricultural land under the State revenue law is certainly a relevant fact but it is not conclusive.'*

10.3 In the said case the Hon'ble Supreme Court has held that land is assessed to land revenue as an agricultural land, is not a conclusive fact and the question is to be decided by considering various factors including whether the land is used for cultivation and agricultural operations.

10.4 Thus, it is settled proposition of law that merely showing the land as agriculture in the land revenue record and its situation in a particular area are not the decisive factors to hold the land as agricultural land.

10.5 Further the Hon'ble Bombay High court in case of Gopal C Sharma vs. CIT reported in 72 taxman 353, while deciding the similar issue observed that past used of land for cultivation alone is not conclusive as such future use of the land after transfer is also important. The relevant observation of the Hon'ble court reads as under:

The underlying object of the Act to exempt 'agricultural income' from income-tax is to encourage actual cultivation or de facto *agricultural operations. Actual user of the land for agricultural purpose or absence thereof at the relevant time is undoubtedly one of the crucial tests for determination of the issue, as to whether the land in question is liable to be considered as agricultural land for the purpose of income-tax. It is well-settled that the nature and character of land may undergo a change depending upon its situation, growth of locality, zone in which it is situate and its potentiality. The fact that the land is sold or transferred to a non-agriculturist for a non-agricultural purpose or that it is likely to be used for non-agricultural purpose soon after its transfer is also a relevant factor germane to the determination of the issue. Merely because the land was used for agricultural purpose in remote past or it continues to be assessed to land revenue on the footing of agricultural land, is not decisive.*

10.6 The scheme and object of exempting agricultural land from the definition of capital asset is to encourage cultivation of land and agricultural operations. Therefore, for the purpose of granting exemption, a restricted meaning has to be given to the expression "agricultural land" as contemplated under section 2(14) (iiib) of the act.

10.7 In the case on hand, the ld. CIT-A has given a very clear finding that the land in dispute was not used for the agricultural purposes. The relevant finding of the ld. CIT-A on page 28 of his order reads as under:

> *"the appellant claims that the lands are agriculture lands and agricultural operations could not be carried out."*

10.8 Besides the above, we also note that the land was sold after the purchases within a short span of time. Thus a cumulative reading of the facts as discussed above, it is transpired that the assessee was not intending to use the land in dispute for the purpose of agricultural operations.

10.9 Before parting, there is no information available on record whether the land in dispute was used for the agricultural operations prior to the date of purchase by the assessee viz a viz whether the land in dispute was to be used for agricultural operations in future by the buyer of the land from the assessee. To our understanding, the information for the prior and the future use of the land was necessary to arrive at the conclusion whether the land in dispute was an agricultural land within the meaning of the provisions of section 2(14) of the Act. The case law referred by the ld. AR at the time of hearing are distinguishable from the present facts of the case in the light of Hon'ble Supreme Court judgment as discussed above. Accordingly, we are not inclined to refer the same. Thus in the interest of justice and fair play, we are inclined to restore the issue to the file of the AO for fresh adjudication as per the provisions of law and in the light of the above stated

discussion. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

11. In the result, the appeal of the assessee is **allowed for statistical purposes.**

Order pronounced in the Court on 09/04/2021 at Ahmedabad.

Sd/-	**Sd/-**
(RAJPAL YADAV)	**(WASEEM AHMED)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

(True copy)

Ahmedabad; Dated 09/04/2021
manish