

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

ITA No.146/SRT/2017 (AY 2013-14)

(Hearing in Virtual Court)

Smt. Maniben Mohanbhai Prajapati, 41-42, Devedeep Society, Singanpore Road, Katargam, Surat – 395004. PNA: AFSP 8096 C	Vs	The Income Tax Officer, Ward-3(2)(5), Surat.
Assessee / appellant		Revenue / respondent

Assessee by	Shri Kamlesh Bhatt – CA
Revenue by	Shri Deependra Kumar – Sr.DR
Date of hearing	27/10/2021
Date of pronouncement	13/12/2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-3, Surat dated 12.09.2017 for the Assessment Year 2013-14. The assessee raised the following grounds of appeal:

“1. In view of the facts and circumstances of the case, the Ld. CIT(a) has erred in law and in facts in upholding the decision of the Ld. A.O. to treat the Agriculture Land as Non Agriculture and thereby denying the exemption to the appellant as claimed by her and hence Your Appellant most humbly Prays that the impugned decision of Ld. CIT(A) and the Ld. A.O. be quashed and they be directed to accept the Capital Gain on sale of agriculture land as offered by the appellant.

2. Such other relief(s) to which the appellant may be lawfully entitled to.”

2. Brief facts of the case as extracted from the orders of lower authorities are that during the assessment, the AO noted that the assessee sold her 1/3rd share in piece of agricultural land situated within the limits of Village Kansad. The assessee acquired the said land in 2007. The assessee invested the entire sale consideration in purchased of other agricultural land and claimed exemption under section 54B of the Act. On perusal of the record, the Assessing Officer (AO) was of the view that assessee failed to fulfil certain conditions laid down in section 54B of the Act. The crop shown in 7/12 extract in the said land “Ghass”. On the basis of recorded entry in 7/12 the AO was of the view that the land was not utilised for the purpose of agricultural activities. Further no agricultural income in A.Y. 2012-13 and 2013-14 was shown by the assessee. The AO on his aforesaid observation issued show cause notice as to why the exemption claimed under section 54B be not denied to the assessee. The assessee filed her reply, vide reply dated 08.02.2016. In the reply, the assessee stated that the land was acquired for agricultural purposes only. As per Form-8 issued by Mamlatdar Officer, it is clearly mentioned that said land is used for agricultural purposes only, copy of Form-8 was furnished to the AO. The assessee also furnished extract of Form 7/12 of the said land for the period 2010-11, 2011-12 and 2012-13 wherein it was mentioned that land was used for agricultural

purposes from the date of acquisition. The assessee also raised objection that agriculture does not merely imply raising a food and grain for consumption of man and animals, it includes all products from the performances of basic as well as subsequent operation of land. The product may be grain, vegetable, fruit, plantation and groves, grass or pasture for consumption of article of luxury such as betel, coffee, tea supplies, spices, tobacco or commercial corps like cotton, flax, jute, hemp, indigo etc. The assessee also stated that even if the assessee is unable to cultivate agricultural land due to vagaries of nature and non-availability of resources, she cannot be denied exemption. The reply of the assessee was not accepted by the AO. The AO took his view that the assessee has not carried out any agricultural activities in the last three years and the Grass is naturally grown in the land and that the assessee has not earned any agricultural income from such activities. Accordingly the AO denied exemption under section 54B while passing the assessment order.

3. On appeal before the Id. CIT(A), the action of AO was upheld. The Id.CIT(A) while upholding the order of AO held that the primary evidence for determining whether land is used for agricultural purpose, is the land revenue record extract or Form 7/12. In Form- 7/12 "Ghass" is shown to have grown in land, which leaves the issue opens for interpretation by the

AO to consider it spontaneous growth and the AO was justified in assuming so. The assessee has not been able to furnish to rebut the presumption of AO and accordingly upheld the action of AO. Further aggrieved, the assessee has filed present appeal before us.

4. We have also heard the submission of Id. Authorised Representative (Id.AR) of the assessee and Id. Senior Departmental Representative (Id.Sr.DR) for the Revenue and gone through the orders of Lower Authorities carefully. The Id.AR for the assessee submits that the impugned land situated at the remote area of Village Kansad of Taluka Choryasi, District Surat. The land is situated near the bank river Mindhola. The area is affected by High Salinity. As a result, it is not possible to have a cultivation of Sugarcane or Mango, Chickoo, or orchard of fruits or the veigitables. The assessee used to cultivate Grass which is not affected by salinity or the floods. The gross grown in the land is used as green fodder for Cattle for neighbouring people who in turn give some amount which is more or less equal to the expenses incurred in removing and maintaining agricultural land and growth of Grass. The AO presumed that the land was not used for agricultural purpose without appreciating the documentary evidence furnished by the assessee. The assessee furnished sufficient documentary evidence issued by Public Authority which unambiguously prove that impugned land was in fact

agricultural land. The veracity of documentary evidence cannot be brushed aside by mere presumptions as presumed by AO. The fact that assessee sold agricultural land is clearly mentioned in the sale deed executed by the assessee along with other co-owner, copy of sale deed dated 08.11.2012 is also placed on record. Further this fact is strengthening by the evidence that while purchasing the land the assessee purchased the land as agriculture land and its user remained unchanged.

5. On the other hand, the Id.Sr.DR for the Revenue supported the order of the Id. CIT(A). The Id.Sr.DR submits that assessee failed to submit substantiate the fact before the Lower Authorities that the land in dispute was used for agricultural purposes in preceding years by the assessee. The assessee has not shown any agriculture income from the impugned land.
6. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We find that there is no dispute about the date, area and sale of agricultural land and further investment of sale proceed for purchase of other agriculture land. We find that the assessee in the sale deed of said land mentioned the nature of land as agricultural land. The assessee also placed on record the copy of Form-8, wherein the user of land is clearly written in Gujarati language as “Kethi LayakUpagyog” i.e. “agricultural purpose”. In the valuation report, the

property is shown as agricultural land. Though, in specification of property, the surrounding factors are mentioned. We find that before the AO as well as Id.CIT(A), the assessee categorically stated that land is situated on the bank of river Mindhola, which area is affected by very high salinity and regular crop of sugarcane or other trees are not possible. The assessee used the land for cultivation and growing of Grass which is not affected by floods. We find that in the documentary evidences furnished by the assessee the nature of land is clearly mentioned as agriculture use. The AO has not made any investigation on the assertion of assessee. The AO presumed that growing of grass is not agriculture activities. We noted that the AO arrived on conclusion on the basis of his presumption that Grass is not agriculture product. The AO has not brought any adverse evidence to counter the evidence furnished by the assessee. The best evidence available before the AO was Form- 7 & 8 extract, wherein the nature of land is mentioned as agriculture land. Mere fact that the assessee has not shown agriculture income from the piece of land would not change its character. In our view, in absence of any adverse material, the presumption of AO that no income is shown from the sale of Ghass is not justified. Hence, the ground of appeal raised by the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order announced on 13 December, 2021 in open court and the result was placed on the notice board as well.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 13/12/2021 /SGR*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By order

/ / TRUE COPY / /

Sr. Pvt. Secretary, ITAT, Surat