

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI AMARJIT SINGH, ACCOUNTANT MEMEBR

आयकर अपील सं./I.T.A. No. 124/Ahd/2021

(निर्धारण वर्ष / Assessment Year : 2016-17)

Deepak Jyotiprasad Chiripal 283, New Cloth Market, O/s. Raipur Gate, Raipur, Ahmedabd - 380002	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Circle – 3(1)(1), Ahmedabad & The Pr. Commissioner of Income Tax, Ahmedabad-3, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AARPA2982Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Gaurav Nahta, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Ajay Pratap Singh, CIT. D.R.

सुनवाई की तारीख / Date of Hearing	15/02/2022
घोषणा की तारीख /Date of Pronouncement	18/02/2022

ORDER

PER MAHAVIR PRASAD, JM:

The captioned appeal has been filed at the instance of the assessee against the order of the Principal Commissioner

of Income Tax (Appeals), Ahmedabad-3 ('PCIT' in short) vide Appeal No. ITBA/REV/F/REV5/2020 dated 31.03.2021 arising in the assessment order dated 19.11.2018 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs. 2016-17.

2. The facts of the case are that learned PCIT noticed that during the year assessee has sold land bearing Survey No. 350 admeasuring 33387 sq. mtrs. situated at Village Rurgadh, Taluka Bavla for Rs.95,20,000/- vide sale deed No.2592 dated 03.10.2015. The assessee had purchased this land on 31.03.2014 for Rs.34 Lacs. On further verification of return of income and other details filed by the assessee, AO found that the assessee has not offered any capital gain on sale of this land by treating it agricultural land. It was further found that the said land was sold by the assessee to a company i.e. Dholi Integrated Spinning Park Limited. As per the sale deed, it has been found that the land was purchased by the said company for the purpose of industrial i.e. Integrated Spinning Park. The Industrial Commissioner had given permission on 03.05.2013 for the said purpose to the said company. As per village Form 7/12, there was no information regarding agricultural activity done during FY 2015-16 on the land purchased from the said company. Further, on verification of assessment records, no material evidences either submitted by the assessee or is available on record which proves that the said land was used by the

assessee for agricultural purpose. Hence, it was found that this land cannot be treated as agricultural land and the same attracts capital gain tax liability on transfer of this land.

3. In view of the above facts, learned PCIT opined that the A.O. had failed to verify the allowability of claim of assessee that the property sold was an agricultural land. Hence, it was apparent that to that extent the order passed u/s 143(3) dated 19.11.2018 was erroneous in so far as it was prejudicial to the interest of revenue. Accordingly, a show cause notice was issued on 09.03.2021 to the assessee requesting to show cause as to why provisions of section 263 of the IT. Act, 1961 not be invoked directing the Assessing Officer to make a fresh assessment after proper examination and enquiry. The assessee was also asked to furnish the following details/documents:

i) Copy of Form 8A for holding of agricultural land for Blocks bearing Survey No.350 by you for the year under consideration.

ii) Details of the land used for agricultural purposes for Blocks bearing Survey No.350 for the last two preceding and current years along with details of revenue paid and a certificate from the Talati for the crops taken, etc.

iii) Details of agricultural income earned for the last two preceding and current year along with details of sale of crops with copies of sales bills and show whether the same

has been disclosed for the last two preceding and current year.

3.1 In response, the assessee had filed written submission vide letter dated 20.03.2021. With regard to permission granted by the Industrial Commissioner dated 03.05.2013, the assessee mainly contended that as per the State Policy, when one has to set up an industrial park, he has to apply for the permission of industrial park and as a part of procedure, the company had applied for and the permission was granted on 03.05.2013. The assessee further submitted that he had not signed anywhere in the said permission and he has nothing to do with that permission.

3.2 With regard to use of agricultural land, the assessee submitted copy of Return of Income filed for AY 2015-16 showing agricultural income offered by him, copy of Form 8A as a proof of holding and extract of 7/12 stating that the land sold was used for agricultural activities for FY 2014-15 also. The assessee further contended that when the land as per revenue record was agricultural land, no presumption can be made that the land was non-agricultural land merely because the purchase was a company. It has further been submitted that he was not concerned with the use of land by purchaser as for him, it was agricultural land only and the buyer can use the land in the manner it wished to do but it would not have any impact on the nature of land and

therefore, the land cannot be treated as non-agricultural land merely because it was sold to an non-agriculturist. The assessee has relied upon the decision in the case of *CIT vs. Rajshibha Meramanbhai Odedra [2014] 42 taxmann.com 497 (Gujarat)*.

3.3 The PCIT did not agree with the submissions of the assessee and held that on careful examination of permission dated 03.05.2013 and Eligibility Certificate dated 14.08.2015 granted by the Industrial Commissioner attached with the sale deed property sold, it is found that purchaser was in the process of acquiring the land purchased by it and sold by the assessee. Thus, it got the land use changed. So, in these circumstances, land on the date of sale i.e. on 03.10.2015 was no more agricultural land and as such the profit arising on transfer of the land are taxable as long term capital gain.

4. Now, the assessee has come before us to challenge the order of the learned PCIT.

5. We have gone through the relevant record and impugned order. The assessee purchased the agricultural land in question on 31.03.2014 for Rs.34 Lakhs and shown himself as farmer as per the Revenue's Laws in Gujarat stating only farmer can purchase the agricultural land. Same is evident from the purchase deed and sale deed of the

land in question. Undisputedly, the permission for Dholi Integrate Spinning Park Limited were sought on 03.05.2013 and assessee was doing cultivation on said land and same is evident from his income tax return wherein he has shown agricultural income of Rs.9,07,000/-. In this case, the assessee had sold the land as agricultural land, if thereafter sold land has been converted into non-agricultural purpose by the buyer of the land, so, in such circumstances, the assessee cannot be held to pay long term capital gain. Hon'ble Jurisdiction High Court in the matter of *PCIT vs. Heenaben Bhadresh Mehta [2018] 96 taxmann.com 164 (Guj.)*, wherein it is held that profits from sale of agricultural land was claimed as exempt on the ground that said land was not a capital asset within the meaning of Section 2(14) of the Act and Hon'ble Gujarat High Court granted relief to the assessee with following observations:

“Section 2(14) of the Income-tax Act, 1961 - Capital gain - Capital asset (Agricultural land) - Assessment year 2009-10 - During relevant year, assessee filed his return wherein profits from sale of agricultural land was claimed as exempt on ground that said land was not a capital asset within meaning of section 2(14) - Assessing Officer rejected claim of assessee mainly on ground that land in question was sold to an industrial unit I and had potential to be used for industrial purpose - Tribunal, however, allowed assessee's claim - It was noted that assessee was an agriculturist and, land owned by him had been shown as agricultural land in revenue records - Moreover, land in question was sold by assessee after a period of approximately 15 to 16 months from purchase and, thus, it could not be regarded as a case of 'adventure in nature of trade' - Whether in aforesaid circumstances, mere intention of purchaser could not be a determinative factor to treat profit earned by assessee on sale of agriculture land as business, income - Held, yes - Whether, therefore, Tribunal was justified in allowing assessee's claim - Held, yes [Paras 7, 8 and 9] [In favour of assessee]”

5.1 It is pertinent to mention here that during assessment proceedings, several notices were issued by the learned AO and a notice dated 20th October, 2018 wherein learned AO specifically asked for the following details:

“(iii) As verified from Column. B7 of schedule-CG attached to the return, there is capital loss of Rs.4,31,199/-, please furnish computation of capital gain with supporting evidences.

(iv) As per Schedule EI, you have claimed exempt income of Rs.77,72,413/-. Please furnish details of exempt income earned with justification/supporting evidences for claim of exempt income.

(v) As per ITS details available with this office, you have sold an immovable property for the consideration of Rs.95,20,000/-. In the matter, you are requested to furnish as under:-

(a) Copy of registered document executed.

(b) Computation of capital gain earned.

(c) As regards const of acquisition of property sold supporting evidences such as purchase deed of property sold/details of expenses incurred.

(d) Copy of relevant bank account, reflecting the receipts of the sales proceeds of the property sold.”

5.2 In reply to that, assessee filed a copy of sale deed, purchase deed alongwith copy of ledger account of Dholi Gram Panchayat specifying the allocation of land and population of village wherein it is mentioned that above said land is not in Municipal area and is used for agricultural purpose only. After going through all above details, we are of the opinion that when already learned AO has made detailed enquiry, then on same point subsequent enquiry by

the PCIT is not enquired under the law. Thus, in view of the above facts and respectfully following the Hon'ble Gujarat High Court's order, we allow the appeal of the assessee.

6. In the result, the captioned appeal filed by the assessee is allowed.

This Order pronounced in Open Court on 18/02/2022

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad: Dated 18/02/2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।