

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

(Convened through Virtual Court)

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMEBR
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 2842/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2013-14)

Sanjaykumar Mansukhlal Shah 101, Sarthik Complex, Atabhai Chowk, Talaja Road, Bhavnagar	बनाम/ Vs.	Assistant Commissioner of Income Tax Circle - 1, 2 nd Floor, Aayakar Bhavan, Nr. Jasonath Chowk Nakubaug, Bhavnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABTPS4835R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri P B Parmar, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri V. K. Singh, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	24/03/2022
घोषणा की तारीख /Date of Pronouncement	31/03/2022

ORDER

PER MAHAVIR PRASAD, JM:

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

Income Tax (Appeals)-6, Ahmedabad ('CIT(A)' in short) vide Appeal No. CIT(A)-6/77/16-17, dated 26.10.2017 arising in the assessment order dated 28.03.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY. 2013-14.

2. The grounds of appeal raised by the assessee read as under:

- “1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO of holding that the land is a capital asset within the meaning of s.2(14) of the Act and thus liable for capital gain tax.*
- 2. The learned CIT(A) has erred both in law and on the facts of the case hi taking aid of s.2(14) of the Act as amended w.e.f. 01.04.2014 which is not at all applicable to the case of the appellant.*
- 3. The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition of Rs.l 1,05,000/- u/s.50C of the Act.*
- 4. The learned CIT(A) has erred both in law and on the facts of the case hi not adjudicating ground challenging, acceptance of DVO's valuation without appreciating the distinguishing features responsible for lesser value as stated in the sales deed.*
- 5. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from tune to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
- 6. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s.234A/B/C of the Act.*

7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in initiating penalty u/s.271(l)(c) of the Act.”*

3. In this case, assessee sold a land and did not show any gains from the sale of same. When asked by the AO, contention of the assessee was that the land sold was agricultural land. But the AO did not agree with the contention of the assessee and added Rs.11,05,000/- under S.50C of the Act.

4. Thereafter, assessee filed appeal against the order of the AO before the CIT(A). The learned CIT(A) held that as per the CBDT notified such distance from local limits of municipality vide Gazette Notification No. [SO 9447] (File No. 164/3/87 - ITA. I) dated 6.1.1994. As per this notification, distance in respect of Bhavnagar municipality is notified as follows:-

7. Bhavnagar	Areas up to a distance of 8 Kms. from the municipal limits in all directions.
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Thus, land within area of 8 Kms from the municipal limits of Bhavnagar, is not considered 'agricultural land' for the purpose of Section 2(14) of the Act. The land sold by the appellant is at a distance of only 5.2 kms from Bhavnagar. There is no substance in the contention of the assessee that population of village Budhel as per last census is only 7760, hence the second condition in clause (a) of Section 2(14) of the Act is not satisfied. This contention is based on

misinterpretation of the above provision. Hence, the land has been rightly held to be non-agricultural land by the AO. In view of discussion above, CIT(A) held that the AO was justified in making addition of Rs. 11,05,000/- u/s 50 C of the Act. Accordingly, addition of Rs. 11,05,000/- was upheld by him.

5. On the other hand, learned DR has relied on the assessment order.

6. We have gone through the relevant record and impugned order. The dispute before us is whether sold land is a 'capital asset' or 'agricultural land'. In support of its contention, assessee has filed a judgment of co-ordinate bench in the case of ITO vs. Akash Deep Farms P. Ltd. in ITA No.2138/Ahd/2012 & Anr. order dated 11.08.2015 wherein it is held that:

"CBDT CIRCULAR NO -17/2015, Dated: October 06, 2015

Subject:- Measurement of the distance for the purpose of [section 2\(14\)\(iii\)\(b\)](#) of the Income-tax Act for the period prior to Assessment year 2014-15 "Agricultural Land" is excluded from the definition of capital asset as per [section 2\(14\)\(iii\)](#) of the Income-tax Act based, inter-alia, on its proximity to a municipality or cantonment board. The method of measuring the distance of the said land from the municipality, has given rise to considerable litigation. Although, the amendment by the Finance Act, 2013 w.e.f. 1.04.2014 prescribes the measurement of the distance to be taken aerially, ambiguity persists in respect of earlier periods.

2. The matter has been examined in light of judicial decisions on the subject. The Nagpur Bench of the Hon. Bombay High Court Vide order dated 30.03.2015 in ITA 151 of 2013 in the case of Smt. Maltibai R Kadu has held that the amendment prescribing distance

to be measured aerially, applies prospectively i.e. in relation to assessment year 2014-15 and subsequent assessment year. For the period prior to assessment year 2014-15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance. The said decision of the High Court has been accepted and the aforesaid disputed issue has not been further contested.

3. Being a settled issue, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/ not pressed upon. This may be brought to the notice of all concerned.

[F. No. 279/Misc./140/2015-ITJ]

(D S Chaudhry) CIT (A&J), CBDT"

6.1 Apart from the aforesaid judgment, learned AR also cited the order of Jaipur Tribunal in case of Dinesh Kumar Jain vs. ITO [2017] 78 taxmann.com 53 (Jaipur-Trib.), wherein it is held as under:

“Section 2(14) of the Income-tax Act, 1961 - Capital gains - Capital asset (Agricultural land) -Assessment year 2011-12 - Whether amendment to section 2(14) by Finance Act, 2013 cannot apply to assessment year 2011-12 - Held, yes - Whether for year under consideration, distance of agricultural land from nearest municipality was to be measured by approach road; same could not be measured aerially as per amendment brought to section 2(14) by Finance Act, 2013 - Held, yes [Paras 6.8 and 6.10] [Matter remanded]”

6.2 After hearing both the, we are of the confirmed view that distance cannot be measured on the basis of Goggle Map. As in the present case, learned AO has measured the distance with the help of Goggle Map, therefore, we set aside this matter to the file of the AO to measure the distance of the land from the outer limit of Bhavnagar Municipality without political / jurisdictional map as in the

relevant assessment year when assessee claimed benefit of agricultural land. Thereafter, AO shall decide the matter as per law.

7. In the result, appeal filed by the Assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 31/03/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 31/03/2022

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 ।