

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI S. RIFAUR RAHMAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 1708/Mum/2019

(निर्धारण वर्ष / Assessment Year:2015-16)

Mr. Subhash Hari Gode Sakhroli Post Atgaon Tal- Shahapura Dist- Thane- 421301. PAN NO: BLLPG0668M	बनाम/ Vs.	ITO, Ward -2(4) Kalyan.
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आयकर अपील सं/ I.T.A. No. 1769/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2015-16)

Mr. Dinesh Subhash Gode Sakhroli Post Atgaon Tal- Shahapura Dist- Thane- 421301.	बनाम/ Vs.	ITO, Ward-2(1) 2 nd Floor Mohan Plaza Wayle Nagar Khadkhpada, Kalyan-421301.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AXOPG2157P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri M. Subramanian	
Revenue by:	Shri T. Shankar (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 08/02/2022

घोषणा की तारीख /Date of Pronouncement: 08/03/2022

आदेश / ORDER

PER AMARJIT SINGH (JM):

The assessee's have filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) -03, Thane [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2015-16.

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2. The assessee has filed the present appeal against the order dated 07.01.2019 passed by the Commissioner of Income Tax (Appeals) -03,



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Thane [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2015-16.

3. The assessee has raised the following grounds: -

“1) The learned Assessing Officer erred in making and delivering the order within the time limit as prescribed u/s.153 of the IT Act,1961.

2) The learned Assessing Officer further erred by not sending computation of income as assessed by Assessing Officer.

3) On the facts and in the circumstances of the case and in law the Learned Assessing Officer erred in considering amount of Rs.1,34,84,750/- received towards Sale of Agriculture Land as Long Term Capital Gain and making addition of the said entire Sale amount.

4) The Learned Assessing Officer failed to appreciate the fact that, the said property is Agricultural Land and same shall not be considered as capital asset as per the provisions of section 2(14) of Income Tax Act 1961.

5) The Learned Assessing Officer erred in making the addition to the total income of the appellant by specifying irrelevant case law of CIT v/s Raja Benoy Kumar Sahas Roy.

6) On the facts and circumstances and in law, the Learned Commissioner of Income Tax (Appeals)-Thane-3 erred in relying on the below mentioned judicial pronouncements;

i. B. Sudhakar Pai [TS-360-ITAT-2016(Bang)] dt.30/06/2016

ii, ACIT v. Subramaniam Vadivel [TS-206-ITAT-2013 (Chennai)] dt.23/05/2013



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iii. Mehmood Ali [TS-151-ITAT-2013(Hyd)]

iv. Shri Vijay Shah [TS-182-ITAT-2017(Chennai)]

7) On the facts and circumstances and in law, the Learned Commissioner of Income Tax (Appeals)-Thane-3 erred in relying on judicial pronouncements of different case and not appreciating the facts of Appellant's case independently.

8) On the facts and in the circumstances of the case and in law the Learned Assessing Officer erred in making the decision that the land transferred is not agricultural land solely on the basis that there was no agriculture activities carried out by the owner of land on day when the Learned Assessing officer visited the site however he failed to appreciate the fact that the land was transferred during FY 2014-15 and not on FY 2017-18.

9) The Learned Assessing Officer failed to consider the submission and explanation made by appellant as well as third party/ independent party without giving enough opportunity of being heard to cross examine and to prove the status of agricultural land and not following the principle of natural justice.

10) The appellant craves to add, alter, classify , reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another.”

4. The brief facts of the case are that the assessee filed his return of income on 31.03.2017 declaring total income to the tune of Rs.2,70,000/- for the A.Y.2015-16. Thereafter, the assessment was selected for scrutiny under CASS. The scrutiny was on account of this fact that the sale consideration of property in ITR was less than the sale consideration



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reported in Form 26QB and large agricultural income in comparison to total income. Necessary notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee along with the family members sold the land of Rs.1,87,50,000/-. The assessee has shown the agricultural income in sum of Rs.37,50,000/-. The assessee was asked to satisfy the status of the land. An amount in sum of Rs.37,50,000/- was the share of assessee which was treated as long term capital gain during the F.Y.2014-15. The amount in sum of Rs.37,50,000/- was added to the income of the assessee. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

5. In all the issues are in connection with this fact that the price of agriculture land sold by assessee is liable to be treated as Long Term Capital Gain or not. The assessee treated the sale price of agriculture land as Capital Gain. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in ITA. No.5497/Mum/2018 for the A.Y.2015-16 dated 21.01.2021. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. It is not in dispute that the land of the assessee is situated at Sakhroli, Atgaon, Taluka Shahapur, Dist. Thane. Agreement of sale dated 03.04.2014 is on record which speaks that the land is situated at Sakhroli, Atgaon, Taluka Shahapur, Dist. Thane. Moreover, description of land is not in dispute. Whether the land is the agriculture land of non-agriculture land is liable to be seen. The land is situated in area of Sakhroli, Atgaon, Taluka Shahapur, Dist. Thane. In this particular area, the Hon'ble ITAT has already been decided the issue by specifically holding that the land is agriculture land in the case bearing ITA.



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No. 5497/Mum/2018 for the A.Y.2015-16 dated 21.01.2021. The relevant finding is hereby reproduced as under: -

“9. We have heard both the parties and perused the material available on record. The assessee owned agricultural land, which was leased out to a cultivator to carry out agricultural activities on the said land as is evident from the revenue records /certificates placed before us during the course of appellate proceedings the copy whereof is filed at page no. 174 to 178. The assessee has received Rs 16,40,000/- as agricultural Income from the cultivator under the MOU. Now the issue before us is whether the said receipt Is agricultural income or now. After perusing the case laws, we find that the income so received from leasing of the agricultural land is apparently also an agricultural Income and, therefore, the addition confirmed by the learned CITA) cannot be upheld. On perusal of the order sheet entries, we find that the AO has not Issued show cause notice to the assessee before making the addition. In our considered view, any addition made without issuing show-cause notice cannot be sustained. The case is supported by the decision of Hon'ble Gujarat-High Court in the case of Zenith Process Mill (supra) and the order of the Co-ordinate Bench in the case of M/s. Lal Construction (supra). We find that the lower authorities have failed to appreciate the terms and conditions of the MOU (a copy of which has been filed at page 174 to 178) of the paper-book as per which the assessee Is not required to maintain any bills, vouchers and books of accounts and consequently the Income received from the cultivator was the net agricultural income. This proposition is also supported by the provisions of section 2(1A)(a), wherein it has been provided that any any rent or revenue derived from land in India used for agricultural purpose Is also agricultural Income. Accordingly, we are Inclined to



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set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. This ground is allowed.

10. In ground no. 2, the assessee has disputed the addition of Rs. 9,04,44,852/- made by the AO In respect of Profit on sale of agricultural land as business income u/s. 2(13) r.w.s. 28(1) of the Act which has been confirmed by the CIT(A). The facts in brief are that the assessee sold land vide registered agreements on various dates to various persons for total consideration of Rs 11,03,89,000/-. The land holding period ranges from five to twenty-five years, the details whereas are. given at page 11 of the assessment order. The assessee claimed that the gain resulting from sale proceeds of the land was exempt from tax being agricultural land situated beyond 8 kms from local limits of the nearest municipal council and also the population of the area -being less 10000. The Assessing Officer has stated that assessee has not carried out any agricultural activities and the land was acquired with the sole intention to sell it to various companies on profit. The Assessing Officer observed that the assessee had been doing similar transactions in each year. The Assessing Officer noted that keeping in view the nature of land traded, quantity of land traded and frequency of sales and purchases over the years prove that the assessee Is involved in land trading and, accordingly, the profit therefrom has to be treated as business income. According to the Assessing Officer, the Inspector who was recruited to inquire about the land has reported that the land is barren and not being used for agricultural purposes, Finally, the Assessing Officer held that the activity of the assessee i.e. buying and selling of land was nothing but an adventure In the nature of trade and, therefore, Rs 9,04,44,852/- profit arising from sale of agricultural land is treated as business income of the assessee u/s, 28(1) r.w.s. 2(13) of the Act.



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11, In the appellate proceedings, the learned CIT(A) affirmed the order of the Assessing Officer by holding that the assessee has purchased land not for agricultural activity but to derive profit from sale of land. The intention of the assessee was to make profit from sale of land and not income from cultivation. The CIT(A) has passed a very detailed order discussing various case laws at pages 38 to 47 of the appellate order.

12. The learned AR vehemently submitted before the Bench that the order passed by the learned CIT(A) suffered from several infirmities and too was passed without taking into consideration necessary facts and documents filed during the appellate proceedings. The learned AR drew our attention to Index no II known as 7/12 extracts of the land revenue record on 19.09.2017 (Page no 17-55 of the paper book). He pointed out that a perusal of Page nos. 22, 25, 29, 32, 36, 39, 42, 45, 48, 52 and 55 of the paper-book it is clear that the agricultural land stands in the name of the assessee as the owner and the type of the land was shown as agricultural land. The assessee also filed copy of certificate showing distance of 28 kms from the Municipality limit issued by the Talati, filed at Page no 58 of the paper-book. He also filed certificate showing population less than 10,000 people, filed at page nos. 179 and 180 of the paper-book. The learned AR further pointed out that both conditions of population and distance as contained in Section 2(14) have been fulfilled by the assessee and, accordingly, the sale of agricultural land does not fall within the definition of Capital Asset and, therefore, any gain arising from sale of such land has rightly been claimed as exempt. The learned AR relied on the decision of Chennai Benches of the Tribunal in the case of N. Jaymurgan (70 taxmann.com 2), wherein it has been held as under:



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"Where assessee received certain amount from sale of land, in view of fact that in revenue records said piece of land had been classified as agricultural land and, moreover, it was situated beyond 8 k.m. from municipal limits and, thus, it did not come within purview of section 2(14)(iii) either under item (a) or (b), net proceeds of land in question could not be brought to tax as business, Income."

13. *The learned AR further referred to the case of Mohit' Harchandrai (980 taxmann.com 174) wherein, it has been held that merely because purchasers converted land to non-agricultural and it remained uncultivated for long time, would not make it as non-agricultural at time of selling of land. The learned AR therefore submitted that the said property does not fall under the definition of capital asset as defined under section 2(14) of the Act as the assessee has fallen under the exception provided by fulfilling the necessary conditions of the distance of the land being 8 Kms away from the Municipality limit and the population of the place being less than 10000. The learned AR also pointed out that the report of the inspector is obtained in the month of December 2017 i.e. three years after the sale of land i.e. FY 2014-15 hence, that does not reveal the condition on the date of sale. He further pointed out that the different use of land by subsequent buyer In December 2017 cannot be criteria for treating the land as non-agricultural. He further submitted that the land was held for a very long period before being sold which ranged from 5 to 25 years. The learned AR relied on the decision of Hon'ble Gujarat High Court in the case of Heenaben Mehta (96 taxmann.com 164) wherein It has been held that, "where assessee was an agriculturist and land owned by him had been shown as agricultural land In revenue records, mere fact that said land had been sold to an unit and had potential to be used for industrial purpose, could not be*



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an administrative factor to treat profit earned by assessee on sale of agriculture land as business income." The learned AR further submitted that income from this land has been treated as agricultural income and has been claimed exempt and allowed as such by the Revenue in the earlier years. In support of his arguments, learned AR relied on the following decisions:

Nandial Agrawal [ITA 2534/AHD/2015]

Mr. S.H. Mohamed Nowfel [ITA 435/Chny/2019]

Sarnath Infra Pvt Ltd (124 ITD 71 (Lucknow))

Warniks Park Pvt Ltd. [41 taxmann.com 109 (Hyderabad Tribunal)]

Smt. Bilkishbai (225 ITR 570 (MP))

K.P.R, Developers Ltd [117 taxmann.com 822 (Madras)]

The learned AR therefore, pleaded that profit on sale of agricultural land is wrongly treated by the AO as the business income instead of the exempt income u/s 2(14) of the Act and, therefore, prayed for deleting the same.

14. The learned DR, on the other hand, submitted that keeping in view the frequency of sales, nature of land and conduct of the assessee in buying and selling of land was nothing but an adventure in the nature of trade and not for earning agricultural income. He relied heavily on the orders of the authorities below by submitting that the Assessing Officer had elaborated the issue in depth. He, therefore, submitted that the addition so affirmed by the learned CIT(A) may be upheld.

15. We have heard both the parties and have carefully perused the material on record. We find that in this case the assessee has made a



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number of sale transactions during the year on which he has made gain of Rs 9,04,44,852/-. The assessee has treated the said gain as exempt as arising from sale of agricultural land which does not constitute capital asset within the meaning of section 2(14) of the Act; whereas, the Assessing Officer has treated the same as income from business u/s. 28(i) r.w.s. 2(13) of the Act by holding that the assessee has been doing business of land purchase and sale though the land sold during the year were held by the assessee from five to twenty-five years. According to the Assessing Officer this has been the regular practice of the assessee. Undisputed facts are that as per Index no II known as 7/12 extract of the land revenue record on 19.09.2017 it is clear that the agricultural land stands in the name of the assessee as the owner and the type of the land was shown as agricultural land. This land was sold in the F.Y. 2014-15 when the nature of land was agricultural land. The assessee has duly fulfilled the conditions of distance and population, which are provided for in Section 2(14) i.e, the land is location 8 kms away from the limits of the municipality and the population is less than 10000 people. In our opinion, the said land has to be held as agricultural land and the income therefrom has to be treated as gain arising from agricultural land, which cannot be brought to tax under the Act. Another fact which attracts our attention is the Inspector's report, wherein it is mentioned that the land is barren and that there is no source for irrigation and no agricultural operations were undertaken on the land, was based on the inquiry/inspection carried out in 2017, whereas the land was sold In FY 2014-15, which is approximately three years after the date of sale of land and, therefore, we cannot place reliance on this report of the assessee is supported by the decisions in the case of N Jaymurgan (supra) and Mohit Harchandrai (supra). It also finds support from



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decision of Hon'ble Gujarat High Court in the case of Heenaben Mehta (supra), wherein it has been held. that "where assessee was an agriculturist and land owned by him had been shown as agricultural land in revenue records, mere fact that said land had been sold to an industrial unit and had potential to be used for industrial purpose, could not be a determinative factor to treat profit earned by assessee on sale of agriculture land as business income. In view of these facts and ratio laid down by the various judicial forums as discussed above, we hold that the profit earned on sale of land by the assessee cannot be treated as business income. Accordingly, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition and treat the same as exempt from tax. The ground of appeal of the assessee is allowed."

6. There is nothing on record to which it can be assumed that the agriculture land of the assessee falls within the Municipal Corporation Area. The certificate signed by Talathi of Atgaon, Taluka Shahapur Disit. Thane dated 28.12.2017 is on record which lies at page no. 60 of the paper book and speaks that the land in question bearing Gut No.214 at Sakhroli was at distance of more than 10 Kms., Shahapur Nagar Panchayat and it is an agriculture land. The revenue record lies at page no. 64 of the paper book speaks about this fact that the land is the agriculture land and specifically use for agriculture purpose. Taking into account of all the facts and circumstances, we are of the view that the finding of the CIT(A) is not in accordance with law and the relevant facts required to be considered adjudicating the matter of controversy was not considered, therefore, we set aside the finding of the CIT(A) on this issue and decide all the issues are in favour of the assessee against the revenue and by holding that the land is the agriculture land and is exempt for tax.



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In the result, the appeal filed by the assessee is hereby allowed.

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7. The assessee has filed the present appeal against the order dated 07.01.2019 passed by the Commissioner of Income Tax (Appeals) -03, Thane [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2015-16.

8. The assessee has raised the following grounds: -

“1. On the facts and circumstances and in law, the Learned Commissioner of Income-Tax (Appeals)-Thane-3, Thane erred in dismissing the appeal of the Appellant against Assessment Order passed u/s.143(3) by Assessing Officer, Income Tax Officer - 2(4), Kalyan, making addition of Rs.37,50,000/- and therefore addition may kindly be deleted.

2. On the facts and circumstances and in law, the Learned Commissioner of Income-Tax (Appeals)-Thane-3 erred disposing the appeal without giving adequate opportunity of being heard.

3. On the facts and circumstances and in law, the Learned Commissioner of Income-Tax - (Appeals)-Thane-3 erred in disposing the appeal without considering the grounds of appeals and statement of facts submitted on merits.

4. On the facts and circumstances and in law, the Learned Commissioner of Income-Tax (Appeals)-Thane-3 erred in disposing the appeal without appreciating the fact that, the said property is Agricultural Land and same shall not be considered as capital asset as per the provisions of section 2(14) of Income Tax Act 1961. The



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learned Commissioner of Income-Tax (Appeals)-Thane-3 further erred in not appreciating the evidences such as Census count certificate from Grampanchayat and Agricultural Land Declaration from nearby Talathi Office-Atgaon and Satbara submitted by appellant.

5. On the facts and circumstances and in law, the Learned Commissioner of Income-Tax (Appeals)-Thane-3 erred in relying on the below mentioned judicial pronouncements,

i. B. Sudhakar Pai [TS-360-ITAT-2016(Bang)] dt.30/06/2016

ii, ACIT v. Subramaniam Vadivel [TS-206-ITAT-2013 (Chennai)] dt.23/05/2013

iii. Mehmood Ali [TS-151-ITAT-2013(Hyd)]

iv. Shri Vijay Shah [TS-182-ITAT-2017(Chennai)]

6. On the facts and circumstances and in law, the Learned Commissioner of Income-Tax (Appeals)-Thane-3 erred in relying on judicial pronouncements of different case and not appreciating the facts of Appellant's case independently.

7. The Appellant craves to add, alter or modify any grounds of appeal during the appellate proceedings.”

9. The facts of the present case are quite identical to the facts of the case as narrated above while deciding the ITA. No.1708/Mum/2019. However, the assessee is the different and share of the assessee is also different in this case but land in question is the same situated at Sakhroli, Atgaon, Taluka Shahapur, Dist. Thane. In this case also the matter of controversy is the same which has been decided while deciding the appeal



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No.1708/Mum/2019. The finding given above is quite applicable in the present case also as mutatis mutandis. Accordingly, we decide all the issues are in favour of the assessee against the revenue.

10. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 08/03/2022

Sd/-

(S. RIFAUR RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 08/03/2022

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai