आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
'' SMC'' BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms SUCHITRA KAMBLE, JUDICIAL MEMBER

Sl. No(s)	ITA No.	Asset. Year(s)	Appeal(s) by Appellant vs. Respondent	
			Appellant	Respondent
1.	No.581/Ahd/2019	2014-15	Shaileshbhai Kalabhai Chaudhary, Matapura, Chhala, Dist. Gandhinagar. **PAN: APKPC9240B**	Income Tax officer, Ward-4, Gandhinagar.
2.	No.2018/Ahd/2018	2014-15	Babubhai Motibhai Chaudhary, 1578, At Matapura, Chhala, Dist. Gandhinagar **PAN: CFSPB4120F**	Income Tax officer, Ward-1, Gandhinagar.
3.	No.2019/Ahd/2018	2014-15	Somabhai Motibhai Patel., Matapura, Chhala, Dist. Gandhinagar. **PAN: BTIPP1979F**	Income Tax Officer, Ward-4, Gandhinagar.
4.	No.2020/Ahd/2018	2014-15	Kantaben Govabhai Patel, House No.9601, Matapura Mahadevpura, Chhala, Dist. Gandhinagar **PAN: CJTPP7836F**	Income Tax officer, Ward-2, Gandhinagar.

(Applicant)		**(Respondent)**

Assessee by	:	Shri Pritesh Shah, A.R
Revenue by	:	Shri Shaurya S. Shukla, Sr.D.R

सुनवाई की तारीख**/Date of Hearing : 22/03/2022**
घोषणा की तारीख **/Date of Pronouncement: 08/04/2022**

आदेश/O R D E R

PER BENCH:

The captioned four appeals have been filed at the instance of different Assessee against the separate orders of the Learned Commissioner of Income Tax (Appeals)-12, Ahmedabad, of even dated 21/02/2018 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

ITA **No. 581/Ahd/2019 for A.Y.2014-15** in the case of Shailesh Kalabhai Chaudhary

2. The first issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹ 9,52,000.00 on account of long-term capital gain.

3. The assessee, being an individual, along with 4 co-owners was owning a piece of agricultural land which was converted into non-agricultural land dated 4 February 2013. Thereafter, the assessee along with the co-owners has sold the same on 1 August 2013 for a consideration of Rs. 47,6000.00 only. It was submitted by the assessee that the impugned land was the agricultural land. The assessee in support of his contention has also filed the letter from the Gram Panchayat to justify

that the impugned land was used for agricultural activities before the date of conversion and the same was located beyond the limits of Municipal Corporation. Thus, as per the assessee, the question of charging any capital gain on the transfer of the impugned land does not arise.

3.1 However, the AO was dissatisfied with the contention of the assessee on the reasoning that as on the date of sale of the impugned land, the status of the land was nonagricultural. Furthermore, the land was sold to the party who was coming up with the residential project on the land. Thus, there was no intention for using the impugned land for the purpose of agricultural activities.

3.2 The AO also observed that the assessee has not shown any income by way of agricultural activities from the impugned land based on the documentary evidence such as sales bills, cultivation expenses, electricity expenses, seeds expenses. Thus, it becomes evident that the land was not used for the purpose of the agricultural activities. Accordingly, the fact whether land is situated within the limits of Municipal Corporation becomes irrelevant. As per the AO, the land in dispute was non-agricultural land.

3.3 The AO further observed that the assessee has not furnished any details about the cost of acquisition of the impugned land and therefore the AO treated the entire gross value of the sale consideration amounting to Rs. 47,60,000.00 as income under the head capital gain. Accordingly, an amount of ₹ 9,52,000.00 being 20% of the gross sales value representing the share of the assessee was added to the total income on account of long-term capital gain.

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

4.1 The assessee before the learned CIT-A filed the valuation report as on 1 April 1981 from the Government approved registered valuer to establish the cost of

acquisition as on 1 April 1981 at ₹ 3,96,560.00 and prayed to consider the same while calculating the income under the head capital gain.

5. The learned CIT-A called for the remand report from the AO who in turn vide letter dated 6 September 2018 submitted that the assessee failed to bring any cogent reason to justify that there was sufficient reason which prevented him to file the valuation report during the assessment proceedings. Accordingly, the AO in the remand report opposed to admit the additional evidences filed by the assessee.

5.1 Without prejudice to the above, the AO in his remand report further submitted that the property in dispute was acquired by the assessee by way of inheritance and therefore the cost of acquisition as applicable to the previous owner should be taken as the cost of acquisition. However the assessee, failed to bring any details in support of the cost of acquisition and therefore, the AO proposed to take the cost of acquisition at nil for calculating the long-term capital gain.

5.2 The learned CIT-A after considering the submission of the assessee and the remand report of the AO confirmed the order of the AO by observing that as on the date of sale, the status of the impugned land was as nonagricultural. Therefore, it was the nonagricultural land which was transferred by the assessee. Therefore, the impugned land cannot be treated as agricultural land and the fact whether the impugned land was situated beyond the limits of Municipal Corporation becomes irrelevant.

6. Being aggrieved by the order of the learned CIT-A the assessee is in appeal before us.

7. The learned AR before us has filed a paper book running from pages 1 to 262 and contended that the land in dispute was the agricultural land and therefore the same is not subject to capital gain.

7.1 The learned AR, without prejudice to the above, also contended that the revenue has calculated the capital gain without allowing the deduction for the cost of acquisition. As per the learned AR, impugned land was acquired by the assessee by way of inheritance before 1981. Therefore, the assessee has filed the valuation report from the registered valuer as on 1 April 1981 which should be allowed as deduction from the value of consideration for determining the capital gain.

8. On the other hand the learned DR before us vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates to the following disputes:

i. Whether the assessee has transferred the agricultural land within the meaning of the provisions of section 2(14) of the Act and therefore the same is not subject to the capital gain.

ii. Whether the assessee is entitled for the deduction of cost of acquisition based on the valuation report as on 1 April 1981 for the property acquired by way of inheritance

9.1 With respect to the question No. 1, we note that the agricultural land does not fall within the definition of capital assets as provided under section 2(14) of the Act provided it is situated beyond the prescribed limit/area and the same area has a population less than the prescribed limit.

9.2 From the above, it is transpired that the land whether it is agricultural or not depends upon its location and the population of the location. Accordingly the situation of the land will decide whether it is a capital assets, liable to tax under the head capital gain.

9.3 However, it is pertinent to note that there is no definition provided under the Act for the agricultural land. Therefore, there are other factors, as provided by different courts in the respective judicial pronouncements, needs to be considered to find out whether the land is agricultural land. These factors are detailed as under:

I. The use of the land in the past, present and intended use in the future for the agricultural operations.

II. Is it necessary that the owner of the agricultural land should be the agriculturist ?

III. Is it sufficient the recording of agricultural land in the relevant documents of agricultural land issued by the government authorities ?

9.4 The meaning of the expression 'agricultural land' was considered first time by the Supreme Court in case of *CIT* v. *Raja Binoy Kumar Sahas Roy* [1957] 32 ITR 466. The constitution bench of Supreme Court has considered the meaning of the expression 'agricultural land' which was again considered by the Supreme Court in case of *Smt. Sarifabibi Mohmed Ibrahim* v. *CIT* [1993] 204 ITR 631/70 Taxman 301. The following principles laid down:

i. The assessment of the land under the land revenue provisions as agricultural land is not the conclusive evidence that the land agricultural land.

ii. The use of the land for the agricultural operations and cultivation is pre requisite for classifying land as agricultural land in nature. As such, the actual and the intended use of the agricultural land has to be seen for the purpose of exemption under section 2(14) of the Act.

9.5 Similarly, the criteria laid down by the Hon'ble Bombay High Court in case of *CIT* v. *V.A Trivedi* [1988] 172 ITR 95/38 Taxman 102 is to find out true character and nature of the land is to ascertain whether the land has been used for the reasonable span of time for the agricultural operations and further it was intended use such land for agricultural operations for the reasonable span of time in the future.

9.6 From the above it can be concluded that merely showing the land as agricultural land in the revenue records and furthermore the use of the land in the remote past is not decision factor to hold the land as agricultural land after considering the future use of the land which is for non-agricultural operations. As such the future use of the land will change the character of the land from agricultural to nonagricultural at the time of sale. In fact purpose of providing exemption to the agricultural land from the capital gain was to encourage cultivation of land and agricultural operations. Accordingly, a restricted meaning has to be given to the expression agricultural land as contemplated under section 2(14)(iiib) of the Act.

9.7 Coming to the facts of the case, there is no ambiguity that the land at the time of transfer was not the agricultural land and the same was transferred for the purpose of residential project. Thus there was no use of the impugned land in the future for the purpose of agricultural activities. Therefore, to our mind the assessee is not entitled for claiming the land as agricultural land so as to get out of the purview of the provisions of capital gain. Thus we reject the contention of the learned AR for the assessee.

10. The 2nd question comes for determining the cost of acquisition of the impugned land which was acquired by way of inheritance. The Income chargeable under the head "Capital gains" is calculated by deducting from full value of consideration received or accruing as a result of transfer:

i. The cost at which the asset was acquired
ii. The cost incurred subsequently on improvement of the capital asset.

10.1 The provisions of section 49(1) of the Act provides that where a capital asset becomes the property of the assessee by way inheritance, the cost to the previous owner shall be deemed to be the cost of acquisition to the assessee. From the above provisions, there remains no ambiguity to the fact that the assessee is very much entitled against the full value of consideration from the transfer of capital asset, the deduction for the cost of acquisition of the capital asset. In other words, the same

cannot be made nil merely on the reasoning that the assessee has not furnished any detail for the same. Admittedly, the primary onus lies upon the assessee to furnish the necessary details but in the event, the assessee fails to discharge the onus, it does not mean that the revenue can determine the income in arbitrarily manner. It is incumbent upon the revenue to calculate the income chargeable to tax in the manner provided under the statute. If the assessee failed to furnish the cost of acquisition, then the revenue was empowered to find out the same by exercising the authority provided under the statute under the provisions of section 131/133 (6) of the Act. But we find that the revenue has not exercised such powers.

10.2 Moving further, we find that the assessee in support of the cost of acquisition has furnished the valuation report as on 1 April 1981 amounting to ₹ 3,96,560.00 but no defect of whatsoever was pointed out by the authorities below. In the case of *CIT* v. *Manjula J. Shah* [2011] 16 taxmann.com 42, the Bombay High Court, after analysing the facts of the case and position, in law, laid down an important legal proposition that while computing capital gains arising on transfer of a capital asset acquired by an assessee under an inheritance, indexed cost of acquisition has to be computed with reference to year in which previous owner first held the asset, and not from the year in which the assessee became owner of that asset. On the same reasoning, the assessee should also be entitled to adopt the value of the property, in a situation when the asset became the property of the previous owner before April 1, 1981, in terms of section 55(2)(*b*)(*ii*) of the Act. As such the assessee has the option to take actual cost or the fair market value of the asset (other than a depreciable asset), as on April 1, 1981 as the cost of acquisition. In such a situation, the period of holding shall be determined under section 2(*42A*) of the Act by including period for which such an asset was held by the previous owner. Accordingly, we hold that the assessee is entitled for the deduction towards the cost of acquisition of the impugned property against the full value of consideration for the amount shown in the valuation report as on 1 April 1981 as per the provisions of law. Hence, the ground of appeal of the assessee is partly allowed.

10.3 In the result, the appeal filed by the assessee is partly allowed.

Coming to ITA No. 2018/AHD/2018, A.Y. 2014-15 an appeal by the assessee Shri Babubhai Motibhai Chaudhary

11. At the outset, we note that issue raised by the assessee in its ground of appeal similar to the grounds raised in the case of Shri Shaileshbhai Kalabhai Chaudhary in ITA No.581/Ahd/2019 for A.Y. 2014-15. Therefore, the findings given in ITA No.581/AHD2019 for A.Y. 2014-15 shall also be applicable for the assessee appeal in ITA No.2018/Ahd/2018 for A.Y. 2014-15. The appeal of the assessee Shri Shaileshbhai Kalabhi Chaudhary has been decided by us vide paragraph Nos. 9 to 10.3 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for issue raised in ITA No. 581/Ahd/2019 shall also be applied for the issue raised by the appellant. Hence, the grounds of appeal filed by the assessee is partly allowed.

11.1 In the result appeal of the assessee is partly allowed.

Coming to ITA No. 2019/AHD/2018, A.Y. 2014-15 an appeal by the assessee Shri Somabhai Motibhai Patel

12. At the outset, we note that issue raised by the assessee in its ground of appeal similar to the grounds raised in the case of Shri Shaileshbhai Kalabhi Chaudhary in ITA No.581/Ahd/2019 for A.Y. 2014-15. Therefore, the findings given in ITA No.581/AHD2019 for A.Y. 2014-15 shall also be applicable for the assessee appeal in ITA No.2019/Ahd/2018 for A.Y. 2014-15. The appeal of the assessee Shri Shaileshbhai Kalabhi Chaudhary has been decided by us vide paragraph Nos. 9 to 10.3 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for issue raised in ITA No. 581/Ahd/2019

shall also be applied for the issue raised by the appellant. Hence, the grounds of appeal filed by the assessee is partly allowed.

12.1 In the result appeal of the assessee is partly allowed.

Coming to ITA No. 2020/AHD/2018, A.Y. 2014-15 an appeal by the assessee Kantaben Govabhai Patel

13. At the outset, we note that issue raised by the assessee in its ground of appeal similar to the grounds raised in the case of Shri Shaileshbhai Kalabhi Chaudhary in ITA No.581/Ahd/2019 for A.Y. 2014-15. Therefore, the findings given in ITA No.581/AHD2019 for A.Y. 2014-15 shall also be applicable for the assessee appeal in ITA No.2020/Ahd/2018 for A.Y. 2014-15. The appeal of the assessee Shri Shaileshbhai Kalabhi Chaudhary has been decided by us vide paragraph Nos. 9 to 10.3 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for issue raised in ITA No. 581/Ahd/2019 shall also be applied for the issue raised by the appellant. Hence, the grounds of appeal filed by the assessee is partly allowed.

13.1 In the result appeal of the assessee is partly allowed.

14. In the combined results, the appeals filed by the different assessee are **partly allowed.**

Order pronounced in the Court on 08/04/2022 at Ahmedabad.

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 08/04/2022

Manish