

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 2056/Ahd/2014
Assessment Year : 2010-11

DCIT, Central Circle 1(4), Ahmedabad	Vs	Shri Chandrakant L. Patel, 18/ B, Saujanya Society, Makarpura Tin Rasta, Vadodara-390 010 PAN : AHZPP 6425 C
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Revenue by :		Shri R.R. Makwana, Sr DR
Assessee by :		Shri Mukund Bakshi, CA

सुनवाई की तारीख/Date of Hearing : 25/04/2022

घोषणा की तारीख /Date of Pronouncement: 31/05/2022

आदेश / O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal is preferred by the Revenue against the order of learned Commissioner of Income-Tax (Appeals)-I, Ahmedabad ("CIT(A)" in short) dated 28.04.2014 and the solitary issue involved therein relates to the deletion by the learned CIT(A) of the addition of Rs. 3,60,15,240/- made by the Assessing Officer on account of Short Term Capital Gain.

2. The assessee, in the present case, is an individual who filed his return of income for the year under consideration on 06.08.2010 declaring a total income of Rs.71,690/-. A search action under Section 132 of the Income-tax Act, 1961 ("the Act" in short) and survey under Section 133A of the Act were carried out in the cases of Bhogilal Group. During the course of said action, various documents were found and seized which revealed that the assessee had purchased agricultural land at Survey No.86 from one Princes Gaekwad vide conveyance deed executed on 18.03.2010 for a consideration

of Rs.17,76,06,000/-. It was also revealed that the assessee on 18.03.2010 itself had entered into a partnership firm in the name and style of M/s. Vallabh Developers with M/s Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. and the land at Survey No. 86 was introduced by the assessee in the partnership firm as stock-in-trade for a value of Rs.22,41,00,000/-. The return of income filed by the assessee for the year under consideration was selected under compulsory scrutiny and when the assessee was called upon by the Assessing Officer to offer his explanation as regards the chargeability of capital gains in relation to land at Survey No. 86, he explained that the land in question was sold to Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. on 13.05.2011 for a total consideration of Rs.21,11,00,000/- and his share in the said land was only 30%. The assessee accordingly agreed to offer the capital gain arising from the said transaction in his return of income for the AY 2012-13. It was also submitted by the assessee that the remaining 70% of the share in the said land was belonging to one Shri Mukesh Gupta as clearly reflected in banakhat executed on 17.10.2007. It was further submitted by the assessee that the land in question was never converted as stock-in-trade and introduced as capital contribution in the firm of M/s. Vallabh Developers. It was contended that M/s. Vallabh Developers had only nominal existence and term of the partnership deed dated 18.03.2010 was never given any effect. It was submitted that the transfer of immovable property exceeding the value of Rs.2000/- could be made only by a registered conveyance deed as per the Transfer of Property Act. It was also pointed out that the land in question was an agricultural land as on 18.03.2010 and it was converted into non-agricultural land only on 11.01.2011. It was submitted that the partnership firm could not be owner of agricultural land unless all the partners are agriculturists. It was contended that after purchase of land by the assessee jointly with Shri Mukesh Gupta from Princess Ujwala Raje, the land in question continued to

be owned by them jointly till it was finally sold to M/s. Bhogilal Odhavji Industrial Enterprise Pvt. Ltd. It was contended that there was thus no transfer of property or the land in question within the meaning of Section 2(47) of the Act in the previous year relevant to AY 2010-11 and there was no question of taxability of any capital gain. It was pointed out the land was actually transferred on 12.05.2011 and the name of Shri Mukesh B. Gupta did appear in the sale deed as a confirming party.

3. The explanation/submission made by the assessee was not found acceptable by the Assessing Officer. According to him, there were certain facts emerging from the material available on record and the same being relevant to decide the issue, he summarized the same in his order as under:-

“In the year 2007 an agreement for sale of land at Survey No.86 between the seller Princess Gaekwad and the assessee as well as Shri Mukesh Gupta was executed wherein Shri Mukesh Gupta has also declared himself as an Agriculturist.

- On 18/03/2010, the land at Survey No.86 was purchased by a registered deed solely by the assessee and there is no mention of having right, title or entitlement of any third party especially Shri Mukesh Gupta or any mention of MOU for sharing of land or co-ownership of the land.*
- On 18/03/2010 itself, a Partnership firm between the assessee and one Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. being represented by its Directors S/Shri Bhogilal Odhavji Amlani, Vinod Bhogilal Amlani and Bhupesh Bhogilal Amlani was formed and Partnership Deed was executed accordingly.*
- On 18/03/2010 itself, as per the Partnership Deed Clause 10, the assessee agreed that at the time of creation of this Partnership firm, the land in question i.e. Survey No.86 has been accepted as introduced by him as stock in trade for a total consideration of Rs.22,41,00,000/-. In this clause itself, it has also been accepted that the Partner Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. has given loan of Rs.1,05,00,000/- to the assessee and this loan amount will not be repaid by the assessee but the same will be treated as capital of the loanee namely; Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. and his capital account will be credited accordingly by Rs.1,05,00,000/-. Thus, the net effect of this agreement was that the*

assessee's capital account stands credited by Rs.22,41,00,000/- and stands debited by Rs.1,05,00,000/- and corresponding credit of Rs.1,05,00,000/- is to be given in the capital account of Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. This partnership deed is not merely a Partnership deed executed on paper but the assessee has received Rs. 1,05,00,000/- from Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. and the said amount was deposited in his Bank account with Bank of Baroda on 18/03/2010.

- In furtherance of the Partnership Deed, the assessee has given Power of Attorney in favour of one of the Director of Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. Shri Bhupesh Bhogilal Amlani in respect of land at Survey No.86 as on 19/03/2010. This Power of Attorney was notarized before some B.M. Patel, a Public notary vide registration No.3675. Simultaneously, as on 19/03/2010, this Power of Attorney document was registered before the Sub Registrar, Baroda vide Registration No. 162/2010. All these facts can be traced out from the cancellation agreement executed between the assessee and Shri Bhupesh Bhogilal Amlani upon dissolution of the partnership firm as on 13/05/2011, Thus, undisputedly, after creation of the partnership firm in the name & style of M/s. Vallabh Developers, as on 18/03/2010 and upon throwing the capital asset into the firm as capital contribution by declaring the same as stock in trade for a value of Rs.22,41,00,000/-, in furtherance of the business of the firm, the assessee has given registered Power of Attorney to the another partner.*

- Thereafter, the firm was dissolved as on 13/05/2011 and as per the Dissolution deed itself, it has been mentioned that the assessee is partner on one side and Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. is partner on another side. As per this dissolution of Partnership deed itself, it has been agreed that, the books of accounts, Balance sheet and Capital accounts are to be prepared as on 13/05/2011 and corresponding debits and credits are to be made into partners capital accounts and that, it is to be signed by all the partners and all the transactions of receipts and payments are to be completed by the partners through their capital accounts. The plain and simple meaning of this dissolution deed clearly shows that on one hand the assessee at the time of creation of partnership firm was given credit of Rs.22,41,00,000/- towards cost of land contributed as stock in trade. Out of such credits, the loan of Rs. 1,05,00,000/- given by Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. was debited to the capital account of the assessee and corresponding credit as capital of Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. was to be made in their account. In light of these facts, the firm of M/s.Vallabh Developers was dissolved and dissolution deed was executed on 13/05/2011. Accordingly, the corresponding entries have been agreed to be passed as on 13/05/2011. It is pertinent to note here that in this*

dissolution deed also, there is no mention of any MOU, etc. with regards to Shri Mukesh Gupta."

4. In the light of the factual position as summarized above emerging from the relevant material available on record, the Assessing Officer proceeded to consider the contentions raised by the assessee and recorded his observations/findings in paragraph Nos. 4.8.1 to 4.8.9 of his order as under:

"4.8.1 Thus, in light of facts of the case of the assessee and provisions of Sec.2(14), Sec.2(47) and Sec.45 of the Income tax Act, the issue of chargeability of income arising out of short term capital gain came up for consideration. Sec. 2(14) of the Act defines the term "Capital Asset". Undisputedly, the land at Survey No.86 was a Capital Asset. Sec.2(47) defines the term "Transfer" and it covers in its scope and ambit transfer of such capital asset where the asset is converted by the owner thereof into, or is treated by him as, stock in trade of a business carried on by him, such conversion or treatment are treated as transfer within the Income tax Act, Now Sec.45 of the Act stipulates that any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to Income tax under the head "Capital gains" and shall Be deemed to be the income of the previous year in which the transfer took place. If all these provisions of the Income tax Act are applied to the facts of the case of the assessee, undisputedly, the assessee has purchased the land as sole purchaser as on 18/03/2010, has entered into partnership firm as an Individual partner or person as on 18/03/2010, converted his capital asset i.e. land into stock in trade for a value of Rs.22,41,00,000/-, set-off his personal debts from another partner of Rs.1,05,00,000/- from the consideration of value of land, executed power of attorney in favour of another partner as on 19/03/2010 in respect of land, continued in the partnership firm till 13/05/2011 till its dissolution. Thus, undisputedly, the capital asset in form of land was converted into stock in trade as on 18/03/2010 by the assessee and therefore, his case was squarely covered within the scope and ambit of provisions of Sec.45 r.w.s. 2(47) of the Act.

4.8.2 As against this interpretation of the statute, it is the further contention of the assessee that the firm of M/s.Vallabh Developers had a nominal existence upto 13/05/2011 is not well founded. The firm was created on substantial basis as on 18/03/2010 and it was dissolved as on 13/05/2011 and there is no term known to law, as nominal existence. Existence is always on substantial basis. So either there can be an existence or no existence but

there can be no nominal existence. On the contrary, by accepting the nominal existence of the firm, the assessee himself has accepted and admitted the existence of the firm which can only be substantial existence. Accordingly, I hold that the firm of M/s. Vallabh Developers came into existence on 18/03/2010 through a Partnership Deed on substantial basis.

4.8.3 The second contention of the assessee is that transfer of immovable property exceeding the value of Rs.2,000/- can be made only by a registered Conveyance deed as per the Transfer of Property Act. This contention is also not well founded. The Transfer of Property Act has defined the term "Transfer" and has made it mandatory to recognize the term "Transfer" only if it is through a registered Deed. If this contention of the assessee is considered as true and correct and without prejudice to the provisions of the Income-tax Act, then in that case, the registered deed of purchase of property was executed between the Princess Gaekwad as seller and the assessee as absolute sole purchaser. Thus, the assessee at the first instance becomes the sole owner of the property as per Transfer of Property Act.

4.8.4 Now coming back to the provisions of the Income tax Act, it is pertinent to note here that contribution of the capital asset or transfer of capital asset is to be considered and evaluated in terms of definition of "transfer" as given in the Income tax Act and not in any other Act including the Transfer of Property Act. In this connection, it is pertinent to note here that even prior to amendment in Sec.2(47) / 45 i.e. term "Transfer" / chargeability of capital gains, in relation to conversion of capital asset into stock in trade, any contribution of capital asset by the assessee into the firm were held to be the transfer. In the case of CIT V/s. Kartikeya V. Sarabhai (131 ITR 42), the Hon'ble Gujarat High Court has held that, where a property or asset belonging to an assessee is brought in and introduced by him into a firm in which he becomes or is a partner, the property in question thenceforward belong to the firm in view of Sec. 14 of the Partnership Act, 1932. In such a case, the erstwhile title of the partner in such property thereby stands extinguished resulting in a transfer. This decision of the Hon'ble Gujarat High Court came up for appeal before the Hon'ble Supreme Court in the case of Sunil Siddharthbhai V/s. CIT (156 ITR 509) wherein the Hon'ble Supreme Court held that where a partner makes over his asset to his firm as his capital contribution, there is a transfer of the concerned asset by the partner to the firm because an exclusive interest of the partner in the concerned asset is reduced, on its entry into the firm, into a share interest. Thus, the Hon'ble Supreme Court affirmed the view taken by the Hon'ble Gujarat High Court. The second limb of the Hon'ble Supreme Court's decision in the case of Sunil Siddharthbhai regarding non-exigibility of charging of capital gains stand statutorily suspended in light of the newly inserted provisions of Sec.45(3) of the Act by Finance Act, 1987 and also

amendment in Sec.2(47). Under the new provisions, the amount recorded in the books of accounts of the firm as the value of the capital asset brought in by the partner is deemed, for the purposes of Sec.48, to be the full value of consideration received or accruing as a result of the transfer of the capital asset. Thus, the concept of transfer in such eventuality was accepted even prior to the amendment in Sec.2(47) / Sec.45 of the Act but the concept of chargeability of capital gains tax to such transaction was accepted statutorily with effect from A.Y. 1988-89 and onwards. In view of this position of the law, profits or gains arising from transfer of a capital asset by a person to a firm in which he is or becomes a partner, by way of capital contribution or otherwise, are, for & from A.Y. 1988-89, exigible to capital gains tax-levy by virtue of the provisions of Sec.45(3) r.w.s. 2(47) of the Act.

4.8.5 Thus, the contention of the assessee with reference to the provisions of Transfer of Property Act and not having any transfer of the asset, etc. are not correct, valid or maintainable under the Income tax Act. This view gets support from the decision of the Hon'ble Bombay High Court in the case of CIT V/s. Tata Iron & Steel Co. Ltd. (206 ITR 196, 204). It has been held that, the definition of expression "Transfer", as contained in Sec.2(47), has a very wide meaning and it cannot be narrowed down by referring to the provisions of other statutes which are quite different and applicable in different context. In nutshell, in the Income tax Act, the term "transfer" in the context of changeability of the capital gains tax has been given wider meaning than the Transfer of Property Act.

4.8.6 The third contention of the assessee with regards to the agricultural land can be transferred only to an Agriculturist and as on 18/03/2010, the land was agricultural land and was converted into non-agricultural land only on 11/01/2011, etc. I found no force therein. As regards the agricultural land also, there is specific definition under the Income tax Act. Sec.2(14) of the Income tax Act defines the term "Capital asset" as property of any kind, held by an assessee whether or not connected with his business or profession but does not include, agricultural land in India, not being land situate in any area which is comprised within the jurisdiction of a Municipality which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year. In the instant case of the assessee, under the Income tax Act, the land at Survey No.86 was situated well within the boundaries of the Baroda city as on the first day of the previous year i.e. F.Y.2009-10. It is pertinent- to mention here that the land is situated just opposite Income tax Office at Baroda. Therefore, the same was not an agricultural land within the scope and ambit of Sec.2(14) of the Income tax Act despite its nature being shown in the State Government Revenue records for some different purposes.

In other words, such land was a Capital asset within the meaning of sec.2(14) of the Act.

4.8.7 Further, Sec.2(42A) of the Income tax Act defines the term "Short term Capital asset" as a capital asset held by assessee for not more than 36 months immediately preceding the date of its transfer. Thus, in the instant case of the assessee, the land was a Short term capital asset.

4.8.8 Thus, there is no merit in the contention of the assessee with regards to agricultural land and its transfer to a particular class of person, etc. It is interesting to note here that the assessee is recouring to approbating and reprobating in his contentions. On one hand he claims that Shri Mukesh Gupta was not Agriculturist so he executed alleged Memorandum of Understanding for sharing ownership of the agricultural land and justifies it. On the other hand, on the issue of conversion of the same land into stock in trade and for considering the same as transfer within the meaning of Sec.2(47) / Sec.45, the assessee contends that such land cannot be given to the non-agriculturist. Thus, when it is convenient to the assessee, he can share the agricultural land to the non-agriculturist but when it is inconvenient, the contention of non-agriculturist entity is being raised. This methodology is not allowable or maintainable. Thus, this contention of the assessee with regards to nature of land and its transfer is rejected both in terms of facts as well as speaking provisions of the Income tax Act in respect of the nature of land.

4.8.9 Lastly, it is the contention of the assessee that the land in question was ultimately sold by him through a registered conveyance deed dated 12/05/2011 to Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. for a total consideration of Rs.21,11,00,000/-. By contending this, the assessee has raised the question as to how land which was transferred by him to the partnership firm of Vallabh Developers on 18/03/2010 could again be sold by a registered sale deed on 12/05/2011. This contention of the assessee is devoid of merits and without appreciating the provisions of the income tax Act. The Act provides that, when the asset is converted into stock in trade, it amounts to transfer exigible to the capital gains tax in the relevant previous year. In the instant case of the assessee, such transfer within the meaning of Sec.2(47) r.w.s. 45 arose and the assessee was liable to capital gains tax irrespective of any subsequent transactions assessee might have entered into. Thus, there is no force in this contention of the assessee also and the same is accordingly rejected."

5. On the basis of the above observations/findings recorded by him, the Assessing Officer held that the land in question at Survey No.86 was

entirely owned by the assessee and the same was transferred to the partnership firm in terms of partnership deed dated 18.03.2010 as stock-in-trade for a value of Rs.22,41,00,000/-. He accordingly treated the said value as the sale consideration and after deducting cost of acquisition to the assessee amounting to Rs.17,76,06,000/- and stamp duty paid at the time of transfer of land in the name of the assessee amounting to Rs.1,04,78,760/-, he worked out a short term capital gain chargeable to tax in the hands of the assessee for the year under consideration at Rs.3,60,15,240/-. Accordingly, addition to that extent on account of short term capital gain was made by the Assessing Officer to the total income of the assessee in the assessment completed under Section 143(3) of the Act vide an order dated 28.03.2013.

6. Against the order passed by the learned Assessing Officer under Section 143(3) of the Act, an appeal was preferred by the assessee before the learned CIT(A) challenging the addition of Rs.3,60,15,240/- made by the Assessing Officer on account of short term capital gain. During the course of appellate proceedings before the learned CIT(A), the submissions made before the Assessing Officer during the course of assessment proceedings were mainly reiterated on behalf of the assessee. It was submitted that the entire transaction of constituting the firm and transfer of land did not materialize at all since the assessee was an agriculturist and the land in question being an agricultural land, the same could have been purchased only by an agriculturist. It was submitted that the partnership firm of M/s. Vallabh Developers not being capable of being characterized as an agriculturist could not have owned the agricultural land and the only transfer of land which took place in this case after its acquisition by the assessee was by way of sale to M/s. Bhogilal Odhavji Industrial Enterprise Pvt. Ltd. which happened on 12.05.2011 i.e. during the previous year relevant to AY 2012-13. It was contended that the firm M/s. Vallabh

Developers could not have purchased the agricultural land because only such firm can purchase agricultural land where all the partners are agriculturists. It was contended that any agreement/arrangement for transfer of agricultural land to a non-agriculturist was a void agreement and the same could not be recognized or given effect to being not permitted by law.

7. The submissions made on behalf of the assessee found favour with the learned CIT(A) who deleted the addition of Rs.3,60,86,930/- made by the Assessing Officer on account of short term capital gain for the following reasons given in paragraph Nos. 6.1 to 6.8 of his impugned order.

“6.1 When the facts of this transactions are examined it would be seen that the part consideration on the part of the appellant is transfer of agricultural land in the state of Gujarat to the firm Vallabh Developers who is not an agriculturist. Transfer of agricultural land to a non-agriculturist in Gujarat is unlawful. Apart from the transfer of land to the appellant and the firm Vallabh Developers, this agreement does not have any other object. In view of the above, the entire agreement for the transfer of land by the appellant to the firm Vallabh Developers was a void contract.

6.2 It is seen that the said firm did not carry out any activities at all and the firm was dissolved on 13-05-2011. Further there is no registered conveyance deed for transferring the land by the appellant to the firm, which is legally required in case of transfer of any property exceeding Rs.2,000/- as per the provisions of Transfer of Property Act. In the absence of registered conveyance deed executed, no right in property got transferred within the meaning of section 45 of the IT Act. Mere grant of permissive right to build on the plot would not amount to a transfer of capital asset.

6.3 From the submissions made by the AR of the appellant during the course of appellate proceedings, it has been found that although a partnership firm was formed on 18-3-2010, the same could not be considered as a valid partnership as it involved acts which were not legally permitted in Gujarat. No business activity was carried out by the firm and no clauses of the partnership deed were implemented. Further the transfer of immovable property exceeding Rs.2,000/- can be made only by registered conveyance

deed. The AO did not bring on record any such deed or document. The appellant also placed on record a dissolution deed dated 13-05-2011.

6.4 The AR of the appellant argued that even if it is presumed that the land has been converted into stock in trade and has been contributed as capital contribution by the appellant in the firm M/s. Vallabh Developers, then in that case the land would have become the property of the firm. In other words the ownership of land would stand vested with the firm and the assessee could not have legally sold or transferred the land on his own and sole accord. There is no mention of the firm in the registered deed of sale of the land by the appellant to Bhogilal Industrial Enterprises Pvt. Ltd. executed on 13.5.2011 which shows on that day only the appellant was the owner of the land. Moreover, any partnership firm cannot own or acquire agricultural land unless all the partners of the firm are agriculturist. The land in question which was alleged to have been converted into stock in trade as on 18/03/2010 was agricultural land and therefore the same cannot be converted into stock in trade without first converting nature of the land i.e. from agricultural land into non-agricultural land. Undisputedly the nature of the land as on 18/03/2010, when the alleged conversion into stock in trade took place and when the appellant became a partner in the partnership firm of M/s Vallabh Developers remained to be agricultural land.

6.5 It is true that if a person converts his personal property into stock in trade and introduces the same in the business, the transaction would constitute transfer within the meaning of section 2(47) of the IT Act and capital gain arising therefrom would be chargeable to tax in the year in which such property has been sold as per section 45(2) of the IT Act. Similarly when a person converts his personal property into stock in trade and introduces the same as capital in the firm in which he is a partner or becomes a partner also constitute transfer within the meaning of 2(47) of the IT Act and the capital gain arising from such transaction is chargeable to tax under 45(3) of the IT Act. In the present case, as is evident from the facts and submission on records, though it was mentioned in the partnership deed that the assessee had converted the land in question into stock in trade and introduced the same into the partnership firm of M/s Vallabh Developers, in reality no legal effect to such transaction has been given, because the firm could not have legally acquired agricultural land and consequently since the land in question was not vested in the said partnership firm, the ownership of the said land always remained with the appellant assessee right from the day of purchase on 18.08.2010 till it was converted into a non- agricultural land.

6.6 At best, it can be said that the land became the property of the firm only on.01.2011 when it was converted into non-agricultural land and could have been transferred to the firm. In this case, no such act was performed on 11.1.2011. No evidence has been brought on record by the AO of any such event on 11.1.2011. As already discussed earlier the partnership deed in this case is ab intio void because it is for the constitution of the firm for acquiring agricultural land and its subsequent development later on when the firm could not have acquired the agricultural land at all. Finally the land was sold by the assessee to Bhogilal Odhavji industrial Enterprise Pvt. Ltd. on 12/05/2011 by registered conveyance deed. There is no mention of the firm in this deed. Therefore, provisions of section 45(2) and 45(3) of the income tax Act have no applicability on the facts and circumstance case of the appellant, in so far as, this assessment year is concerned.

6.7 The AR of the appellant also contended that even if the provisions of section 2(47) of the I T Act are applied to the case of the appellant, then also there is no liability to capital gains during the year under consideration. This is because, it is undisputed that the said land was transferred / sold to Bhogilal Odhavji Industrial Enterprise Pvt. Ltd. on 12-05-2011 i.e., during the Financial Year relevant to the Asst. Year 2011-12. Thus the liability to capital gain, if any, would arise only in the subsequent year viz., Asst. Year 2012-13. Accordingly when the land was sold to Bhogilal Odhavji Industrial Enterprises Pvt. Ltd., a Registered Conveyance Deed dated 12-05-2011 was duly executed. The said transfer/sale was effected only after converting the agricultural land into a Non-Agricultural land.

6.8 In view of the above, it is clear that there was no transfer of capital asset during the year under appeal within the meaning and scope of section 2(47) of the ST Act and that the transfer of the capital asset in question i.e. land took place only on 12/05/2011 when the appellant assessee sold the land to Bhogilal Odhavji Industrial enterprise Pvt. Ltd. by a registered conveyance deed. Thus, the capital gain on transfer of the land in question arises only in the Asst. Year 2012-13 when the actual sale took place. The appellant has already offered the income from Short Term Capital Gain in respect of such sale of land, while filing the I T Return for the Asst. Year 2012-13. A copy of the computation of total income and the acknowledgement of IT Return filed for AY 2012-13 is placed on record. The other issues raised by the appellant and not required to be adjudicated here since it has been held that no transfer took place in this year in respect of the land in question. The AO may examine the computation of income of Capital Gains offered on the sale of this land for its correctness or otherwise in A.Y. 2012-13 light of the observations in this order. The AO is therefore is not justified in computing short term capital gain at Rs. 3,60,86,930/- in the current assessment year

since there was no transfer of any capital asset in A.Y. 2010-11. The addition made by the AO on account of short term capital gain in A.Y. 2010-11 is not justified. The addition made is deleted."

Aggrieved by the order of learned CIT(A), the Revenue has preferred this appeal before the Tribunal.

8. The learned Departmental Representative strongly relied on the order of the Assessing Officer in support of the Revenue's case on the issue under consideration. He submitted that the assessee had introduced the agricultural land in question as stock-in-trade in the books of the partnership firm as per the partnership deed dated 18.03.2010 and there being transfer of the said land by the assessee to the partnership firm within the meaning of Section 2(47) r.w.s. 45(3) of the Act, the capital gain arising from the said transfer was chargeable to tax in the hands of the assessee in the year under consideration as rightly held by the Assessing Officer. He also submitted that the said transfer, however, is held to be null and void ab initio by the learned CIT(A) vide his impugned order on the ground that both the partners of the partnership firm were not agriculturists. He contended that the assessee is one of the two partners who is admittedly agriculturist while whether the other partner is agriculturist or not is not known. He contended that if the other partner is also agriculturist, the partnership firm is legally entitled to purchase or acquire the agricultural land and the transfer of the agricultural land by the assessee to the said partnership firm cannot be treated as null and void ab initio. As regards the capital gain stated to be offered by the assessee on transfer of agricultural land in question finally in AY 2012-13, he submitted that the assessee has declared the capital gain of only Rs.27,42,019/- in AY 2012-13 and has claimed exemption for the same under Section 54B of the Act. He contended that this working of capital gain made by the assessee as well as

eligibility of the same for deduction under Section 54B of the Act is also in question.

9. The learned Counsel for the assessee, on the other hand, submitted that even though the agricultural land purchased by the assessee was introduced as stock-in-trade in the partnership firm as per the partnership deed dated 18.03.2010, there was no valid transfer of land by the assessee to the partnership firm. He submitted that as per sub-section (1) of Section 63 of the Gujarat Tenancy and Agricultural Lands Act, 1948, sale of agricultural land to a person who is not an agriculturist is not valid and since the partnership firm of M/s. Vallabh Developers was not an agriculturist, the transfer of agricultural land by the assessee to the said partnership firm as per partnership deed was null and void ab initio. By relying on the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Vithalbhai P. Patel, [1999] 236 ITR 1001 (Guj.), he contended that when there was no sale transaction in the eye of law, there could be no capital gain arising from the null and void transfer of land. He submitted that the transfer of land by the assessee to the partnership firm as per partnership deed, therefore, was not given effect to and after the conversion of the said agricultural land into non-agricultural land on 11.01.2011, the same was transferred by the assessee to M/s Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. on 12.05.2011 by a registered conveyance deed. He contended that the provisions of Sections 45(2) and 45(3) of the Act thus were not applicable in the facts of the present case; and, since the land was finally transferred by the assessee to M/s Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. only on 12.05.2011, the capital gain arising from the said transfer was chargeable to tax in the hands of the assessee for AY 2012-13 and the same was duly declared by the assessee in the return of income filed for AY 2012-13.

10. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the land in question acquired by the assessee on 18.03.2010 was admittedly an agricultural land on the date of acquisition i.e. 18.03.2010. Although the said land was claimed to be acquired by the assessee jointly with one Shri Mukesh Gupta, this claim of the assessee is not found acceptable by the learned CIT(A) vide his impugned order as the name of Shri Mukesh Gupta did not appear in the conveyance deed executed on 18.03.2010 whereby the land in question was acquired by the assessee in his individual capacity. On 18.03.2010 itself, the assessee had entered into a partnership firm in the name and style of M/s. Vallabh Developers with M/s Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. and as per the said deed, the land in question acquired by the assessee was introduced in the partnership firm as stock-in-trade for a value of Rs.22,41,00,000/-. On the basis of this averment made in the partnership deed, the Assessing Officer held that there was a transfer of the agricultural land in question by the assessee to the partnership firm within the meaning of Section 2(47) r.w.s. 45(3) of the Act giving rise to capital gain which was chargeable to tax in the hands of the assessee in AY 2010-11. As contended on behalf of the assessee before the learned CIT(A) as well as before the Tribunal, the agricultural land, as defined in sub-section (8) of Section 2 of the Gujarat Tenancy and Agricultural Lands Act, 1948, cannot be sold to a person who is not an agriculturist and any such sale without the permission of the Collector shall not be valid as provided specifically in sub-section (1) of Section 63. The learned Counsel for the assessee, at the time of hearing before us, has placed on record a copy of the said Act to support and substantiate this contention and even the learned DR has not been able to dispute the position clearly emerging from the relevant statutory provisions whereby the transfer of agricultural land to non-agriculturist without the permission of the Collector is barred. The transfer of land by

the assessee to the partnership firm by way of partnership deed dated 18.03.2010 without the permission of Collector thus was null and void ab initio. In this regard, the learned DR has raised a contention that if both the persons of the partnership firm are agriculturists, then the partnership firm is regarded as agriculturist. He has contended that the assessee being one of the two partners is an agriculturist while the position as regards the other partner is not clear. However, as clarified by the learned Counsel for the assessee, the other partner M/s. Vallabh Developers was a private limited company and therefore the same cannot be an agriculturist.

11. In the case of CIT Vs. Vithalbhai P. Patel (supra) cited by the learned Counsel for the assessee, the transfer of land by the assessee was declared as null and void by the Collector in view of the provisions of Section (4) of the Gujarat Vacant Lands In Urban Areas (Prohibition of Alienation) Act, 1972, and taking note of the same, it was held by the Hon'ble Gujarat High Court that as there was no sale transaction in the eye of law, there could be no capital gain arising out of a null and void transfer of land. In our opinion, the ratio of this decision of Hon'ble Gujarat High court is squarely applicable in the facts of the present case; and, respectfully following the same, we uphold the impugned order of the learned CIT(A) holding that the transfer of agricultural land by the assessee to the partnership firm of M/s. Vallabh Developers by virtue of partnership deed dated 18.03.2010 being null and void ab initio, it could not give rise to any capital gain which is chargeable to tax in the hands of the assessee in the year under consideration.

12. It is pertinent to note that the land in question remained to be an agricultural land till 11.01.2011 when it was converted into non-agricultural land and the same was transferred by the assessee in his individual capacity

to M/s Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. by a registered conveyance deed on 12.05.2011. The land in question thus was never transferred by the assessee validly to the partnership firm of M/s. Vallabh Developers much less in the year under consideration when it remained an agricultural land since valid transfer of the same to the firm of M/s. Vallabh Developers was not permissible in the eye of law as the said firm was not agriculturist. The valid transfer of the said land thus was taken place after its conversion into non-agricultural land by a registered conveyance deed dated 12.05.2011 by the assessee in his individual capacity to M/s Bhogilal Odhavji Industrial Enterprises Pvt. Ltd. giving rise to the long term capital gain which was taxable in the hands of the assessee in AY 2012-13. As noted by the learned CIT(A) in his impugned order, the assessee duly declared such capital gain in his return of income filed for AY 2012-13 and although the learned DR has raised certain questions relating to the computation of such capital gain as well as the admissibility of deduction claimed under Section 54B of the Act at the time of hearing before us, it is observed that the learned CIT(A) in his impugned order has given direction to the Assessing Officer to examine the computation of income from capital gains offered on the sale of land by the assessee for its correctness or otherwise in AY 2012-13 in the light of observations made by him in his impugned order. As such, keeping in view all the facts of the case and having regard to the contentions raised by the learned representatives of both the sides as discussed above, we are of the view that there was no valid transfer of land in question by the assessee to the partnership firm of M/s. Vallabh Developers in the year under consideration giving rise to any capital gain and the transfer of the said land having validly taken place only in the previous year relevant to AY 2012-13 by the assessee to M/s. Vallabh Developers, the capital gain arising from the said transfer was chargeable to tax in the hands of the assessee for AY 2012-13 as duly declared by the

assessee in his return of income for AY 2012-13. In that view of the matter, we uphold the impugned order of the learned CIT(A) deleting the addition of Rs.3,60,15,240/- made by the Assessing Officer on account of short term capital gain and dismiss this appeal of the Revenue.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 31st May, 2022 at Ahmedabad.

Sd/-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 31/05/2022

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

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

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad