

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 2340/Ahd/2018
Assessment Year 2012-13**

ITA No, Ward-4(2)(1), Ahmedabad (Appellant)	Vs	Chandrikaben Piyushkumar Patel, B- 2-201, Swipark Tenament, Near Ranna Park, Ghatlodiya, Ahmedabad-61 PAN: BABPP2710C (Respondent)
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**Appellant by : Shri Mukeshkumar Sharma, Sr. D.R.
Respondent by : Shri Sakar Sharma, A.R.**

Date of hearing : 05-04-2022
Date of pronouncement : 22-06-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Revenue against the order passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad, (in short referred to as CIT(A)), dated 04-09-2018, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the “Act”) pertaining to Assessment Year (A.Y) 2012-13 .

2. Brief back ground of the case is that the assessee's case was reopened on the information with the A.O. that the assessee had sold immovable property bearing survey no. 153(1), 153(2) situated at Bhopal, Ahmedabad jointly with four persons for sale consideration of Rs. 6 crores during the impugned year i.e. on 09.03.2012, the assessee's share in the same being Rs.1.20 crores, but no return of income had been filed by the assessee during the year disclosing any gain on the same. That subsequently after calling for relevant information from the assessee during the reassessment proceedings and after considering the contentions made by the assessee to the effect that the impugned land did not qualify as capital asset u/s. 2(14) of the Act, since it was situated beyond 8 KM from the Ahmedabad Municipal Limits, the A.O. held that there was no truth in the contention of the assessee since the land was situated within 8KM of the municipal limits of Ahmedabad. He therefore held that capital gain earned on the said transaction was liable to tax and accordingly made addition of the entire consideration received by the assessee of Rs. 1.20 crores to the income of the assessee, in the absence of any details in respect of the cost of acquisition of the asset being furnished by the assessee.

2.1 The matter was carried in appeal before the Id. CIT(A) who held that the distance of the land had to be measured from the municipal limit of Ahmedabad as on the date of Gazette Notification issued by the CBDT spelling the limits of urbanization, on 06.01.1994. In this regard, he relied on the various decisions of the ITAT holding so. He accordingly directed the

A.O. to measure the distance of the impugned land from the municipal limits of Ahmedabad as on 06.01.1994 and directed him further to make no addition in case the land was found to be situated beyond the 8 KM limit specified in the CBDT notification.

3. Aggrieved by this order of the Ld. CIT(A) the Revenue has come up in appeal before us. Originally grounds raised by the Revenue read as under:

1) *"that the Ld. CIT (A) has erred in law and on the facts in holding that the distance of the land bearing old Survey No. 53/1 and 53/2 of Block No. 55, Khata No. 292 of Bopal Village, Tal. Daskroi, Distrit : Ahmedabad has to be measured from the municipal limit of Ahmedabad as on 06.01.1994 i.e. on the date of notification in No. (SO 9447)[File No. 164/3/87-ITA.1J."*

2) *"Whether the distance between the Municipal limits and the land transferred for the purpose of application of section 2(14) (Hi) of the Act, is to be determined as on the date of transfer? "*

4. Thereafter vide letter dated 27.10.2020 the following revised grounds were filed:

1) *The Ld.CIT(A) erred in law and on facts in directing the Assessing Officer as below :-*

"..to ascertain the distance from the municipal limit of Ahmedabad as per 06.01.1994 and if the same is found to be less than 8 /cms, the said land is to be treated as beyond the municipal limit of Ahmedabad.."

which tantamounts to setting aside the assessment order, whereas the CIT(A) has no power to set aside the assessment order as held by the Hon'ble ITAT, Chandigarh in the case of ACIT Vs Venus Remedies Ltd in ITA No. 1529/CHD/2018 dated 23/07/2019

2) *The Ld. CIT(A) erred in law and on facts in holding that the appeal is partly allowed whereas the direction of the CIT(A) tantamounts to setting aside the case especially in view of the fact that the issue of method computing the distance from Municipal limits is itself a debatable issue.*

3) *The Ld.CIT(A) has erred in law and on facts in deleting the addition in respect of long term capital gain amounting to Rs.1,20,00,000/- in holding that the*

distance of the land bearing old survey No.53/1 and 53/2 of Block No.55, Khata No.292 of Bopal village, Tal. Daskroi, Dist. Ahmedabad has to be measured from the municipal limit of Ahmedabad as on 06/01/1994 i.e on the date of notification in No.(SO 9447)(File NO.164/3/87-ITA.1).

5. A perusal of the revised grounds reveals that the Revenue is primarily aggrieved on two counts by the order of the Ld CIT(A)

(i) that the Ld.CIT(A) had no power to set aside an issue to the AO.

(ii) That the direction of the Ld.CIT(A) to measure the distance of the land from the municipal limits of Ahmedabad as on 06.01.1994 was not in accordance with law.

6. Before proceeding further it is relevant to reproduce the findings of the Ld. CIT(A) at Para 6 to 6.4 of the order as under:

"6.1 It is the contention of the appellant that the law as it stood during the relevant period the position of land has to be seen from the notification issued by Central Government In the-official Gazette in this regard. CBDT issued notification No. [SO 9447] (File No.164/387-ITA.1, dated 06.01.1994) wherein the Municipal limits Ahmedabad Municipality was specified for the purpose of section 2(14)(iii) (b) of the Act. It is the contention of the appellant that the distance has to be measured from the Municipal limits as it existed on the date of notification i.e. on 06.01.1994 and not on the date of transaction as adopted by the AO. Appellant relied on the judgment of Hon'ble ITAT, Ahmedabad in the case of ITO v. Akashdeep Farms P. Ltd. (ITA No.2138/Ahd/2p12), order dated 11.08.20:13 wherein the Hon'ble ITAT have held as under:

"8. We have duly considered rival contentions and gone through the record carefully. The definition of "capital asset"-has been provided in section 2(14) of the Act. Sub-clause (a) and (b) of Section 2(14)(in) contemplates that if an agriculture land is in India, and it is situated at a distance of more than 8 KMs. from the local limit of any municipality cantonment board, then, that land would not fall within the ambit of definition "capital asset". In other words, if the land which is not forming part of capital asset sold by an assessee, then, no gain as such would be considered, as accrued to the assessee. In the present case, the Id.A3 has observed that-if the distance of geographical situation of the assess e 9's land is being measured from municipality limit, by way of crow's flight: it hen,

it is within the municipal limit. In various authoritative pronouncements, as discussed by the Ld. CIT(A), it has been held that the distance is to be Measured by road and not by aerial route. At this stage, it is important to take note of the Board Circular bearing No. 17/2015. It reads as under:

"CBDT CIRCULAR NO -17/2015, Dated: October 06, 2015 Subject:- Measurement of }he 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 f. 64.2014 prescribes the measurement of the distance to be taken aerially, ambiguity persists in respect of earlier periods. 2- if/7e 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. IF/No. 279/Misc./140/2015-ITJ] (&S Chaudhry) CIT (A&J), CBDT"

9. Thus, if the finding of the Id.CIT(A) is being examined in the light of the circular, then on6 thing is clear that the distance is to be measured by roads in this accounting year. The land sold by the assesses is situated beyond 8 KMs. of the municipal limit. 10. Next objection of the AO was that the State Government has enhanced the municipal limit in 2006 and the distance is to be measured from new boundary of the Ahmedabad Municipal Corporation Limit. AMC limit was extended upto Sarkhej since 2006. The Id.CIT(A) has examined this aspect, and has observed that perusal of sub-clause (b) of section 2(14)(iii) would indicate that the municipal limit is to be taken from the area which has been notified by the Central Government in its gazette notification. Central Government has notified the area on 6.1.1994, and from that notification, the agriculture land of the assessee was situated beyond a distance of 8KMs. This aspect has been lucidly considered by the Id.CIT(A) in the finding extracted supra. We do not see any reason to interfere in this finding. In view of the above discussion, we do not find any merit in the appeal of the Revenue. It is dismissed.

6.2 Appellant further relied on the devising of Hon'ble ITAT , Ahmedabad in the case of Nilesh R Patel vs. ITO in ITA.No 3337/Ahd/ 2015 dated 29/08/2017 wherein it has been held:

"6. In the light of the above, let me examine facts of present case for finding out distance of the land sold by the assessee from [he municipal limit. The Ld. AO has not carried out a proper exercise. Inspector is not a competent authority to find1 out geographic situation of land. Similarly, authority- under Vadodara Urban Development Authority is also not a competent authority Revenue record is maintained by State Government under Gujarat Land Revenue Act. Competent authority could be Assistant Collector (Agriculture)/ Mamlatdar or any other Revenue officials who in discharge of their official duties maintain land records of entire State. They can be the proper officials to give an authentic certificate about geographies! Situation of the land in dispute from the municipal area. The second aspect is that municipal limit is dynamic and keeps on changing over a period t of time. Therefore, an explanation has been given at the end of the notification that municipal the limit as existing tin the date of publication of the notification and not the limit on the date of transaction or as on date. In other words, the point from where municipal limit is to be taken for measuring the distance upto the land of assessee is the year 1994. The AO has taken cognizance from the fresh municipal limit notified by the Vadodara Urban Development Authority. That is not correct method adopted by the A. O. Therefore, after considering all these aspects, I deem it appropriate to set aside this issue to the AO. The Ld. ' AO shall call for report from the office of Revenue authorities under the State Government, and such authority shall determine the distance on the basis of municipal limit in the year 1994. To be precise on 06/01/1994, from that boundary upto the assessee's land, distance is to be measured After-ascertaining this aspect, the Ld. A.O. shall determine status of the land whether it falls within the exemption clauses provided in section 2(14)(iii) of the Income Tax Act, 1961 or not. The Ld. AO shall, thereafter, decide the computation of capital gain, if any. Such exercise be carried out aftw-oroviding an opportunity of hearing to the assessee."

6.3 Appellant also relied on the decision of Hon'ble ITAT Ahmedabad in the case of ACIT v. Shri Govindbhai C. Patel ITA No.1610/Ahd/2009. Further, appellant relied on the judgment of Hon'ble Gujarat High Court in the cases of [CIT vs. Jitendra Ramniklal [;1986] 162 ITR 371 (Guj) and CIT v. Smt. Mamta Narottamdas [1986] 162 ITR 365 (Guj)]. Wherein it was held that where agricultural lands were sold by a document and till the date of execution and registration of the document no such notification as is envisaged by section 2(14)(iii)(b) was issued, it could not be said that the land so situated fell within the definition of 'capital asset. Appellant further relied on various, case laws as reproduced in the earlier part of this order in the submissions made by the appellant in this regard and contended that the amended provisions of section 2(14)(iii) of the Act are

applicable prospectively w.e.f. A.Y.2014-15 as clarified by CBDT vide circular No. 17 of 20-15. It is seen that the said circular is as regards the measurement of distance for the purpose of section 2(14)(iii)(b) of the Act. However, the decisions of Hon'ble ITAT Ahmadabad and other decisions relied upon by the appellant certainly favour the assertion of the appellant in this regard.

6.4. The plea that as on 06.01.1994 i.e. on the date of notification of CBDT in terms of section 2(14)(iii)(b) of the Act, the land was beyond 8 kms from the limits of AIVIC was taken before the AO as noted by the AO on page 13 & 14 of the impugned assessment order. However, AO was not convinced and held that the limit is dynamic and also the limits expanded by the AMC vide Gazette notification dated 14.02.2006 the nearest area of Bopal Village where the impugned lands are located namely Bodakdev and Thaltej have merged in AMC. Appellant also contended that in the case of other owners no capital gain was charged by department from them. As regards the question whether the limit of 8 kilometer is to be taken from the date of gazette notification dated 6.01.1994 issued by CBDT or from the date of the transaction the Hon'ble ITAT, Ahmedabad in the case of Nilesh R Patel v. ITO ITA No.337/Ahd/2015 dated ;29.08.2017 and in the case of ITO V. Akshdeep Farms P. Ltd. ITA No.2133/Ahd/2012 dated 11.08.2016 have held that the distance is to be taken on the basis of municipal limit as on the date of notification i.e. on 06.01.1994. The Hon'ble ITAT examined the issue in detail in both these cases and held that the limit has to be taken from the date of notification and not from the date of transaction. The relevant part of the later judgment in the case of Nilesh R. Patel is reproduced as below: "6. In the light of the above, let me examine facts of present case for finding out distance of the land sold by the assessee from the municipal limit. The Ld. AO has not carried out a proper exercise. Inspector is not a competent authority to find out geographic situation of land. Similarly, authority under Vadodara Urban Development Authority is also not a competent authority. Revenue record is maintained by State Government under Gujarat Land Revenue Act. Competent authority could be Assistant Collector (Agriculture)/ Mamlatdar or any other Revenue officials who in discharge of their official duties maintain land records of entire State. They can be the proper officials to give an authentic certificate about geographical situation of the land in dispute from the municipal area. The second aspect is that municipal limit is dynamic and keeps on changing over a period of time. Therefore, an explanation has been given at the end of the notification that municipal limit is the limit as existing on the date of publication of the notification and not the limit on the date of transaction or as on date. In other words, the point from where municipal limit is to be taken for measuring the distance up to the land of assessee is the year 1994. The AO has taken cognizance fresh municipal limit notified by the Vadodara Urban Development Authority. That is not correct method adopted by the A. O. Therefore, after considering all these aspects, I deem it appropriate to set aside this issue to the

AO. The Ld. AO shall call for report from the office of Revenue authorities under the State Government, and such authority shall determine the distance on the basis of municipal limit in the year 1994. To be precise on 06/01/1994, from that boundary upto the assessee's land, distance is to be measured After ascertaining this aspect, the Ld. A. O. shall determine status of the land whether it falls within the exemption clauses provided in section 2(14) (Hi) of the Income Tax Act, 1961 or not. The Ld. AO shall, thereafter, decide the computation of capital gain, if any. Such exercise be carried out after providing an opportunity of hearing to the assessee. "

Respectfully following the above , it is held that the distance of the said land has to be measured from the municipal limit of Ahmedabad as on 06.01.1994 i.e. on the date of notification in No. [SO 9447] (file No.164/3/87-ITA.1). During the course of assessment proceedings appellant had requested the AO vide written submission dated 05.10.2017 as reproduced in the assessment .order from page No. 10 to 14 that the distance of the said land from the municipal limit as per 06.01.1994 is less than 8 kms. Accordingly, AO is directed to ascertain the distance from the municipal limit of Ahmedabad as per 06.01.1994 and if the same is found to be less than 8 kms, the said land is to be treated as beyond the municipal limit of Ahmedabad for the purposes of section 2(14) (iii) at the relevant time and no capital gains on sale of the same is to be charged. Ground no. 2 & 3 of the appeal are allowed subject to the above verification.

7. As is evident from the above, the Ld. CIT(A) took note of the orders of the ITAT in various cases holding that the limits of urbanization specified in the CBDT notification dated 06.01.1994 had to be determined on the basis of municipal limits as on the date of notification. Accordingly the Id. CIT(A) directed the A.O. to determine the situation of the impugned land from the municipal limits of Ahmedabad as on 06.01.1994 and to delete the addition if the land was found to be beyond the 8KM.

8. Coming to the first plea of the Revenue that the Id. CIT(A) had no power to set aside the issue, we may point out that in the impugned case, the Id. CIT(A) had not set aside any issue for reconsideration but on the contrary had given his findings on the issue and proceeded thereafter to

direct the A.O. to act upon these findings. He has given his finding that distance of the land for determining whether it is urban or rural land is to be measured from the municipal limits of Ahmedabad as on 06.01.1994, that is the date when the CBDT notification regarding urbanization was notified in the official Gazette. He has only directed the AO to determine the actual distance based on these findings and then accordingly deal with the adjustment to be made. There is clearly a difference between setting aside an issue to the A.O., which power the Ld. CIT(A) does not have as per Section 251 of the Act, and giving directions to the AO. An issue set aside to the AO is left for adjudication to him, while in a case giving directions, the issue is restored to the AO only for acting on the adjudication done by the CIT(A).

9. In view of the above ground of appeal no. 1 & 2 raised by the revenue are dismissed.

10. As for ground no. 3, the Id. CIT(A) while holding that the distance is to be measured from the municipal limit as on 06.01.1994 has relied on the various decision of the ITAT Ahmedabad Bench on the issue .

11. The Id. D.R. has been unable to point out any contrary decision either of the Hon'ble High Court and Supreme Court in this regard. We therefore find no infirmity in the order of the Id. CIT(A) who has followed the decision of the ITAT while holding that the distance of the land sold by the assessee is to be measured from the municipal limit of Ahmedabad as on

06.01.1994, that is the date of CBDT Notification specifying limits of urbanization, following the decision of the ITAT in several cases.

12. Ground no. 3 is also therefore dismissed.

13. In effect, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 22 -06-2022

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 22/06/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद