

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 280/Srt/2019 (Assessment Year: 2015-16)
(Virtual hearing)

Bakir Pachorwala, Raj Sheet Metal Engg. Works, C- 1/16-B, GIDC Estate, Pardi, Valsad. PAN No. ADXPP 9237 G	Vs.	I.T.O., Ward-1, Valsad.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Parin Shah, CA
Respondent represented by	Shri Vinod Kumar Sr.DR
Date of hearing	16/08/2022
Date of pronouncement	16/08/2022

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals), Valsad (in short, the Id. CIT(A) dated 18/03/2019 for the Assessment year 2015-16. The assessee has raised following grounds of appeal:

"1. Ld.CIT(A) erred in law and on facts in confirming addition of Rs. 500000/- for an amount of compensation received on transfer of shed on agriculture land as unexplained credit and treat as income from other sources. Ld. CIT(A) ought to have considered the fact due to restriction in local land laws purchaser gave separate compensation for transfer of shed which in fact considered as consideration towards transfer of agriculture land and exempt from tax. It be so held now.

2. *Ld. CIT(A) erred in law and on facts in not adjudicating Ground No. 2 raised before him that amount of compensation cannot be treated as unexplained credit as identity, genuineness and creditworthiness is established from sale deed itself and accordingly appellant is not liable to tax at special rate u/s 115BE of the Act.*
3. *Charging of interest u/s 234A, 234B, 234C and 234D of the Act is unjustified.*
4. *Initiation of penalty u/s 271(1)(c) is unjustified.*
5. *The order passed by the AO and confirmed by CIT(A) is illegal, invalid and bad in law and required to be quashed.”*

2. Brief facts of the case are that during the assessment proceedings, the Assessing Officer noted that the assessee had sold agricultural land for a consideration of Rs.1.153 crore to Nirmal Seeds Pvt. Ltd.. On further perusal of account of assessee, the Assessing Officer noted that the assessee received total consideration of Rs. 1.203 crore from Nirmal Seeds Pvt. Ltd. On confronting such fact, the assessee explained that he has received additional amount of Rs. 5.00 lacs by way of cheque against the construction value of small godown. The said amount is not mentioned in the conveyance (Sale) deed which cannot be linked with the property sold. The Assessing Officer issued show cause notice to the assessee as to why such amount of Rs. 5.00 lacs be treated as unexplained credit and added to the income of assessee under Section 168 of the Income Tax Act, 1961 (in short, the Act) and taxed under Section 115BE of the Act. The assessee

filed his detailed reply dated 31/3/2017. The contents of reply is recorded by Assessing Officer in para 5 of the assessment order. The assessee in its reply has stated that he has sold rural agricultural land of worth Rs. 1.203 crore. Sale deed was executed in 2014. The purchaser gave him Rs. 1.153 against agricultural land and remaining amount of Rs.5.00 lacs was given against the value of shed constructed in the agricultural land. Copy of minutes of meeting was also filed by the assessee confirming that the amount of Rs. 5.00 lacs were paid for consideration of shed. On the basis of his submission, the assessee claimed that the amount of Rs. 5.00 lacs is in part and parcel of consideration of agricultural land and the same is exempted under the provisions of Income Tax Act. The amount is an explained amount and cannot be added as his income. The reply of assessee was not accepted by the Assessing Officer by taking a view that the said amount of Rs. 5.00 lacs is not mentioned in the conveyance deed (transfer deed), so cannot be linked as a part consideration of land. The Assessing Officer added the said amount under the head "income from other sources".

3. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. The Id. CIT(A) while upholding the action of Assessing Officer held that the price of land is shown at Rs. 1.153 crore and in the details of property sold, in the sale deed, there is no narration of any construction

on the said land. The Id. CIT(A) also referred the relevant clause of sale deed narrating the boundary of land and concluded that the description of property clearly indicate that the sale consideration of Rs. 1.153 crore included construction of property sold, therefore, the assessee claimed that Rs. 5.00 lacs received towards sale of land is not acceptable. Further aggrieved, the assessee has filed the present appeal before this tribunal.

4. We have heard the submissions of the learned authorised representative (Ld. A.R) of the assessee and the learned Senior Departmental Representative (Sr. DR) for the revenue and have gone through the orders of the authorities below. The Id. AR of the assessee submits that during the relevant financial year, the assessee sold agricultural land to Nirmal Seeds Pvt. Ltd. The Id. AR submits that the nature of land and exemption of sale proceed thereof is not disputed by the revenue. At present, there is a limited dispute between the assessee and the revenue about the receipt of Rs. 5.00 lacs received against the shed/godown constructed in the land transferred by the assessee. The Id. AR submits that assessee has received Rs. 5.00 lacs alongwith sale consideration of land. Rs. 5.00 lacs is also part of consideration of land. Therefore, Rs. 5.00 lacs cannot be taxed separately. The Id. AR submits that as per provisions of Income Tax Act, the definition of "Agricultural Income" defined in Section 2(1A)(c) of the Act wherein it provides that "any

income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on" is agriculture income receipt and cannot be brought to tax. While reading the sub-clause (c) of sub-section (1A) of Section 2 of the Act, the Id. AR of the assessee made emphasis that by virtue of clause (c) of sub-section (1A) of Section 2 of the Act, the receipt of Rs. 5.00 lacs is exempted from taxation.

5. The Id. AR also submitted that he has placed on record the copy of Board's resolution of purchaser company wherein they have specifically mentioned that Rs. 5.00 lacs is paid as a consideration of shed constructed in the land. The Id. AR also furnished relevant part of copy of sale deed showing the nature and boundary of land. On the basis of aforesaid submission, the Id. AR of the assessee submits that Rs. 5.00 lacs is part and parcel of overall sale consideration against the transfer of land, thus, the receipt thereof is not liable to tax.
6. On the other hand, the Id. Sr. DR for the Revenue supported the orders of the lower authorities. The Id. Sr. DR by referring para 3.3 of the order of Id. CIT(A) submits that the assessee has received sale consideration of land of Rs. 1.153 crore against the sale of agricultural land, Rs. 5.00 lacs

is received separately against the shed constructed on the land. There is no reference of said 'shed' in the conveyance deed. Since Rs. 5.00 lacs is not a consideration of agricultural land, it was rightly brought to tax under the income head "other sources" by assessing officer. The Id. Sr. DR for the revenue further submits that the reference made by the Id. AR of assessee about the resolution of purchaser company is of no help to assessee rather made it clear that Rs. 5.00 lacs was paid exclusively for the shed. So far as applicability of Clause (c) of sub-section (1A) of Section 2 of the Act is concerned, the Id. Sr. DR for the revenue submits that the said provision clearly mandates that 'any income' derived from building owned and occupied by the receiver of such land or by cultivator is intended to be treated as agricultural income. Here the issue is something absolutely different. Here the assessee has received consideration of shed apart from the value of land by way of separate sale consideration. The sale consideration of said shed is not a part of sale consideration of agricultural land and cannot be treated as exempted receipt.

7. We have considered the rival contentions of both the parties and have gone through the orders of authorities below carefully. The Assessing Officer during the assessment, initially issued show cause notice to explain the fact about receipt of Rs. 5.00 lacs. The assessee claimed that

he has received consideration of Rs. 5 lacs against the shed, which is part and parcel of sale consideration of agricultural land. The Assessing Officer on perusal of sale deed/transfer deed found that there is no such reference about the receipt of sale consideration of amount/said 'shed' in the registered sale deed. The Assessing Officer after issuing specific show cause notice as to why the said receipt against the transfer of shed should not be treated as income under Section 68 of the Act and taxed under section 115BE. However, on considering the explanation of assessee that the receipt of Rs. 5.00 lacs is not unexplained receipt, rather is part of consideration received against the shed in the agriculture land, the Assessing Officer treated the receipt of Rs. 5.00 lacs as income from other sources. The Id. CIT(A) confirmed the action of Assessing Officer by taking almost similar view. The Id. CIT(A) in his finding has held that the contention of assessee that Rs. 5.00 lacs is related to sale of land is disproved by the sale deed itself.

8. During hearing before us, the Id. AR of the assessee tried to take assistance from clause (c) of sub-section (1A) of Section 2 of the Act and made emphasis that the receipt of Rs. 5.00 lacs is part of agricultural income. On the other hand, the Id. Sr. DR for the revenue has submitted that assessee has received sale consideration of land of Rs. 1.153 crore against the sale of agricultural land, Rs. 5.00 lacs is received separately

against the shed constructed on the land. There is no reference of said (shed) in the convinced deed. Since Rs. 5.00 lacs is not a consideration of agricultural land, it was rightly brought to tax under the income head "other sources". The Id. Sr. DR further submitted that the reference made by the Id. AR of assessee about the resolution of purchaser company is of no help to assessee rather made it clear that Rs. 5.00 lacs was paid exclusively for the shed. So far as applicability of Clause (c) of sub-section (1A) of Section 2 of the Act is concerned, the Id. Sr. DR for the revenue submitted that the said provision clearly mandates that any income derived from building owned and occupied by the receiver of such land or by cultivator is intended to be treated as agricultural income. Here the issue is something absolutely different. Here the assessee has transferred that shed by way of separate sale consideration. The sale consideration of said shed is not a part of sale consideration of agricultural land and cannot be treated as exempted receipt.

9. Considering the submissions of both the parties, we are of the view that clause (c) of sub-section (1A) of Section 2 of the Act is not helpful to the assessee in any way. Clause (c) of sub-section (1A) of Section 2 of the Act speaks about the income of any building owned and occupied by the cultivator of land or any receipt of rent in kind. However, the fact before us are entirely different, we are not concerned with any income of such

shed situated in the land, but the question before us is only with regard to sale consideration of such building (shed), which was received by the assessee separately and apart from the consideration of transfer of land. Therefore, it is not part of income generated from such shed, rather the assessee received consideration of it on sale of the land. The consideration is received separately and it was not clubbed with the sale consideration of the agriculture land for the reasons best known to the assessee or purchaser. Therefore, we do not find any merit in the ground No. 1 of the appeal of the assessee. No other submission of any kind of alternative relief is made before us qua the amount receipt of Rs. 5.00 lacs, therefore, we do not find any merit in the ground No. 1 of the appeal raised by the assessee and we dismiss the same.

10. So far as ground No. 2 of the appeal is concerned wherein the assessee urged that the amount of compensation cannot be treated as unexplained credit. We find that the Assessing officer has already treated the receipt of Rs. 5.00 lacs as income from 'other sources', therefore, no such issue for treating the said receipt at a special rate under Section 115BE, is survive now and thus dismissed. The other grounds i.e. grounds No. 3 and 4 are consequential in nature and do not require any adjudication on our part.
11. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 16th August, 2022 soon after hearing of this appeal.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 16/08/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat