

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.192/Ahd/2019
Asstt.Year : 2014-15

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| Chirag Hiralal Barot 19, Dhananjay Bungalow Sola Bhagwat Temple Sola, Ahmedabad. PAN : AFMPB 5006 J | Vs | ITO, Ward-4(2)(1) Ahmedabad. |
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| (Applicant) | (Responent) |
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| Assessee by : None | |
| Revenue by : Shri Mukesh Thawani | |

सुनवाई की तारीख/Date of Hearing : 19/09/2022
घोषणा की तारीख /Date of Pronouncement: 28/09/2022

आदेश/O R D E R

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-4, Ahmedabad (in short referred to as Id.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 13.12.2018 pertaining to Asst.Year 2014-15.

2. None appeared on behalf of the assessee. It has been noticed from order sheet entries of hearings conducted before us that the assessee has remained unrepresented from 27.10.2021, on four hearings conducted since then. All notices served on the assessee at the address mentioned in Form No.36 were returned with the noting "left". In fact perusal of the record before me reveals that notices issued to the assessee right from beginning of institution of appeal till fixing for hearing today have been remained un-served

with remark “left” by the postal authority. On 18.1.2022, the AO filed a letter before me stating that notice for hearing of the appeal fixing on 19.1.2022 was served through the Department. Copy of service of notice was also filed. As is evident, the assessee does not seem to be interested in pursuing the appeal before us. Therefore, I am left with no option but to proceed with the disposal of the appeal *exparte*.

3. The grounds raised by the assessee read as under:

“Sale of rural agriculture land Rs.936200/- (Exempt)”

4. A perusal of the orders of the authorities below reveals that during the assessment proceedings, the AO had information that the assessee had sold property/land for Rs.12,36,125/-. Inquiry from the Registrar revealed that the assessee has sold the land for the said sum and the copy of the registered deed was provided to the AO. The assessee agreed to addition of the entire amount before the AO, but did not bother to produce purchase deed of the land so as to claim long term/short term capital gain on the same. Accordingly, entire claim of sale consideration of Rs.12,36,200/- was added to his income. Before, the Id.CIT(A) evidence of purchase of the property/land was furnished. The Id.CIT(A) noted that it was purchased for Rs.6 lakhs, and Rs.3 lakhs out of the same was paid in cash, and since source of the cash payment remained unexplained, the Id.CIT(A) allowed deduction of purchase cost of the land to the extent of Rs.3.00 lakhs only against the sale consideration of the land of Rs.12,36,200/-, that is, in turn restricting the addition to Rs.9,36,200/-. But before the Id.CIT(A) the assessee also contended that the asset was not capital asset as per section 2(14) of the Act stating that the land in question was an

agricultural land located well outside the specified municipal limits, in village "Anasan". In the remand proceedings, certificate of AUDA was obtained by the AO dated 13.9.2017. Vide this certificate, distance between said agriculture land from the municipal limit was stated to be only 7.5 km. The Id.CIT(A) noted that the assessee did not dispute this finding of AUDA but before him the assessee provided crows flight distance of the said land, which he noted to be 8.5 km via Naroda Dehgam from the AMC outer limit and 6.5 km via Naroda Dehgam Road. He further noted the road via Naroda having lots of curves and bends the crow flight distance he held would be around 7.5 km. from the outer limit of AMC. He accordingly rejected this argument of the assessee also for not being a capital asset as per section 2(14) of the Act. His finding at para 4.5 of his as under:

"4.1 First issue is relating to an addition of Rs.12,36,200/- relevant part of assessment order is as under:

"On the issue of sale of immovable property for Rs.12,36,125/- vide Registration No. 516/2014, assessee vide order sheet entry dated 27/12/2016 has agreed for the addition of Rs.12,36,200/- as his income from undisclosed sources. Assessee has even not bothered to furnish the purchase deed, so that he could claim long term/short term capital gain. Instead he has disclosed the entire sale consideration for tax. Therefore, Rs. 12,36,200/- is added to the total income of the assessee as his income from undisclosed sources as confirmed by the AR of the Assessee on 27/12/2016."

As can be seen above, the addition is based on the statement of the appellant/order sheet entry dtd.27/12/2016, therefore the appellant should not have grievance in view of Bombay High Court decision in the case of Rameshchandra & Co. 168 ITR 375 (Bom.). There is no indication from the record about any allegation that such noting was recorded under coercion, hence the admission has to be taken as correct. Further, it is claimed that the land in question is in village "Anasan" which is not Capital Asset as per section 2(14). In the remand report dtd. 08/01/2018 the appellant disputed the findings in AUDA certificate dtd. 13/09/2017. Now the appellant has provided crow flies distance which is 8.2 km. via Naroda Dehgam Road from the AMC outer limit and 6.5 km via Naroda Dehgam Road. The crows flies distance would be less or maximum of the average of two

distances such as 8.2 km and 6.5 km. In other words, the road via Naroda has lot of curves and bends which definitely results into a crow flies distance which will be anywhere and around 7.5 km from the outer limit of AMC. In the circumstances, though the new argument but rejected as land is capital asset as per section 2(14).

However, during appellate proceedings it is seen that the said property was purchased on 15/10/2013 from one Shri Kanubhai Lalabhai Galiya for Rs.6,00,000/-, out which 3,00,000/- cash payment made to the seller of land has remained unexplained (refer remand report). Therefore, even if the sale is considered for taxation, the deduction for purchase has to be granted. The ratio in the case of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana [2012] 340 ITR 1 (SC) is relied which is as under:

" Immovable property can be legally and lawfully transferred or conveyed only by a registered deed of conveyance. Transactions of the nature of general power of attorney sales or sale agreements/general powers of attorney will transfers do not convey title and do not amount to transfer, nor can they be recognized as valid modes of transfer of immovable property."

As the agreement to sell has been executed on 11/03/2014 the date much later than the revision in jantri value, the stamp valuation as on that date shall be applicable as per provisions of sub section 1 of section 50C of IT Act, 1961. Infact, it has been submitted, "..... purchaser has paid stamp duty as per Jantri value. This is done to not involve in litigation with Stamp Valuation Authority and to get clear title of the property."

In the circumstances the addition is restricted to Rs.9,36,200/- on sale of land in this case as the total jantri value as per record at Rs.12,36,200/-. The issue is decided giving part relief to the appellant."

5. Before me, in the absence of any arguments on behalf of the assessee's claim, the finding of fact by the Ld.CIT(A) of the impugned land being within 8KM municipal limit remains uncontroverted. I therefore find no infirmity in the order of the ld.CIT(A) rejecting assesses contention of the land not qualifying as a capital asset as per section 2(14) of the Act.