

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 28/Rjt/2018  
Assessment Year: 2014-15**

Naresh Kantilal Thacker, Plot No. 9A NU-3, Classic Co.OP HSG Soc. Apna Nagar, Gandhidham  PAN: ACUPT6614R  (Appellant)	Vs	The Income Tax Officer, Ward-2, Gandhidham  (Respondent)
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**Assessee Represented: Shri Chetan Agarwal, A.R.  
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 16-11-2022  
Date of pronouncement : 06-01-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee against the Appellate order dated 16.11.2017 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot arising out the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The brief facts of the case is that the assessee is an individual and engaged in the business of Trading of timber. For the Assessment Year 2014-15, the assessee filed its Return of Income declaring income of Rs. 3,00,380/-. The return was selected for limited scrutiny assessment and then converted into complete scrutiny assessment vide PCIT letter dated 15.12.2016.

2.1. The assessee purchased a piece of land at Ajapar Village on 06.02.2014 for a consideration of Rs. 1,53,00,000/-. Within six days thereafter i.e. on 12.02.2014, the assessee sold the very same land to M/s. Agarwalla Teak International Pvt. Ltd. (hereinafter referred as ATIL) for a consideration of Rs. 1,86,00,000/-. The assessee had shown the gain on sale of land in his capital account of Rs. 23,96,970/- however not declared in the Return of Income as the same is an agriculture land, exempt from taxation u/s. 2(14)(iii) of the Act. The Assessing Officer issued a show cause notice why not to treat the sale of land as Short Term Capital gain and called for explanation from the assessee.

2.2. The assessee replied that the land sold was an agriculture land not being a capital asset and also exempt u/s. 2(14)(iii) of the Act, therefore not offered any capital gains. Though the land was sold on 12.02.2014 but registered only on 30.12.2015 after converting the land into non-agriculture land, since the buyer M/s. ATIL was not a farmer in Gujarat. Further in the Income Tax Return for the Assessment Year 2016-17, the assessee shown Short Term Capital Gain on the sale of above land and paid appropriate taxes. Hence

proposing to tax the same transaction again will amount to double taxation, which is not permissible under law and therefore requested to accept the returned income.

2.3. The ld. A.O. considered the above submissions of the assessee and held that the assessee's claim is partly true and also misleading. Since immediately after the issuance and service of the show cause notice on 05.12.2016, the assessee filed Return of Income for the Assessment Year 2016-17 on 07.12.2016, accepting the Short Term Capital Gain. The assessee has not filed the Return of Income voluntarily u/s. 139 of the Act, but only after issuance of the show cause notice for the Assessment Year 2014-15. Thus the claim of the assessee that the gain on the sale of land is to be treated as agriculture income is without basis and merits. Trading in agriculture land cannot be termed as income from agriculture. The intention of the assessee was clear not to do any agriculture activities, but clearly to sell the said land to non-agriculturist from whom he received the entire funds. Therefore the A.O. treated the transaction as Short Term Capital Gain and charged to tax for the Assessment Year 2014-15 and demanded tax thereon.

3. Aggrieved against the Assessment Order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-3. The assessee pleaded the same arguments before the Ld. CIT(A). After considering the submission, the Ld. CIT(A) treated the sale transaction as an adventure in the nature of trade and assessable to tax during the assessment year 2014-15, however directed the

A.O. to delete the income offered by the assessee in the subsequent assessment year 2016-17 and thereby dismissed the appeal as follows:

5.1. I have carefully considered the submission of the appellant and perused facts of the case in A.O's order. The only effective grievance in this case is addition on account of Rs.23,96,970/- during impugned previous year instead of FY 2015-16 as claimed by the appellant was owner of an agricultural land which was sold after conversion of the into non-agricultural land for the declared sum of Rs.1,86,00,000/- and the same was registered on 30/12/2015. The said property was purchased on 06/02/2014 and as per appellant the same was sold but not registered on 12/02/2014 when entire proceeds of Rs.1,86,00,000/- were received. The said sale was on 30/12/2015. It is apparent from the assessment order that appellant has shown the purchase price at Rs.1,62,03,030/- and has declared gain on sale of agricultural land of Rs.23,96.,970/-. However he has treated the same as exempt covered under the umbrella of agricultural income. It is apparent from the assessment order that the initial purchase was funded by M/s. Agarwalla Teak International Pvt. Ltd. which subsequently brought the said land from the appellant. Faced with these facts appellant gave another explanation that though the sale deed was entered in relevant FY it could only be registered in FY 2015-16 after getting the NA Certificate. The appellant reiterated that accordingly he has declared short term capital gain in A.Y. 2016-17 and hence no further addition in AY 2014-15 is warranted. The appellant also argued that this single transaction should not be treated as adventure in nature of business. However AO made observation that from the entire chain of sequence it is apparent that doing agriculture was not at all intention of the applicant. The intents was to buy the agricultural land, get it converted into non-agricultural land and sale the same to M/s. Agarwalla Teak International Pvt. Ltd.

5.2 I agree with the AO that the sale has been completed in AY 2014-15 itself, himself has declared so in his return filed u/s, 139(1) and has also received the entire proceeds. He has also clearly mentioned that registration was kept waiting only due to pending conversion of land into agricultural land. There is no doubt whatsoever that sale was completed san registration in FY 2013-14 itself and registration was kept pending merely for getting non-agricultural conversion certificate. I also confirm the AO's action of treating the transaction as trade adventure because of the apparent intention of purchase of land only to transfer it in favour of M/s. Agarwalla Teak International Pvt. Ltd. and appellant's own action of getting the NA Certificate, In similar circumstances the Court has held that merely because the nature of agricultural will not prevent it from being treated as business in nature (Hon'ble SC in the of Smt. Sarifabibi Mohmed Ibrahim & Ors). This appeal is dismissed. However appellant has offered gain from the same transaction in AY 2016-17. Same income cannot be in -

*two assessment years. The AO is directed to delete the income offered in AY 2016-17 on account of sale of the said land.*

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1. Ld. CIT(A) had erred in law as well as on fact in confirming addition of Rs.23,96,970/- being profit on sale of agricultural land in AY 2014-15 on the basis of agreement to sale instead of gain already offered for taxation in AY 2015-16 on the basis of registered sale deed and the year in which actual transfer takes place.*

*2. Ld. CIT(A) had erred in law as well as on fact in confirming addition of Rs.23,96,970/- being profit on sale of agricultural land treating it as adventure in nature of trade.*

4.1. Ld. Counsel Mr. Chetan Agarwal appearing for the assessee filed a Paper book consisting of the written submission filed before Ld. CIT(A), Registered Sale Deed dated 30.12.2015 and unregistered sale agreement dated 12.02.2014 and Income Tax Return filed for the Assessment Year 2016-17. The Ld. Counsel submitted that the assessee entered into agreement on sale of land on 12.02.2014 to M/s. Agarwalla Teak International Pvt. Ltd. The land was converted into non-agriculture land on 01.08.2015 and ultimately sold and registered on 31.12.2015, after completing all legal formalities. Thus the physical ownership of the land was transferred on 31.12.2015 during the Assessment Year 2016-17 and not in the Assessment Year 2014-15, as determined by the Assessing Officer which was based on the agreement of sale dated 06.02.2014. Therefore the action of the Lower Authorities required to be set aside and thereby allow the assessee's appeal.

5. Per contra, the Ld. Sr. D.R. Mr. B.D. Gupta appearing for the Revenue submitted that though the agreement of sale entered on 12.02.2014, the entire sale consideration was received by the assessee and possession also given to the purchaser. Therefore the conclusion reached by the Ld. CIT(A) that the above transaction is in the adventure of trade and liable to be taxed in the assessment year 2014-15 is correct in law. There is no question of double taxation on sale of the above land, since the Ld. CIT(A) directed the Assessing Officer to delete the income offered by the assessee in the subsequent assessment year 2016-17 on the very same sale transaction. Thus the order passed by the Ld. CIT(A) does not require any interference and the same is liable to be upheld by dismissing the assessee's appeal.

6. We have given our thoughtful consideration and perused the materials available on record including the Paper Books filed by the assessee. The assessee purchased the above piece of land on 06.02.2014 for a consideration of Rs. 1.53 crores and within a period of six days thereafter, the assessee entered into a sale agreement dated 12.02.2014 with Agarwalla Teak International Pvt. Ltd. for a consideration of Rs. 1.86 crores. This clearly proves that the assessee has no intention of carrying out any agricultural activity in the land. Further it clearly proves that the assessee converted the agricultural land into non-agricultural purpose and sold it to M/s. ATIL. It is further seen from the registered sale deed that the entire sale consideration was funded by M/s. ATIL to the assessee to buy the above piece of land. Further it is seen from the

ld. CIT(A)'s order, the Ld. CIT(A) directed the Assessing Officer to delete the claim of Long Term Capital Gain offered by the assessee in the Return of Income filed for the subsequent Assessment Year 2016-17. Thus there is no question of double taxation of the very same sale transaction.

6.1. In our considered opinion the above transaction is to be treated as an adventure in the nature of trade, as the assessee converted the above land as non-agricultural and for the purpose of industrial use and sold it to M/s. Agarwalla Teak International Pvt. Ltd. for a consideration of Rs. 1.86 crores. We do not find any infirmity in the orders passed by the Lower Authorities and therefore does not require any interference. Thus the grounds raised by the assessee is devoid of merits and the same is liable to be rejected.

7. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 06-01-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 06/01/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL 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,  
राजकोट