

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

ITA No. 488/SRT/2019 (AY: 2014-15)

(Hearing in Physical Court)

I.T.O., Ward-3(3)(1), Surat.	Vs.	Shri Bharatkumar Laljibhai Tejani, 286, Vithal Nagar Society, Near Hira Baugh Circle, Varacha Road, Surat-395006. PAN: AHBPT 5143 P
APPELLANT		RESPONDEDNT

ITA No. 540/SRT/2019 (AY: 2014-15)

Shri Bharatkumar Laljibhai Tejani, 286, Vithal Nagar Society, Near Hira Baugh, Varacha Road, Surat-395006. PAN: AHBPT 5143 P	Vs.	I.T.O., Ward-3(3)(1), Surat.
APPELLANT		RESPONDEDNT

Assessee by	Shri Sapnesh Sheth, CA
Department by	Shri Ashok B. Koli, CIT-DR
Date of hearing	01/03/2023
Date of pronouncement	18/05/2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These cross appeals by the revenue as well as by the assessee are directed against the order of the learned Commissioner of Income Tax (Appeals)-3, Surat [in short 'ld. CIT(A)] dated 20/08/2019 for the Assessment Year (AY) 2014-15. The Revenue in its appeal has raised the following grounds of appeal:

- “1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not upholding the disallowance made by the AO of Rs. 3,91,95,831/- U/s. 54B of the Act.*
- 2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance made by the Assessing Officer of Rs. 3,91,95,831/- u/s. 54B of the Act, without appreciating the fact that the assessee has failed to establish with documentary evidences that the agricultural activities have been carried out by him at least for a period of two years immediately preceding the dates of transfer ?*
- 3. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that showing of agricultural income in the Returns of Income is sufficient to prove that the agricultural activities have been carried out by him in the said land without having furnished any documentary evidences by the assessee ?*
- 4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in accepting submission of the assessee that the date of transfer of property is in the year in which the Agreement to sale was made with purchaser, when the assessee himself show the sale transaction in the year in which the Sale Deed is registered ?*
- 5. On the facts and circumstances of the case and in Law, the Ld. CIT (A) ought to have upheld the order of the A.O. It is, therefore, prayed that the order of the Ld. CIT(A), Surat may be set aside and that of the A.O.'s order may be restored.*

2. The assessee in his cross appeal has raised following grounds of appeal:

- “1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in partly confirming the action of assessing officer in making addition of Rs. 73,46,536/- u/s 50C of the I.T. Act, 1961 without giving any finding on the issue and also without considering the fact that the jantri value obtained by assessing officer is that of non-agricultural land and not of agricultural land.*
- 2. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.*

3. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

3. Brief facts of the present case as gathered from the orders of the lower authorities are that the assessee is engaged in diamond brokerage and agricultural activities, filed his return of income for A.Y. 2014-15 on 14/10/2014 declaring income of Rs, 1,84,080/- and agricultural income of Rs. 1,28,990/-. The assessee revised his income by filing revised return of income on 02/05/2015 declaring total income at Rs. 2,34,251/- and agricultural income of Rs.1,28,990/-. The case of assessee was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has sold a non-agricultural land out of Revenue Survey No. 18, Block No. 20 of Village Pasodara, Taluka Kamrej, District-Surat admeasuring 15697 Square meters for a consideration of Rs. 3.95 crores on 10/07/2013. The assessee claimed to have purchased this land on 16/09/2005 at the cost of Rs. 2,63,999/-. The assessee computed long term capital gain of Rs. 3.89 crores after availing indexation. The assessee also claimed deduction under Section 54B of the Income Tax Act, 1961 (in short, the Act) for purchasing other agricultural land by investing sale proceed for purchase of new agricultural land. The Assessing Officer was of the view that the assessee has sold non-agricultural land, so the deduction under Section 54B of the Act cannot be allowed. On the basis of aforesaid observation, the

Assessing Officer issued show cause notice dated 12/12/2016, the relevant part of show cause notice is extracted in para 4.1 of the assessment order. The assessee filed his reply dated 16/12/2016. The relevant part of reply is extracted in para 4.2 of the assessment order. The assessee in its reply in sum and substance submitted that the contents of show cause notice that the assessee sold non-agricultural land is not correct and such facts is specifically denied. The assessee explained that sale deed of land was registered on 10/07/2013 at serial No. 7080. An agreement to sell was executed between the parties on 20/04/2012. At the time of execution of agreement to sell, the purchaser paid advance money of Rs. 30,11,111/- as a part performance of the said consideration. The assessee handed over possession of land on the same date. At the time of handing over the possession, the land was agricultural land. The assessee furnished copy of agreement. The assessee further submitted that the conveyance deed was executed on 10/07/2013. There was some mistake in the payment dates on the conveyance deed so a rectification deed was also registered subsequently on 26/08/2013. In the agreement to sell dated 20/04/2012, it was agreed that purchaser will get the possession and will start procedure for change of land use i.e. non-agricultural use before the Collector. The purchaser will prepare plan for sanction before competent or

local authority and will be entitled to get the survey of land by the competent authority. The assessee finally submitted that the land was transferred at the time of agreement within the meaning of Section 2(47)(v) of the Act and it was agricultural land. At the time of execution of conveyance deed, the nature of land was converted into non- agricultural purpose. The assessee made investment for purchase of another agricultural land in Gothan village and invested Rs. 49,50,000/- out of the sale proceed of agricultural land. The assessee invested the sale proceed in other agricultural land and claimed deduction under Section 54B of the Act.

4. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer noted that in the computation of income, filed with the return of income, the assessee himself calculated capital gain on sale of impugned land, which proved that the assessee believed that he has sold land which is liable for capital gain and computed capital gain. The Assessing Officer obtained report of location of land from Municipal limit from Ward Inspector, who reported that the municipal limit of land is about 3 to 3.5 KM. The assessee also furnished location of impugned land from google map from Municipal limit which is 16.30 KM. The details of location of land furnished by the assessee was not accepted by the Assessing Officer by taking a view that the assessee measured distance from Railway Station and not from

Municipal limit. After recording such fact, the Assessing Officer asked the assessee to furnish the abstract of Form No. 7/12 and 8A alongwith sale bills of agriculture produce of immediately preceding two years. The Assessing Officer recorded that the assessee vide submission dated 07/12/2016 submitted three bills, ledger account and certain details of Agriculture Produce Market Committee. The Assessing Officer after obtaining such evidences, and making reference of decision of Hon'ble Gujarat High Court in CIT Vs Siddhartha J. Desai (1982) 10 Taxman 1 (Guj) took his view that the nature of land is to be determined on the basis of various factors. The assessing officer also was of the view that merely revenue record showing the nature of land as agriculture or showing agriculture income in the return of income without supporting evidence does not mean that the assessee was doing any agriculture activities on the land, and land is out of preview of definition of capital asset.

5. The Assessing Officer obtained information from Sub-Registrar, Kamraj about the value determined by the Sub-Registrar on the transaction of said land. The Sub-Registrar, Kamrej furnished report and stated that value of land for the purpose of stamp valuation it was valued at Rs. 4.70 crores. The Assessing Officer again issued a show cause notice by invoking provisions of Section 50C of the Act as to why the difference between value determined by Sub-Registrar

office and the value of consideration shown on the registered document should not be added. The assessee again filed reply dated 19/12/2016 and explained that the sale deed was executed by showing the sale consideration at Rs. 3,95,11,111/- on 10/07/2013. The Jantri rate of Revenue Survey No. 18 of said land was Rs. 2500 per square meter and as per the sale document, total area of land was 15697 square meter and total value as per Jantri rate comes to Rs. 3,92,42,500/-. However, the document was executed by showing consideration at Rs. 3,95,11,111/-. The stamp duty was charged from purchaser as per Jantri rate applicable for non-agriculture land. Thus, the value of stamp was enhanced to that extent and purchaser has paid the higher stamp duty. The assessee has not received any other amount except the consideration shown on conveyance deed. The reply of the assessee was not accepted by the Assessing Officer. The Assessing Officer recorded that the land was converted from agricultural land to non-agricultural land and development charges was paid to Surat Urban Development Authority (SUDA) in connection with conversion from agricultural to non-agricultural. The Assessing Officer scanned the various reports in his assessment order and concluded that intention of the parties was to sell the land as non-agricultural land for housing purpose and subsequent use of land is non-agricultural purpose. The Assessing Officer accordingly held that

the land is not situated beyond 8 KM from municipal limit, no agriculture activities are carried out, land was non- agricultural land at the time of transfer, sold to non-agriculturist and the assessee had applied for non-agriculture purpose. Accordingly, deduction under Section 54B of the Act was denied to the assessee and the Assessing Officer computed the long term capital gain by taking the value of sale consideration on the basis of stamp valuation authorities and added long term capital gain of Rs. 4.65 crores.

6. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee challenged the disallowance of exemption under Section 54B of the Act and invocation of provisions of Section 50C of the Act. The assessee appeared in person and himself explained the fact before the Id. CIT(A) as recorded in para 5 of his order.
7. The Id. CIT(A) after considering the submission of assessee noted that on perusal of details available, the sale deed of land was executed on 10/07/2013, before execution of sale deed, agreement was executed on 20/04/2011. On execution of agreement, purchaser paid Rs. 30,11,111/- as advance money. The order of conversion from agricultural land to non-agricultural land was passed on 22/09/2012, after execution of agreement to sell. The case of assessee is that he sold agricultural land and it was purchaser who

got the sanction/order for conversion from agricultural land to non-agricultural land. Further the claim of assessee is that he invested sale proceed in purchasing agricultural land. The assessee in original return of income calculated the capital gain. The Assessing Officer noted that the assessee has not shown capital gain in return of income for A.Y. 2013-14. The Id CIT(A) further noted that in para 4.5 of assessment order, the assessing officer recorded that the assessee furnished the bills of agriculture activities for AY 2009-10,2010-11 and 2011-12, showing cotton and fruits to APMC, Amish Oil Mills. On such observation the Assessing Officer held that the assessee failed to show the agricultural activities in preceeding years and is not eligible for deduction under Section 54B of the Act.

8. During appellate proceedings the Id. CIT(A) directed the assessee to produce copy of Form 7/12, N.A. order and evidence of sale of agriculture product and return of income for three preceeding assessment years. As per the direction of Id. CIT(A), the assessee furnished requisite details. On considering such details i.e. return of income for A.Y. 2010-11, 2011-12 and 2012-13, the Id. CIT(A) recorded that the assessee was showing regular agricultural income in all assessment years. The land was situated within the City limit and was a capital asset. However, the Id. CIT(A) was of the view that the Assessing Officer has not considered the fact that the assessee

purchased agricultural land for an amount of Rs. 3.91 crores and was eligible for deduction as he fulfills the condition of Section 54B of the Act. The Id. CIT(A) on the basis of agriculture income and the other evidence shown in earlier years held the assessee eligible for deduction under Section 54B of the Act. By considering such fact, directed the Assessing Officer to treat the land as capital asset and to allow the claim of deduction under Section 54B thereby giving part relief to the assessee. No finding on the invocation of Section 50C of the Act and treating the sale consideration at Rs. 4.70 crore was given by the Id. CIT(A).

9. Aggrieved by the order of Id. CIT(A), both the parties have filed their cross appeals. The Revenue in its appeal has challenged the action of Id. CIT(A) in granting deduction under Section 54B of the Act and on the other hand, the assessee has challenged the action of Id. CIT(A) for not giving finding on the issue under Section 50C of the Act.

10. We have heard the submissions of the learned Commissioner of Income tax- departmental representative (CIT-DR) for the revenue and the learned authorised representative (AR) for the assessee and have gone through the orders of the lower authorities carefully.

11. Perusal of record shows that the impugned order was passed by the Id. CIT(A) on 20/08/2019, however, the assessee has filed its cross

appeal only on 27/1/2019, thus, there is delay in filing appeal. The assessee has filed application for condonation of delay. In the application, the applicant/assessee has contended that the impugned order was passed on 20/08/2019 which was received by the assessee on 06/09/2019 and thus the appeal was required to be filed on or before 05/11/2019. It is further contended that there is no intentional delay in filing appeal within 60 days. Initially, the assessee was advised to file rectification application under Section 154 before the Id. CIT(A). On advise, the assessee filed rectification application. Thereafter, he was guided to file appeal by Shri Sapnesh Sheth, CA who was engaged for appellate proceedings. In getting the proper advice, the delay of 21 days occurred.

12. The Id. AR of the assessee submits that delay in filing appeal is neither intentional nor deliberate for the reasons that there was no clarity on the issue of Section 50C as the Id. CIT(A) neither accepted nor rejected such plea of assessee. The assessee, initially, filed application under Section 154 of the Act for seeking rectification in the appeal order. The assessee was bonafide in pursuing remedy before the Id. CIT(A). The delay occurred in getting the proper advice which is neither intentional nor deliberate. The assessee has good case on merit on the issue on which he has filed cross appeal before the Tribunal. The Id. AR of the assessee submits that the assessee

will not get any benefit in filing appeal belatedly rather there is a chance that the delay may not be condoned. The Id. AR of the assessee submits that a liberal view may be taken to condone the small delay of 21 days in filing appeal.

13. On the other hand, the Id. CIT-DR for the revenue after going through the contents of order of Id. CIT(A) and the application for condonation of delay would submits, that the Bench may take appropriate decision in accordance with law.

14. We have considered the rival contentions of both the parties on the plea of condonation of delay. On perusal of operative part of decision of Id. CIT(A), we find that there is no express finding of Id. CIT(A) either in rejecting or in accepting the grounds of appeal against addition under Section 50C of the Act. The Id. AR of the assessee vehemently submitted that the assessee on legal advice filed application for rectification under Section 154 of the Act before the Id. CIT(A) and was pursuing remedy bonafidely. Considering the overall facts and circumstances of the case, we find that the delay in filing appeal was not intentional or deliberate rather due to advice given to the assessee to file application before the Id. CIT(A) for rectification of the order, which the assessee was pursuing and on getting properly advice filed present appeal. We further find that on getting second opinion on the issue, the assessee filed present appeal

before the Tribunal. Therefore, considering the facts of the case, the delay in filing appeal by the assessee is condoned. Now adverting to the merit of the case.

15. The Id. CIT-DR for the revenue in his appeal, supported the order of Assessing Officer. The Id. CIT-DR for the revenue submits that during the assessment, the assessee could not furnish complete details of agricultural activities undertaken by the assessee on the impugned land. The assessee was given opportunity to prove such fact. Mere showing agricultural income was not sufficient. The nature of land in the conveyance deed on the date of transfer it was clearly mentioned the nature of land as non- agricultural land. The land use was changed before transfer of land, therefore, the assessee cannot take the plea that the assessee sold agricultural land.
16. On the grounds of appeal in assessee's cross appeal under Section 50C of the Act, the Id. CIT-DR submits that the stamp value authority valued the land at Rs. 4.70 crores, therefore, the provisions of Section 50C of the Act are clearly applicable on the transaction of land.
17. On the other hand, the Id. AR of the assessee submits that during the assessment, the Assessing Officer examined the fact on different angles, even such issues were required to be examined. The case of assessee was simple that he has sold agricultural land and purchased another agricultural land. The land use was changed at the instance

of purchaser as he was a non-agriculturist. It is a known fact and legal position in the State of Gujarat that the agricultural land can be purchased by agriculturist whose name is registered in the record of Collector as an agriculturist (Khedut). The purchaser was not the agriculturist, therefore, the user of land was changed at the instance of purchaser. The fact remain the same that the assessee handed over the land as agricultural land and purchased another agricultural land. The Assessing Officer has not disputed the nature of new agricultural land and subsequent agriculture activities thereon. Only a limited issue on the deduction under Section 54B was that the assessee was using the said land for agriculture purpose. The assessee before the Assessing Officer as well as before the Id. CIT(A) proved beyond doubt that the assessee was doing agriculture activities by furnishing requisite evidences. Such fact is otherwise accepted by Assessing Officer in assessment order that nature of business of assessee is "agriculture activities" on first page of assessment order. The location of land from municipal limit was notwithstanding when the assessee has claimed deduction under Section 54B of the Act. For claiming deduction under Section 54B, the assessee fulfilled all the requisite conditions which were appreciated by the Id. CIT(A) in examining the fact of case and evidence in depth.

18. On the issue/grounds of appeal in assessee's appeal, the Id. AR of the assessee submits that the assessee has received consideration as recorded in the sale deed itself which is Rs. 3.95 crores only. The additional stamp duty if any was charged by stamp valuation authority by considering the land as non-agricultural land, however, the fact remains the same that the rate of Revenue Survey No. 18, Block No. 20 was Rs. 2500/- per square meter and the value as per Jantri rate of land was Rs. 3.92 crores. Since the assessee has not received any amount in addition to the value shown on the conveyance deed, no addition as made by Assessing Officer is justified.
19. We have considered the rival submissions of both the parties and have perused the orders of lower authorities carefully. First we shall take up the grounds of appeal in revenue's appeal. The revenue has basically challenged the order of Id. CIT(A) in allowing deduction under Section 54B of the Act. We find that the assessee right from the beginning has claimed deduction under Section 54B of the Act. The Assessing Officer instead of examining the claim of Section 54B in right perspective, started investigation as that the assessee is not eligible for exemption of capital gain. The investigation of Assessing Officer was not on right track. The assessee is eligible for claiming exemption of Section 54B irrespective of fact whether the land sold

by individual assessee falls in rural area or in urban area. The conditions for claiming eligibility are that the land must have been used for agricultural purpose immediately for two years from the date of transfer for the agricultural purpose and the land acquired on investing such sale proceed should be used for agriculture purpose. We find that the Assessing Officer has not questioned the nature of land purchased by assessee. To prove the claim of Section 54B, the assessee has shown agricultural income in three preceding assessment years and return of income for three preceding assessment years were filed the assessee also furnished the details recorded in Form 8 and 7/12 extract. Besides that, the assessee also furnished the evidence of sale of cotton, vegetables to APMC and Amish Oil Mills.

20. We find that the Assessing Officer while rejecting the claim of assessee under section 54B, referred the decision of Hon'ble Jurisdictional High Court in CIT Vs. Siddhartha J. Desai (supra), we find that the Assessing Officer failed to appreciate the decision in correct perspective. The ratio of decision and the fact of said decision are more favorable to the assessee. In the said case, the nature of land was also converted from agriculture to non-agriculture purpose just before transfer of land and the same was considered as a transfer of agriculture land as far as seller is concerned. Those facts exactly

similar to the facts of the present case. Thus, we find that the Id. CIT(A) on appreciation of such evidence, allowed the deduction under Section 54B of the Act. We find that finding of Id. CIT(A) is based on appreciation of evidence with regard to claim of deduction under Section 54B of the Act. Therefore, we do not find any infirmity or illegality in his order which we affirm. In the result, grounds of appeal raised by the revenue are dismissed.

21. In the result, the appeal of the revenue is dismissed.

22. Now adverting to the appeal of assessee. We find that before the Id. CIT(A), the assessee has raised specific ground of appeal against invoking provisions of Section 50C of the Act by the Assessing Officer. The assessee also made specific submission on such issue. We find that the Id. CIT(A) neither rejected the corresponding ground of appeal nor discussed the merit/demerit of such ground of appeal. Before us, the Id. AR of the assessee vehemently submitted that the assessee sold agricultural land and the value of consideration was more than the Jantri value applicable for agricultural land, the Jantri value applied by Stamp Valuation Authority for collection of stamp from purchaser by applying the rate of non-agricultural land. We find that on such issue, the Assessing Officer has not brought any adverse evidence against the assessee. The Assessing Officer has not examined the purchaser, thus, we find merit in the submission of Id.

AR of the assessee that the assessee is not liable to be taxed by invoking provisions of Section 50C of the Act in absence of any supporting evidence. Therefore, we direct the Assessing Officer to compute the capital gain on the basis of sale consideration shown on the sale deed dated 10.07.2013.

23. In the result, grounds of appeal raised by the assessee in his appeal are allowed.

24. In the final result, the appeal of assessee is allowed. One copy of this order be kept in both the appeal folders.

Order pronounced on 18/05/2023, in open Court.

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 18/05/2023

**Ranjan*

Copy to:

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

By Order

Sr. Private Secretary, ITAT Surat