

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA No.166/JODH/2020
Assessment Year : 2009-10**

Shri Trilock Chand Bugaliya, C/o Rajendra Jain Advocate, 106 Akshay Deep Complex, 5 th B Road, Sardarpura, Jodhpur PAN: ACVPB6833F	Vs	Income Tax Officer, Ward-2, Makrana
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Rajendra Jain, Advocate & Smt. Raksha Birla, C.A.
Revenue by	Ms. Nidhi Nair, JCIT-DR
Date of hearing	07.08.2023
Date of pronouncement	07.08.2023

ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of Id. Commissioner of Income Tax (Appeals)-2, Jodhpur dated 14.02.2020 emanating from the assessment order under section 143(3) r.w.s. 147 dated 30.03.2013 passed by Income Tax Officer, Ward-2, Makrana. The Assessee has raised the following grounds of appeal :

“1. That on the facts and in the circumstances of the case, the ld CIT (A) grossly erred in upholding the validity of notice u/s 148 issued by the ld AO.

2. That on the facts and in the circumstances of the case, the ld CIT (A) grossly erred in upholding the provision of section 50C of the Act particularly when the transaction is an adventure of nature of trade.

3. That on the facts and in the circumstances of the case, the ld CIT (A) erred in upholding the finding of ld AO that profit derived from sale of land as income from capital gain particularly when the assessee had claimed the same as business income.

4. That on the facts and in the circumstances of the case, the Id CIT (A) erred in recording various observations in the order are contrary to facts on record.

5. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.

6. The petitioner prays for justice & relief.”

Submission of Ld. AR

2. Ld. AR, at the outset submitted that he will not like to press for ground no. 1 which is a legal ground and assessee had challenged the validity of notice under section 148.

The ld. AR submitted that in this case assessee had purchased agricultural land on 30.01.2008. Then assessee got the land

converted into non agricultural land on 07.06.2008. Assessee sold the impugned land on 21.07.2008. The ld. AR submitted that assessee sold the land within six months by converting agricultural land into non agricultural land. The assessee in the return of income had shown the said activity as adventure in nature of trade and offered the said income in the return of income filed in response to notice under section 148 as business income. However, the Assessing Officer treated the said activity as capital gain and also invoked provision of section 50C. The ld. AR submitted that from the beginning assessee had intention to sell the land and earn profit therefore, immediately assessee got the land converted into non agricultural and then sold it, all these things explained assessee's intention to do business. The assessee is a teacher however, ld. CIT(A) has merely mentioned in the order that assessee is a teacher and therefore, he cannot do business. The ld. AR submitted that being a teacher in Government does not mean that assessee is prohibited from doing business. The learned AR submitted that neither ld. CIT(A) nor ld. AO has referred to any statutory provision which prohibits a teacher from doing business therefore, ld. AR submitted that assessee always had intention to

do business and accordingly offered the income as business income.

Submission of Ld. DR

3. Ld. DR heavily relied on the order of the lower authorities. Ld. DR read out the relevant parts of ld. CIT(Appeal's) order to explain that assessee is a teacher with Government and hence assessee is not permitted to do business.

Findings & Analysis

4. We have heard both the parties and perused the records. It is an admitted position before us that in the return of income filed by assessee in response to notice under section 148, assessee has shown sale of land under the head income from business and offered the profit for taxation. In the said return of income, assessee has also shown income from salary from education department. Both the lower authorities have emphasized that assessee being a teacher cannot do business. However, it is observed that it is an admitted fact that the assessee purchased the agricultural land on 30.01.2008. After purchasing the land, the assessee applied to BDO, Ajmer for conversion of land into non agricultural. Immediately after purchase of land, assessee got the land levelled by spending Rs. 25,700/-. Assessee got the non

agricultural permission on 7.6.2008. The said land was converted into industrial use land by assessee. Subsequently, it has been sold on 21.07.2008. It is also observed that on 27.05.2008, assessee made payment of Rs. 35,210/- to State Government towards fees for conversion of land from agriculture to Industrial purpose. Thus, it is absolutely clear that assessee's intention from the beginning was to sell the land and earn profit. Assessee sold the land as industrial purpose land. It is also a fact that assessee had never carried out any agricultural activity since 30.01.2008 i.e. the date of purchasing the impugned land. In these facts and circumstances of the case, we are of the opinion that assessee's activity of sale of land is adventure in nature of trade. Accordingly, we agree that income from sale of land needs to be taxed as business income. We find support from the order of Hon'ble Supreme Court in the case of *Dalmia Cement Ltd. vs. CIT 1976 AIR 2150* in which case a single transaction has been held as adventure in nature of trade. The Assessing Officer has applied section 50C of the Act to determine the cost of sale. However, section 50C cannot be invoked for this particular kind of transaction which is adventure in nature of trade. Hence, assessee's grounds of appeal nos. 2, 3 and 4 are allowed.

5. Ground nos. 5 and 6 are general in nature and does not need any adjudication.

Ground No. 1

6. Ld. AR submitted that he will not like to press further legal ground. Accordingly, ground no.1 is dismissed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 07th August, 2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Dated: 07/08/2023

Sh.

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench