IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No.42/Jodh/2022
Assessment Year: 2016-17

Narayani Bai Dangi 407, Near Akhand Ashram Shoubhagpura Udaipur. [PAN:BREPD4963P] **(Appellant)**	Vs.	Income Tax Officer, Ward-2(1), Udaipur. **(Respondent)**

Appellant by	Sh. Shrawan Kumar Gupta, Adv.
Respondent by	Ms. Nidhi Nair, JCIT DR

Date of Hearing	11.10.2023
Date of Pronouncement	13.10.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the NFAC, Delhi {in brevity the CIT(A)}, order passed u/s 250 of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y. 2016-17. The impugned order was emanated from the order of the Income Tax Officer, Ward 2(1), Udaipur,[in brevity 'the AO'] order passed u/s 143(3) r.w.s. 147of the Act.

2. The assessee has taken the following ground:

"1. 1.1 AND1.2 : The impugned order u/s 148/143(3) dated 20.06.2018, as well as the action taken u/s 147/148 and notices are bad in law, illegal, invalid, void-ab-initio on facts of the case, for want of jurisdiction, without proper approval and satisfaction of higher authorities u/s 151 of the Act, and also barred by limitation and various other reasons and hence the same may kindly be quashed.

2 Ground 2. Rs. 15, 53,1 12,'-: The Id. C1T(A) has grossly erred in law as well as on the facts of the case in sustaining the addition of Rs. 15, 53,1 12/- made by the Id. AO on account of capital gain by denial of deduction u/s 54B, also erred in not considering the material in their true perspective and sense. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.

3. Grounds. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

4. Ground4. The appellant prays your honours indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing. "

3. Brief fact of the case is that the assessee is not a return filler and notice u/s 148 was issued, thereafter the assessee filed return u/s 148 and declared the

transaction for sale and purchase of the agricultural land in the return filed u/s 148. During assessment proceedings, the ld. AO accepted the sale of agricultural land but denied to allow the claim for purchase of agricultural land with persuasion of section 54B of the Act. Accordingly, the claim u/s 54B amount to Rs.15,53,112/- was rejected by the ld. AO and calculated the capital gain accordingly. Being aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) denied the assessee's claim that the said agricultural land is non functional, so, it cannot be accepted as a nature of agricultural land. Hence, the entire claim of deduction u/s 54B was duly rejected and the order of the ld. AO was upheld. Being aggrieved assessee filed an appeal before us.

4. The ld. AR for the assessee vehemently argued and filed written submissions which are kept in the record. The ld. AR placed that the assessee had purchased and sold the land which both are agricultural in nature, there is no dispute that the said land is not an agricultural land. The ld. AR invited our attention in the appeal order pages 28 to 29 which are reproduced as below:

> *"In the course of the present proceedings, I find that the Appellant has reiterated the same facts as was submitted before the AO. The Appellant has not furnished any evidences with regards to the fact that the plot of land was being used for agriculture purposes. The Appellant has submitted that the plot of land was given to one Shri Prem Shankar Mali who did the cultivation and sold the produce in the market and after keeping his share, the balance was given to the Appellant. The Appellant*

does not have sale bills etc as the produce was sold by Shri Mali. It is very surprising that the Appellant never insisted for any bills and / or never bothered to find out as to what was the value of the agriculture produce being sold or whether Shri Mali was giving the right amount to the Appellant or not. It is difficult to digest that the Appellant does not have any documentary evidences regarding agriculture activities being carried out in the said plot except one affidavit from Shri Mali, which is, in my opinion a self serving document. In this background, one should not lose sight of the fact that the plot merely measured 3658 sq feet. It is not understandable what agriculture operations could have been carried out on such a small piece of land.

From perusal of the facts of this case, the Doctrine of preponderance of probabilities is clearly attracted. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under Section 3 of the Evidence Act, 1872, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact is thus to be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact as a prudent man. So the Court applies this test for finding whether a fact in issue can be said to be proved. The first step in

this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage and the improbable at the second. Within the wide range of probabilities, the Court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on promissory note. The nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities and not the one relating to beyond reasonable doubt.

In view of the above facts and discussions I uphold the action of the AO in denying the benefits of the section 54B of the Act since the small plot of land was not demonstrated by the Appellant to have been used for agriculture purposes. I also uphold the action of the AO in treating the plot of land as a capital asset in terms of sections 2(14) of the Act. In view of the same, I uphold the action of the AO in taxing the income earned from the sale of the plot as long term capital gain. As regards the case laws relied upon by the Appellant, the same are distinguishable on facts and hence has no relevance to the issue on hand. The ground is, thus, dismissed.

5.3. As regards ground 3, since the Appellant has not added, altered or amended any of the grounds, the same is dismissed as not pressed.

6. In the result, the appeal is dismissed."

5. The ld. DR vehemently argued and fully relied on the order of the revenue authorities.

6. We heard the rival submission and consider the documents available in the record. The ld. AR primarily claimed that the assessee submitted the relevant documents before the revenue authorities thereafter same wassubmitted before the ITAT. The sale deed of agricultural land in **APB pages 14to 20**, copy of purchase deed of new agricultural land in **APB pages 21 to 29**, copy of the affidavit of Sh. Prem Shankar Mali in **APB page 30,** copy of Jamabandi in **APB page 31**. The ld. AR vehemently claimed that the assessee submitted her affidavit before the ld. CIT(A) but the ld. CIT(A) had not confronted or rejected the affidavit. The ld. CIT(A) is silent in appeal order against the affidavit filed by the assessee to substantiate the claim related agricultural land.

The ld.AR respectfully relied on the order of the **Hon'ble Supreme Court** in the case of **Mehta Parikh & Co. v. Commissioner of Income-tax, [1956] 30 ITR 181 (SC).** The ld. AR relied on following paragraph which is reproduce as below: -

"It has to be noted, however, that beyond these calculations of figures, no further scrutiny was made by the Income-tax Officer or the Appellate Assistant Commissioner of the entries in the cash book of the appellants. The cash book of the appellants was accepted, and the entries therein were not challenged. No further documents or vouchers in relation to those entries were called for, nor was the presence of the deponents of the three affidavits considered necessary by either party. The appellants took it that the affidavits of these parties were enough and neither the Appellate Assistant Commissioner, nor the Income-tax Officer, who was present at the hearing of the appeal before the Appellate Assistant Commissioner, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances it was not open to the Revenue to challenge the correctness of the cash book entries, or the statements made by those deponents in their affidavits."

6.1 We respectfully relied on the order **Mehta Parikh & Co,** (supra). The revenue has not acted in proper manner to verify the nature of land and had not confronted the affidavit filed by assessee. The ld. DR was unable to submit any contrary judgment against the submission of the assessee. In our considered

view, the revenue has not taken any pain to complete the verification or has not confronted the affidavit of the assessee during the appeal stages. So, the ground of the assessee is accepted by the bench. We set aside the appeal order and the additionamount to Rs. 15,53,112/- is quashed.

7. In the result, the appeal of the assessee bearing **ITA No. 42/Jodh/2022** is allowed.

Order pronounced in the open court on 13.10.2023

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**Judicial Member**

AKV
(On Tour)
Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By order