

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.387/NAG/2019

निर्धारण वर्ष / Assessment Year : 2016-17

The Assistant Commissioner of Income Tax, Akola Circle, Akola – 444001.	V s	DSD Progressive Associate, 11, DSD Mall, Near Tahsil Office, Chaitanya Wadi, Buldhana – 443001. PAN: AAIFP 3358 A
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Mukesh Agrawal – CA
Revenue by	Shri Kailash Kanojiya – Sr.DR
Date of hearing	30/08/2023
Date of pronouncement	13/10/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Revenue i.e. ACIT, Akola Circle against the order of Id.CIT(A)-1, Nagpur dated 09.09.2019 for A.Y. 2016-17. The Revenue has raised the following grounds of appeal :

1. *On the facts and circumstances of the case and in law, the Ld. CIT (Appeals), Nagpur has erred in deleting the addition of Rs. 8,33,55,350/- made to the returned income as business income arising out of sale of agriculture land held as stock in trade in the books of account by the assessee.*

2. *In reaching the above conclusion, the Ld. CIT (Appeals) has erred in drawing support merely from the fact that the assessee had not attempted to convert the agricultural land into non-agricultural land ignoring the fact that the assessee had consistently treated the land as it stock-in-trade.*

3. *In reaching the above conclusion, the Ld. CIT (Appeals) has erred in concluding that since the transaction of sale of the impugned land is not taxable as capital gains the same is also not taxable as business income under the I.T. Act. 1961.*

4. *In reaching the above conclusion, the Ld. CIT(Appeals) has gravely erred in not noticing the fact that said land being stock-in-trade has in fact been sold on 23.12.2015 to Buldhana Urban CO-operative Credit Society, which is not an agriculturist society.*

5. *In reaching the above conclusion and on the fact and circumstances of the case, the Ld. CIT(Appeals) has gravely erred in holding that the consistent treatment of impugned land as stock-in-trade in the books of account was merely an error in accounting without there being any corroborative or circumstantial evidence to so hold.*

6. *In reaching the above conclusion and on the fact and circumstances of the case and in law, the Ld. CIT (Appeals) has gravely erred in drawing support from decision of the Hon'ble Supreme Court in the case of **Smt Sarifabibi Mohmed Ibrahim (204 ITR 631)** as the tests laid down in that decision are in a completely different context and on completely distinguishable facts.*

7. *Any other grounds to be raised with due permission of the Hon'ble ITAT.*

Findings & Analysis :

2. We have heard both the parties and perused the records. The assessee is a firm. The assessee firm sold agricultural land for Rs.8,50,00,000/- and claimed profit of Rs.8,33,55,350/- as exempt income. The assessee claimed the said profit as exempted claiming that assessee had sold agricultural land and hence, profit is not taxable. Thus, the limited question before us is whether the said profit of Rs.8,33,55,350/- is taxable or not! It is an admitted fact by the Assessing Officer(AO) that assessee had sold agricultural land situated in Village Malvihir, Dist. Buldhana which is 2 kms from local limits of Buldana Municipal Corporation. It is an admitted fact by the assessee that impugned land was shown as stock-in-trade. Since the time it was purchased in F.Y.2010-11. The assessee had shown impugned land as stock-in-trade in all the balance sheets since A.Y.2011-12 to Balance Sheet as on 31.03.2015. This fact has been confirmed by the partner of the firm in the statement recorded by the AO during the assessment proceedings under section 131 of the Act. The assessee had sold this land to Buldana Urban Co-operative Credit Society. The relevant part of statement of the partner Mr.Nitin Atulkar is reproduced here as under:

“Q.6 When was the land in the closing stock acquired?”

Ans: Aurangabad land was acquired on 20.9.2010. The land sold to Buldhana Urban was purchased 2011. Since we intended to sell the same on profit, since then we have shown the same in closing stock.

Q. 12 Please explain about the correctness of the accounting of the conversion of stock to fixed asset and its treatment in accounts and return? You are allowed to consult your tax advisor Shri Sachin Vaidya, CA who is accompanying you.

Ans: I have consulted Shri Sachin Vaidya. Accounting has been explained earlier, I am under the bonafide-belief that sale of agriculture land is exempt from tax and the treatment is given accordingly. Actually there was loan from Buldana Urban and there was no transaction for long period and the account has become NPA. We have proposed to the bank to acquire our stock against the loan liability and bank has made its own valuation and the property was sold to the bank.....”

3. It is an admitted fact that the assessee partnership firm is in the business of acquiring land and selling of land. This fact has not been rebutted by the assessee.

4. Thus, the assessee was shown impugned land as stock-in-trade, assessee is in the business of sale and purchase of land. Before the Id.CIT(A), assessee had pleaded that by mistake the land was shown as stock-in-trade which has been reproduced by the Id.CIT(A) on page 5 and 3 of the order.

“The Appellant submits that the said land was never used by the firm as stock in trade and since its purchase, it was a rural agricultural land and no business activities were done by the appellant in any year of its holding (about 6 years) on the said land. It was disclosed as a Fixed Asset in the balance sheet of the FY 2015-16 and sold accordingly. Further, by mistake of the accountant the same was wrongly shown as stock in trade from the FY 2010-11 to the year of sale. There was no intention of the appellant to use the same as stock in trade and this is supported by the fact that no activity to use it as stock was performed on the said land. It was merely a mistake in accounting entry because of which the land was shown as stock-in-trade. The appellant is based in a rural area where trained accountants are not available. Hence appellant has to make do with the available sources. The appellant firm was also not well versed with the accounting methodologies, groupings of assets or its implications. Therefore, when the mistake was noticed in FY 2015-16 at the time of sale, the same was rectified by changing the head of asset as Fixed Assets from stock in trade. Even otherwise the same was never a capital asset during its period of holding or even at the time of sale of the same.”

5. We are of the opinion that the Id.CIT(A) has erred in accepting this submission of the assessee that by mistake it was shown as stock-in-trade. The assessee firm had filed Audited Balance Sheet. In the Audited Balance Sheet the assessee firm had shown the impugned land as stock-in-trade.

6. In these facts and circumstances of the case, we agree with the Assessing Officer that profit arising from sale of impugned

land which was held as stock-in-trade is taxable as business profit. Accordingly, appeal of the Revenue is allowed.

7. In the result, appeal of the Revenue is Allowed.

Order pronounced in the open Court on 13th October, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 13th October, 2023/ SGR*

आदेशकीप्रतिलिपि अग्रेषित /Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.