

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 254/Rjt/2019
Assessment Year 2014-15**

Shri Bhadresh Ramniklal Nagda, Flat No. 37/603, 6 th Floor K D Tower, Hirji Mistry Road, Oshwal Colony, Jamnagar-361004 PAN: AFYPN5086N (Appellant)	Vs	The ITO, Ward-3(1), Jamnagar (Respondent)
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Assessee by: Shri Mehul Ranpura, A.R.

Revenue by: Shri Abhimanyu Singh, Sr. D.R.

Date of hearing : 09-08-2023

Date of pronouncement : 31-10-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2014-15, arises from order of the CIT(A), Jamnagar, dated 28-08-2019, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised the following Grounds of Appeal:-

“1. Ld. CIT Appeal Jamnagar Erred on law as well as on fact to Partially confirm the Order of ld AO to retain addition of Rs.387500/ u/s. 56(vii)(b)(ii) i.e. difference between addition made by AO Rs.834694/- (Circle rate Rs.2834694/- Less Actual purchase price Rs.200000/-) Less Valuation made by Dept. Valuation Officer Rs.2387500/- on account of alleged difference between actual purchase price and Valuation made by Department VO without complying various legal formalities to be observed as stated under section 56 2vii like purchase is made by appellant by payment of extra money or location and joint owner ship and agricultural land etc. hence addition is prejudicial and illegal and contrary to the fact of the case hence Rs 387500/- retained by CIT Appeal from addition made by AO amounting to Rs.834694/- may be deleted.

2 Ld. CIT Appeal Jamnagar Erred on law as well as on fact to confirm the Order of ld AO to retain addition of Rs. 247786 as unexplained income though the same is agricultural income earned by appellant on regular basis and by doing agricultural activities hence addition is contrary to the fact of case and provision of law therefore the same may be deleted Without prejudice even he intent to add the same it should have been added in the agricultural income which is tax free.

3 Ld. CIT Appeal Jamnagar Erred on law as well as on fact to confirm the Order of ld AO to add alleged temporary deposits of Rs 68500 from 040 depositors contrary to the fact of the case of appellant hence the same may be deleted.

4 Ld. CIT Appeal Jamnagar Erred on law as well as ofi fact to confirm the Order of Id AO the addition of Rs. 235970 computer job work income which is already added in return of income filled on 31 03 2015 amounting to Rs 219871 hence duplicated the addition illegally and contrary to the fact of case hence to be deleted.

7 Any other grounds presented with the permission of your honor at the time of hearing.”

Ground number 1: Ld. CIT(Appeals) has erred in partially confirming the order of Id AO to retain addition of Rs.3,87,500 / u/s. 56(vi)(b)(ii) of the Act

3. The brief facts in relation this Grounds of Appeal are that the AO made addition of Rs.8,34,694/-u/s.56(vii)(b)(ii) of the Act on the ground that the stamp duty value of the property was more than the value of the property as, declared by the appellant. The assessee as well as some other persons had purchased a piece of land at Vasai and the share of the appellant in the same was 25%. The total sale consideration as shown by the appellant and other persons as per sale deed was Rs.80,00,000/- and the share of the appellant in such purchase of land was coming to Rs.20,00,000/-. As per the AO the value of the property as per stamp duty valuation authority was coming to Rs. 1,13,38,776/- and the share of the appellant as per jantri value was coming to Rs.28,34,694/-. Thus, as per the AO the appellant in his case. has shown the sale consideration of the land less by Rs.8,34,694/- than the stamp duty value. Accordingly, the AO has made addition of this amount of Rs.8,34,694/- u/s.56(vii)(b)(ii) of the Act. In appeal, Ld. CIT(Appeals) requested the AO to refer the matter to the Departmental Valuation Officer for valuation of the property. The Departmental Valuation Officer determined the value of the property at Rs.23,87,500/- in the case of the assessee as the share of the assessee in the total value of the property was 25%. In light of the above, Ld. CIT(Appeals) partly allowed the appeal of the assessee with the below observations:

*However, as stated above, the department valuation officer has determined the value of the property in the case of appellant at Rs.23,87,500/-. **Thus, there is different of Rs.3,87,500/- between the***

value of the property as declared by the appellant in his case and the value as determined by the departmental valuation officer. In my opinion since the difference between the stamp duty valuation and the value as determined by the departmental valuation officer is more than 5% and therefore, this particular amount of Rs.3,87,500/- is required to be added to the total income of the appellant and not Rs.8,34,694/- as added by the AO to the total income of the appellant. In view of this fact and also in view of insertion of 3rd proviso to section 50C of the Act, the submission of the AR of the appellant that 5% may be considered for condoning the matter is not found to be acceptable. Considering this fact, the AO is directed to make addition of Rs.3,87,500/- only u/s.56 (vii)(b) (ii) of the Act instead of Rs. 8,34,694/-. Thus, the appellant will get part relief of Rs.4,47,194/-. Thus the ground of appeal no. 1 of the appellant is partly allowed.

4. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) partly confirming the additions made by the assessing officer. The primary contention of the assessee before us is that the impugned land under consideration it is an agricultural land and hence the same is clearly outside the purview of section 56(vii)(b)(ii) of the Act. The counsel for the assessee placed reliance on several judicial precedents in support of the proposition that once the land is treated as an agricultural land, then no addition can be made by the assessing officer by invoking the provisions of 56(vii)(b)(ii) of the Act. In response, the Ld. DR submitted that the decisions on which reliance has been placed by the counsel for the assessee are distinguishable on facts, since the Tribunal while allowing the appeal of the assessee also took into consideration the particular facts of the assessee's case. Accordingly, it was submitted that reliance cannot be placed on the aforesaid decisions by the assessee.

5. We have heard the rival contentions and perused the material on record. Before deciding on this issue, it would be useful to refer to the judicial precedents on the subject, which have dealt with the applicability of the provisions of 56(vii)(b)(ii) of the Act with respect to agricultural land. In the case of **Shri Pravin B Ghoghari and others vs. ITO in ITA no 304 to 306 SRT/2018 for AY 2014-15**, the ITAT made the following observations on this issue:

“10. We have considered the rival submission of both the parties and have gone through the orders of authorities below. We find that the ld.AO made addition under section 56(2)(vii)(b) by taking view that a plain reading of section 56(2)(vii)(b)(ii) made it clear that Sub-section and clause are applicable in respect of transfer of "any immovable property" and not for capital asset only. It was further held that intention of legislature behind insertion of sub-clause d(ii) of clause (vii) of 56(2) is to curb the practise of "on money" in relation to transaction of immovable property in the hand of purchaser. Thus, from amended provision of clause 7 of sub-section (ii) of section 56 where any immovable property is received for a consideration which less than the stamp value of property by an amount exceeding Rs.50,000/-, the stamp duty value of said property has exceeded such consideration is chargeable to tax in the hands of individual or HUF as income from other sources. The ld.AO on the basis of aforesaid submission, all the difference of the Rs.18.84 lakhs under the head income from other sources.

11. The Id.CIT(A) upheld the order of ld.AO by holding that there is no dispute regarding the status of land being an agricultural land situated beyond 8km from municipality limits. However, the other contention of assessee that land purchased by the assessee is agricultural land falls within the exemption of capital asset under section 2(14) and section 56(2)(vii)(b) is not applicable, was not accepted by holding that he has already taken a contrary view in appeal no.CAS3 334/16-17 dated 17 12:2017 The ld.CIT(A) further held that the submission of assessee is misplaced. The explanation

appears in clause -c of section 56(2)(vii)(b)(ii) and it starts for the purpose of this clause, which makes it clear that the explanation is for clause (c) and not for clause-(b). It is further held that from reading of explanation difference, the explanation does not pertain to phrase "immovable property" as used in 56(2)(vii)(b), but to the word property used in clause (c) of section 56(2)(vii) in the phrase, any property, other than immovable property. If the meaning given in the explanation is imported to the word property in clause (b), then it will have absurd meaning like immovable shares and securities of immovable jewellery.

12. We find that Co-ordinate Bench of Jaipur and Pune Tribunal while considering the similar grounds of appeal has taken a view that agricultural land purchased by assessee is not covered by the provisions of section 56(2)(b)(vii)(b). The relevant part of decision of Pune Bench in Mubarak Gafur Korabu vs. ITO (supra) is extracted below:

“8. We have heard the rival contentions and perused the record. Section 56(2)(v) of the Act talks about where an individual or HUF received in an previous year from an person or persons on or after first day of October 2009 but before first day of April, 2017 under clause (a) any sum of money without consideration exceeding Rs 50,000/- then the whole of such sum is chargeable to tax under Income from other sources.’ Under clause (b), any immovable property i.e. (i) without consideration, the stamp duty value of which exceeds Rs 50,000 then stamp duty value of such property is to be added, and (ii) for consideration which is less than stamp duty value of the property by an amount exceeding Rs. 50,000- then stamp duty value of such property as exceeds such consideration is to be added in the hands of person as Income from other sources Clause (c) talks of any property other than movable property and sub-clause (i) talks of without consideration the aggregate fair market value which exceeds Rs. 50,000 and sub-clause (ii) talks of consideration which is less than aggregate market value of the property by an amount exceeding Rs 50000/-. Explanation under the said section defines certain terms and

clause (d) talks of property to mean capital assets of the assessee and then refers to the list of assets

*9. The case of assessee before us is the it has purchased agricultural asset which was held as Current Asset by the assessee and when the same was sold in 2016, business income was declared on the said transaction. The assessee also stressed that agricultural land purchased by assessee was not capital asset for which reliance was placed on the definition of capital asset under section 2(4) of the Act. As per terms used under the Act, an immovable property is defined to be the land or building or both as per clause (d) of Explanation under the said section. Hence, clauses (a) and (b) of section 56(2) of the Act are not attracted. Clause (c) talks of a property other than immovable property. Section 2(4) of the Act defines 'capital asset' to mean property of any kind held by assessee whether or not connected with his business or profession and any securities held by foreign institutional investor but it does not include any stock in trade, consumable stores or raw materials held for the purpose of business, (ii) personal effects i.e. movable property held for personal use and (iii) agricultural land in India in the first instance where the assessee had purchased agricultural land which was its stock in trade and on its sale the receipts were recognized and accepted as business income, then there is no question of attracting the provisions of section 56(2)(vii)(b) of the Act against assessee. **Even otherwise, the land held by assessee was agricultural land which is not capital asset as clearly defined under section 2(4) of the Act, which excludes agricultural land out of definition of capital asset**'. The asset owned by assessee is not capital asset, hence clause (b) is not attracted and provisions of clause (c) i.e. property other than immovable property is also not attracted, in view of definition of property as per clause (d) under Explanation i.e. property means the following capital assets of the assessee:-*

- (i) immovable property being land or building or both;*
- (ii) shares and securities;*

- (iii) jewelers;
- (iv) archaeological collections;
- (v) Drawings;
- (vi) paintings;
- (vii) sculptures;
- (viii) any work of art. [or]
- (ix) bullion.

10. In the totality of above definitions, we hold that agricultural land purchased by assessee is not governed by the provisions of section 56(2)(b) of the Act being not capital asset and also because of the fact that the assessee was holding it as stock on trade. Hence, it is outside the purview of said section and no addition has to be made in the hands of assessee.

11. Now coming to the decision of Jaipur Bench of Tribunal in *Trilok Chand Sain (supra)* wherein provisions of clause (b) of section 56(2)(vii) of the Act were considered. However they have failed to take into cognizance the provisions of clause (c) of said section which talks of property other than Immovable property. The Tribunal in para 6 refers on to the definition of 'immovable property and hold that it is not circumscribed or limited to any particular nature of property. However, clause (c) clearly talks of property other than immovable property and the word 'property' has further been defined under clause (d) of Explanation thereunder. In the totality of the above said facts and circumstances, there is no merit in reliance placed upon by the learned Departmental Representative for the Revenue on the ratio laid down by Jaipur Bench of Tribunal in *ITO v. Trilok Chand Sain (supra)*. In view of clear-cut provisions of the Act, we find no merit in the orders of authorities below in making the aforesaid addition in the hands of assessee. The ground of appeal No. 1 raised by assessee is thus, allowed.

12. In the result the appeal of assessee is allowed"

13. We further find that by following the decision of Pune Tribunal, the Jaipur Bench also took a similar view in Yogesh Maheshwar vs. DCIT (supra). We have independently examined the facts of the case. We find that the lower authorities has not disputed the fact that the land purchased by the assessee are beyond the 8 km from the mentioned unit of SMC We further filed that Id.CIT(A) further admitted that the assessee purchased the agricultural land. We have seen the sale purchase deed dated 25.102013. which is placed on record on the direction of the bench, wherein the nature of land is described as "agricultural land".

14. In view of the aforesaid factual and legal discussion, we find that grounds of appeal raised by the assessee is covered by the decision of Pune Bench of Tribunal in Mubharak Gafur Korabu vs. ITO (supra) and Jaipur Bench of Tribunal in Yogesh Maheshwari vs. DCIT (supra). Therefore, we find merit in the submission of the Id.AR of the assessee that provision of section 56(2)(vii)(b) of the Act are of the Act not applicable in the present case.

15. Thus, the grounds of appeal filed by the assessee are allowed.

16. In the result the appeal of the assessee is allowed.

17. As noted earlier, the facts in ITA No. 305 & 306 Srt 2018 are also common, the assessee's have raised identical grounds of appeal, more over all the appellant are co-owners, therefore, these appeals are also allowed with similar observations.

18. In the result all the appeals are allowed."

5.1 Accordingly, we observe that the Tribunal in the aforesaid decision has given a categorical finding that provisions of 56(vii)(b) of the Act are

not applicable with respect to agricultural land. However, we also observe that this issue has not been considered/analysed by the assessing officer or the Ld. CIT(Appeals) whether the impugned land under consideration qualifies as an agricultural land. This argument has been taken for the first time before us. The counsel for the assessee submitted that this being a legal as well as factual argument, can be raised by the assessee for the first time before the Tribunal as well.

5.2 Looking into the facts of the instant case and the judicial precedents on the subject as highlighted above, in interest of justice, ground number 1 of the assessee's appeal is restored to the file of assessing officer for carrying out the necessary verification as to whether the aforesaid land under consideration qualifies an "agricultural land" in the first instance, and then pass an order in accordance with law. The assessee is also directed to produce all relevant documents in support of the contention before the assessing officer for his consideration.

6. In the result, ground number 1 of the assessee's appeal is restored to the file of the assessing officer with the aforesaid directions. In the result, ground number 1 of the assessee's appeal is allowed for statistical purposes.

Ground Number 2: Ld. CIT(Appeals) erred in confirming the order of Id AO by retaining addition of Rs. 2,47,786/- as unexplained income

7. The brief facts in relation to this Ground of Appeal are that the assessee had claimed agricultural income to the extent of Rs.3,18,471/-. During the course of assessment proceedings, the Ld. Assessing Officer

observed that the assessee had furnished sale bill of Rs. 1,00,901/- only in support of his claim. Accordingly, the Ld. Assessing Officer held that the assessee failed to submit the documentary evidence in respect of agricultural income of Rs.2,17,570/- (i.e. Rs.3,18,471/- - Rs. 1,00,901/-). Accordingly, the Ld. Assessing Officer made addition to the extent of Rs. 2,47,786/- to the income of the assessee.

8. In appeal, Ld. CIT(Appeals) confirmed the additions with the following observations:

In my opinion the AO has correctly considered gross agricultural income in the case of appellant to the extent of Rs. 1,00,901/- based on sale bill of this amount as furnished by the appellant to him during the course of assessment proceedings and after reducing 30% of the expenses from such gross receipt of Rs. 1,00,901/- the AO has correctly held the net agricultural income in the case of appellant only to the extent of Rs.70,631/-. Thus, the AO has reduced this net agricultural income of Rs.70,631/- from Rs. 3,18,471/- which as per the claim of appellant is agricultural income and finally he has correctly added an amount of Rs.2,47,786/- to the total r income of the appellant by treating the same as taxable income from other sources u/S.68 of the Act. This addition of Rs.2,47,686/- of the AO is sustained. Thus, the ground of appeal no. 2 of the appellant is partly allowed.

9. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) confirming the additions made by the assessing officer. Before us, the counsel for the assessee drew our attention to pages 1-15 paper book to contend that the assessee was having substantial agricultural land holdings and also that he has been engaged in carrying on agricultural activities and chart giving of details of agricultural produce were also

furnished before us. Accordingly, the counsel for the assessee submitted that the assessing officer has failed to pay cognizance of the evidence furnished on a sample basis and accordingly, Ld. CIT(Appeals) has erred in confirming the order of assessing officer on this issue. In response, the Ld. DR submitted that since bills to the extent of ₹ 1 lakhs approximately were furnished by the assessee, and there is no evidence whatsoever that the additional amount of agricultural income was earned by the assessee.

10. We have heard the rival contentions and perused the material on record. In our view, considering the facts of the instant case, the matter is being restored to the file of assessing officer to analyse the details of land holdings by the assessee and also the assessee is directed to file details of agricultural produce for verification by the assessing officer. The assessing officer may accordingly pass an order in accordance with law after taking into consideration the evidences filed by the assessee.

11. In the result, ground number 2 of the assessee's appeal is allowed for statistical purposes.

12. With respect to the other grounds of appeal raised by the assessee in the present appeal, no specific arguments were taken by the assessee during the course of appellate hearings before us. Accordingly, in interest of justice, since the primary issue for consideration have been restored to the file of assessing officer, the assessing officer may also look into the other grounds of appeal and pass an order in accordance with law.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31-10-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 31/10/2023

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot