

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1587/Ahd/2019
(Assessment Year: 2012-13)

Tejabhai Nagjibhai Makwana, Vill: Bhojan, Deesa, Dist: Banaskantha, Gujarat-385535	Vs.	Income Tax Officer, Ward-4, Palanpur, Gujarat
[PAN No.CMCPM6331E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Jimi Patel, A.R.
Respondent by:	Shri Sushil Kumar Katiar, Sr. D.R.

Date of Hearing	08.02.2024
Date of Pronouncement	15.02.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-4, (in short “Ld. CIT(A)”), Ahmedabad in Appeal No. CIT(A)-4/10518/2018-19 vide order dated 23.08.2019 passed for Assessment Year 2012-13.

2. The assessee has taken the following grounds of appeal:-

“1. The Ld. CIT(A) erred in law and on facts in confirming the addition of Rs.94,94,170/- to the returned income of the appellant by upholding the action of Assessing Officer of treating the land sold by the appellant as capital asset and thereby invoking the provision of Section 50C of the IT Act , 1961 without appreciating the facts and law of the case properly.

2. The Ld. CIT(A) erred in law on facts in denying alternative claim of the appellant to grant the exemption u/s 54B & 54F as per the law and thereby passed the order in the breach of principle of natural justice.

3. The Ld. CIT(A) erred in law in denying the permission to appellant to raise additional grounds of appeal with respect to alternative claim of exemption u/s 54 B and 54F of the I. T Act, 1961 without appreciating the fact that even oral request for

raising additional ground of appeal is sufficient for the purpose of adjudication thereof and in the present case there was specific averments made in the submission filed that alternative claim of exemption u/s 54 B & 54F may kindly be allowed.

The appellant craves leave to add, amend or alter the aforesaid grounds of appeal at the time of hearing, if the need arise.”

3. The brief facts of the case are that the Assessing Officer was in possession of information that the assessee along with two other sellers had sold immovable property for which they received Rs.1,00,00,000/- in cash. Further, the ITO, Mehsana had intimated that the Jantri value of land sold was determined at Rs.3,73,32,000/-. The Assessing Officer was at the view that the said land is a capital asset in the hands of the assessee on which capital gains has not been offered to tax by the assessee during the impugned year under consideration. The assessee had not filed return of income and case of the assessee was reopened under Section 147 of the Act. During the course of assessment proceedings, on scrutiny of materials available, the A.O. observed that the assessee and two co-owners had sold the land for a consideration of Rs.1,00,00,000/-. The agricultural land had been converted into non-agricultural land by the assessee on 15.10.2011 and the Jantri value of the land was Rs.3,73,32,000/- and the share of the assessee was one-third of the said property. During the course of assessment on being requisitioned, the assessee submitted that the assessee is an individual and agriculturalist and is carrying on the activities of land cultivation on the said piece of land for many years. The contention of the assessee was that the assessee had been carrying on cultivation activities on the said land for past many years right up to the date of sale. It was submitted that the assessee being agriculturist had only one source of income i.e. income from agricultural activities, which is exempt from taxation under the Income Tax Act. The contentions of the assessee before the Assessing Officer were two fold: firstly, the said land was agricultural land and

conversion of such land into non-agricultural land was only at the behest of the purchasers, who wanted to use the land for non-agricultural purposes. However, factually, the land was used for agricultural purposes right up to the date of sale of land. Even in terms of location, the land qualified as agricultural land since it was situated beyond the prescribed municipal limits as defined under the Income Tax Act. The second contention of the assessee was that the sale consideration from sale of aforesaid property had been invested by the assessee in construction of residential house and also purchase of agricultural land. Accordingly, it was submitted that the assessee is eligible to claim deduction under Section 54B and Section 54F of the Act. However, the Assessing Officer rejected, the arguments put forth by the assessee and made an addition of Rs.1,23,97,837/- being the assessee's share from sale of land, with the following observation:

*“Lengthy reply of the assessee is fully considered, but the same is not acceptable, because according to the provision of section 50-C of the Income tax Act 1961 the Sub-Registrar, Deesa had valued the property at Rs, 3,72,32,000/- for stamp duty purposes, against which value of the property shown at Rs, 1,00,00,000/-. According to the provision of section 50-C of the Income tax Act 1961, the value valued by the sub-registrar, Deesa is to be adopted genuine and accordingly the long term capital gain is to be worked out. Accordingly, long term capital gain of Rs. 1,23,97,837/- (1/3 rd share of the assessee) is worked out and added to the total Income declared, In this case, the assessee vide letter dt 14/12/2018 has requested to refer the issue regarding sale value of the property to the Departmental Valuation Officer, Ahmedabad, Accordingly, vide letter dated 14/12/2018 the issue has been referred to the Departmental Valuation Officer. In view of this fact, the assessment is finalized subject to report of the Departmental Valuation Officer. On receipt of the report of the Departmental Valuation Officer, the order will accordingly be modified and the sale value of the property will be taken as per the value determined by the Departmental Valuation Officer, and the capital gain will accordingly be reworked.
(Addition Rs. 1,23,97,837/-)”*

4. The assessee filed appeal before Ld. CIT(Appeals) against the aforesaid assessment order. The Ld. CIT(Appeals) party allowed the appeal of the

assessee by restricting the addition on the basis of valuation given by the DVO.

While passing the order, CIT made the following observation:

“4.1 The ground no.2 is relating to addition of Rs. 1,23,97,840/- which is made invoking the provisions u/s.50C of the act. Following facts are noted:

- a) The return of income was not filed u/s. 139(1) of the Act.*
- b) The return of income declaring total income as NIL was filed on 15.08.2018 in response to notice dated 23.03.2018 u/s.148 of the Act.*
- c) The appellant is one of the three co-owners of property involved.*
- d) The property is not ancestral.*
- e) The property has been converted into non-agricultural land by the order of collector, Banaskantha on 15.10.2011.*
- f) Therefore, the asset in question is non-agricultural much before the end of year i.e. 31.03.2012.*

The appellant has relied on very old case laws which are possibly pertaining to certain sections of I.T. Act, 1922. The law is ever evolving and the interpretation in 1960s & 1970s was mostly about the implications for wealth tax purposes. It is also noted that such case laws were mostly relating to ancestral properties. The commercialization of landed proper and its large scale utilization for manufacturing units and housing projects started in 1980s and onwards. The land use and permission for change of land use has been most important function of revenue administration in 1980s and onwards. There are number of formalities which have to be fulfilled before the permission for change of land use is allowed by the revenue administration. All such protracted legal matters culminated with issuing orders by collector, Banaskantha on 15.10.2011. It is re-emphasized that the group of persons has made investment only to reap benefit which are liable to be taxed. The AO has correctly assessed asset as non-agricultural and computed the capital gains as the land being used for growing of agricultural crops in earlier period has lost meaning with the conversion of land with the order dated 15.10.2011 of collector, Banaskantha.

Nevertheless, the conclusion drawn by the AO in assessment order is reproduced as under:

"Lengthy reply of the assessee is fully considered, but the same is not acceptable because according to the provision of section 50-C of the Income tax Act 1961 the Sub-Registrar, Deesa had valued the property at Rs.3,72,32,000/- for stamp duty purposes, against which value of the property shown at Rs. 1,00,00,000/-. According to the provision of section 50-C of the Income tax Act 1961, the value valued, by the sub-registrar, Deesa is to be adopted genuine and accordingly the long term capital gain is to be worked out. Accordingly, long term capital gain of Rs. 1,23,97,837/- (1/3 rd share of the assessee) is worked out aro added to the total income declared.

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In this case, the assessee vide letter dt 14/12/2018 has requested to refer the issue regarding sale value of the property to the Departmental Valuation Officer Ahmedabad Accordingly, vide letter dated 14/12/2018 the issue has been referred to the Departmental Valuation Officer. In view of this fact, the assessment is finalized subject to report of the Departmental Valuation Officer On receipt of the report of the Departmental Valuation Officer, the order will accordingly be modified and the sale value of the property will be taken as per the value determined by Departmental Valuation Officer, and the capital gain will accordingly be reworked

(Addition Rs. 1,23,97,8371-)"

*As can be seen above, the appellant did raise objections to stamp valuation during assessment proceedings itself and relied on number of case laws The AO correctly referred the issue to DVO for correct valuation but was duty bound to pass assessment order before 31.12.2018. However, this order was issued by the AO subject to valuation by the DVO as can be seen above. Now, the valuation report has come into being wherein the value of asset has been determined at Rs.2,86,21,000/-. Consequently, the AO is directed to replace stamp valuation of Rs.3,72,32,000/- with Rs.2,86,21,000/- as determined by the DVO in report dated 17.01.2019(on record) and determine proportionate share of the capital gains of appellant accordingly. The ground no.2 of appeal is **partly allowed**. The AO is directed to issue revised demand notice.*

Observation:

The appellant has not taken any ground to allow deduction u/s.54B or section 54F of the Act. However, the AR commented on such issue on final day of appellate proceedings. He mentioned that such issue was raised before AO who has not commented in assessment order. The perusal of page no.10 of assessment order has been perused wherein assessee's submission as alternative to the main argument has been quoted and the same is reproduced as under:

"In addition to that, the assessee would like to submit that he has invested the sale consideration to construct the residential house and also purchase agriculture land. In eventuality of addition being made in hands of assessee by treating the above land as capital asset then deduction u/s.54B and 54F may kindly be granted to the assessee The documents pertaining to claim deduction claim u/s.54B and section 54F are attached herewith Annexure-B."

*Therefore, in my opinion the AO is required to allow deduction u/s.54B/54F as per provisions of the Act after due verification about the **fulfillment of conditions** laid therein. AO to keep in mind the holding period of asset as the same would decide it being STCG or LTCG and STCG would not result into any benefit u/s.54B/54F. However, as there is no such ground taken in Form No.35, neither I can decide nor legally direct the AO as it is beyond the mandate prescribed as per provisions of the Act.*

5. *In the result, the appeal is **partly allowed**."*

5. The assessee is an appeal before us against the aforesaid order passed by CIT. The primary contention of the counsel for the assessee before us that firstly, the Department has never disputed the fact that the assessee was continuously carrying out agricultural activities on the said piece of land, right up to the date of sale. Secondly, the counsel for the assessee submitted before us that it is a well established law that once the said land which has been sold is being used for purpose of agricultural activities, right up to date of sale, the mere fact that the user of such land was converted into non-agriculture would not take away the fact that the land continued to be in agricultural land and sale of such land there was exempt from tax under the Income Tax Act. Thirdly, it was contended that the land was situated beyond the municipal limits as prescribed under the Income Tax Act and therefore the land was an agricultural land within the meaning of Section 2(14) of the Income Tax Act. Finally, it was submitted that the assessee is eligible for claim of deduction under Section 54B/54F of the Act, which only requires that the land was being used for agricultural purposes before the date of sale.

6. In response, DR submitted before us that as per revenue records, the land was a non-agricultural land as on the date of sale. Hence, the Assessing Officer had correctly invoked the provisions of Section 50C of the Act.

7. We have heard the rival contentions and perused the material on record. The following material facts are under consideration before us. Firstly, the Department has not disputed/contested the claim of the assessee that the assessee has been carrying on agricultural activities right the date of sale of land. Secondly, we agree with the argument of the assessee that once the assessee is carrying on agricultural activities right up to the date of sale, then the land continues to be agricultural land respective of conversion of such land

into non-agriculture land. In the case of **CIT v. Vajulal Chunilal Taxman 438 (Guj.)**, the High Court made the following observations:

“The same reasoning would also apply to the facts of the present case. It is axiomatic under the Bombay Tenancy and Agricultural Lands Act that when permission is granted by the authorities concerned for sale of agricultural land to a non-agriculturist, the land does not cease to be agricultural land merely because of such permission being granted. If the conditions of the permission are not complied with, the land in respect of which permission was granted under Section 63 would revert to its original character of agricultural land. Therefore, the land was agricultural land at the date of the sale and would continue to be agricultural land until permission for non-agricultural use is granted and the land is put to non-agricultural use by the purchaser, as was contemplated by the permission under Section 63 itself. But, as emphasised in Manilal Somnath's case [1977] 106 ITR 917 (Guj.) mere granting of the permission under Section 63 does not alter the agricultural character of the land and on that aspect of the matter,”

8. In the case of **Manilal Somnath 106 ITR 917 (Gujarat)**, the High Court made the following observations:

“So far as the special features of this case were concerned, the fact that the land was within the municipal limits or the fact that it was included within the proposed town planning scheme would not by themselves dislodge the presumption flowing from the actual user of the land. The fact, on the other hand, that there was no approach road at the relevant time and that agricultural operations were being carried on with the aid of tractor would go to show that the presumption raised from actual user could not be dislodged. This was not a case of a mere purchaser going in for agricultural activity pending the disposal of the land. This was the ancestral land of the assessee-Hindu undivided family and right from 1939 when the land was received by it on partition, this assessee-Hindu undivided family was carrying on agricultural operations on the land till the date of the sale. Nothing had happened till the date of the sale to show that the character of the land had ceased to be that of agricultural land. What had to consider was not what the purchaser did with the land or what the purchaser was supposed to do with the land, but what was the character of the land at the time when the sale took place. It was true that permission to sell the land Co-operative Housing Society Ltd. was granted on condition that the land would be used for residential purposes and the application for permission under Section 63 of the Bombay Tenancy and Agricultural Lands Act was applied for on the footing that, after the sale, the land would be used for residential purposes. But that only went to show that, after the date of the sale, this land was to cease to be agricultural land. The permission granted by the City Deputy Collector under Section 63 of the Bombay Tenancy and Agricultural Lands Act clearly went to show that in case the land did not cease to be agricultural land, the permission would be treated as cancelled and, therefore, the sale in favour of Co-

operative Housing Society Ltd. would be infructuous and the land would revert back to the assessee. In such an eventuality, the land would still continue to be agricultural land because the permission to sell to a non-agriculturist would be treated as cancelled. That eventuality had not happened and as pointed out it was some time in February, 1969, that the permission for non-agricultural use was granted to the purchaser, that is, Co-operative Housing Society Ltd. The fact that a particular plot of agricultural land has potential non-agricultural value for which a purchaser was prepared to pay a high price did not mean that it was not an agricultural land at the relevant date and the fact about the price realised being out of all proportion to the value of the land as agricultural land was not a factor which would dislodge the presumption flowing from the actual user of this land as agricultural land. The land had undoubtedly potential, non-agricultural value and for that potential non-agricultural value, the purchaser was prepared to pay a large price but such potential non-agricultural value did not detract from the character of the land as agricultural land at the date of the sale.”

9. Accordingly, we are of the considered view that the mere fact that land use was converted to non-agricultural prior to date of sale would not convert the land as agricultural land, as held by the Hon'ble Gujarat High Court in the decisions referred to above.

10. However, we also observe that whether the land sold qualifies as agricultural land within the meaning of Section 2(14) of the Act has not been analysed by the Tax Department. The Assessing Officer has made a reference at page 2 of the assessment order that the land sold by the assessee is situated at the distance of 4 km from Deesa and hence the land should be taxed at Jantri value of Rs.3,73, 32,000/-. Therefore, it is not clear from the facts available on record whether land qualified as an agricultural land within the meaning of Section 2(14) of the Act.

11. Accordingly, in the interest of justice, the issue is being set aside to the file of Assessing Officer with the view to verify whether the conditions of Section 2(14) of the Act are being met in the instant set of facts. The assessee would be at liberty to produce all supporting documents to show that land is situated as per prescribed limits given under Income Tax Act so as to qualify

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as agriculture land and also file copies of any notification etc. in respect of this land which support the fact that the land is an agriculture land and is situated as per the prescribed municipal limits under Section 2(14) of the Act.

12. With regard to the other contentions of the assessee with respect to claim of deduction and Section 54F/54B of the Act, we observe that Ld. CIT(Appeals) had already directed the Assessing Officer to allow the claim of deduction under Section 54B/54F after due verification about the fulfillment of conditions, contained therein. Accordingly, to that extent, we find no infirmity in the order of Ld. CIT(Appeals) to call for interfere. The assessee would be at liberty to produce all supporting documents to support the claim of deduction under Section 54B/54F of the Act.

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

This Order pronounced in Open Court on	15/02/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 15/02/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad