

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.371/PUN/2024

निर्धारण वर्ष / Assessment Year: 2018-19

Pradip Pranlal Shah, 410, Budhwar Peth, Near Pasodya Vithoba Temple, Pune 411002 Maharashtra PAN : ADXPS3591G	बनाम / V/s.	AU National e-Assessment Centre, Delhi
.....अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 11.09.2024

घोषणा की तारीख / Date of Pronouncement : 18.09.2024

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for assessment year 2018-19 arises against the NFAC's Order No.ITBA/NFAC/S/250/2023-24/1059161549(1), dated 28.12.2023, involving proceedings u/s.250 of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal.

“The following grounds are taken without prejudice to each other

On facts and in law.

1] The Id. CIT(A) erred in confirming the addition of Rs.53,90,000/- made by the Id. A.O. on the ground that the land situated at Gat No.1738, Ranjangaon Ganapati, Tal Shirur, Dist Pune which was sold by the assessee was not an agricultural land and hence, the gain thereon was taxable as long term capital gain.

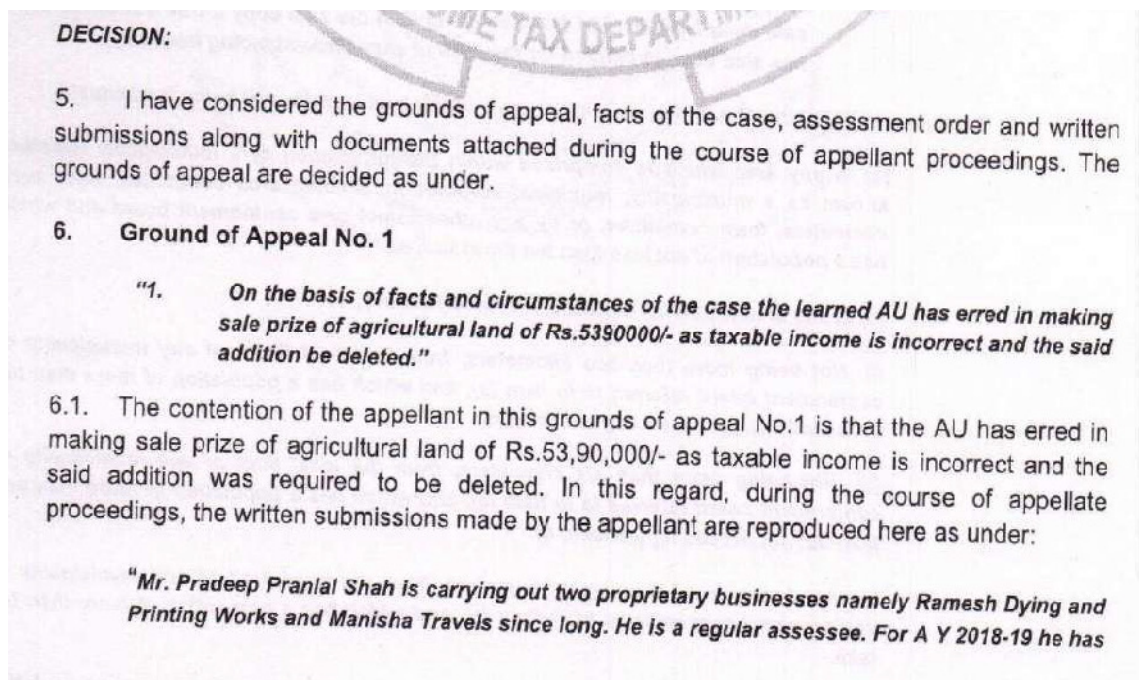
2] The Id. CIT(A) failed to appreciate that the above referred land sold by the assessee was an agricultural land and hence, the same was not a capital asset as per the provisions of section 2(14) and accordingly, the addition made of Rs. 53,90,000/- ought to have been deleted.

3] The Id. CIT(A) erred in not appreciating the various evidences submitted by the assessee to prove that the land sold by him was an agricultural land and hence, the addition confirmed by him is not justified at all.

4] Without prejudice to the above grounds, the assessee submits that the entire sale proceeds received on sale of the above referred land has been taxed as long term capital gains by the Id. A.O., without appreciating that only the gain after reducing the indexed cost could be taxed as long term capital gain in the hands of the assessee.

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

4. It emerges during the course of hearing that the assessee’s sole substantive grievance raised in the instant appeal challenges both the lower authorities’ action assessing long term capital gains of Rs.53.90 lakhs in his hands, in the course of assessment framed on 17.02.2021 as upheld in the lower appellate discussion reading as follows :



filed his ITR on 27.07.2018 vide acknowledgement number 9406199250270718. His case was selected for scrutiny and he has been served with a notice under section 143(2) RWS 143(3A) and (3B) of the I T Act, 1961 dated 28-09-2019. Thereafter various notices under section 142(1) were served to which assessee has replied from time to time and ultimately on 17-02-2021 the AU of National e-Assessment Centre has passed an order under section 143(3) of the IT Act, 1961 where in an addition of Rs.5390000/- has been made by the AU which assessee is of the opinion that is an incorrect addition and hence present appeal has been preferred by the assessee against the said order.

1. In this year assessee has sold an agricultural land on 19-05-2017 for Rs.5390000/-. The said asset perfectly falls within the provisions of section 2(14) of the I T Act, 1961 and is not a capital asset at all. Since the said asset is not a capital asset, provisions of taxation of long term capital asset do not apply per se in this case. But, section 2(1A) of the I T Act, 1961 states that any rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income. On this background assessee has shown the sale proceeds of the said land as an agricultural income in his ITR amounting to Rs.5390000/-. But, AU has not taken into consideration the thought process of the assessee and has added the said amount in the taxable income and finalized the assessment.

2. In support of assessee's contention that the land which is sold is not a capital asset, he wish to submit following documents and evidences which were also placed before the AU:-

- A. Copy of sale deed of the agricultural land sold on 19/05/2017 which clearly indicates that the land which was sold was an agricultural land (The copy of original sale deed is in Marathi & hence along with the said copy a true translated copy has also been submitted for the sake of easy understanding herewith.)
- B. Copy of purchase deed dated 26/04/1999 of the said land.(The copy of original sale deed is in Marathi & hence along with the said copy a true translated copy has also been submitted for the sake of easy understanding herewith.)

1. Section 2(14)(iii) of the IT Act 1961 states that agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand, or

(b) in any area within the distance, measured aerially,-

(I). Not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a), and which has a population of more than ten thousand but not exceeding one lakh; or

(II). Not being more than six kilometers, from the local limit of any municipality or cantonment board referred to in item (a), and which has a population of more than one lakh but not exceeding ten lakh; or

(III). Not being more than eight kilometers, from the local limit of any municipality or cantonment board referred to in item (a), and which has a population of more than ten lakh.

Explanation- For the purposes of this sub - clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

M.T. 2018-19
ITBA/NFAC/S/250/2023-24/1059161549(1)

4. *In our case the purchase as well as sale deed clearly indicates that the land is an agricultural land has been proved beyond any doubt. The entries appearing in 7/12 extract also indicates that the land is under cultivation since long. The entries in 7/12 extract are made by Govt. and hence are trustworthy. This satisfies the basic norm for claiming the land is not a capital asset.*
5. *The said land is situated in Ranjangaon where population is 13427 as per last census and in support copy of Govt. record has been enclosed herewith.*
Since the area in which the land is situated beyond the indicated area in kilometers from local limits of any municipality or cantonment board by measuring the distance aerially, this is not a capital asset.
The screen shot of a map showing that the distance from Ranjangaon to the nearest municipality which is Shirur is of 17.3Kms is enclosed herewith.
6. *Since the basic 3 conditions to claim that the land which is sold is not a capital asset respectively :-*
 - A. *That said land is an agricultural land*
 - B. *That the said land is under cultivation*
 - C. *That the population as per last census is 13427 only*
 - D. *That the distance between nearest municipality of Shirur is 17.3Kms Are satisfied and supporting proofs are also submitted herewith and hence it is requested to delete the addition of Rs.53,90,000 /- entirely.*
7. *Whether a land is an agricultural or not is to be proven by the assessee [Kalpotta Estates Ltd. v. CIT [1992] 61Taxman 4(Ker.)]. Once the assessee proves that the land is agricultural land, the burden of proving that is not agricultural land is on the Revenue [CWT v. officer-in-charge (Court of wards), Paigah [1976] 105ITR 133(SC)]. And is this case assessee has proved that this is an agricultural land beyond doubt and now if it is to be treated as taxable capital asset then the AU should prove that this is not an agricultural land and assessee wish to rely on above citations.*
8. *In addition to above the AU has not only created the additional tax liability but also levied interest under section 234A, 234B and 234C of the I T Act,1961 which is not justifiable.*
9. *Since the logic applied by the AU is bad in law and creates injustice on assessee, this appeal has been preferred with a request to delete the said addition of Rs.5390000/- and oblige.*

6.2 On perusal of the above submissions, it is noticed that the appellant contended that the land sold by the appellant was agricultural in nature and the states that the land sold by the appellant perfectly falls within the provisions of section 2(14) of the Income Tax Act, 1961 and is not a capital asset at all. In this regard, during the course of assessment proceedings, even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc.

6.3 Even during the course of appellate proceedings also, the appellant merely stated that the land sold by the appellant was an agricultural land and is not capital assets as per provisions of section 2(14) of the Income Tax Act, 1961. In support of this contention the appellant submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents. The appellant failed to submit documentary evidences viz., details of Nature and type of Agricultural Income, Copy of Khatauni, Mode of sale of Agri Products, documentary evidences for the expenditure incurred to execute the agricultural activity. Therefore, the contention of the appellant in his written submissions that the land sold by the appellant is not at all a capital asset is rejected.

6.4 It is further stated by the appellant that section 2(1A) of the Income Tax Act, 1961 states that any rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income. On this background appellant had shown the sale proceeds of the said land as an agricultural income in his ITR amounting to Rs.53,90,000/-.

6.5 However, as per provisions of section 2(1A) of the income tax, any rent or revenue derived from the land which is situated in India and is used for agricultural purpose means an agricultural income. However, in the instant case, the consideration received on sale of land stated to be agricultural in nature was admitted an agricultural income. However, as per provisions of section 2(1A) of the Income Tax Act, 1961, the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income. Section 2(1A) of the Income Tax Act, 1961 is reproduced here as under:

Section 2(1A) of the Income Tax Act, 1961:

"Agricultural Income means:-

[(a) any rent or revenue derived from the land which is situated in India and is used for agricultural purposes;]

(b) any income derived from such land by-

(i) Agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:"

6.6 As seen from the above, as per provisions of section 2(1A) of the Income Tax Act, 1961 any revenue or rent derived from the agricultural land is treated as agricultural income. However, the consideration received on sale of land was treated by the appellant as agricultural income and claimed exemption. Therefore, the contention of the appellant in his written submissions that rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income is not acceptable.

6.7 Even though, it is assumed that the appellant used to do agricultural activity in the said land (though it is not agricultural land), as per provisions of section 54B of the Income Tax Act, 1961, the appellant require to re-invest such proceeds for purchase of another agricultural land within two years from the date of sale of such agricultural land. In the assessment order, the assessing officer made addition under the head long term capital gains for the reason that the appellant had not re-invested the sale proceeds in purchase of another agricultural land within the period of two years from the date of sale of land.

6.8 It is further pertinent to mention that Ranjangaon (village) is located there near Maharashtra Industrial Development Corporation (MIDC), which is five star Industrial area in which several manufacturing companies including LG, Whirlpool, Carraro, Fiat, Bombay Dyeing, Maccaferri, Beakaert Etc., are based as per search on the internet. The screen shot retrieved from 'Wikipedia' by doing google search in internet is affixed here as under:

6.9 As seen from the above, it is evident that the area near which the said land was situated is an industrial area. Therefore, the onus is on the appellant to prove with documentary evidence that the said land was an agricultural land. However, during the course of assessment proceedings even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc. Even during the appeal proceedings, no such documentary evidence as mentioned supra were submitted. During the course of appellate proceedings, the appellant only submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents without any supporting documentary evidence, which cannot be considered to prove that the land sold by the appellant was an agricultural land as per provisions of section 2(14) of the Income Tax Act, 1961

6.10 Further, the appellant contended in his written submissions that the income derived on sale of land was an agricultural income as per provisions of section 2(1A) of the Income Tax Act, 1961. However, the contention of the appellant is not acceptable for the reason that the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income.

6.11 Further, even if the appellant used to do agricultural activity in the said sold land, the appellant has not submitted any documentary evidence to prove that the appellant had invested the sale consideration for purchase of another agricultural land to claim exemption under section

54B of the Income Tax Act, 1961 either before the assessing officer or during the course of appeal proceedings.

6.12 In view of the above, it is evident that the appellant failed to submit any explanation or documentary evidence to prove that the land sold by the appellant was agricultural land and also the consideration on sale of land was re-invested to purchase another agricultural land to claim exemption as per provisions of section 54B of the Income Tax Act, 1961. Therefore, I do not find any reason to interfere in the assessment order passed by the assessing officer under section 143(3) read with section 143(3A) & 143(3B) of the Income Tax Act, 1961 dated 17.02.2021 for the assessment year 2018-19 with regard to disallowance of exemption of Rs.53,90,000/- claimed by the appellant. Accordingly, this grounds of appeal No.1 is required to be dismissed.

6.13 Therefore, this grounds of appeal No.1 is dismissed.

5. We wish to make it clear at the outset that the assessee has stated in very fair terms that he had never claimed any section 54B deduction either in the return or otherwise, as the case may be. The Revenue is equally very fair in not rebutting the same before us. It is in this factual backdrop that we proceed to decide with the foregoing sole substantive question of long term capital gains addition amounting to Rs.53.90 lakhs.

6. There is no dispute between the parties that the assessee had indeed sold/transferred the land at Taluka Shirur, Pune on 19.05.2017 for a consideration of Rs.53.90 lakhs. A perusal of the assessee's paper book running into 65 pages indicates that he had also produced the corresponding Form 7/12 extract indicating the said land to be agricultural only. The Assessing Officer appears to have treated the said land as a capital asset within the meaning of section 2(14) of the

Act to assess the foregoing sale consideration as his long term capital gains as upheld in the lower appellate proceedings.

7. Learned counsel's sole substantive argument is that the assessee's land nowhere qualifies the relevant conditions in section 2(14) so as to be a capital asset once the CIT(A)'s detailed discussion in para 6.8 to 6.9 has gone by "proximity" of various industries in the corresponding location. This clinching fact has gone un-rebutted from the departmental side as there is no indication in the case file that the land satisfies all the relevant parameters of being a capital asset. This is indeed coupled with the fact that the assessee has already proved his land cultivated for agricultural activities only. We thus conclude in these peculiar facts and circumstances that once both the learned lower authorities have not quoted any concrete material indicating the assessee to have transferred his agricultural land as a capital asset, the impugned consequential long term capital gains addition of Rs.53.90 lakhs is not sustainable in law. The same is directed to be deleted in very terms.

8. This assessee's appeal is allowed.

Order pronounced on 18th September, 2024.

Sd/-
R.K. PANDA
VICE PRESIDENT

Sd/-
S.S. GODARA
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th September, 2024

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

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“The following grounds are taken without prejudice to each other

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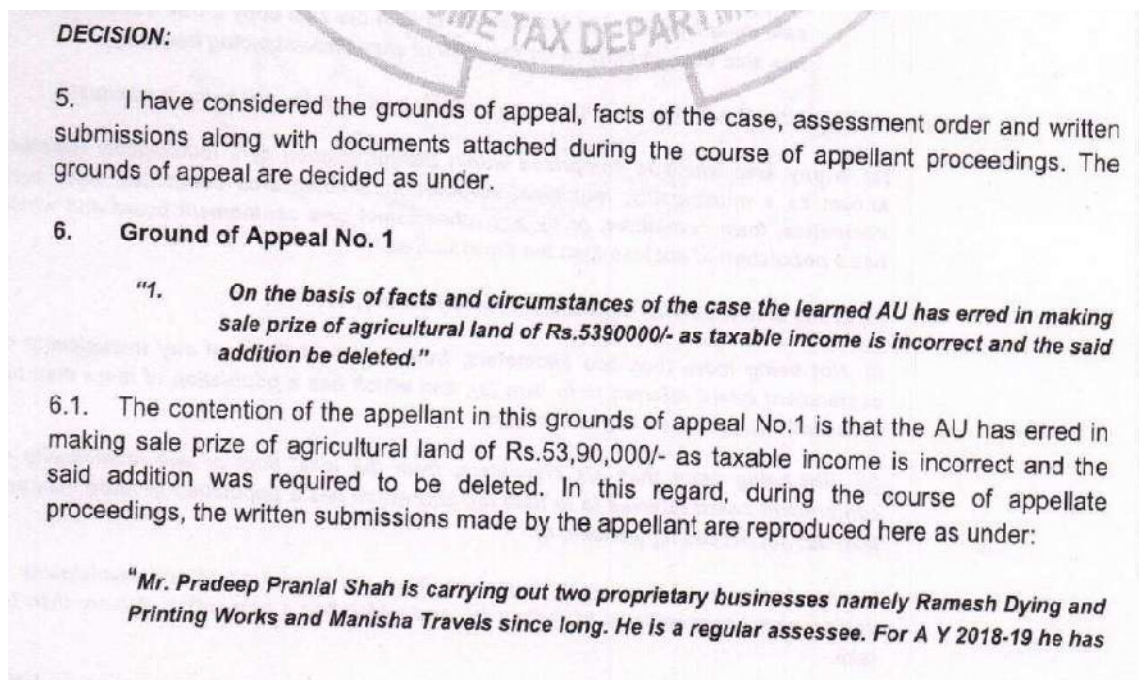
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3] The Id. CIT(A) erred in not appreciating the various evidences submitted by the assessee to prove that the land sold by him was an agricultural land and hence, the addition confirmed by him is not justified at all.

4] Without prejudice to the above grounds, the assessee submits that the entire sale proceeds received on sale of the above referred land has been taxed as long term capital gains by the Id. A.O., without appreciating that only the gain after reducing the indexed cost could be taxed as long term capital gain in the hands of the assessee.

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

4. It emerges during the course of hearing that the assessee’s sole substantive grievance raised in the instant appeal challenges both the lower authorities’ action assessing long term capital gains of Rs.53.90 lakhs in his hands, in the course of assessment framed on 17.02.2021 as upheld in the lower appellate discussion reading as follows :



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2. In support of assessee's contention that the land which is sold is not a capital asset, he wish to submit following documents and evidences which were also placed before the AU:-

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9. *Since the logic applied by the AU is bad in law and creates injustice on assessee, this appeal has been preferred with a request to delete the said addition of Rs.5390000/- and oblige.*

6.2 On perusal of the above submissions, it is noticed that the appellant contended that the land sold by the appellant was agricultural in nature and the states that the land sold by the appellant perfectly falls within the provisions of section 2(14) of the Income Tax Act, 1961 and is not a capital asset at all. In this regard, during the course of assessment proceedings, even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc.

6.3 Even during the course of appellate proceedings also, the appellant merely stated that the land sold by the appellant was an agricultural land and is not capital assets as per provisions of section 2(14) of the Income Tax Act, 1961. In support of this contention the appellant submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents. The appellant failed to submit documentary evidences viz., details of Nature and type of Agricultural Income, Copy of Khatauni, Mode of sale of Agri Products, documentary evidences for the expenditure incurred to execute the agricultural activity. Therefore, the contention of the appellant in his written submissions that the land sold by the appellant is not at all a capital asset is rejected.

6.4 It is further stated by the appellant that section 2(1A) of the Income Tax Act, 1961 states that any rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income. On this background appellant had shown the sale proceeds of the said land as an agricultural income in his ITR amounting to Rs.53,90,000/-.

6.5 However, as per provisions of section 2(1A) of the income tax, any rent or revenue derived from the land which is situated in India and is used for agricultural purpose means an agricultural income. However, in the instant case, the consideration received on sale of land stated to be agricultural in nature was admitted an agricultural income. However, as per provisions of section 2(1A) of the Income Tax Act, 1961, the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income. Section 2(1A) of the Income Tax Act, 1961 is reproduced here as under:

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(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:"

6.6 As seen from the above, as per provisions of section 2(1A) of the Income Tax Act, 1961 any revenue or rent derived from the agricultural land is treated as agricultural income. However, the consideration received on sale of land was treated by the appellant as agricultural income and claimed exemption. Therefore, the contention of the appellant in his written submissions that rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income is not acceptable.

6.7 Even though, it is assumed that the appellant used to do agricultural activity in the said land (though it is not agricultural land), as per provisions of section 54B of the Income Tax Act, 1961, the appellant require to re-invest such proceeds for purchase of another agricultural land within two years from the date of sale of such agricultural land. In the assessment order, the assessing officer made addition under the head long term capital gains for the reason that the appellant had not re-invested the sale proceeds in purchase of another agricultural land within the period of two years from the date of sale of land.

6.8 It is further pertinent to mention that Ranjangaon (village) is located there near Maharashtra Industrial Development Corporation (MIDC), which is five star Industrial area in which several manufacturing companies including LG, Whirlpool, Carraro, Fiat, Bombay Dyeing, Maccaferri, Beakaert Etc., are based as per search on the internet. The screen shot retrieved from 'Wikipedia' by doing google search in internet is affixed here as under:

6.9 As seen from the above, it is evident that the area near which the said land was situated is an industrial area. Therefore, the onus is on the appellant to prove with documentary evidence that the said land was an agricultural land. However, during the course of assessment proceedings even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc. Even during the appeal proceedings, no such documentary evidence as mentioned supra were submitted. During the course of appellate proceedings, the appellant only submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents without any supporting documentary evidence, which cannot be considered to prove that the land sold by the appellant was an agricultural land as per provisions of section 2(14) of the Income Tax Act, 1961

6.10 Further, the appellant contended in his written submissions that the income derived on sale of land was an agricultural income as per provisions of section 2(1A) of the Income Tax Act, 1961. However, the contention of the appellant is not acceptable for the reason that the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income.

6.11 Further, even if the appellant used to do agricultural activity in the said sold land, the appellant has not submitted any documentary evidence to prove that the appellant had invested the sale consideration for purchase of another agricultural land to claim exemption under section

54B of the Income Tax Act, 1961 either before the assessing officer or during the course of appeal proceedings.

6.12 In view of the above, it is evident that the appellant failed to submit any explanation or documentary evidence to prove that the land sold by the appellant was agricultural land and also the consideration on sale of land was re-invested to purchase another agricultural land to claim exemption as per provisions of section 54B of the Income Tax Act, 1961. Therefore, I do not find any reason to interfere in the assessment order passed by the assessing officer under section 143(3) read with section 143(3A) & 143(3B) of the Income Tax Act, 1961 dated 17.02.2021 for the assessment year 2018-19 with regard to disallowance of exemption of Rs.53,90,000/- claimed by the appellant. Accordingly, this grounds of appeal No.1 is required to be dismissed.

6.13 Therefore, this grounds of appeal No.1 is dismissed.

5. We wish to make it clear at the outset that the assessee has stated in very fair terms that he had never claimed any section 54B deduction either in the return or otherwise, as the case may be. The Revenue is equally very fair in not rebutting the same before us. It is in this factual backdrop that we proceed to decide with the foregoing sole substantive question of long term capital gains addition amounting to Rs.53.90 lakhs.

6. There is no dispute between the parties that the assessee had indeed sold/transferred the land at Taluka Shirur, Pune on 19.05.2017 for a consideration of Rs.53.90 lakhs. A perusal of the assessee's paper book running into 65 pages indicates that he had also produced the corresponding Form 7/12 extract indicating the said land to be agricultural only. The Assessing Officer appears to have treated the said land as a capital asset within the meaning of section 2(14) of the

Act to assess the foregoing sale consideration as his long term capital gains as upheld in the lower appellate proceedings.

7. Learned counsel's sole substantive argument is that the assessee's land nowhere qualifies the relevant conditions in section 2(14) so as to be a capital asset once the CIT(A)'s detailed discussion in para 6.8 to 6.9 has gone by "proximity" of various industries in the corresponding location. This clinching fact has gone un-rebutted from the departmental side as there is no indication in the case file that the land satisfies all the relevant parameters of being a capital asset. This is indeed coupled with the fact that the assessee has already proved his land cultivated for agricultural activities only. We thus conclude in these peculiar facts and circumstances that once both the learned lower authorities have not quoted any concrete material indicating the assessee to have transferred his agricultural land as a capital asset, the impugned consequential long term capital gains addition of Rs.53.90 lakhs is not sustainable in law. The same is directed to be deleted in very terms.

8. This assessee's appeal is allowed.

Order pronounced on 18th September, 2024.

Sd/-
R.K. PANDA
VICE PRESIDENT

Sd/-
S.S. GODARA
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th September, 2024

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.371/PUN/2024

निर्धारण वर्ष / Assessment Year: 2018-19

Pradip Pranlal Shah, 410, Budhwar Peth, Near Pasodya Vithoba Temple, Pune 411002 Maharashtra PAN : ADXPS3591G	बनाम / V/s.	AU National e-Assessment Centre, Delhi
.....अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 11.09.2024

घोषणा की तारीख / Date of Pronouncement : 18.09.2024

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for assessment year 2018-19 arises against the NFAC's Order No.ITBA/NFAC/S/250/2023-24/1059161549(1), dated 28.12.2023, involving proceedings u/s.250 of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal.

“The following grounds are taken without prejudice to each other

On facts and in law.

1] The Id. CIT(A) erred in confirming the addition of Rs.53,90,000/- made by the Id. A.O. on the ground that the land situated at Gat No.1738, Ranjangaon Ganapati, Tal Shirur, Dist Pune which was sold by the assessee was not an agricultural land and hence, the gain thereon was taxable as long term capital gain.

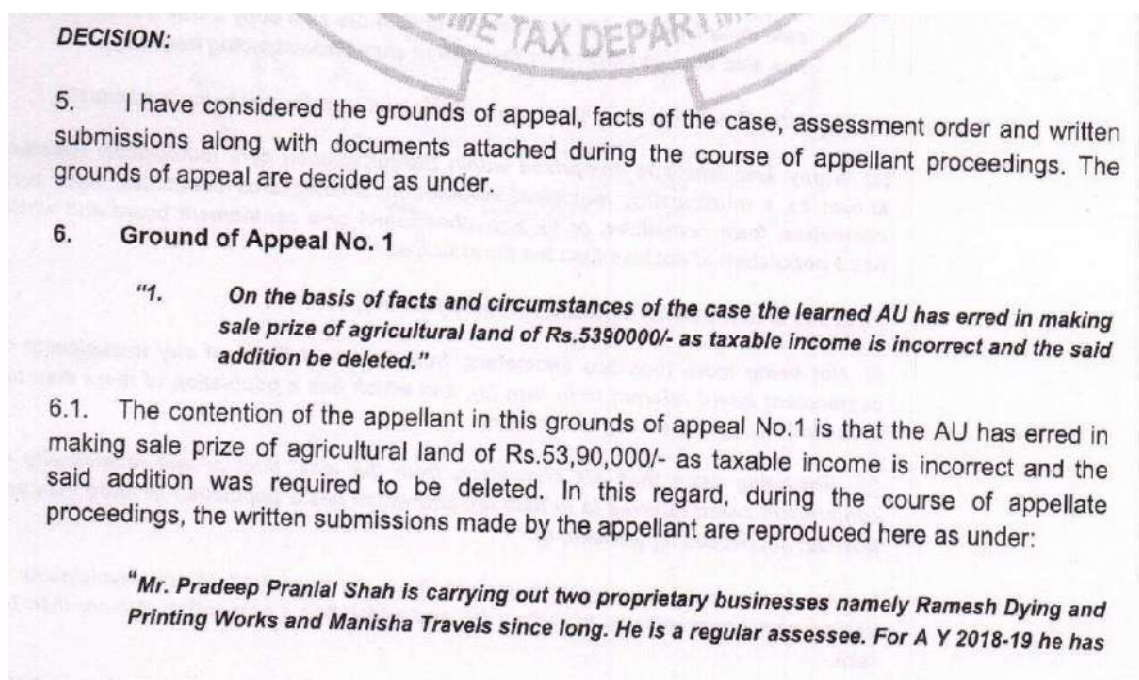
2] The Id. CIT(A) failed to appreciate that the above referred land sold by the assessee was an agricultural land and hence, the same was not a capital asset as per the provisions of section 2(14) and accordingly, the addition made of Rs. 53,90,000/- ought to have been deleted.

3] The Id. CIT(A) erred in not appreciating the various evidences submitted by the assessee to prove that the land sold by him was an agricultural land and hence, the addition confirmed by him is not justified at all.

4] Without prejudice to the above grounds, the assessee submits that the entire sale proceeds received on sale of the above referred land has been taxed as long term capital gains by the Id. A.O., without appreciating that only the gain after reducing the indexed cost could be taxed as long term capital gain in the hands of the assessee.

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

4. It emerges during the course of hearing that the assessee’s sole substantive grievance raised in the instant appeal challenges both the lower authorities’ action assessing long term capital gains of Rs.53.90 lakhs in his hands, in the course of assessment framed on 17.02.2021 as upheld in the lower appellate discussion reading as follows :



filed his ITR on 27.07.2018 vide acknowledgement number 9406199250270718. His case was selected for scrutiny and he has been served with a notice under section 143(2) RWS 143(3A) and (3B) of the I T Act, 1961 dated 28-09-2019. Thereafter various notices under section 142(1) were served to which assessee has replied from time to time and ultimately on 17-02-2021 the AU of National e-Assessment Centre has passed an order under section 143(3) of the IT Act, 1961 where in an addition of Rs.5390000/- has been made by the AU which assessee is of the opinion that is an incorrect addition and hence present appeal has been preferred by the assessee against the said order.

1. In this year assessee has sold an agricultural land on 19-05-2017 for Rs.5390000/-. The said asset perfectly falls within the provisions of section 2(14) of the I T Act, 1961 and is not a capital asset at all. Since the said asset is not a capital asset, provisions of taxation of long term capital asset do not apply per se in this case. But, section 2(1A) of the I T Act, 1961 states that any rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income. On this background assessee has shown the sale proceeds of the said land as an agricultural income in his ITR amounting to Rs.5390000/-. But, AU has not taken into consideration the thought process of the assessee and has added the said amount in the taxable income and finalized the assessment.

2. In support of assessee's contention that the land which is sold is not a capital asset, he wish to submit following documents and evidences which were also placed before the AU:-

- A. Copy of sale deed of the agricultural land sold on 19/05/2017 which clearly indicates that the land which was sold was an agricultural land (The copy of original sale deed is in Marathi & hence along with the said copy a true translated copy has also been submitted for the sake of easy understanding herewith.)
- B. Copy of purchase deed dated 26/04/1999 of the said land.(The copy of original sale deed is in Marathi & hence along with the said copy a true translated copy has also been submitted for the sake of easy understanding herewith.)

1. Section 2(14)(iii) of the IT Act 1961 states that agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand, or

(b) in any area within the distance, measured aerially,-

(I). Not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a), and which has a population of more than ten thousand but not exceeding one lakh; or

(II). Not being more than six kilometers, from the local limit of any municipality or cantonment board referred to in item (a), and which has a population of more than one lakh but not exceeding ten lakh; or

(III). Not being more than eight kilometers, from the local limit of any municipality or cantonment board referred to in item (a), and which has a population of more than ten lakh.

Explanation- For the purposes of this sub - clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

M.T. 2018-19
ITBA/NFAC/S/250/2023-24/1059161549(1)

4. *In our case the purchase as well as sale deed clearly indicates that the land is an agricultural land has been proved beyond any doubt. The entries appearing in 7/12 extract also indicates that the land is under cultivation since long. The entries in 7/12 extract are made by Govt. and hence are trustworthy. This satisfies the basic norm for claiming the land is not a capital asset.*
5. *The said land is situated in Ranjangaon where population is 13427 as per last census and in support copy of Govt. record has been enclosed herewith.*
Since the area in which the land is situated beyond the indicated area in kilometers from local limits of any municipality or cantonment board by measuring the distance aerially, this is not a capital asset.
The screen shot of a map showing that the distance from Ranjangaon to the nearest municipality which is Shirur is of 17.3Kms is enclosed herewith.
6. *Since the basic 3 conditions to claim that the land which is sold is not a capital asset respectively :-*
 - A. *That said land is an agricultural land*
 - B. *That the said land is under cultivation*
 - C. *That the population as per last census is 13427 only*
 - D. *That the distance between nearest municipality of Shirur is 17.3Kms Are satisfied and supporting proofs are also submitted herewith and hence it is requested to delete the addition of Rs.53,90,000 /- entirely.*
7. *Whether a land is an agricultural or not is to be proven by the assessee [Kalpotta Estates Ltd. v. CIT [1992] 61Taxman 4(Ker.)]. Once the assessee proves that the land is agricultural land, the burden of proving that is not agricultural land is on the Revenue [CWT v. officer-in-charge (Court of wards), Paigah [1976] 105ITR 133(SC)]. And is this case assessee has proved that this is an agricultural land beyond doubt and now if it is to be treated as taxable capital asset then the AU should prove that this is not an agricultural land and assessee wish to rely on above citations.*
8. *In addition to above the AU has not only created the additional tax liability but also levied interest under section 234A, 234B and 234C of the I T Act,1961 which is not justifiable.*
9. *Since the logic applied by the AU is bad in law and creates injustice on assessee, this appeal has been preferred with a request to delete the said addition of Rs.5390000/- and oblige.*

6.2 On perusal of the above submissions, it is noticed that the appellant contended that the land sold by the appellant was agricultural in nature and the states that the land sold by the appellant perfectly falls within the provisions of section 2(14) of the Income Tax Act, 1961 and is not a capital asset at all. In this regard, during the course of assessment proceedings, even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc.

6.3 Even during the course of appellate proceedings also, the appellant merely stated that the land sold by the appellant was an agricultural land and is not capital assets as per provisions of section 2(14) of the Income Tax Act, 1961. In support of this contention the appellant submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents. The appellant failed to submit documentary evidences viz., details of Nature and type of Agricultural Income, Copy of Khatauni, Mode of sale of Agri Products, documentary evidences for the expenditure incurred to execute the agricultural activity. Therefore, the contention of the appellant in his written submissions that the land sold by the appellant is not at all a capital asset is rejected.

6.4 It is further stated by the appellant that section 2(1A) of the Income Tax Act, 1961 states that any rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income. On this background appellant had shown the sale proceeds of the said land as an agricultural income in his ITR amounting to Rs.53,90,000/-.

6.5 However, as per provisions of section 2(1A) of the income tax, any rent or revenue derived from the land which is situated in India and is used for agricultural purpose means an agricultural income. However, in the instant case, the consideration received on sale of land stated to be agricultural in nature was admitted an agricultural income. However, as per provisions of section 2(1A) of the Income Tax Act, 1961, the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income. Section 2(1A) of the Income Tax Act, 1961 is reproduced here as under:

Section 2(1A) of the Income Tax Act, 1961:

"Agricultural Income means:-

[(a) any rent or revenue derived from the land which is situated in India and is used for agricultural purposes;]

(b) any income derived from such land by-

(i) Agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:"

6.6 As seen from the above, as per provisions of section 2(1A) of the Income Tax Act, 1961 any revenue or rent derived from the agricultural land is treated as agricultural income. However, the consideration received on sale of land was treated by the appellant as agricultural income and claimed exemption. Therefore, the contention of the appellant in his written submissions that rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income is not acceptable.

6.7 Even though, it is assumed that the appellant used to do agricultural activity in the said land (though it is not agricultural land), as per provisions of section 54B of the Income Tax Act, 1961, the appellant require to re-invest such proceeds for purchase of another agricultural land within two years from the date of sale of such agricultural land. In the assessment order, the assessing officer made addition under the head long term capital gains for the reason that the appellant had not re-invested the sale proceeds in purchase of another agricultural land within the period of two years from the date of sale of land.

6.8 It is further pertinent to mention that Ranjangaon (village) is located there near Maharashtra Industrial Development Corporation (MIDC), which is five star Industrial area in which several manufacturing companies including LG, Whirlpool, Carraro, Fiat, Bombay Dyeing, Maccaferri, Beakaert Etc., are based as per search on the internet. The screen shot retrieved from 'Wikipedia' by doing google search in internet is affixed here as under:

6.9 As seen from the above, it is evident that the area near which the said land was situated is an industrial area. Therefore, the onus is on the appellant to prove with documentary evidence that the said land was an agricultural land. However, during the course of assessment proceedings even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc. Even during the appeal proceedings, no such documentary evidence as mentioned supra were submitted. During the course of appellate proceedings, the appellant only submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents without any supporting documentary evidence, which cannot be considered to prove that the land sold by the appellant was an agricultural land as per provisions of section 2(14) of the Income Tax Act, 1961

6.10 Further, the appellant contended in his written submissions that the income derived on sale of land was an agricultural income as per provisions of section 2(1A) of the Income Tax Act, 1961. However, the contention of the appellant is not acceptable for the reason that the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income.

6.11 Further, even if the appellant used to do agricultural activity in the said sold land, the appellant has not submitted any documentary evidence to prove that the appellant had invested the sale consideration for purchase of another agricultural land to claim exemption under section

54B of the Income Tax Act, 1961 either before the assessing officer or during the course of appeal proceedings.

6.12 In view of the above, it is evident that the appellant failed to submit any explanation or documentary evidence to prove that the land sold by the appellant was agricultural land and also the consideration on sale of land was re-invested to purchase another agricultural land to claim exemption as per provisions of section 54B of the Income Tax Act, 1961. Therefore, I do not find any reason to interfere in the assessment order passed by the assessing officer under section 143(3) read with section 143(3A) & 143(3B) of the Income Tax Act, 1961 dated 17.02.2021 for the assessment year 2018-19 with regard to disallowance of exemption of Rs.53,90,000/- claimed by the appellant. Accordingly, this grounds of appeal No.1 is required to be dismissed.

6.13 Therefore, this grounds of appeal No.1 is dismissed.

5. We wish to make it clear at the outset that the assessee has stated in very fair terms that he had never claimed any section 54B deduction either in the return or otherwise, as the case may be. The Revenue is equally very fair in not rebutting the same before us. It is in this factual backdrop that we proceed to decide with the foregoing sole substantive question of long term capital gains addition amounting to Rs.53.90 lakhs.

6. There is no dispute between the parties that the assessee had indeed sold/transferred the land at Taluka Shirur, Pune on 19.05.2017 for a consideration of Rs.53.90 lakhs. A perusal of the assessee's paper book running into 65 pages indicates that he had also produced the corresponding Form 7/12 extract indicating the said land to be agricultural only. The Assessing Officer appears to have treated the said land as a capital asset within the meaning of section 2(14) of the

Act to assess the foregoing sale consideration as his long term capital gains as upheld in the lower appellate proceedings.

7. Learned counsel's sole substantive argument is that the assessee's land nowhere qualifies the relevant conditions in section 2(14) so as to be a capital asset once the CIT(A)'s detailed discussion in para 6.8 to 6.9 has gone by "proximity" of various industries in the corresponding location. This clinching fact has gone un-rebutted from the departmental side as there is no indication in the case file that the land satisfies all the relevant parameters of being a capital asset. This is indeed coupled with the fact that the assessee has already proved his land cultivated for agricultural activities only. We thus conclude in these peculiar facts and circumstances that once both the learned lower authorities have not quoted any concrete material indicating the assessee to have transferred his agricultural land as a capital asset, the impugned consequential long term capital gains addition of Rs.53.90 lakhs is not sustainable in law. The same is directed to be deleted in very terms.

8. This assessee's appeal is allowed.

Order pronounced on 18th September, 2024.

Sd/-
R.K. PANDA
VICE PRESIDENT

Sd/-
S.S. GODARA
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th September, 2024

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.371/PUN/2024

निर्धारण वर्ष / Assessment Year: 2018-19

Pradip Pranlal Shah, 410, Budhwar Peth, Near Pasodya Vithoba Temple, Pune 411002 Maharashtra PAN : ADXPS3591G	बनाम / V/s.	AU National e-Assessment Centre, Delhi
.....अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 11.09.2024

घोषणा की तारीख / Date of Pronouncement : 18.09.2024

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for assessment year 2018-19 arises against the NFAC's Order No.ITBA/NFAC/S/250/2023-24/1059161549(1), dated 28.12.2023, involving proceedings u/s.250 of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal.

“The following grounds are taken without prejudice to each other

On facts and in law.

1] The Id. CIT(A) erred in confirming the addition of Rs.53,90,000/- made by the Id. A.O. on the ground that the land situated at Gat No.1738, Ranjangaon Ganapati, Tal Shirur, Dist Pune which was sold by the assessee was not an agricultural land and hence, the gain thereon was taxable as long term capital gain.

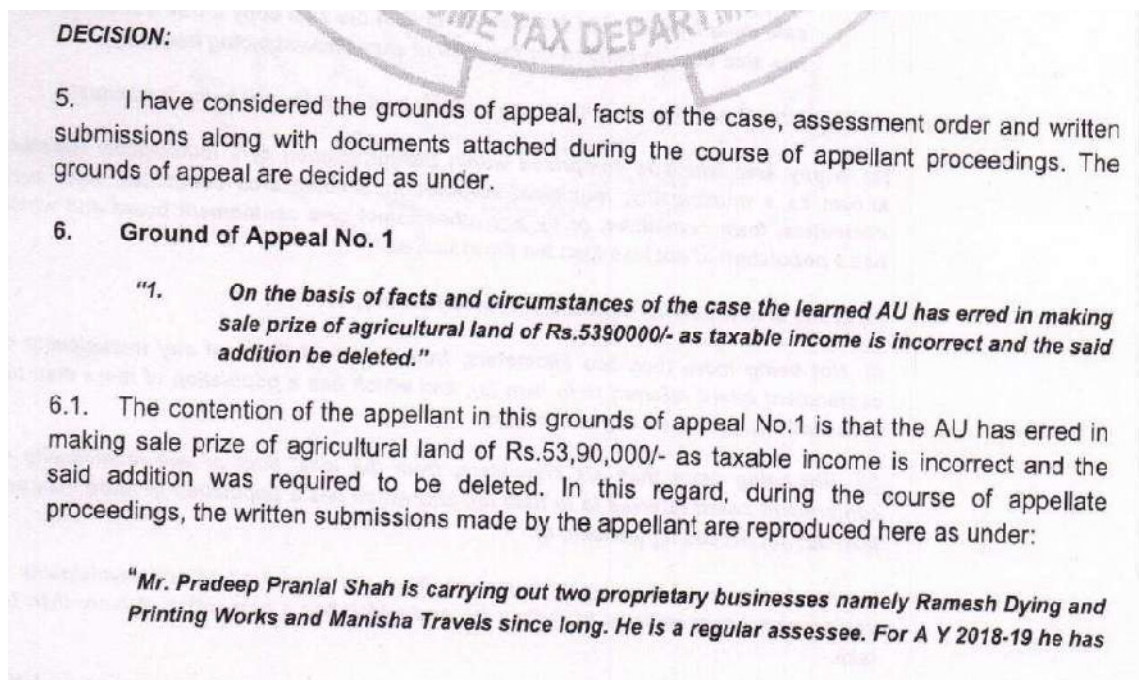
2] The Id. CIT(A) failed to appreciate that the above referred land sold by the assessee was an agricultural land and hence, the same was not a capital asset as per the provisions of section 2(14) and accordingly, the addition made of Rs. 53,90,000/- ought to have been deleted.

3] The Id. CIT(A) erred in not appreciating the various evidences submitted by the assessee to prove that the land sold by him was an agricultural land and hence, the addition confirmed by him is not justified at all.

4] Without prejudice to the above grounds, the assessee submits that the entire sale proceeds received on sale of the above referred land has been taxed as long term capital gains by the Id. A.O., without appreciating that only the gain after reducing the indexed cost could be taxed as long term capital gain in the hands of the assessee.

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

4. It emerges during the course of hearing that the assessee’s sole substantive grievance raised in the instant appeal challenges both the lower authorities’ action assessing long term capital gains of Rs.53.90 lakhs in his hands, in the course of assessment framed on 17.02.2021 as upheld in the lower appellate discussion reading as follows :



filed his ITR on 27.07.2018 vide acknowledgement number 9406199250270718. His case was selected for scrutiny and he has been served with a notice under section 143(2) RWS 143(3A) and (3B) of the I T Act, 1961 dated 28-09-2019. Thereafter various notices under section 142(1) were served to which assessee has replied from time to time and ultimately on 17-02-2021 the AU of National e-Assessment Centre has passed an order under section 143(3) of the IT Act, 1961 where in an addition of Rs.5390000/- has been made by the AU which assessee is of the opinion that is an incorrect addition and hence present appeal has been preferred by the assessee against the said order.

1. In this year assessee has sold an agricultural land on 19-05-2017 for Rs.5390000/-. The said asset perfectly falls within the provisions of section 2(14) of the I T Act, 1961 and is not a capital asset at all. Since the said asset is not a capital asset, provisions of taxation of long term capital asset do not apply per se in this case. But, section 2(1A) of the I T Act, 1961 states that any rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income. On this background assessee has shown the sale proceeds of the said land as an agricultural income in his ITR amounting to Rs.5390000/-. But, AU has not taken into consideration the thought process of the assessee and has added the said amount in the taxable income and finalized the assessment.

2. In support of assessee's contention that the land which is sold is not a capital asset, he wish to submit following documents and evidences which were also placed before the AU:-

- A. Copy of sale deed of the agricultural land sold on 19/05/2017 which clearly indicates that the land which was sold was an agricultural land (The copy of original sale deed is in Marathi & hence along with the said copy a true translated copy has also been submitted for the sake of easy understanding herewith.)
- B. Copy of purchase deed dated 26/04/1999 of the said land.(The copy of original sale deed is in Marathi & hence along with the said copy a true translated copy has also been submitted for the sake of easy understanding herewith.)

1. Section 2(14)(iii) of the IT Act 1961 states that agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand, or

(b) in any area within the distance, measured aerially,-

(I). Not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a), and which has a population of more than ten thousand but not exceeding one lakh; or

(II). Not being more than six kilometers, from the local limit of any municipality or cantonment board referred to in item (a), and which has a population of more than one lakh but not exceeding ten lakh; or

(III). Not being more than eight kilometers, from the local limit of any municipality or cantonment board referred to in item (a), and which has a population of more than ten lakh.

Explanation- For the purposes of this sub - clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

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4. *In our case the purchase as well as sale deed clearly indicates that the land is an agricultural land has been proved beyond any doubt. The entries appearing in 7/12 extract also indicates that the land is under cultivation since long. The entries in 7/12 extract are made by Govt. and hence are trustworthy. This satisfies the basic norm for claiming the land is not a capital asset.*
5. *The said land is situated in Ranjangaon where population is 13427 as per last census and in support copy of Govt. record has been enclosed herewith.*
Since the area in which the land is situated beyond the indicated area in kilometers from local limits of any municipality or cantonment board by measuring the distance aerially, this is not a capital asset.
The screen shot of a map showing that the distance from Ranjangaon to the nearest municipality which is Shirur is of 17.3Kms is enclosed herewith.
6. *Since the basic 3 conditions to claim that the land which is sold is not a capital asset respectively :-*
 - A. *That said land is an agricultural land*
 - B. *That the said land is under cultivation*
 - C. *That the population as per last census is 13427 only*
 - D. *That the distance between nearest municipality of Shirur is 17.3Kms Are satisfied and supporting proofs are also submitted herewith and hence it is requested to delete the addition of Rs.53,90,000 /- entirely.*
7. *Whether a land is an agricultural or not is to be proven by the assessee [Kalpotta Estates Ltd. v. CIT [1992] 61Taxman 4(Ker.)]. Once the assessee proves that the land is agricultural land, the burden of proving that is not agricultural land is on the Revenue [CWT v. officer-in-charge (Court of wards), Paigah [1976] 105ITR 133(SC)]. And is this case assessee has proved that this is an agricultural land beyond doubt and now if it is to be treated as taxable capital asset then the AU should prove that this is not an agricultural land and assessee wish to rely on above citations.*
8. *In addition to above the AU has not only created the additional tax liability but also levied interest under section 234A, 234B and 234C of the I T Act,1961 which is not justifiable.*
9. *Since the logic applied by the AU is bad in law and creates injustice on assessee, this appeal has been preferred with a request to delete the said addition of Rs.5390000/- and oblige.*

6.2 On perusal of the above submissions, it is noticed that the appellant contended that the land sold by the appellant was agricultural in nature and the states that the land sold by the appellant perfectly falls within the provisions of section 2(14) of the Income Tax Act, 1961 and is not a capital asset at all. In this regard, during the course of assessment proceedings, even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc.

6.3 Even during the course of appellate proceedings also, the appellant merely stated that the land sold by the appellant was an agricultural land and is not capital assets as per provisions of section 2(14) of the Income Tax Act, 1961. In support of this contention the appellant submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents. The appellant failed to submit documentary evidences viz., details of Nature and type of Agricultural Income, Copy of Khatauni, Mode of sale of Agri Products, documentary evidences for the expenditure incurred to execute the agricultural activity. Therefore, the contention of the appellant in his written submissions that the land sold by the appellant is not at all a capital asset is rejected.

6.4 It is further stated by the appellant that section 2(1A) of the Income Tax Act, 1961 states that any rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income. On this background appellant had shown the sale proceeds of the said land as an agricultural income in his ITR amounting to Rs.53,90,000/-.

6.5 However, as per provisions of section 2(1A) of the income tax, any rent or revenue derived from the land which is situated in India and is used for agricultural purpose means an agricultural income. However, in the instant case, the consideration received on sale of land stated to be agricultural in nature was admitted an agricultural income. However, as per provisions of section 2(1A) of the Income Tax Act, 1961, the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income. Section 2(1A) of the Income Tax Act, 1961 is reproduced here as under:

Section 2(1A) of the Income Tax Act, 1961:

"Agricultural Income means:-

[a] any rent or revenue derived from the land which is situated in India and is used for agricultural purposes;]

(b) any income derived from such land by-

(i) Agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:"

6.6 As seen from the above, as per provisions of section 2(1A) of the Income Tax Act, 1961 any revenue or rent derived from the agricultural land is treated as agricultural income. However, the consideration received on sale of land was treated by the appellant as agricultural income and claimed exemption. Therefore, the contention of the appellant in his written submissions that rent or revenue derived from the land which is situated in India and is used for agricultural purposes means an agricultural income is not acceptable.

6.7 Even though, it is assumed that the appellant used to do agricultural activity in the said land (though it is not agricultural land), as per provisions of section 54B of the Income Tax Act, 1961, the appellant require to re-invest such proceeds for purchase of another agricultural land within two years from the date of sale of such agricultural land. In the assessment order, the assessing officer made addition under the head long term capital gains for the reason that the appellant had not re-invested the sale proceeds in purchase of another agricultural land within the period of two years from the date of sale of land.

6.8 It is further pertinent to mention that Ranjangaon (village) is located there near Maharashtra Industrial Development Corporation (MIDC), which is five star Industrial area in which several manufacturing companies including LG, Whirlpool, Carraro, Fiat, Bombay Dyeing, Maccaferri, Beakaert Etc., are based as per search on the internet. The screen shot retrieved from 'Wikipedia' by doing google search in internet is affixed here as under:

6.9 As seen from the above, it is evident that the area near which the said land was situated is an industrial area. Therefore, the onus is on the appellant to prove with documentary evidence that the said land was an agricultural land. However, during the course of assessment proceedings even after issue of several notices by the assessing officer calling for details, the appellant had not submitted any of the documents including bank statement, cash flow statement, details of Nature and type of agricultural income, whether the agricultural land was held by him / taken on lease, whether irrigated or rain fed land, copy of khatauni, mode of sale of agri product, evidences for expenses made with supporting documents etc. Even during the appeal proceedings, no such documentary evidence as mentioned supra were submitted. During the course of appellate proceedings, the appellant only submitted copy of sale deed in which it has been mentioned that the land sold by the appellant was an agricultural land. Further, a notarized affidavit is also submitted by the appellant in which it has been declared that the land sold by the appellant was an agricultural land. However, these documents are only self-serving documents without any supporting documentary evidence, which cannot be considered to prove that the land sold by the appellant was an agricultural land as per provisions of section 2(14) of the Income Tax Act, 1961

6.10 Further, the appellant contended in his written submissions that the income derived on sale of land was an agricultural income as per provisions of section 2(1A) of the Income Tax Act, 1961. However, the contention of the appellant is not acceptable for the reason that the rent or revenue received from agricultural land is considered as agricultural income, but not the consideration on sale of land can be treated as agricultural income.

6.11 Further, even if the appellant used to do agricultural activity in the said sold land, the appellant has not submitted any documentary evidence to prove that the appellant had invested the sale consideration for purchase of another agricultural land to claim exemption under section

54B of the Income Tax Act, 1961 either before the assessing officer or during the course of appeal proceedings.

6.12 In view of the above, it is evident that the appellant failed to submit any explanation or documentary evidence to prove that the land sold by the appellant was agricultural land and also the consideration on sale of land was re-invested to purchase another agricultural land to claim exemption as per provisions of section 54B of the Income Tax Act, 1961. Therefore, I do not find any reason to interfere in the assessment order passed by the assessing officer under section 143(3) read with section 143(3A) & 143(3B) of the Income Tax Act, 1961 dated 17.02.2021 for the assessment year 2018-19 with regard to disallowance of exemption of Rs.53,90,000/- claimed by the appellant. Accordingly, this grounds of appeal No.1 is required to be dismissed.

6.13 Therefore, this grounds of appeal No.1 is dismissed.

5. We wish to make it clear at the outset that the assessee has stated in very fair terms that he had never claimed any section 54B deduction either in the return or otherwise, as the case may be. The Revenue is equally very fair in not rebutting the same before us. It is in this factual backdrop that we proceed to decide with the foregoing sole substantive question of long term capital gains addition amounting to Rs.53.90 lakhs.

6. There is no dispute between the parties that the assessee had indeed sold/transferred the land at Taluka Shirur, Pune on 19.05.2017 for a consideration of Rs.53.90 lakhs. A perusal of the assessee's paper book running into 65 pages indicates that he had also produced the corresponding Form 7/12 extract indicating the said land to be agricultural only. The Assessing Officer appears to have treated the said land as a capital asset within the meaning of section 2(14) of the

Act to assess the foregoing sale consideration as his long term capital gains as upheld in the lower appellate proceedings.

7. Learned counsel's sole substantive argument is that the assessee's land nowhere qualifies the relevant conditions in section 2(14) so as to be a capital asset once the CIT(A)'s detailed discussion in para 6.8 to 6.9 has gone by "proximity" of various industries in the corresponding location. This clinching fact has gone un-rebutted from the departmental side as there is no indication in the case file that the land satisfies all the relevant parameters of being a capital asset. This is indeed coupled with the fact that the assessee has already proved his land cultivated for agricultural activities only. We thus conclude in these peculiar facts and circumstances that once both the learned lower authorities have not quoted any concrete material indicating the assessee to have transferred his agricultural land as a capital asset, the impugned consequential long term capital gains addition of Rs.53.90 lakhs is not sustainable in law. The same is directed to be deleted in very terms.

8. This assessee's appeal is allowed.

Order pronounced on 18th September, 2024.

Sd/-
R.K. PANDA
VICE PRESIDENT

Sd/-
S.S. GODARA
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th September, 2024

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune