

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 6088/MUM/2019  
(A.Y. 2011-12)**

Smt. Beena Rajan Shah C/2, 454, 6 <sup>th</sup> Floor, Matru Ashish, Nepeasn Sea Road, Mumbai, Maharashtra-400006	v/s. बनाम	ITO-16(2)(1), Mumbai Maharashtra-400007
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAGPS8608G</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Dr. P. Daniel
Respondent by :	Shri Paresh Deshpande

Date of Hearing	09.10.2024
Date of Pronouncement	19.11.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-30 [hereinafter referred to as “CIT(A)”] dated 23.07.2019 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2011-12.

2. The assessee has raised following grounds of appeal:

*“1) The learned Commissioner of Income Tax (Appeals) has erred in confirming the sale of agricultural land to tax without taking cognizance of the note submitted by the appellant. No reasons have been assigned for not considering the note.*

*2) The learned CIT (Appeals) has erred in not taking into consideration the agreement of sale executed on 05.10.2009 between the confirming parties as*

*the purchaser and Beena R. Shah as the seller when the said agreement was duly registered before the Sub-Registrar, Thane. The reasons assigned by him for doing the same are wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same.*

*3) The learned CIT (Appeals) has erred by confirming the calculation of Capital Gains at Rs.1,4,56,935/taking Rs.1,80,00,000/- as the sale consideration. The reasons assigned by him for doing the same are wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same. Regard being had to the facts and circumstances of the case, the said addition ought not to have been made.*

*4) The learned CIT (Appeals) has erred in confirming the levy of interest u/s 234A, 234B and 234D. Reasons assigned by him for doing the same are wrong and insufficient. Provisions of the Act ought to have been properly construed before levying the same.*

*5) Order passed is bad in law and contrary to the provisions of the Act.”*

3. The brief facts of the case are that the assessee filed return declaring income of Rs. 6,96,350/- on 29.09.2010. The Ld. AO passed the assessment order u/s 143(3) of the Act on 29.03.2014 determining assessed income at Rs. 1,21,53,290/-. It was noted from Annual Information Return (AIR) information available on system that the assessee had sold immovable property for a consideration of Rs. 1,80,00,000/- on 18.05.2010. The AO held that the long-term capital gains from the sale of agricultural land is assessable in the hands of the assessee. Accordingly, the assessment was completed after making addition on account of long-term capital gain of Rs. 1,14,56,935/-.

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) sought a report from the AO on the assessee's contentions that the land in question is an agricultural land or a non-agricultural land. No remand report was received from the AO. However, based on the documents furnished by the assessee during the appellate proceedings,



the Ld. CIT(A) dismissed the appeal vide order dated 23.07.2019 after holding that the transaction relating to sale of land was liable to be taxed under capital gains.

5. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us. The main ground of the appeal is that the consideration received on sale of agricultural land is not taxable under Income Tax Act.

6. Before us, the Ld. AR submitted various documents in support of her claim that the land in question is an agricultural land. It was claimed that the land in question is within the jurisdiction of gram panchayat and hence is not a capital asset u/s 2(14) of the Act. Copy of a certificate issued by gram panchayat Pimpri, Teh. & Dist. Thane dated 27.06.2019 has also been furnished wherein it is stated that the assessee owned land in question in Pimpri which has population of 4885 and is situated 20 km away from the Thane Municipal Corporation. The Ld. DR relied on the orders of the lower authorities.

7. We have considered the rival submissions and perused the material placed before us. The sole issue for consideration is that whether the land sold by the assessee is covered by the definition of agricultural land provided in section 2(14) of the Act or not. Relevant portion of the section is reproduced below:

“2.

*14. capital assets means-*

*(a) property of any kind held by an assessee, whether or not connected with his business or profession;*



·  
·  
·  
but does not include-  
(i) any stock-in-trade.

·  
·  
·  
[(iii) 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 kilometres, 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 kilometres, from the local limits 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 kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.”

8. Admittedly, the land in question is located in District Thane and its description as per the Conveyance Deed is as under:

*"ALL THAT PIECE AND PARCEL of Open Plot of land admeasuring 27 guntha bearing Old Survey No 211 and 221, New Survey No 19/2, 30/7, 30/9, 30/11, 30/12, 39/13, 30/14, and 30/15 at mouje Pimpri, Tal. & Dist. Thane, Sub- Registrar Thane within the limits of Navi Mumbai Municipal Corporation, Taluka and District Thane."*

9. Thus as per the conveyance deed, the land is located within the limits of Navi Mumbai Municipal Corporation. But, as per the certificate of the Gram Panchayat submitted by the assessee, the land is located at distance of 20Km from the municipal limits of Thane Municipal Corporation.



10. In view of the above, the issue is to be decided whether the land is covered under which of the subclauses (a) or (b) of clause (iii) reproduced hereinbefore. The assessee's contention is that the land is situated 20Km away from the Municipal limits hence is not a capital asset u/s 2(14) of the Act. On the other hand, the AO and the Ld. CIT(A) have observed from the conveyance deed that the land is situated within the limits of Navi Mumbai Municipal Corporation, hence, is not an agricultural land in terms of section 2(14) of the Act. Accordingly, we are of the view that the claim of the assessee regarding exemption of agricultural land in question from the definition of capital asset requires physical verification in terms of provisions of section 2(14) of the Act.

11. We, therefore, deem it proper to restore the matter to the AO for verification of the location of land to ascertain whether it is an agricultural land to be excluded from the definition of capital asset u/s 2(14) of the Act in terms of clause (iii) reproduced above.

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

Order pronounced in the open court on 19.11.2024.

**Sd/-**

**BEENA PILLAI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 19.11.2024

अनिकेत सिंह राजपूत/ स्टेनो



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**

