

**Before: Shri Amarjit Singh, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

<p>The ITO, Ward-3(2)(1), Ahmedabad (Appellant/Respondent)</p>	<p>Vs</p>	<p>Andubhai Popabhai Sisodiya, Vill-Kolat, Taluka-Sanand, Dist-Ahmedabad PAN: BVAPR9837C (Respondent/Cross Objector)</p>
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Date of hearing : 06-03-2019  
Date of pronouncement : 07-03-2019

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This revenue's appeal and assessee's cross objection for A.Y. 2013-14, arise from order of the CIT(A)-3, Ahmedabad dated 20-09-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. The revenue has filed following substantive ground of appeal:-

*"1 . The Ld.CIT( A) has erred in law and on facts in not considering the fact that at the time of sale, the land was Non- agricultural land and hence the said land should not had been treated as exempt within the purview of section 2(14)."*

3. The brief fact of the case is that assessee being agriculturist has not filed her return of income for assessment year under consideration, therefore, the case was reopened u/s. 147 by issuing of notice u/s. 148 of the act on 29<sup>th</sup> March, 2016. However, in response to the notice, she has submitted a copy of her bank passbook and copy of registered sale deed. On the basis of AIR information the assessing officer has held as under:-

*“3. During the year under consideration, the assessee was agriculturist & earned income from agriculture activities. As per the information available with this office and submission made by the assessee, it is gathered that the assessee has sold an immovable property i.e. NA land at Vill-Koth, Sanand vide sale deed no 1339/2012-13/Dholka dated 01/06/2012 for a consideration of Rs 1,80,00,000/-. The property in question was purchased for an amount of Rs 8,71,000/- + stamp duty of RS 1,21,000 / - in FY 2008-09. The cost of acquisition of this land was computed to Rs 14,53,962/- ( 9,93,200/-\*852/582). Thus the net STCG comes to 1,65,46,038/-( Rs 1,80,00,000/- minus Rs 14,53,962/-) As discussed in para 2, despite being given various and sufficient opportunities assessee is unable to furnish any relevant explanation for his not offering any STCG, In fact the submission made by the assessee i.e. his bank pass book also confirms the facts that sale consideration was received by the assessee and assessee did not even file his ITR for the year under consideration. This is a very clear and confirm case of tax evasion done by the assessee. In the light of above discussion net profit of Rs 1,65,46,038/- as worked out is hereby treated as undisclosed STCG in the hands of assessee and added to the total income of the assessee.”*

4. Aggrieved assessee has filed appeal against the decision of assessing officer before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of Id. CIT(A) is reproduced as under:-

*“4.2 As regards **ground No.4** relating to the issue of sale consideration of agricultural land as STCG the appellant has filed additional evidences and pursued the case with the AO during remand proceedings. Certain information was not on record therefore the appellant himself put into disadvantage in clarifying the issues to avoid additions in his case. Now the facts are as under:*

- 1) The appellant is agriculturist and has submitted Form No.SA as a support to his contention.*
- 2) Further the copy of purchase deed dated 19.04.2008 also indicates that it was agricultural land. The appellant is shown as owner of the land as per register maintained with Sub-registrar Dhoika w.e.f 19.04.2008.*
- 3) it is further proved as per evidence on record that the appellant gave possession of said land to the buyer as agricultural land only.*
- 4) Form No.7/12 and certificate from Panchayat indicates that the land in question is agricultural land.*
- 5) The impugned land is in village Koth, Tal. Dholka which is more than 30 KM from Ahmedabad.*
- 6) Shri S.G. Shah, Advocate emphasized that the appellant is pure agriculturist and stays in village as on this date.*

*The main contention taken by the appellant was that the rural agricultural land situated at Village **Koth** is not a capital asset as per the provision of section 2(14)(iii) of the Act. The submission dated 09.02.2017 is reproduced as under:*

*"The agricultural land is not capital asset chargeable to tax.*

*The relevant provision is reproduced here under for your ready reference. "No. of Sect/on 2(14)4:-*

*From Assessment Year 2014-15 and onwards, agricultural land in India, not being land situated (1) in any area within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee) or a cantonment board which has a population of not less than 10000; or (2) in any area within the distance, measured aerielly : (1) not being more than 2 kilometres, from local limits of any municipality or cantonment board referred to in item (a) above and which has a population of more than 10000 but not exceeding 100000; or (2) not being more than 6 kilometres from the local limits of any municipality or cantonment board referred to in item (a) above and which has a population of more than 100000 but exceeding not exceeding 1000000; or not being more than 8 kilometres, from the local limits of any municipality or cantonment board referred to in item (a) above and which has a population of more than 1000000. Explanation to sec 2(14) defines the term 'population'. 'Population' means the population according to the last preceding census of which the relevant figures have been published before the 1<sup>st</sup> day of the previous year.[Section 2(14)(iii)]. "*

*I find the issue has already been adjudicated by jurisdictional ITAT. The relevant portion of jurisdictional ITAT decision in the case of ITO vs. Akash Deep Farms P. Ltd. (ITA No.2138/Ahd/2012 dtd.11.08.2015) is as under:*

*"8. We have duly considered rival contentions and gone through the record carefully. The definition of "capital asset" has been provided in section 2(14) of the Act. Sub-clause (a) and (b) of Section 2(14)(ii) contemplates that if an agriculture land is in India, and it is situated at a distance of more than 8 KMs. from the local limit of any municipality cantonment board, then, that land would not fall within the ambit of definition "capital asset". In other words, if the land which is not forming part of capital asset sold by an assessee, then, no gain as such would be considered, as accrued to the assessee. In the present case, the Id. AO has observed that if the distance of geographical situation of the assessee's land is being measured from municipality limit, by way of crow's flight, then, it is within the municipal limit. ....*

*10. Next objection of the AO was that the State Government has enhanced the municipal limit. 2006 and the distance is to be measured from new boundary of the Ahmedabad Munic: Corporation Limit. AMC limit was extended upto Sarkhej since 2006. The Id. CIT(A) has examined this aspect, and has observed that perusal of sub-clause (b) of section 2(14)(iii) would indicate that the municipal limit is to be taken from the area which has been notified by the Central Government in its gazette notification. Central Government notified the area on 06.01.1994, and from that notification, the agriculture land of the assessee was situated beyond a distance of 8 KMs. This aspect has been lucidly considered by the Id. CIT(A) in the finding extracted supra. We do not see any reason to interfere in this finding. In view of the above discussion, we do not find any merit in the appeal of the Revenue. It is dismissed. "*

*Reliance is placed on following case laws:*

*CIT vs. Satinder Pal Singh 229 CTR 82 [P&H]*

*CIT Vs. Madhukumar N. HUF - 23 Taxmann.com 341 (Kar. HC)*

*CIT vs. Khoobsurat Resorts Pvt. Ltd. - ITA No.776 of 2011 dt.05.11.2012 (Delhi HC)*

*Smt. (Dr.) Subha Tripathi Vs. Dy.CIT - 34 Taxmann.com 286 (ITAT, Jaipur)*

*Satya Dev Sharma Vs. ITO - 46 Taxmann.com 149 (ITAT, Jaipur)*

*DCIT Vs. Arjit Mitra - 16 Taxmann.com 66 (ITAT, Kolkata)*

*The appellant has clearly stated that the provision of taxing capital gains are only applicable in case of a capital asset and as the Rural agricultural land situated at village Koth is not a capital asset and hence the provision of capital gains would not apply. Further, section 45 is the charging*

*section and section 48 is the section for computation of capital gain and both provisions are integrated with each other. As the rural agricultural land situated at Village Koth is not a capital asset as per the definition of section 2(14)(iii) of the Act and hence, the chargeability u/s. 45 would fail and accordingly, the computation provision as per section will also fail. It is clear that the sales consideration received on sale of rural agricultural land at Koth is exempt as it is not a capital asset.*

*The evidence on record indicates that Koth village is at a distance of more than 20 KM from the outer limit of AMC (AMC Municipal limit as per CBDT notification dated 06.01.1994). Hence it is beyond the AMC limit of 8 KM. I agree with the appellant that the Rural Agricultural Land situated at Village Koth is not a capital asset as per provisions of section 2(14)(iii) r.w.s 45 and the sales consideration is exempt. Further, as per the decision of Hon'ble Apex Court in the case of CIT vs. B.C. Srinivasa Setty reported in 128 ITR 294 which is squarely covered to the facts of the case of appellant that section 45 charging section would fall as the Rural Agricultural Land situated at Village Koth is not a capital asset.*

*In view of above facts which have emanated from the remand proceedings the appellant's contention that the said land was not capital asset so as to attract tax provisions to bring the gains in the ambit of taxability, is found to be correct. In view of facts on record and the remand report dated 10.09.2017, the ground No.4 is allowed."*

5. During the course of appellate proceedings before us, nobody has attended from the side of the assessee. The ld. departmental representative has contended that ld. CIT(A) has not adjudicated on the issue that assessee has sold the non-agricultural land (after conversion of agricultural land to non-agricultural land). In this connection, the ld. departmental representative has referred the aforesaid finding of the assessing officer, wherein he has stated that as per AIR information, the assessee has sold immovable property i.e. NA land at Vill-Koth, Sanand. With the assistance of ld. departmental representative, we have gone through the material on record carefully and it is noticed that assessing officer has mentioned in his order that assessee has sold an immovable property (non-agricultural land). However, we find that the ld. CIT(A) has held that assessee has sold an agricultural which is not a capital asset. In the light of the above facts, we are of the view that it will be appropriate to restore this issue to the file of ld. CIT(A) to adjudicate the veracity of the fact reported by the A.O. in the

assessment order that the sold land was non-agricultural land. In the result, appeal of the revenue of the assessee is allowed for statistical purposes.

**C.O. No. 12/Ahd/2019 filed by assessee**

6. Since, we have set aside the appeal of the revenue to the file of Id. CIT(A) for adjudicating the veracity of the fact reported by the assessing officer in the assessment order that the sold land was non-agricultural land, therefore, the cross objection of the assessee has become infructuous and the same is dismissed

7. In the result, the appeal of the revenue is allowed for statistical purposes and cross objection of the assessee is dismissed.

Order pronounced in the open court on 07-03-2019

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 07/03/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क० त० तालिम अ० षत / Copy of Order Forwarded to:-**

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

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलालय आधिकरण,  
अहमदाबाद