

(2003) 01 GUJ CK 0023

In the Gujarat High Court

Case No : IT Ref. No. 43 of 1988 16 January 2003 & Income-tax Reference No. 43 of 1988

Commissioner of Income Tax

APPELLANT

Vs

B.B. Vyas

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Income Tax Act, 1961 — Section 2(14), 48

Citation : (2003) 183 CTR 108

Hon'ble Judges : R.K. Abichandani, J;A.L. Dave, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; Pranav G. Desai, for the Respondent

Judgement

R.K. Abichandani, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench ""B"", has referred the following question for the opinion of

this court u/s 256(1) of the Income Tax Act, 1961.

Whether in law and on facts Circular No. 88, dated August 1, 1969, issued by the Central Board of Direct Taxes but subsequently withdrawn on

September 23, 1971, was applicable and the cost of acquisition had to be determined on the basis of the value as determined on the date of

conversion of agricultural land into non-agricultural land, i.e., when the land became a capital asset ?

2. The matter pertains to the assessment year 1971-72. The assessee is an individual. In the assessment proceedings u/s 143(3), the Income Tax

Officer, while computing the capital gain was of the opinion that the cost of the land in question to the previous owner worked out at Rs. 1.10 per

sq. yd. was to be given deduction for computation of the capital gain made by

the assessee in respect of which the land which was sold during the assessment year in question. In the assessment proceedings, the assessee, while computing the capital gains, took the cost of acquisition of the land as its value on the date of the gift. The lands were purchased as agricultural lands in 1961 and thereafter converted into non-agricultural land on March 12, 1962, and gifted in July, 1966, when they were valued for the purpose of gift-tax at Rs. 9 per sq. yd. According to the assessee, the land became a capital asset on the date when converted into non-agricultural land on March 12, 1962, and, therefore, since it was not a capital asset as defined u/s 2(14) at the time of its acquisition, its cost at the time of acquisition, cannot be taken into consideration for the purposes of computation of the capital gains. The assessee placed reliance on the circular dated August 1, 1969, issued by the Central Board of Direct Taxes. As per that circular, the assessee was entitled to determine the cost of acquisition on the basis of the conversion of agricultural land into non-agricultural land. The Income Tax Officer rejected the claim of the assessee, which order was upheld by the Appellate Assistant Commissioner. The Tribunal, however, held that the circular issued by the Central Board of Direct Taxes was of a benevolent nature and applied in the case of the assessee in respect of the assessment year 1971-72, because it was in force from the date of the assessment year, though later on it came to be withdrawn on September 23, 1971.

3. Though the question which is referred mentions number of the circular as ""88"", dated August 1, 1969, these orders are in Instruction No. 90 which was issued on August 1, 1969, a copy of which is placed on record before us. Learned counsel for the Revenue has, during the proceedings, at our instance, after frantic efforts been able to trace out these relevant instructions which are the subject matter of the proceedings.

The instructions issued by the Board on August 1, 1969, read as follows :

Section 48 of the Income Tax Act, 1961, prescribes the mode of computation of the income chargeable under the head "Capital gain". It, inter alia, allows a deduction for the cost of the acquisition of the capital asset concerned. A question has arisen as to how the "cost of acquisition of the capital asset" should be determined for the purpose of the levy of the capital gains tax u/s 45 in a case where agricultural land is converted into

non-agricultural land and then sold for non-agricultural use.

2. "Capital asset" as defined in Section 2(14) of the Income Tax Act includes property held by the assessee but does not include agricultural land

and so long as the property remains an agricultural land, it is, in law, not a capital asset at all.

The expression "cost of acquisition of the capital asset" for the purpose of Section 48 has, therefore, to be understood with reference to the legal

meaning of the expression "capital asset". When an asset is not a capital asset as defined in the Act, it will not obviously be a capital asset for the

purposes of Section 48. It is only when the agricultural land is converted into a non-agricultural land that the land becomes a capital asset as

defined in the Act. Therefore, the relevant date for the purpose of determining the cost of the acquisition of the capital asset whose sale is the

subject matter of the levy of the capital gains tax, is the date on which the agricultural land had been converted into a non-agricultural land. Such

cost of acquisition may reasonably be taken, in accordance with the principles enunciated by the Supreme Court in the case of Commissioner of

Income Tax, Bombay City I, Bombay Vs. Bai Shirinbai K. Kooka, to be the market price of the land at the point of time when the agricultural land

is converted into non-agricultural land.

3. The cases of the type in question are to be decided under the provisions of Section 48(ii) as clarified above and Sections 49 and 55(2) would

not apply.

4. There is no dispute about the fact that the above instructions were in force at the relevant time. Therefore, subsequent withdrawal of these

instructions will not affect their operation. These instructions have, obviously been issued u/s 119 of the said Act by the Board and they were

binding on the subordinate authorities. The instructions clearly indicated that since the definition of "capital asset" in Section 2(14) of the Act did not

include the agricultural land, it would become capital asset only on being converted into non-agricultural land. Since the circular was operative and

binding on the subordinate revenue authorities under the law, the Tribunal has not committed any error in holding that the circular was applicable in

the case of the assessee and in directing the Income Tax Officer to determine the cost of the acquisition on the basis of the value of land as

determined on the date of its conversion into non-agricultural land. The question referred to this court is, therefore, answered in the affirmative

against the Revenue and in favour of the assessee. The reference stands disposed of accordingly with no order as to costs.