

(1981) 09 GUJ CK 0004
In the Gujarat High Court
Case No : IT Reference No. 57 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Siddharth J. Desai

RESPONDENT

Date of Decision : 22-09-1981

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63, 65
Income Tax Act, 1961 — Section 2(14), 2(24), 4, 45, 53
Wealth Tax Act, 1957 — Section 2(e)(c)

Citation : (1982) 10 TAXMAN 1

Hon'ble Judges : P.D. Desai, J; D.H. Shukla, J

Bench : Division Bench

Advocate : B.R. Shah and G.N. Shah, for the Appellant; K.C. Patel, for the Respondent

Judgement

Desai, J.—The familiar but vexed question raises its head again in this reference: Was a piece or a parcel of land held by the assessee "agricultural land" so that the surplus realized on the sale thereof was not chargeable to income tax under the head "Capital gains"? The question arose in the course of the proceedings for the assessee's assessment to income tax for the assessment year 1969-70, the previous year being the financial year ended 31-3-1969. The question is required to be answered in the light of the facts set out hereunder. The assessee, who ordinarily resides at Ahmedabad, had purchased along with another person a piece or parcel of agricultural land, admeasuring 15,054 sq. yds. (approximately 3 acres, 4 gunthas), situate in village Billimora, for a total consideration of Rs. 43,989. The conveyance was executed on 18-8-1965. The assessee had an undivided one-third share in the said piece or parcel of land and he contributed a sum of Rs. 15,400 towards the consideration. The land is situate in an area which was not included in the municipal limits and there is no evidence or material on the record to show that there was any development in the surrounding area indicating any potentiality for the development of the land. After the purchase, the land was put to agricultural use for a period of three years. According to the

revenue record, the crop of pulse (tuver) was realised for two years and, for one year, the land yielded green grass. The yield, however, was of a very low order quantitatively and, therefore, there was no sale of the produce. It is not in dispute that at or about the time of its subsequent sale, the land was not actually put to agricultural use. All the while, however, the land continued to be listed in the revenue record and it was assessed to land revenue.

2. The assessee made an application to the competent authority u/s 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, for permission for the sale of the land to the Smrutikunj Co-operative Housing Society Ltd. The permission was granted by an order made on 16-11-1968 and 22-11-1968. The permission was granted subject to the conditions that (i) the land should be used for residential purposes, (ii) the conveyance should be executed within a period of one year, (iii) the permission for non-agricultural use u/s 65 of the Bombay Land Revenue Code, 1869, should be obtained from the competent authority within the same time limit, and (iv) the construction should also commence within the same time limit. Within about two and half months of the grant of permission, the conveyance in favour of the Smrutikunj Co-operative Housing Society Ltd. was executed on 1-2-1969. Within about four days" time thereafter, the vendee obtained from the competent authority the permission for the non- agricultural use of the land.

3. The assessee, who had received a sum of Rs. 67,928 as his one-third share in the total amount of consideration, claimed in Part IV of the return of income that since the land in question was agricultural, the surplus realised by him on the sale thereof was not liable to be taxed as capital gains. The ITO was of the view that since no agricultural operations were carried on immediately before the sale of the land in question, the land could not be treated as agricultural on the date of its sale and that, therefore, the surplus realised by the assessee was liable to be taxed as capital gains. On appeal, the AAC reversed the decision of the ITO. Having considered the entire evidence on record, the AAC held that the land in question was agricultural and that, therefore, the levy of capital gains tax was not justified. On further appeal, the Appellate Tribunal affirmed the decision of the AAC. At - the instance of the revenue, however, the Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the land bearing survey No. 538 sold by the assessee to Smrutikunj Co-operative Housing Society was an agricultural land and the surplus realised on a sale thereof was not liable to be assessed to capital gain in the assessment of the assessee for the assessment year in question?

2. Whether the land, bearing survey No. 538, ceased to be an agricultural land on the application for the permission made u/s 63 of the Bombay Tenancy and Agricultural Lands Act, 1948?

4. Under the charging section (section 4) of the income tax Act, 1961

(hereinafter referred to as "the Act"), where any Central Act enacts that income tax shall be charged for any assessment year at any rate or rates, income tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year or previous years, as the case may be, of every person. Section 2 (24) of the Act defines "income" as including any capital gains chargeable u/s 45 of the Act. Section 45, as it stood at the material time, provided that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53 and 54 of the Act, be chargeable to income tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place. Section 2 (14) of the Act, as it stood at the relevant time, defined "capital asset" to mean property of any kind held by an assessee, whether or not connected with his business or profession, but as not including agricultural land in India. The combined effect of these various provisions, as they stood at the material time, was that the profits realised from the sale of an agricultural land were not liable to be taxed as income under the head "Capital gains".

5. It would be pertinent to mention at this stage that under the provisions of the Wealth-tax Act, 1957, the word "assets" was at the relevant time so defined that the value of the agricultural land held by an assessee was not includible in the net wealth of the assessee chargeable to tax under the Wealth-tax Act. The question, therefore, as to what constitutes "agricultural land" arises both in proceedings for assessment to income tax as well as to wealth-tax. The decisions are galore under both the Acts in which several principles have been laid down and applied for determining whether the land in question was "agricultural land."

6. So far as this High Court is concerned, there are 18 decisions to which our attention has been invited dealing with the question either under the income tax Act or under the Wealth-tax Act. About 15 of those decisions have been reported in one or the other journal. The rest are still not reported. The earliest decision in point of time is in *Rashiklal Chimanlal Nagri Vs. Commissioner of Wealth-tax, Gujarat*. The latest decision, which is so far unreported, is in *CIT v. Sarifabibi Mohamed Ibrahim* [1981] 7 Taxman 1 (since reported in) and three companion matters, all of which were decided by a common judgment delivered on 17-4-1981 by the Division Bench, consisting of M.P. Thakkar, J. (as he then was) and R.C. Mankad, J.

7. Broadly speaking, the question has arisen in the context of four fact situations bearing upon the user of the land on the date of sale. In *Rasiklal Chimanlal Nagri's* case (*supra*), the question had to be decided in the light of the fact that the land in question was not being put to any use whatsoever and that it was lying idle on the relevant date. In *Commissioner of Wealth Tax, Gujarat Vs. Narandas Motilal*, on the material date, the land was actually being put to agricultural use and it was found that there were no other factors present in the case which could dislodge the presumption flowing from the agricultural use of

the land. In *Ranchhodbhai Ranchhodbhai Bhaijibhai Patel Vs. Commissioner of Income Tax, Gujarat II, Ahmedabad*, on the relevant date, i.e., on the date of the sale, the land was not used for agricultural purposes and the cesser of agricultural use was of a permanent nature. In *Himatlal Govindji Vs. Commissioner of Wealth-tax, Gujarat I*, though on the relevant date, the land was being used for agricultural purposes, the finding of fact was that such user was only by way of a stop gap arrangement pending the availability of buyers for the demarcated plots in question.

8. One fact which requires to be emphasised is that most of the cases which have arisen so far in this Court were concerned with land situate within the municipal limits of well developed cities and towns. We tabulate below those cases with the relevant particulars such as the description and location of land and the finding in each case as to its true nature and character.

Citation

Situation and description of land

whether held to be agriculture

(1)

(2)

(3)

RasiklalChimanlalNagri (supra)

4 plots in the Ellisbridge residential area, at same distance from Paldi, Ahmedabad; assessed to land revenue; permission for non-agricultural use not obtained.

No

CWT v. NarandasMotilal (supra)

2 plots of land situate in the Navrangpura area of Ahmedabad; sub-plotting made; some sub-plots sold; Draft T.P. Scheme applied; no non-agricultural use of the plots nor any residential activity in the vicinity.

Yes

HimatlalGovindjiv. CWT (supra)

38 plots on Jamnagar Road within the municipal limits of Rajkot; permission for non-agricultural use obtained; 70 other plots forming part of the same land previously sold for residential purpose; development in the vicinity; agricultural use made by way of a stop-gap arrangement.

No

CIT v. Manilal Sotmnath, (1977) 106 ITR 917 (Guj.)

Plot of land in Wadaj, Ahmedabad; agricultural operations carried on in the land though income and expenditure negligible; draft T.P. Scheme applied; surrounding area fully developed; permission u/s 63 of the Tenancy Act obtained for sale.

Yes

CIT v. Prakash Industries [1978] 114 ITR 316 (Guj.)

3 plots in Navrangpura-Shekhapura-Khanpur areas of Ahmedabad; land continuously used for agricultural purpose although surrounded by developed or developing area; sold on yardage basis.

Yes

Smt. Chandravati Atmaram Patel v. CIT [1978] 114 ITR 302

(Guj.)

Final Plot comprised in T.P. Scheme No. 20, Ahmedabad (in village Changispur, Mithakhali as revealed from the record); assessed to land revenue and actually used for agricultural purpose; full development in the vicinity.

Question Not Answered

Yaswanti R. Bhatt Vs. Commissioner of Wealth-tax, Gujarat,

Agricultural land in Paldi area of Ahmedabad; covered by T.P. Scheme; surrounding area well developed for housing; no cultivation for 6 out of 8 years involved; meagre income out of last 2 years" agricultural use.

No

Chhotalal Prabhudas Vs. Commissioner of Income Tax, Gujarat-V,

24 plots in Usmanpura area of Ahmedabad; T.P. Scheme No. 19 applied; previously used for brick manufacture; agricultural land since about 15 years prior to sale; in earlier years lying fallow but later grass and still later juvergrown; permission u/s 63 of the Tenancy Act obtained for sale; permission for non-agricultural use obtained after sales by vendees, all but one of whom were co-operative housing societies.

Yes

Gordhanbhai Kahandas Dalwadi v. CIT [1981] 127 ITR 664 (Guj.)

Agricultural land within the limits of Anand Municipality; temporary use for 2 years for brick manufacture; thereafter lying fallow except for one year when bajricrop raised; situate in fast developing locality; permission u/s 63 of the Tenancy Act obtained for sale.

Yes

Manibhai Motibhai Patel Vs. Commissioner of Income Tax, Gujarat,

5 pieces or parcels of agricultural land situate in Shekhpur-Khanpur locality (also called Navrangpura village) in Ahmedabad: actually used for raising crop for four years up to the date of sale; per mission u/s 63 of the Tenancy Act obtained for sale; sale for non-agricultural use; land covered by T.P. Scheme; residential locality nearby.

Yes

Sercon Pvt. Ltd. Vs. Commissioner of Income Tax, Gujarat,

Final plot comprised in T.P. Scheme and situate near the main road leading from Town Hall to Ellisbridge in Ahmedabad; surrounded on all sides by buildings; land shown in revenue records as agricultural land; for 17 years kept fallow; for a period of 4 years roughly immediately preceding the date of sale, put to agricultural use and some income derived from agricultural operations; no permission for non-agricultural use obtained from the authority.

Yes

ChandulalLallubhaiv. CIT (IT Reference No. 243 of 1975 decided on 16-9-1980 and 17-9-1980)

3 plots of land situate in Vastrapur-Paldi area of Ahmedabad; plots formed part of agricultural land subject to land revenue; two survey numbers in which two plots were comprised actually cultivated as agricultural land at the relevant time, finding of the Tribunal that such use of the land at the relevant time was a device or eye-wash found to be completely unjustified; no evidence that at any time the plots were actually put to non-agricultural use; covered by draft T.P. Scheme since 8 years prior to sale but development had not reached the land; permission of the Collector sought u/s 63 of the Tenancy Act for sale; the land itself not developed.

Yes

Ramprasad C. Dalalv. CIT [1981] 7 Taxman 173(Guj.)

Plot of land opposite Law Garden, Navrangpura, Ahmedabad; in wealth-tax proceedings from 1957-58 to 1967-68, the land was held to be agricultural; in record of rights for the relevant years, the land was shown to be under cultivation, books maintained showing accounts for cultivation; never put to non-agricultural use; agreement to sell described the land as agricultural; surrounding area fast developing; covered by T.P. Scheme since 1945; sold on yardage basis; very small income received by way of agriculture.

Yes

CIT v. Sarifabibi (supra)

Land situate at a distance of 1 kilometre from the railway station, Surat, covered

by a T.P. Scheme; a parcel of land out of the very land converted to non-agricultural use 15 years back and residential chawl constructed thereon; no agricultural operations were carried on; only grass fodder grown in the last year; the land still continued as agricultural land in revenue records and it was not actually converted to non-agricultural use; the purchaser was a housing society and the purchase was for non-agricultural use for which permission was obtained subsequently.

No

9. Next we may give similar particulars in a tabular form in respect of cases where the land was situate in the vicinity of or at some distance from well-developed cities:

Citation

Situation and description of land

Whether held to be agricultural

Ranchhodbhai Bhaijibhai Patel Vs. Commissioner of Income Tax, Gujarat II, Ahmedabad,

Large piece of land situate in village Saved at some distance from Baroda city, agreements of sale in respect of two separate portions of the land in favour (Guj.) of a construction company and a co-operative housing society; permission for non-agricultural use obtained thereafter; cessor of agricultural operations after agreements of sale price fixed on yardage basis.

No

MaganlalMorarbhaiv . CIT [1979] 118 ITR 224(Guj.)

A portion of the land situate at village Phoolpada near Surat; not within municipal limits; not covered by T.P. Scheme; used for agricultural purposes till the date of sale; the remaining portion of the land continued to be used for agricultural purposes even after sale; permission u/s 63 of the Tenancy Act obtained for sale; sale in favour of a co-operative housing society on yardage basis yielding high price.

Yes

Commissioner of Income Tax, Gujarat-II Vs. Vajulal Chunilal (HUF),

A portion of land situate at village Adajan, TalukaChorasi, District Surat; land surrounded by residential locality; sale in favour of a co-operative housing society after obtaining permission u/s 63 of the Tenancy Act; land not converted to non-agricultural use prior to sale and over several years used for agricultural purposes; even on the date of sale crops grown.

Yes

Motibhai D. Patel Vs. Commissioner of Income Tax, Gujarat,

A portion of land situate in Acher of Sabarmati, Ahmedabad; agricultural land which was under cultivation up to the date of sale; very small income, as compared to the investment made, derived from agricultural operations; permission for sale obtained u/s 63 of the Tenancy Act; sale in favour of co-operative housing societies; high price obtained on sale; land situate in residential area.

Yes

10. Only two more decisions remain to be referred to. Although judicial notice as regards the land involved in those cases being situate in the vicinity of two major cities can be taken, we have considered it proper to give below separately the relevant particulars in regard to those lands in a tabular form, since the exact particulars with regard to the distance between the land involved in those cases and the neighbouring cities are not available from the judgment.

11. This bird's eye view of the cases decided by this Court would indicate that the question has arisen mostly in the context of land situate in an urban conglomeration or on the periphery thereof. In quite a few cases, even such land has been held to be agricultural.

A closer examination of the decisions would reveal that the final conclusion in each case was reached upon a balanced consideration of the diverse factors, pro and con, present in the case. Since each case ultimately turned upon its own facts, a kaleidoscopic picture emerges from the catena of decisions and no precise formula can be extracted making it possible to deal with and decide future cases involving a similar question on the application of such formula. Indeed, this Court has repeatedly observed that whether or not a particular land is agricultural must, in the ultimate analysis, depend upon the facts and circumstances of each case and that in each case, the conclusion will have to be reached upon a balanced consideration of the diverse factors. This is also the view of the Supreme Court as is evident from the decision in *Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah*, wherein it is observed:

...the determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case." (p. 143)

It would, thus, appear that any attempt to devise any straight-jacket formula, howsoever precisely conceived and designed to cover all situations, would not prove to be a profitable exercise and that it may not always produce a correct answer.

12. It would be convenient at this stage to refer to the decision in the case of *Officer-in-Charge (Court of Wards) (supra)*. The question before the Supreme Court in that case was whether the property called "Begumpet Palace" within the

municipal limits of Hyderabad consisting of vacant lands, admeasuring about 108 acres, and also buildings enclosed in the compound wall constituted "agricultural land" within the meaning of section 2(e)(c) of the Wealth-tax Act. The income tax authorities had found that the land was never intended to be used for agricultural purpose and that since it was not ploughed or tilled, it had not been actually used for such purpose. The authorities up to the stage of the Appellate Tribunal held, therefore, that the property could not be treated as "agricultural land". On reference, the High Court held that the land was classified and assessed to land revenue as "agricultural land" under the Andhra Pradesh Land Revenue Act and that that circumstance coupled with certain other circumstances, present in the case led to the conclusion that the land was agricultural. On appeal to the Supreme Court, it was held that in the context it is imperative to give reasonable limits to the scope of the term "agricultural land". It was further held that to be "agricultural land", the land must be one "which could be said to be either actually used or ordinarily used or meant to be used for agricultural purposes." In other words, it must have "a connection with an agricultural user or purpose". It will not suffice merely to show that the land is "capable of being used for agricultural". What is necessary is "credible evidence of at least appropriation or setting apart of the land for a purpose which could be regarded as agricultural and for which the land under consideration could be reasonably used without an alteration of its character". What is really required to be shown is "the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality, which will only affect its valuation as part of "assets", but its actual condition and intended user which has to be seen for purposes of exemption from wealth-tax. If there is neither anything in its condition, nor anything in evidence to indicate the intention of its owners or possessors to connect it with an agricultural purpose, the land could not be agricultural land for the purposes of earning an exemption under the Act". The fact that the property was classified in the revenue records as agricultural land, though not conclusive, would raise a "rebuttable presumption" and it would furnish "good prima facie evidence". Evidence to rebut it should be led by the department.

13. On a conspectus of these cases, several factors are discernible which were considered as relevant and which were weighed against each other while determining the true nature and character of the land. It may be useful to extract from those decisions some of the major factors which were considered as having a bearing on the determination of the question. Those factors are:

1. Whether the land was classified in the revenue record as agricultural and whether it was subject to the payment of land revenue?
2. Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?
3. Whether such user of the land was for a long period or whether it was of a

temporary character or by way of a stop-gap arrangement?

4. Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?

5. Whether the permission u/s 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

6. Whether the land, on the relevant date, had ceased to be put to the agricultural use? If so, whether it was put to an alternative use? Whether, such cesser and/or alternative user was of a permanent or temporary nature?

7. Whether the land, though entered in revenue record, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?

8. Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?

9. Whether the land itself was developed by plotting and providing roads and other facilities?

10. Whether there were any previous sales of portions of the land for non-agricultural use?

11. Whether permission u/s 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user.

12. Whether the land was sold on yardage or on acreage basis?

13. Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?

At the risk of repetition, we may mention that not all of these factors would be present or absent in any case and that in each case one or more of those factors may make appearance and that the ultimate decision will have to be reached on a balanced consideration of the totality of circumstances.

14. One more thing before we turn to the facts and circumstances of the present case. While applying the test as to whether an agriculturist would have purchased the land for agricultural purposes at the price realised by the sale and

whether the owner would have ever sold the same by valuing it as property yielding agricultural produce on the basis of its yield, it must be remembered that the valuation of an agricultural land is a complex matter. Several factors enter into account in determining the value of an agricultural land such as the nature of the soil and its fertility, the type of crop for which the land is suited or is adaptable, the size of the land and the practicability of the use of mechanised implements, in order to procure better yield, the proximity to village and availability of transport facilities, the availability of irrigation facility and power and above all, the scarcity of the land in the area. Personal, social and economic considerations also influence, perceptibly or otherwise, the valuation of an agricultural land in our country. All these factors will have to be investigated into and a finding of fact will have to be recorded on each of the relevant aspects by the fact-finding authorities. In the absence of such findings, no presumption can ordinarily be raised, merely because high price is realised, that the land could never have been sold as an agricultural land for genuine agricultural user or purposes.

15. Against the aforesaid background, let us turn to the question whether on the facts and in the circumstances of the present case, the land in question was an agricultural land. The land, when jointly purchased by the assessee from an agriculturist about four years prior to its present sale, was admittedly agricultural. It was and it continued to be listed in the revenue records as agricultural land subject to the assessment of land revenue. For a period of three years immediately after its purchase, agricultural activity was carried on in the land which yielded agricultural produce. For the first two years, the crop of pulse (tuver) was raised and for the third year green grass was grown. Of course, quantitatively the yield was not much and there was no sale of the produce resulting in any profit to the assessee. However, the nature of exploitation of the land for the major part of the period during which the assessee held it would indicate that not only its physical characteristics but the user also was agricultural. It is not shown that such user was of a temporary character or as and by way of a stop-gap arrangement. Even though the land was not actually put to agricultural use since about one year prior to the sale, there is no evidence to establish that it was converted to any other use. It is true that permission u/s 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained by the assessee to sell the land to a co-operative housing society and that the permission was granted subject to the condition that the land should be used for residential purposes. This circumstance does not, however, militate against the land continuing to be agricultural on the date of its sale. The permission, in the instant case, was obtained only about two and a half months prior to the sale. The permission was necessary only because the land was agricultural and because it was governed by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The mere fact that such a permission was obtained does not mean that the land ceased to be agricultural use of the land u/s 65 of the Bombay Land Revenue Code was still not obtained from the

competent authority (sic). Such permission was, in fact, never obtained by the assessee it was obtained by the vendee after the sale was completed. Till the land was held by the assessee therefore, its character as agricultural land was not changed either as a result of its re-classification in the revenue records or by the actual alteration of its use. If, for any reason, the sale transaction had not gone through or the conditions laid down in the permission issued u/s 63 had not been satisfied, the permission would have been treated as cancelled. There is no evidence on record to show that there was any development in the surrounding area or that the land itself was developed prior to its sale. The land is located on the outskirts of the Billimora town but it was not situate within the municipal limits. The land must, therefore, be taken as having been situate in a rural area and it continued to an agricultural land right up to the date of its sale. There is no evidence or material on record to indicate that the price offered for the land by the vendee, even proceeding on the basis that the intended user on his part was non-agricultural, would not have been offered by an agriculturist who wanted to purchase the land for purely agricultural user. There being no evidence on record as regards the nature of the soil, its fertility, its suitability and adaptability for raising cash crops, the irrigation facility and such or similar factors which, as earlier pointed out, have a great bearing on the valuation of an agricultural land, it would be hazardous to come to the conclusion that the price offered was such that no agriculturist would have paid the same if he wanted to purchase the land for purely agricultural purposes. The evidence on record does not show whether the sale was on acreage or yardage basis. The extract from the sale deed reproduced in the Tribunal's order shows that the land was sold as an "agricultural land". Having regard to the totality of circumstances, we are of the view that the conclusion reached by the Tribunal, after taking into account all the relevant circumstances and upon a balanced consideration of the entire evidence and on the application of the correct legal test, is just and correct. In the result, the questions referred for our opinion are answered as follows:

Question No. 1

Answer : In the affirmative, i.e., against the revenue and in favour of the assessee.

Question No. 2

Answer : In the negative, i.e., against the revenue and in favour of the assessee. The Commissioner will pay the costs of this reference to the assessee.