

(2014) 04 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 3890 of 2014

Deepakbhai Ramjibhai Patel

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 148, 40(a)(2)(b), 50C

Citation : (2014) 366 ITR 134

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : S.N. Divatia, Advocate for the Appellant; Mauna M. Bhatt, Advocate for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—The petitioner has challenged the notice dated August 21, 2013, issued under section 148 of the Income-tax Act, 1961 ("the Act" for short). Under such notice, the Assessing Officer desired to reopen the assessment of the petitioner for the assessment year 2009-10 which was previously framed after scrutiny. The notice was thus issued within the period of four years from the end of the relevant assessment year. The Assessing Officer supplied the reasons recorded by him for issuing such notice to the petitioner which read as under:

"The assessee, Shri Deepakbhai R. Patel, is assessed to tax in the status of individual. The return of income for the assessment year 2009-10 was furnished on September 18, 2009, declaring taxable income of Rs. 1,46,590. The assessment was finalized under section 143(3) of the Income-tax Act, 1961, vide order dated October 18, 2011. The taxable income was determined at Rs. 1,99,350.

2. It is seen from the records that the assessee was the co-owner of land situated at village Chadiel, Tal. Daskroi, District Ahmedabad bearing survey No. 83, Block No. 130. The land was purchased by the assessee and his co-owner, Shri Dhirubhai Thakarshibhai, on May 28, 1998, vide deed registration No.

1556/1998 for Rs. 33,385. The land was agricultural land as on the date of transfer, i.e., May 28, 1998.

3. Thereafter, the assessee started procedure to convert this agricultural land into non-agricultural land and paid premium amount of Rs. 16,02,480 into the Government account on October 14, 2008, as per the order of District Collector, Ahmedabad, dated September 30, 2008. The said agricultural land was converted into non-agricultural land, vide the State Government's order dated February 10, 2009, after following the statutory/administrative procedure/formalities.

4. The said non-agricultural land was sold by the assessee and his co-owner for Rs. 36,66,180, vide sale deed registered at Sr. No. 1159/2009 on February 17, 2009. It is further seen from the records that the capital gain was worked out at Rs. 9,84,302 by the assessee for the assessment year 2009-10 and claimed deduction under section 54B of the Income-tax Act, 1961, on the ground that said long-term capital gain was invested in purchase of another agricultural land.

5. The scrutiny of details on records reveals that on the date of transfer, the land sold was not agricultural land, as discussed in the foregoing paragraphs. As such the conditions laid down under section 54B of the Income-tax Act, 1961, are not satisfied and the assessee was not entitled to deduction under section 54B of Income-tax Act 1961.

6. The claim for deduction to the extent of Rs. 9,84,302 was erroneously allowed at the time of framing the assessment under section 143(3) of the Income-tax Act, 1961. I have, therefore, reason to believe that income chargeable to tax to the extent of Rs. 9,84,302 has escaped assessment within meaning of the provisions of section 147 of the Income-tax Act, 1961. This is a fit case for issue of notice under section 148 of the Income-tax Act, 1961."

The petitioner raised objections to such notice for reopening under communication dated January 22, 2014. Such objections were rejected by the Assessing Officer by order dated February 7, 2014. The petitioner has, therefore, filed the present petition.

2. Counsel for the petitioner drew our attention to the documents on record and pointed out that in the return filed by the petitioner on September 18, 2009, the major claim of the petitioner was for exemption under section 54B of the Act. During the course of the original assessment, such claim was scrutinized thoroughly by the Assessing Officer. Only upon being satisfied about the validity of the claim, he framed assessment making no change. It is this assessment which the Assessing Officer desires to reopen on the basis that the petitioner sold the land which was converted into non-agricultural land and that, therefore, exemption under section 54B of the Act was not available. He submitted that such ground even otherwise lacked validity. The petitioner held agricultural land and used it for agricultural purpose right till the end it was sold. In order to sell the land to a non-agriculturist, the same had to be converted into a non-

agricultural land. Such permission was granted by the Government on February 10, 2009, and the land was sold on February 17, 2009.

3. On the other hand, learned counsel, Mrs. Bhatt, for the Revenue opposed the petition contending that in the original assessment the question of exemption under section 54B of the Act with respect to the land which was sold as non-agricultural land was never examined by the Assessing Officer. At this stage, sufficiency of reasons recorded by him cannot be gone into.

4. From the record, it emerges that in the return filed by the petitioner, the main claim was for exemption under section 54B of the Act on sale of his land. In the return itself, he appended a note stating that:

"4. Sale of land:

The assessee was the owner of the land agricultural land situated at Chandiel village, Ta. Daskroi, Dist Ahmedabad, Sur. No. 83, Block No. 130. The said land is joint property. The assessee is ? holder of the said property. The said land is sold out on February 17, 2009, of Rs. 20,63,700 (sale price Rs. 3666180 - premium paid conversion Rs. 16,02,480) in which the share of the assessee was Rs. 10,31,850 (? share of the assessee of Rs. 28,676 (? of Rs. 57,352). The land term "capital gains" is calculated as above computation."

From such note, it can be seen that the petitioner has paid premium for conversion of the land. Thus, even in the return, the petitioner pointed out to the Department that the land was converted from agricultural land. Additionally, during the course of assessment, further details were also brought to the notice of the Assessing Officer. On August 9, 2011, the Assessing Officer raised certain queries to the assessee with respect to his claim, which included the following:

"(i) Please furnish the complete details of the sources for the sums invested for purchase of agricultural land along with the proof.

(ii) Please furnish the copy of the proof of the conversion premium paid to the Government.

(iii) Please justify the capital gains on sale of property with reference to the provisions of section 50C of the Income-tax Act, 1961.

(iv) Please furnish detail copy of the account with Kirti Milk Bar. Also give details that the transaction with Kirti Milk Bar is whether falls within the person cover under section 40(a)(2)(b) of the Income-tax Act, 1961, or not."

The petitioner filed three replies. In his reply dated February 7, 2011, he pointed out as under:

"Copy of sale deed of immovable property (land) sold of Rs. 36,66,180.

The assessee was the owner of the agricultural land situated at Chandiel village, Ta. Daskroi, Dist. Ahmedabad, Sur. No. 83, Block No. 130 since May 28, 1998. The said land is joint property. The assessee is having ? holder of the said

property. The said land is sold out on February 17, 2009, for net consideration of Rs. 20,63,700 (sale price Rs. 36,66,180 less conversion premium paid to the State Government of Rs. 16,02,480) in which the share of the assessee was Rs. 10,31,850 (? of Rs. 20,63,700). The said property was purchased on May 28, 1998, for Rs. 57,352 (including stamp, registration fee and premium) in which the share of the assessee of Rs. 28,676 (? of Rs. 57,352). The long-term capital gain on sale of such land is already considered at the time of filing return of income for the assessment year 2009-10.

(A) in respect of abovementioned transaction following enclosures are attached herewith.

(1) Copy of sale deed of Rs. 36,66,180 is enclosed on pages 12 to 22.

(2) Copy of bank statement for verification of receipt of sale proceed on sale of land is enclosed on page 01 to 01.

(B) Enclosures regarding evidences for purchase of said property (sur. No. 83 block No. 130) are attached herewith as under:

(1) Copy of purchase deed is enclosed on pages 24 to 39.

(2) Copy of premium paid Rs. 16,693 on pages 40 to 42.

(C) Working of long-term capital gain:

By his reply dated August 2, 2011, he clarified that he was the owner of the agricultural land having ? share which was sold on February 17, 2009, for a net consideration of Rs. 20.63 lakhs (rounded off) which included the sale price of Rs. 36.66 (rounded off) less conversion premium of Rs. 16.02 lakhs (rounded off) paid to the State Government. He also pointed out that the sale deed was already on record. In his further reply dated August 24, 2011, he further clarified as under:

"Justification of capital gain:

The proceeds of the sale of land was invested in purchase of another agricultural land and, hence, the same was claimed under section 54B. The details of the same has been shown in the statement of total income attached with the return of income filed in your office and the copy of the same is attached at pages 6-10. The consideration of sale of the land as per the sale deed is credited in the assessee's savings bank account No. 27582 with the Saurashtra Co-op Bank Ltd. Bapunagar, Ahmedabad Branch. The copy of the bank statement has been submitted, vide submission dated February 7, 2011, page 1. The conversion premium has been paid through the above bank account and the copy of the receipt showing the payment made is enclosed at pages 1-5."

It can thus be seen that in the original assessment, the claim of the assessee for exemption under section 54B of the Act was thoroughly scrutinized. The Assessing Officer had raised certain questions. The assessee gave detailed

answers to such questions. It was made plain to the Assessing Officer that the petitioner as an agriculturist had purchased agricultural land in the year 1998 and sold the same on February 17, 2009, after converting the same into non-agricultural land on February 10, 2009. It was after examination of such details, the Assessing Officer accepted the claim for exemption under section 54B of the Act. The issue was thus thoroughly scrutinized. Merely because during such scrutiny, the Assessing Officer did not look at the angle of denying exemption on the ground that what the assessee sold was not an agricultural land, would not permit him to reopen the assessment for denying the claim on a new ground. Any such exercise on his part would be a mere change of opinion inasmuch as having examined the claim at length, the claim which did not present any complex facts and which was virtually the sole claim made in the return filed and examined during the course of assessment proceedings, cannot now be revisited on a new ground which may have occurred to the Assessing Officer. The assessee had presented all facts before the Assessing Officer and on the basis of such facts during the original assessment if he was of the opinion that the claim was not acceptable for any reasons, he would have expressed such opinion. In any case, to permit him to reopen the assessment to press in service a new ground for denying the claim would not be permissible. In the result, only on the first ground, the impugned notice dated August 21, 2013, is quashed. We, therefore, do not enter into the question of validity of the reasons recorded by the Assessing Officer to hold a belief that income chargeable to tax has escaped assessment. The petition is allowed and disposed of accordingly.