(1981) 02 GUJ CK 0004

In the Gujarat High Court

Case No : IT Reference No. 149 of 1976

Sercon (P.) Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 12-02-1981

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63

Citation : (1981) 6 TAXMAN 340

Hon'ble Judges : B.J. Divan, C.J;B.K. Mehta, J

Bench : Division Bench

Advocate : K.C. Patel, for the Appellant; N.U. Raval and R.P. Bhatt, for the Respondent

Judgement

B.J. Divan, CJ.

1. In this reference made at the instance of the assessee, the following question has been referred to us for our opinion: Whether, the Tribunal was justified in law in holding that the land in question bearing final plot No. 522-C sold by the assessee was not agricultural land and that the excess of Rs. 10,65,243 was liable to be taxed as capital gains tax even when the plot in question at the time of its sale was entered in the Government revenue records as agricultural land?

In the instant case, we are concerned with assessment year 1970-71, the relevant period of account being the financial year 1969-70. The assessee before us is a limited company and it was formed on April 1, 1968, by amalgamation of two private limited companies, namely, Western India Prospecting Syndicate Private Ltd. and Cotton and Cloth Private Ltd. The Western India Prospecting Syndicate Private Ltd. was formed on May 1, 1920, under the Indian Companies Act, 1913, and on July 10, 1947, Western India Prospecting Syndicate Private Ltd. had purchased 4,847 square yards of land at the rate of Rs. 46 per square yard and the total purchase price which was paid was Rs. 2,18,220. On August 14, 1969, the assessee-company which had got the land at the time of the amalgamation sold that plot of land for Rs. 13,08,690 and this means that the price was about Rs. 276 per square yard. The assessee contended that the land was agricultural land at the time when it was sold and, therefore, it was not liable to capital gains tax under the provisions of the income tax Act, 1961. 2. The question as to what is agricultural land in the context of income tax Act and Wealth-tax Act has been considered by the Supreme Court in Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, and it was also considered by this High Court in a series of decisions. It may also be pointed out that in Mst. Subhadra Vs. Narsaji Chenaji Marwadi, , in the context of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Supreme Court considered the meaning of "agricultural use "of the land. A series of decisions of our High Court, namely, Rashiklal Chimanlal Nagri Vs. Commissioner of Wealth-tax, Gujarat , Commissioner of Wealth Tax, Gujarat Vs. Narandas Motilal, and other cases up to date were considered by this High Court in Commissioner of Income Tax, Gujarat-III Vs. Manilal Somnath, and the decision of the Supreme Court in the case of Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, (hereinafter referred to as Begumpet Palace case) was referred to by this court in Chandravati Atmaram Patel Vs. Commissioner of Income Tax, Gujarat-III, Ahmedabad, and in subsequent decisions all these decisions have been considered from time to time. The latest of this series is the decision in income tax Reference No. 241 of 1976 decided by us on February 26/27, 1981: (since reported in Manibhai Motibhai Patel Vs. Commissioner of Income Tax, Gujarat, . There we have pointed out that in Mst. Subhadra''s case, AIR 1966 SC 806, Shah J., as he then was, speaking for the Supreme Court, observed (see p. 124 of 131 ITR):

It is common ground that till November 11, 1949 (that being the date on which the Collector of Ahmedabad sanctioned conversion of the user from agricultural to non-agricultural purpose), the plot was assessed for agricultural purposes under the Bombay Land Revenue Code. In the year 1947, the plot was undoubtedly lying fallow, but on that account, the user of the land cannot be deemed to be altered. User of the land could only be altered by the order of the Collector granted u/s 65 of the Bombay Land Revenue Code.''

3. Thus it is clear that in view of the position under the Bombay Land Revenue Code, even for, the purpose of the Bombay Rent Act, 1947, the land was treated as agricultural land being put to agricultural user because user could only be changed from agricultural to non-agricultural by a specific order made by the Collector u/s 65 of the Bombay Land Revenue Code. The following statement of the law was set out by us after considering the decisions, in Chandravati Atmaram Patel Vs. Commissioner of Income Tax, Gujarat-III, Ahmedabad, (at p. 312):

...the law, therefore, is very clear. If the land is actually used for agricultural purpose as shown by Commissioner of Income Tax, Gujarat-III Vs. Manilal Somnath, and also by the Supreme Court in Commissioner of Wealth Tax, Andhra

Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , it can be said to be agricultural land, at least, prima facie, as agricultural land could be said to be land which is either actually used or ordinarily used or meant to be used for agricultural purposes. If it is actually used at the relevant date for agricultural purposes and there are no special features, for example, building plot being actually used as a stop-gap arrangement for agricultural purposes or a building site being used for agricultural purposes, actual user or ordinary use or intention to use the land for agricultural purposes, or land is meant to be used for agricultural purposes, it would be ''agricultural land''. Secondly, potential use of the land as agricultural land is totally immaterial. Thirdly, entries in the record of rights are good prima facie evidence regarding agricultural land and if the presumption raised either from actual user of the land or from agricultural use or the land is to be rebutted, there must be material on the record to rebut that presumption. The approach of the fact-finding authorities, namely, the income tax authorities and the Tribunal should be to consider the question from the point of view of presumption arising from entries in the record of rights or actual user of the land and then consider whether that presumption is dislodged by the presence of other factors in the case.

4. This legal position was once again reiterated in Motibhai D. Patel Vs. Commissioner of Income Tax, Gujarat, . Chandravati Atmaram Patel Vs. Commissioner of Income Tax, Gujarat-III, Ahmedabad, was considered in Dr. Motibhai D Patel''s case and the following propositions were laid down (see headnote at p. 672):

(1) That the fact that permission was obtained u/s 63 of the Bombay Tenancy and Agricultural lands Act did not mean that the land ceased to be agricultural in character, because if for any reason the conditions laid down in the permission were not satisfied, the sanction would automatically be null and void and the land would again resume its agricultural character;

(2) That permission to convert the land into non-agricultural use was not obtained by the assessee and his co-owners prior to the date of sale on March 17, 1967, to the three co-operative societies; " (It may be pointed out that in the case before us, permission to convert the land into non-agricultural use was not obtained by the assessee before us before the land was sold on August 14, 1969).

(3) That the presumption raised from the long user of the land for agricultural purposes and the presumption arising from the entries in the revenue records were not rebutted by the revenue;

(4) That the fact that development had caught up with the land could not be a ground for holding that the land had ceased to be agricultural in character. The high price of the land which was paid in 1967, might reflect the potentiality for non-agricultural use so far as the land was concerned, but such potentiality did not mean that the land had lost its character as agricultural land;

(5) That the fact that only a very small income, as compared to the investment

made by the assessee and his co-owners, was derived from the land was totally irrelevant. The question whether the land is agricultural in character or not could be decided only by the use to which it was being put and not by the smallness or otherwise of the income which was derived by the assessee from the same.

5. It was urged by Mr. Raval appearing on behalf of the revenue before us that for nearly seventeen years after the Western India Prospecting Syndicate Private Ltd., purchased this plot of 4,847 square yards it was lying fallow and for a period of four years prior to 1969, agricultural operations were being carried on in the land. As pointed out by the Supreme Court in Mst. Subhadra''s case, AIR 1966 SC 806, the fact that the land was lying fallow is totally immaterial. Permission to convert the land to non-agricultural user had not been obtained u/s 65 of the Bombay Land Revenue Code. Moreover, in Grahams Trading Co. (India) Ltd. Vs. Income Tax Officer, Central and Others, , it was pointed out by Beg J., as he then was, speaking for the Supreme Court, at p. 138 of the report:

The property at Begumpet was known as ''Begumpet Palace, Hyderabad''. The buildings in this property were valued at Rs. 8,81,336 while the vacant land comprising an area of about 108 acres was valued at Rs. 15,69,052. The entire plot of land was enclosed in a compound wall and the various buildings inside it had their own compound walls. The property is situated within the limits of the Hyderabad Municipal Corporation. The land had never been actually used for agriculture, in the sense that it had never been ploughed or tilled. The property is situated adjacent to the tank known as '' Hussain Sagar '' on the southern side, and there are two walls in the said land. The land was capable of being used for agricultural and land revenue was being assessed and paid in respect of the said lands."

(Emphasis supplied by us)

6. On these facts the Supreme Court held that the presumption would arise from the entries in the land revenue records and from the fact that land revenue was being paid for agricultural use in respect of the land that the land was agricultural land and that until that presumption was rebutted by the revenue, it must be presumed that the land was agricultural land for the purposes of wealth-tax. It is well settled that what is agricultural land for wealth-tax purposes is also agricultural land for the purpose of considering the question of capital gains under the income tax Act, 1961.

7. The fact, therefore, that in the instant case for nearly seventeen years the land was being kept fallow and was being shown in the land revenue records as agricultural land as being used for agricultural purposes but was not actually cultivated and was lying fallow is, therefore, totally immaterial. The fact that a show was sought to be made for four years, according to the revenue, to put up the case that the land was being used for agricultural purposes, is again totally immaterial because even if the land was treated as lying fallow, the principle laid down in Mst. Subhadra'' s case, AIR 1966 SC 806 and in Commissioner of Wealth

Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, would apply. In the light of these two decisions of the Supreme Court, it must be held that if the land is shown in the revenue records as agricultural land or as land being put to agricultural use, and the permission u/s 65 of the Bombay Land Revenue Code has not been obtained, it must be treated as agricultural land.

8. Mr. Raval for the revenue urged before us that in the instant case, the fact that the land is situated in a completely developed locality and that it is very near the main road leading from the Town Hall in Ahmedabad to Ellis Bridge and that it is surrounded oh all sides by buildings, would indicate that the land had lost its agricultural character. He contended that the high price paid in 1947 at the rate of Rs. 46 per square yard and Rs. 276 per square yard in 1969, would indicate that the land was no longer agricultural in character. His contention is that the land was not meant to be used for agricultural purposes at the time when the land was sold in 1947 by the previous owner to Western Indian Prospecting Syndicate Private Ltd. and, at any rate, it was not meant to be used for agricultural purposes when it was sold by the assessee-company on August 14, 1969.

9. Now it is well-settled law that the character of a land, namely, whether it is agricultural land or whether it has ceased to be an agricultural land has to be judged as of the date of sale with reference to which the question of capital gains arises. In the instant case, the question that we have to ask ourselves is whether, at the date of sale by the assessee-company it could be said that the land was not meant to be used for agricultural purposes, and that, therefore, it bad lost its agricultural character. In Commissioner of Income Tax, Gujarat-III Vs. Manilal Somnath, , we have pointed out that the high price paid for the agricultural land may be due to the reflection of the potential non-agricultural user of the land but merely because high price is paid for a piece of agricultural land it cannot be said that the land had ceased to be agricultural land in character.

10. In Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , the Supreme Court has pointed out that when land is actually used for agricultural purposes or ordinarily used for agricultural purposes or meant to be used for agricultural purposes, it is agricultural land. Now, all that Mr. Raval''s argument amounts to is that as at the date of the sale on August 14, 1969, the land was not meant to be used for agricultural purposes. Evidence was led by the assessee-company to show that for a period of four years roughly immediately preceding- the date of sale on August 14, 1969, the land was being put to agricultural use and some income was being derived from agricultural operations on the land in question. Even if we were to disregard that part of the actual user and proceed to consider whether the land was meant to be used for agricultural purposes, there is nothing on the evidence to show that the land was not meant to be used for agricultural purposes. On the hand, there is the decision in Mst. Subhadra Vs. Narsaji Chenaji Marwadi, , which says that until the

permission from the Collector has been obtained u/s 65 of the Bombay Land Revenue Code the land must be treated as being used for agricultural purposes, even though the land is lying fallow because, according to the Supreme Court, the user of the land could be changed from agricultural to non-agricultural only by a permission granted u/s 65 of the Bombay Land Revenue Code; on the other hand, it has been pointed out in Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , which is a subsequent decision that if the presumption arising from the entries in the revenue records can be rebutted the land has to be treated as non-agricultural. Potential use of the land as agricultural land is immaterial, according to the decision of the Supreme Court in Begumpet Palace case. Therefore, applying the principles laid down in Mst. Subhadra Vs. Narsaji Chenaji Marwadi, , in the light of the decision in Begumpet Palace case, if, objectively speaking, it can be shown that either there was an unauthorised actual user for non-agricultural purposes or that there were clear cut materials and evidence in the shape of preparations, etc., made by the vendor, clearly indicating that he meant to use the land for non-agricultural purposes, the presumption arising from the entries in the record of rights can be said to be rebutted. Full effect must be given to both these decisions of the Supreme Court and, in our opinion, it is only when there is clear cut evidence of preparations, for example, preparing plaps and designs for construction of buildings on the plot of land in question in anticipation of the permission u/s 65 of the Land Revenue Code for non-agricultural use, or applying to the municipal authorities or other authorities for sanctioning of such plans and designs for the construction of buildings, that it can be said that, according to the vendor, the land was not meant to be used as land for agricultural purposes and, therefore, it had lost its agricultural character at the date of the sale. Barring such clear cut and specific evidence on the point, it cannot be said, so long as the permission u/s 65 of the Bombay Land Revenue Code had not been obtained from the Collector, that the user of the land had ceased to be agricultural and that land had lost its agricultural character.

11. In the instant case, there is no clear cut evidence to that effect and all that we have got is the fact that on the revenue records the land continued to be shown as agricultural land and no permission had been applied for from the Collector under the provisions of section 65 of the Bombay Land Revenue Code to change the user of the land. The fact that the land is situated in a well developed locality or within the limits of the Municipal Corporation or is covered by a town planning scheme, are totally immaterial for determining the character of the land as shown in the decisions already cited and as pointed out in our decision in income tax Reference No. 241 of 1976 decided on February 26/27, 1981-(since reported in Manibhai Motibhai Patel Vs. Commissioner of Income Tax, Gujarat, .

12. Under these circumstances, since the question which has been referred to us itself indicates that the plot in question at the time of sale was entered in Government revenue records as agricultural land, a presumption would arise that

it was agricultural land in character and that presumption is not capable of being rebutted by any of the materials on the record of this case, and in the light of the facts of this case conceivably there cannot be any materials and that is why we have not accepted the contention of Mr. Raval for the revenue that the procedure indicated by the Supreme Court in COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD., should be followed in the present case. Under these circumstances, we answer the question referred to us in the negative, that is, in favour of the assessee and against the revenue. The Commissioner will pay the costs of this reference to the assessee.

