(2018) 04 RAJ CK 0011

In the Rajasthan High Court

Case No : Income Tax Appeal No. 98, 99 of 2018

Virendra Singh & Ors. @APPELLANT@Hash Income Tax Officer

Date of Decision : 17-04-2018

Acts Referred:
Income Tax Act, 1961 — Section 54B, 54B(1)

Citation : (2018) 04 RAJ CK 0011

Hon'ble Judges : K.S.JHAVERI, J;INDERJEET SINGH, J

Bench : Division Bench

Advocate : Ashish Sharma

Final Decision : Dismissed

Judgement

,,,,

In both appeals common questions of law and facts are involved, hence, they are decided by this common judgment.",,,,

By way of these appeals, the appellants have challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal of the",,,,

assessee and appeal of Surendra Singh has partly allowed confirming the order of AO as well as CIT(A).,,,,

Counsel for the appellant has framed following questions of law:-,,,,

In DBITA No. 98/2018,,,,

â??(i) Whether in the facts and circumstances of the case the learned ITAT was justified in rejecting the claim of the assessee under Section 54B,,,,

claimed on account of capital gain on transfer of land used for agricultural purposes amounting to Rs. 9,01,332/-?",,,,

(ii) Whether in the facts and circumstances of the case, the ITAT was justified in holding the order of the Coordinate Bench of ITAT Hyderabad",,,,

completely at variance without discussing and considering the facts of the case of the assessee as also the facts of the case of ACIT vs. N.,,,,

Raghuverma (2013) 42 ITS 421 Hyd.?,,,,

(iii) Whether in the facts and circumstances of the case, ITAT was justified in holding that the lands under consideration (khasra Nos. 886 & 890)",,,,

were not used for agricultural purposes?â??,,,,

In DBITA No. 99/2018,,,,

â??(i) Whether in the facts and circumstances of the case the learned ITAT was justified in rejecting the claim of the assessee under Section 54B,,,,

claimed on account of capital gain on transfer of land used for agricultural purposes amounting to Rs. 8,05,540/-?",,,,

(ii) Whether in the facts and circumstances of the case, the ITAT was justified in holding the order of the Coordinate Bench of ITAT Hyderabad",,,,

completely at variance without discussing and considering the facts of the case of the assessee as also the facts of the case of ACIT vs. N.,,,,

Raghuverma (2013) 42 ITS 421 Hyd.?,,,,

(iii) Whether in the facts and circumstances of the case, ITAT was justified in holding that the lands under consideration (khasra Nos. 886 & 890)",,,,

were not used for agricultural purposes?â??,,,,

Though counsel for the appellant has relied upon the decision in the case of Commissioner of Wealth Tax vs. Officer-in-Charge reported in [1976] 105,,,,

ITR 133 (SC) wherein it has been held as under:-,,,,

â??For the reasons already given, we do not think that the term ""agricultural land"" had such a wide scope as the Full Bench appears to have given it",,,,

for the purposes of the Act we have before us. We agree that 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.",,,,

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. One of the objects of the exemption seemed to,,,,

be to encourage cultivation or actual utilisation of land for agricultural purposes.

If there is neither anything in its condition, nor anything in evidence to",,,,

indicate the intention of its owners or possessors, so as to connect it with an agricultural purpose, the land could not be ""agricultural land"" for the",,,,

purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence. We do not think that all these",,,,

considerations were kept in view by the taxing authorities in deciding the question of fact which was really for the assessing authorities to determine,,,,

having regard to all the relevant evidence and the law laid down by this Court. The High Court should have sent back the case to the assessing,,,,

authorities for deciding the question of fact after stating the law) correctly.â??,,,,

He has further relied upon the decision of Gujarat High Court in case of Gordhanbhai Kahandas Dalwadi vs. Commissioner of Income Tax reported in,,,,

[1981] 127 ITR 664 (Gujarat) wherein it has been held as under:-,,,,

â??In Chhotalal Prabhudas' case MANU/GJ/0006/1978 : [1979]116ITR631(Guj) , in 1952 non-agricultural use of the land was discontinued and",,,,

permission was obtained for use of land for purely agricultural purposes and thereafter for some years after 1952 the land was allowed to lie fallow,,,,

and thereafter agricultural operations were resumed on the land, and in the light of those facts, this court held that the land was agricultural land. In",,,,

that case, the land was used for brick-making for nearly two decades before it was returned to agricultural operations in 1952. In the instant case, we",,,,

have non-agricultural use for brick-making for a period of two years and thereafter the land was allowed to lie fallow and agricultural operations were,,,,

started and bajri was grown in this land in the revenue year 1964-65. We may point out that under the Bombay Tenancy and Agricultural Lands Act,",,,,

1948, ""land"" has been defined in s. 2, sub-s. (8), to mean, inter alia, land which is used for agricultural purposes or which is sometimes used as",,,,

agricultural land, but is allowed to lie fallow, is agricultural land for the purposes of the Tenancy Act, and it is that agricultural land for the sale of",,,,

which to non-agriculturist permission under s. 63 is necessary and it is in the light of this definition which has obviously to be borne in mind when,,,,

permission under s. 63 is obtained, that the question has to be approached. It must be pointed out that in CIT v. Manilal SOMNATH",,,,

MANU/GJ/0009/1976 : [1977]106ITR917(Guj) , this court has observed that merely because land is surrounded by development or that development",,,, has caught up with the land in question it should not be held that the land had ceased to agricultural land. It is nobody's case that permission for non-,,,,

agricultural use under s. 63 of the Bombay Land Revenue Code had been obtained by the vendor, the assessee, before he sold the land on January 30,",,,,

1969, to the purchaser. The importance of the potential non- agricultural use of the land may be reflected in the price which the purchaser is prepared",,,,

to pay for the agricultural land, but potential non-agricultural use does not alter the character of the land from agricultural land to non-agricultural land.",,,,

In the instant case, it has been found that the assessment which was being paid was for agricultural use of the land and special rates which are fixed",,,,

for non-agricultural use were not being paid by the assessee prior to the date of the sale. Under these circumstances, since the correct tests which are",,,,

required by law to be applied for determining as to of what date the character of the land is to be found and, secondly, in the right of what tests the",,,,

question has to be decided, have not been applied by the Tribunal, we are applying the correct tests to the facts found and, in our opinion, applying the",,,,

principles laid down by this court in CWT v. Narandas Motilal MANU/GJ/0021/1970 : [1971]80ITR39(Guj) , Manilal Somnath's case",,,,

MANU/GJ/0009/1976 : [1977]106ITR917(Guj) , Smt. Chandravati Atmaram Patel v. CIT MANU/GJ/0021/1977 : [1978]114ITR302(Guj) and",,,,

Chhotalal Prabhudas v. CIT MANU/GJ/0006/1978 : [1979]116ITR631(Guj) , read in the light of the observations of the Supreme Court in Begumpet",,,,

Palace's case MANU/SC/0232/1976 : [1976]10ITR133(SC) , it is clear that the Tribunal was in error when it held on the facts found that in law the",,,,

land was not agricultural land. The conclusion that it was not agricultural land was a mixed question of law and fact and the approach of the Tribunal,,,,

adopted in coming to this conclusion was not in strict accordance with law. Since the revenue records showed that this was agricultural land, the",,,,

approach should have been whether the presumption that this was agricultural land was being rebutted by any evidence about user of the land or about,,,,

the character of the land having been changed prior to the date of the sale. No such evidence has been pointed out from the records of this case or,,,,

from the facts found by the Tribunal and considerations of other development in the locality or other locality in the vicinity of the land are not proper,,,,

considerations to be applied, as was pointed out in Manilal Somnath's case MANU/GJ/0009/1976: [1977]106ITR917(Guj).â??",,,, [kljk la- Â¼{ks=Â½,"Leor2065 Â¼foRr

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