

No exemption if agricultural land inherited from father was sold after converting it into residential plots

Summary – The Jaipur ITAT in a recent case of Mahaveer Yadav, (the Assessee) held that where assessee converted agricultural land into residential plots and sold them, it was to be held that by plotting, agriculture land had been converted into assessee's stock-in-trade and according capital gains were to be computed as per section 45(2)

Where assessee's father died intestate leaving behind certain ancestral properties which assessee inherited under section 8 of Hindu Succession Act, said properties devolved on assessee in his individual capacity and not as karta of HUF and accordingly income from these properties would be assessable in assessee's hands in his individual capacity

Facts

- Assessee's father died intestate leaving behind certain ancestral properties which assessee inherited under section 8 of Hindu Succession Act.
- The Assessing Officer observed that there was a cash deposit of Rs. 11.19 lakhs in the bank account maintained by the assessee and the said income had escaped taxation and after regarding reasons, notice under section 148 was issued to the assessee. In response to the notice, the assessee filed his return of income disclosing other income of Rs. 88,500.
- During the course of reassessment proceedings, the assessee submitted that the cash so found deposited in his bank account related to cash receipt on sale of the plots of land. Based on field inspection done by an inspector of the Department and based on information received from Tehsildar, the Assessing Officer determined that the assessee had sold 20 residential plots for an amount of Rs. 84.09 lakhs during the relevant year. The Assessing Officer treated the sale of plots of agriculture land as adventure in the nature of trade for the reason that the land had been sold after plotting which had resulted in change in the nature and character of agriculture land to residential and thereby assessed the income as business income instead of working out long capital gains on sale of these plots of land.
- On appeal, the Commissioner (Appeals) held that since the assessee had sold the land after plotting, it was an adventure in the nature of trade. Therefore, after allowing the deduction of expenditure on development of land at 10 per cent of the receipt, he computed the income from business at Rs.48.99 lakhs.
- On appeal to the Tribunal:

Held

- Where the assessee himself through his conduct and affirmative action is admitting that what has been sold are residential plots of land, the basis of the contention so raised by the assessee that what has been sold by the assessee are agricultural plots of land is not understandable. Further, as

noted above, the size of the plots so sold doesn't warrant any iota of doubt that these are residential plots and not agricultural plots of land. Further, there is no evidence on record to suggest that at the time of sale, agriculture activities were being carried on the said pieces of land. In light of above, the contention so advanced by the assessee is unacceptable.

- There are situations where a capital asset, subsequent to initial acquisition, is converted or treated as stock-in-trade of business carried on by the assessee. In such cases, the intention at the time of purchase or acquisition would not be of much relevance. What is of more relevance is to determine the intention at the subsequent point in time, through conduct and affirmative actions, that the capital asset so purchased initially has been converted or treated as stock-in-trade of the business carried on by the assessee. The legislature has since envisaged such a situation and has brought on the Statute books the provisions of section 45(2) by virtue of the Taxation laws (Amendment) Act, 1984 with effect from 1-4-1985 and there is now a statutory recognition that even asset initially acquired as investment can be subsequently converted into stock-in-trade.
- As per section 45(2), profits & gains arising from the transfer by way of conversion by the owner of a capital asset into or its treatment by him as stock-in-trade of business carried on by him, shall be chargeable to tax as income of the previous year in which such stock-in-trade is sold or otherwise transferred and for the purpose of section 48, the fair market value of the asset on the date of such conversion shall be deemed to be full value of consideration received or accruing as a result of the transfer of capital asset. Therefore, fair market value of the asset on the date of conversion as reduced by the cost of acquisition is required to be assessed under the head 'capital gain'. Further, sales realization of the stock-in-trade over such fair market value is required to be assessed as 'business income'.
- In the instant case, after the death of his father, the assessee had inherited his share of ancestral agriculture land. As already held above such inheritance is in his individual capacity and not in capacity of his HUF. Thereafter, the assessee had taken a series of steps whereby he has developed the agricultural land into 34 smaller plots, developed access road within the plotted land and sold to individual purchasers as residential plots over a period of 3 years. As per assessee's own submissions dated 23-3-2015, the development of plots took about 12 months and completed at the end of financial year 2009 and gravel road developed. There is report of the Inspector on record who has visited the place on 19-3-2015 and has given a finding that about 40-50 residential houses have already been built where people are staying, roads have been laid down, a hospital by name of Shyam Hospital is running on one of the plots, a school by name of little star school is also running on one of the plots and the whole area has been developed as a residential colony. The said findings of the Inspector remain unrebutted. The Stamp duty authorities have also recognized the plotting as residential plots which is very much evident from the registered sale deeds and the stamp duty paid on such sale of residential plots. All these facts taken together shows clearly that the assessee has taken affirmative steps and actions where he has converted his agricultural land into residential stock-in-trade of his business of selling the plots of land for earning profit. The very nature and

purpose of the agriculture land has been changed and the findings of the Commissioner (Appeals) that such change is an irreversible change where very nature and purpose of the land has been changed from agriculture to residential is agreeable. It is not a case that the buyers have acquired agriculture plots and subsequently changed it to residential use. In this case, the assessee itself has developed residential plots and then sold it to individual buyers. Therefore, the findings of the Assessing Officer that by such plotting of land, the agriculture land has been converted into stock-in-trade (in form of residential plots) of assessee's business are affirmed. The development of residential colony and said conversion has happened by assessee's own admission during financial year 2009 and the intent of the assessee has thus been demonstrated through his own actions. The fair market value of the asset on the date of conversion as reduced by the cost of acquisition is required to be assessed under the head 'capital gain' in the year(s) the stock-in-trade is sold/transferred. Further, sales realization of the stock-in-trade over such fair market value is required to be assessed as 'business income'. During the year under consideration, it is an admitted position that 15 plots have been sold for a consideration of Rs. 54.93 lakhs. Therefore, the taxability arising on conversion of agricultural land into stock-in-trade to the extent it has been sold during the year, arises during the impugned assessment year. The matter is accordingly set aside to the file of the Assessing Officer to determine the capital gains in accordance with the provisions of section 45(2) as well as business income on sale of such plots. In the result, the appeal of the assessee is partly allowed.