

No denial of sec. 54B relief if land sold by assessee was classified as agricultural land in revenue record

Summary – The Pune ITAT in a recent case of Murtuza Shabbir Jamnagarwala, (the Assessee) held that where land sold by assessee was classified in revenue record as agricultural land and was subjected to land revenue and, further, land was being cultivated on which jowar crop was grown, land transferred by assessee was an 'agricultural land' and capital gain arising from sale of such land was eligible for exemption under section 54B

Facts

- The assessee transferred its agricultural land admeasuring 81 Are equal to 8100 sq.mtr to one DMR, a builder and developer. The assessee computed capital gain at Rs. 27.79 lakhs. The said amount of capital gain was claimed as exempt under section 54B(1) on the ground that he had further purchased two agricultural lands for a total consideration of Rs. 57.39 lakhs.
- The Assessing Officer noticed that the assessee had entered into a development agreement with DMR for transfer of the land, which was situated within the Municipal Corporation limits. He held that the land ceased to be an agricultural land. The Assessing Officer held that the capital gain arising from the transaction was out of non-agricultural land and, hence, no exemption under section 54B could be allowed towards investment made by the assessee in two agricultural lands.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On second:

Held

- Section 2(14) defines 'capital asset' to mean property of any kind etc. held by the assessee but does not include certain assets including 'agricultural land in India', not being a land situated within 2/6/8 kms, as the case may be, from the local limits of any Municipality. If an agricultural land satisfying the conditions as given in section 2(14) is transferred, any gain arising from such a transfer is a capital receipt, not chargeable to tax as the same does not arise from the transfer of any capital asset. If on the other hand, certain agricultural land, not satisfying the conditions laid down in section 2(14), is transferred, any profit arising from such a transfer is chargeable to tax under the head 'capital gains'. There is no quarrel over the proposition that the land transferred by the assessee did not satisfy the conditions given in section 2(14) and hence qualified as a 'capital asset'.
- The case of the assessee is that he transferred the agricultural land, being, a capital asset and purchased two other agricultural lands within two years and hence, he is entitled to exemption under section 54B. The Assessing Officer has not disputed that the lands purchased by the assessee are agricultural lands. Thus, the second part of the exemption provision, being, purchase of new agricultural lands within period of two years, stands satisfied. The dispute is on the first part of the exemption as to whether or not the land transferred by the assessee was an agricultural land?

- It is nobody's case that the land transferred by the assessee was not a capital asset. Now the question arises as to whether such capital asset was an agricultural land or not? If the assessee succeeds in proving that the land transferred by him was an agricultural land, his claim to exemption under section 54B would be justified.
- A close scrutiny of various clauses of the agreement, described as 'development agreement', transpires that though the nomenclature of "development agreement" was assigned by the parties to the agreement, but it was, in fact, a case of outright sale of 81 Are of land by the assessee to DMR. The assessee received total consideration in full and did not have any further interest in the property to be constructed by the developer. The land transferred by the assessee was to be utilized by the transferee for construction of flats to be sold by him at a later date, as owner. The sum and substance of the above clauses is that the assessee transferred the land on an outright sale basis and did not intend to develop the land through DMR by retaining his ownership rights in it.
- The 7/12 extract of the agreement has been examined. The first thing which emerges from the 7/12 extract is that the assessee transferred "Jirayat land". The authorities below have noted from the 7/12 extract that the land in question was "Jirayat land". The assessee also stated before the Assessing Officer that the land transferred has been classified as "Jirayat type of agricultural land". The Commissioner (Appeals) has noticed in the impugned order that "Jirayat" means 'a barren land'. Similar fact has been recorded in the impugned order, whereby he has held that the "Jirayat land" means that "the land was a fallow land". It, therefore, emerges that the authorities below have proceeded on the premise that the land transferred by the assessee was a "Jirayat land", which as per them means a barren or a fallow land. The assessee has admitted w.r.t. the 7/12 extract that the land transferred was a 'Jirayat land'. However, the meaning ascribed to the *Jirayat land* by the authorities, is not correct. As per the commentary by A.K. Gupte on "Maharashtra Land Revenue Code, 1966", relevant pages from which have been placed on record, certain classification has been given in this commentary, as per which "*Jirayat or Jirait*" means '*land appropriated to or fit for agriculture*'. The term "*Jirayat*" has been defined in the commentary to mean *dry crop land*, which means "*the cultivation mainly depends upon annual rainfall*". Even otherwise, a *Jirayat land* is used for seasonal crops like Khariff and Rabi, where cultivation depends upon annual rainfall. In this commentary, it has been mentioned that "*land unfit for cultivation*" or a barren land is described by the expression "*Kharaba*". This discussion shows that the bedrock of the opinion formed by the authorities below, being, the meaning of the term "Jirayat" land as a barren or fallow land, is erroneous. The english translation of the 7/12 extract of the land transferred by the assessee, also declares the land in question as "Jirayat land", which means that it was a cultivable land as against the view of the authorities of the same being a barren or fallow land. The 7/12 extract which deals with the possession/ownership and crops on the land in question provides details of crop grown on it. There is a reference to the years 2004-05 to 2007-08 in this extract and the name of the cultivator has been given as "self". The crop grown has been written as "jowar crop" in all the four years. These facts amply prove that not only the land was a cultivable land, but "jowar crop" was also

raised by the assessee on it during the year under consideration and immediately preceding three years as well.

- It is further pertinent to note from the 7/12 extract that the land revenue of the said property has been determined at 33 paise. This fact proves that the land was subjected to land revenue. Another factor which weighs in favour of the assessee is that the land was transferred for a consideration of Rs.1.70 crore determined by 00 Hector 81 Are area, *i.e.* 8100sq.mtr and not by rate of square feet or square yard.
- When examining the facts of the instant case, it becomes manifest that the important factors weigh for and against the assessee which includes that the land in question was classified in the revenue records as 'agricultural land' and was subject to land revenue. The land was actually used for agricultural purposes at the relevant time. User of such land was not temporary and was for at least 4 years in a row, as emerged from 7/12 extract. The land was not sold on yardage basis. And factors which are against the assessee are that the land was situated in a developed area. After transfer, it was to be developed by plotting and providing road facilities etc.
- On a cumulative consideration of all the relevant factors prevailing in the instant case, both for and against the treatment of land transferred by the assessee as agricultural land, it is to be held that the assessee transferred agricultural land to DMR. It is so for the reason that the land was classified as agricultural land in land revenue records; subjected to land revenue; was being cultivated on which jowar crop was grown. Here the concerned Talathi of the land transferred by the assessee has certified in the 7/12 extract that the 'jowar crop' was grown on the land in last four years in line. It is, therefore, held that the land transferred by the assessee was an 'agricultural land' and the capital gain arising from such land was eligible for exemption under section 54B.