

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
(Conducted through Virtual Court)
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.766/Ahd/2019
निर्धारण वर्ष/ Asstt.Year : 2014-15

Rekhaben Jayeshkumar Patel 28, Shyam Villa Bunglow B/h.Shatyam Complex Science City Road Solagam Ahmedabad 380 060. PAN : BIBPP 3410 P	Vs.	ITO, Ward-4(2)(4) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Chetan Agarwal, AR
Revenue by :	Shri Kamlesh Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/11/2021
घोषणा की तारीख /Date of Pronouncement: 01/12/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT:

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-4, Ahmedabad dated 21.1.2019 passed for the Asstt.Year 2014-15.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming addition of Rs.38,83,332/- made by the AO on account of entire sale consideration on sale of urban agriculture land.

3. Brief facts of the case are that the assessee has filed her return of income on 5.12.2014 declaring total income of Rs.1,94,220/-. During the course of assessment proceedings, it came to notice of the AO that the assessee has sold two immovable properties valued at

Rs.2,33,00,000/- and Rs.61,31,318/- on 7.10.2013. The assessee has 1/6th and 1/10th share in both properties. The AO has confronted the assessee as to why she has not disclosed capital gain resulted to her on sale of these properties. After hearing the assessee, the Id.AO has made addition of Rs.38,83,332/- with regard to the first property only where the assessee has 1/6th share. Appeal to the CIT(A) did not bring any relief to the assessee.

4. Before us, the Id.counsel for the assessee contended that on sale of immovable property long term capital gain or short term capital gain is required to be computed. In the present case, the Id.AO has computed long term capital gain assessable in the hands of the assessee, however, while computing the capital gain, he took 1/6th of the gross sale consideration without giving benefit of indexation of cost of acquisition. The gross sale consideration cannot be the capital gain in the hands of the assessee. Therefore, he prayed that the issue be remitted to the file of the AO for fresh adjudication.

5. On the other hand, the Id.DR contended that the assessee failed to give computation during the assessment proceedings, and therefore, the Id.AO has rightly computed the gain.

6. We have considered rival submissions and gone through the material available on record. Section 48 of the Income Tax Act provides mode of computation of capital gain. This section contemplates that income chargeable under the head capital gain shall be computed by deducting from the value of consideration received or accruing as a result of the transfer, the amounts, viz. (i) expenditure incurred wholly and exclusively in connection with such transfer, and (ii) the cost of acquisition

asset and the cost of any improvement thereto. As per this section, the AO is bound to find out the date of acquisition, and thereafter he is bound to provide indexation. In the present case, the assessee has pointed out that it was an agriculture land though fallen within eight kilometers of municipality. In other words, this is an urban agriculture ancestral land, and therefore, valuation as on 1.4.1984 is required to be made for the purpose of ascertaining the cost of acquisition, and thereof, benefit of indexation is to be given. After this exercise, if any loss or gain resulted to the assessee is to be computed. We find merit in this contention of the Id.counsel for the assessee, and accordingly we set aside both orders of the Revenue authorities. We remit this issue to the file of the Id.AO, who shall ascertain status of the land in the hands of the assessee; that is, whether it is an ancestral land or not; when the assessee has inherited it; what was cost of acquisition in the hands of the ancestors i.e. prior to succession happened in favour of the assessee. He has to find out cost of acquisition and make indexation thereafter. After this exercise, the Id.AO will compute long term capital gain or loss if any in the hands of the assessee. With the above observation, this issue is relegated to file of the AO for adjudication.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 1st December, 2021 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 01/12/2021