A COMMISSIONER OF INCOME TAX, MADRAS

v.

GEMINI PICTURES CIRCUIT PVT. LTD.

MARCH 27, 1996

B [B.P. JEEVAN REDDY AND S. SAGHIR AHMAD, JJ.]

Income Tax Act, 1961 :

Sections 2 (14)(iii), 45 and 47(viii)—Income Tax liability as capital C *gain from "Agricultural Land in India "which is purchased and subsequently sold, will be allowed—Mere fact that a portion of the said land in heart of city being used for raising bananas and vegetables as stop gap activity will not make the land "Agriculture Land"—"Agricultural Land in India" whether a capital asset—Factors Relevant for the purpose—Nature and character of* D *land, environment and situation—Intention of the assesses at the time of purchase—Previous, present and future use of land—Potential value, Revenue Records of land—Cumulative consideration of all the relevant facts tobe taken into account.*

E **A property comprising of 70 acres, 16 grounds 825 sq. ft situated in the heart of Madras city, was purchased by one R in 1944. He sold the land to an extent of 79 ground 242 sq. ft, roughly four acres out of it to the respondent-assessee under a registered sale-deed dated 27.10.1950 for a consideration of Rs. 5,53,705. The land comprised of a hotel building as well. After purchasing the said property, the assessee constructed two** F **buildings over an extent of 20 grounds towards north. A common road of a width of 25ft was also formed at the western extremity of the property; the road took away 7.6. grounds. An extent of 9.8. grounds was kept as frontage for the building. Excluding the area covered by three buildings, their frontage and the road, an extent of 39.1 grounds was still left vacant and the assessee was raising bananas and growing vegetables thereon.**

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In the years 1966-67, the assessee executed three sale deeds. 19.74 grounds was sold to India Cements Limited. 10.05 grounds was sold to Imperial Tobacco Company of India Limited and 3.85 grounds was sold to Handicrafts Emporium. All these sale deeds were in respect of the H **vacant land comprised in 39.1 grounds.**

In the proceedings relating to assessment year 1967-68, the assessee contented that the land sold under the aforesaid saledeeds, being an agricultural land, does not constitute "capital asset" and therefore the profits arising from its sale is not exigible to tax under Sec. 45 of the Income Tax Act, 1961. The Income Tax officer rejected the contention. On appeal, the appellate Assistant Commissioner affirmed the view taken by the Income Tax Officer. On further appeal to the Tribunal, there was a difference of opinion between the Accountant Member and the Judicial Member. The Accountant Member attached great importance to the fact that the land in question was under cultivation on the date of sale and other circumstances do not detract from the sale position. In view of the difference of opinion, the matter was referred to the Vice-President of Tribunal. The Vice President agreed with Judicial member. The Vice President observed that the actual user is not conclusive and held that an urban land does not become an agricultural land because some cultivation is done thereon. He referred to relevant circumstances, viz., (a) the environment and situation (b) the intention of the assessee at the time of purchase (c) the nature and character of the land (d) the previous and present and future use to which land is put (e) its potential value. (f) the fact that it was registered as municipal land in municipal record and not recorded as agricultural land; and hence held that it can not be treated as an agricultural land.

On reference U/s 256(1) of the Act, the two questions which were referred to the High Court at the instance of the respondent assessee; were as under;

"(i) Whether, on facts and in the circumstances of the case the land sold during the year of account was not Agricultural land in India during the year of assessment and hence not liable to be excluded from the definition of the words 'Capital Asset'?

(ii) Whether, the surplus realised on the sale of land is not exempt from Capital Gains?"

The said questions were answered by the High Court in favour of the assessee and against the Revenue; and held that actual user of the land in the main would be basis for the test for determination.

The Revenue has preferred the present appeal against High Court's

A order.

Allowing the appeal, this Court

HELD : 1.1. Whether a land is an agricultural land or not is essentially a question of fact. The question has to be answered in each case
B having regard to the facts and circumstances of that case. The court has to answer the question on a consideration of all of them-a process of evaluation. The inference has to be drawn on cumulative consideration of all the relevant facts. [1014-H, 1015-A]

1.2. Mere fact that it was sold at a high price indicates its potentiality
C for non-agricultural use. [1014-F]

2. The land is situated on Mount Road, Madras which is most important and the busiest thorough fare in the City. The land is surrounded on all sides by industrial and Commercial buildings. No agricultural operations were being carried on in any land nearby. In the face of the above
D circumstances the mere fact that vegetables were being raised thereon at the time of the sale or for some years prior there to does not change the nature and character of the land. Obviously, it was only a stop gap activity. It was not a true reflection of nature and character of land. [1013-E-G]

E *Gordhanabhai Kahandas Dalwadi* v. *CIT*, (1981) 127 IT 664 (Guj.) and *Motibhai D. Patel (Dr.)* v. *CIT*, (1981) 127 ITR 671 (Guj), Distinguished.

Sarifabibi Mohamed Ibrahim v. *CIT*, [1993] Supp. 4 SCC 707 = (1993) 204 ITR 631, relied on.

F *CIT* v. *V.A. Trivedi*, (1998) 172 ITR 95 = (1998) Tax LR 373 (Bom.), referred to.

Gemini Pictures Circuit (P) Ltd. v. *CIT*, (1981) 130 ITR 686 (Mad), reversed.

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6133-34 of 1983.

From the Judgment and Order dated 1.8.80 of the Madras High Court in I.T.R. No. 563 of 1976.

H K.N. Shukla, S.N. Terdol and S. Rajappa for the Appellants.

Aruneshwar Gupta and Manoj K. Das for the Respondents. A

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. These appeals arise from the judgment of the Madras High Court answering the two questions referred to it at the instance of the respondent-assessee in favour of the assessee and against B the Revenue. The two questions are :

> "(i) Whether, on the facts and in the circumstances of the case the lands sold during the year of account was not 'Agricultural land in India' during the year of assessment and hence not liable to be excluded from the definition of the words 'capital Asset'? C
>
> (ii) Whether, the surplus realised on the sale of land in the year of account is not exempt from capital gains?"

The property known as Spencer's Hotel comprising 70 acres, 16 D grounds* 825 sq. ft. situated on Mount Road, Madras was purchased by one Gulab Bhai Mukund Rao Rane in 1944. Rane sold an extent of 79 grounds 242 sq.ft. (roughly 4 acres and odd) out of it to the assessee under a registered sale-deed dated October 27, 1950 for a consideration of Rs. 5, 53,705. The extent purchased by the assessee comprised the hotel building as well. After purchasing the said extent, the assessee constructed E two buildings over an extent of 20 grounds towards the north. A common road of a width of 25 ft. leading from Mount Road was also formed at the western extremity of the property; the road took away 7.6 grounds. An extent of 9.8. grounds was kept as frontange for the two buildings. Excluding the area covered by three buildings, their frontage and the road, an F extent of 39.1 grounds was still left vacant. On this extent, the assessee was rising bananas. From 1962, it had been growing vegetables thereon.

In the years 1966-67, the assessee executed three sale-deeds. 19.74 grounds was sold to India Cements Limited on April 29, 1966. 10.05 grounds was sold to Imperial Tobacco Company of India Limited on April G 29, 1966 and 3.85 grounds was sold to Handicrafts Emporium on March 27, 1967. All these sale deeds were in respect of the vacant land comprised in 39.1 grounds aforesaid. In the proceedings relating to its assessment for

* In the city of Madras, we are told, a ground means an area/plot admeasuring 266 sq. yards. H

A the Assessment Year 1967-68, the assessee contented that the land sold under the aforesaid three sale-deeds, being an agricultural land, does not constitute 'capital asset' and, therefore, the profit arising from its sale is not exigible to tax under Section 45 of the Income-Tax Act, 1961. The Income Tax Officer rejected the contention holding that having regard to the location and the physical characteristics of the land, the development and use of the adjoining lands and the price at which and the purpose for which it was sold, go to show that it was not an agricultural land. On appeal, the Appellate Assistant Commissioner affirmed the view taken by the Income Tax Officer. On further appeal to the Tribunal, there was a difference of opinion between the Accountant Member and the Judicial Member. The Accountant Member attached great importance to the fact that the land in question was actually under cultivation on the date of the sale and held that the other circumstances pointed out by the Income Tax Officer and the Appellate Assistant Commissioner do not detract from the position that the land was actually being used as an agricultural land on the date of its sale. The Judicial Member on the other hand held that having regard to the location, its price, the fact that it was registered as an urban land in the Municipal records and the purpose for which land was purchased would all go to show that it was not an agricultural land. In view of the said difference of opinion, the matter was referred to the Vice President of The Tribunal. The Vice President agreed with the Judicial Member. The Vice President observed that the actual user is not conclusive. He held that an urban land does not become an agricultural land merely because some cultivation is done thereon. He referred to several relevant circumstances, viz., (a) the environment and situation; (b) the intention of the assessee at the time of purchase; (c) the nature and character of the land; (d) the previous, present and future use to which the land is put; (e) its potential value and (f) the fact that it was registered as municipal land in the municipal records and not recorded as agricultural land and held that it cannot be treated as an agricultural land. Thereupon the aforesaid two questions were referred for the opinion of the High Court at the instance of the assessee. The High Court looked to the actual user of the land in the main and on that basis held the land to be an agricultural land. In this appeal, the view taken by the High Court is questioned.

The land is situated within the limits of the Madras Municipal Corporation. It is located on the Mount Road which is the main artery of the city and its business Centre. Even when the assessee purchased it in

1950, there was a hotel building located in the said land. In the municipal records, the property was registered as urban land and urban land tax was being levied thereon. It bore the Municipal door number "151-Mount Road, Madras." After purchasing the land, the assessee put up two more buildings thereon in the northern portion which together occupied an extent of 20 grounds which means that they were substantially large buildings. One of them was occupied by the assessee for its own business purposes and the other was occupied by its sister concern. After laying a road and reserving certain portion to serve as frontage for the buildings, an area of about 39 grounds was remaining open. The assessee was raising bananas thereon until 1962 and thereafter vegetables until the year 1966-67 when it was sold to three parties as aforestated. It is significant to notice that even when the assessee purchased an extent of about 4 acres of land with a hotel building *in 1950*, for a consideration of 5.53 lakhs, it could not have been for the purpose of raising banana plantation or vegetables. And when it was sold in 1966-67 (which is the relevant point of time for our purposes) it was sold at the rate of about *Rs.260 per sq. yard.* Neither the sale-deed under which the assessee purchased the said land nor the sale deeds executed by it in 1966-67 describe the land as an agricultural land. It could not be so described for the simple reason that it was registered in the Municipal records as an urban land and Urban Land Tax was levied thereon. After purchasing the land, the assessee itself constructed two large buildings thereon. Indeed, the buildings were being used for non-residential purposes. The land is situated on Mount Road, Madras which is the most important and the busiest thorough fare in the city. The land is surrounded on all sides by industrial and commercial buildings. No agricultural operations were being carried on any land nearby. In the face of the above circumstances, the mere fact that vegetables were being raised thereon at the time of the sale or for some years prior thereto does not change the nature and character of the land. Obviously, it was only a stop-gap activity. It was not a true reflection of the nature and character of the land. It is a matter of common knowledge that in the heart of New Delhi, there are houses with large compounds wherein a portion of the open land is used for raising vegetables. That does not make those portions agricultural lands. In the case of the assessee too, the raising of vegetables was a stop-gap activity until the assessee found a better use for it, whether construction of buildings or sale. It is well to remember that the

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A question whether a particular land is an agricultural land has to be decided on a totality of the relevant facts and circumstances. There may be circumstances for and against. They have to be weighed together and a reasonable decision arrived at. One has to take a realistic view and see how were the persons selling and purchasing it understood it. Is it believable B that in 1966-67, the assessee and the aforesaid purchasers were under the impression that they were selling and purchasing agricultural land? Did they consider and treat the land as agricultural land? The answer is too evident to call for an elucidation.

C Certain decisions have been cited before us by counsel for both the parties in support of their respective stands. It must, however, be remembered that facts of no two cases will be identical. The tests evolved by the courts are in the nature of guidelines. No hard and fast rules can be laid down in the matter for the reason that it is essentially a question of fact. Even so, a brief reference to the cases cited would be in order. Strong D reliance was placed by Sri Aruneshwar Gupta upon two decisions of the Gujarat High Court in *Gordhanbhai Kahanadas Dalwadi* v. *Commissioner of Income-Tax, Gujarat*, [1981] 127 I.T.R. 664 and *Dr. Motibhai D. Patel* v. *Commissioner of Income-Tax, Gujarat*, [1981] 127 I.T.R. 671. In the first case, the land was registered as agricultural land in the revenue records and land revenue was being paid thereon. No permission was taken for E converting it to non-agricultural use before the date of sale. Potential non-agricultural use or the fact that development had taken place in the vicinity of the land, it was held, do not militate against the fact that it was an agricultural land. In the next case too, the land was registered as an agricultural land and permission to convert it into non-agricultural land was F not obtained before the date of sale. In the circumstances, it was held that mere fact that it was sold at a high price only indicates its potentiality for non-agricultural use. On a consideration of entirety of the circumstances, it was held that it was an agricultural land.

G A recent decision of this Court in *Sarifabibi Mohmed Ibrahim and Others* v. *Commissioner of Income-Tax*, [1993] 204 I.T.R. 631, rendered by a Bench comprising one of us (B.P. Jeevan Reddy, J.) is relied upon by the learned counsel for Revenue. The Bench observed: "whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of this Court and the High Courts, but all of H them are more in the nature of guidelines. The question has to be answered

in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. The court has to answer the question on a consideration of all of them - a process of evaluation. The inference has to be drawn on a cumulative consideration of all the relevant facts." Several judgments of this Court and the High Courts were referred to including a judgment of the Bombay High Court in *Commissioner of Income Tax* v. *V.A. Trivedi*, [1988] 172 I.T.R. 95. On a consideration of the factors for and against, the Bombay High Court observed in *V.A. Trivedi* that for ascertaining the true character and nature of the land, it must be seen whether it has been put to use for agricultural purposes for a reasonable span of time prior to the date of sale and further whether on the date of sale the land was intended to be put to use for agricultural purposes for a reasonable span of time in future. Examining the case from the said point of view, the High Court held that the fact that the agreement of sale was entered into by the assessee with a housing society is of crucial relevance since it showed that the assessee had agreed to sell the land for admittedly non-agricultural purposes. The ratio of the said decision was approved in *Sarifabibi*.

We do not think it necessary to multiply the cases, since, in our respectful opinion, no other conclusion is reasonably possible in the facts of the case before us than the one arrived at by us. All the three authorities under the Act too arrived at the same conclusion. With great respect to the learned Judges of the High Court, we find their conclusion wholly unsustainable and unacceptable.

The appeal is accordingly allowed, the judgment of the High Court is set aside and the two questions referred under Section 256(1) are answered in favour of the Revenue and against the assessee. The appellant shall be entitled to their costs - Rupees ten thousand consolidated.

N.K.S. Appeal Allowed.