



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 238/2018

Mahaveer Yadav S/o Shri Gangadeen, Aged About 74 Years, Vpo-
Budhi Bawal, Tehsil- Kotkasim, Alwar

----Appellant

Versus

Income Tax Officer, Ward-1 (5), Income Tax Office, Alwar

----Respondent



For Appellant(s) : Shri Gunjan Pathak
For Respondent(s) :

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR**

Judgment

13/08/2018

This appeal has been filed by assessee-Mahaveer Yadav challenging the order passed by the Income Tax Appellate Tribunal (for short-`ITAT`) dated 27.02.2018 in his appeal. The Tribunal by the aforesaid order dismissed the appeal and upheld the order dated 7.2.2017 passed by the CIT(A), Alwar for the assessment year 2011-12.

Shri Gunjan Pathak, learned counsel for the appellant- assessee has argued that the learned ITAT has erred in law in confirming the order of CIT(A) in considering the division of the huge chunk of 10-11 bigha agricultural land into smaller portions of agricultural land for easy viability and sale as income from business and profession instead of income under the head capital gains, even when the appellant had inherited the land from his



forefathers and had no intention or a previous track record of being into the business of purchase and sale of properties.

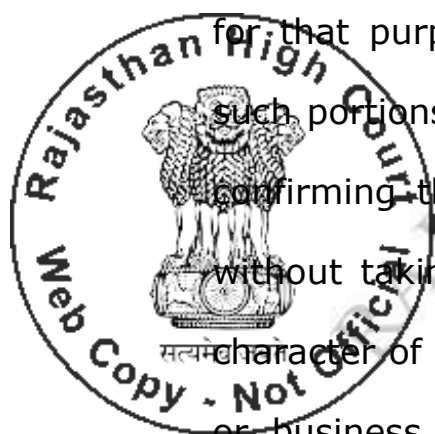
It is contended that the learned ITAT has erred in confirming the receipt sale of agricultural land as income from business and profession, whereas the appellant had subdivided the agricultural land only because the sale of the huge chunk was not viable and

for that purpose, he had to build/develop the approach road to such portions of land. The Assessing Authority has erred in law in confirming the order passed by the Assessing Officer / CIT (A) without taking into consideration the factors for determining the character of the isolated transactions as income from capital gains or business and profession. Learned counsel in support of his

arguments has relied on the judgement of the Supreme Court G.Venkataswami Naidu & Co. vs. CIT-(1959) 35 ITR 594 (SC) and judgements of various High Courts viz. CIT vs. Sohan Khan-(2008) 304 ITR 0194 (Raj.), CIT vs. Suresh Chand Goyal-(2008) 298 ITR 0277 (MP), CIT vs. A.Mohammed Mohideen-(1989) 176 ITR 0393 (Mad.), CIT vs. MLM Mahalingam Chettiar-(1977) 107 ITR 0236 (Chennai), CIT vs. Shashi Kumar Agrawal-(1992) 195 ITR 0767 (All.) and submitted that the appellant had no intention to enter into any kind of adventure in the nature trade or commerce and sold his share in the agricultural land to earn maximum profits only. The land sold by the appellant is in the nature of capital asset acquired by him as inheritance on the demise of his father and is not held by him as stock in trade.

We have heard learned counsel for the appellant and perused the material on record.

The Tribunal dismissed the appeal upholding the findings recorded by the Assessing Officer as also the CIT(A) that the

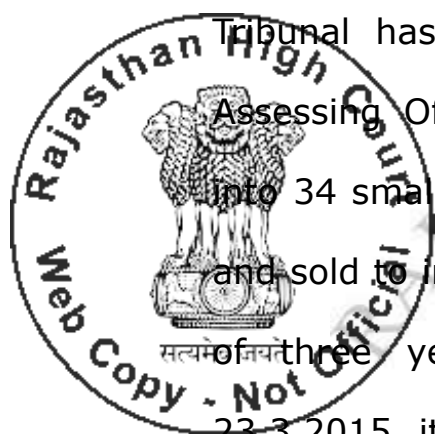




assessee has developed his share of agricultural land into 34 residential plots and sold them to various purchasers as residential plots and stamp duty has also been paid on conveyance deed so executed and further that the plot size ranges from 900 sq. ft. to 2964 sq. ft. of the individual residential plots of lands and that the development of course took place about 12 months ago. The

Tribunal has also taken note of the findings recorded by the Assessing Officer that assessee has developed agricultural land into 34 small plots, developed access road within the plotted land and sold to individual purchasers as residential plots over a period of three years. As per assessee's own submissions dated 23.3.2015, it has been stated by the assessee before the AO that

"the development of plots took about 12 months and completed at the end of Financial Year 2009 and gravel road developed." The Tribunal took note of the fact that there was a report of the Inspector on record, who visited the site on 19.3.2015 and has given a finding that about 40-50 residential plots have already been built where people are staying, roads have been laid down, a hospital by name of Shyam Hospital is running, a school by the 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 Tribunal noted that stamp duty authorities have also recognised the plotting as residential plots, which is evident from the registered sale deeds and the stamp duty paid on such sale of residential plots. It was therefore held that 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 Tribunal therefore upheld the findings recorded by the CIT(A) that such change is an irreversible change where the very nature and purpose of the land has been changed from agriculture to residential. The Tribunal held that 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. The findings recorded by the AO that by such plotting of land, the agriculture land has been converted into stock-in-trade of assessee's business, was thus upheld by the CIT(A) and affirmed by the ITAT. The development of residential colony and said conversion has happened by the assessee's own admission during financial year 2009. 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 the stock-in-trade is sold/transferred. The 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, 15 plots were sold for consideration of Rs.54,93,100. Therefore, the taxability arising on conversion of agricultural land into stock-in-trade to the extent it has been sold during the impugned assessment year. The learned Tribunal in arriving on the aforesaid conclusion has relied on judgement of the Supreme Court in Smt. Sarifabibi Mohmed Ibrahim vs. CIT-(1993) 204 ITR 631 (SC).

In view of the concurrent factual finding recorded by the Assessing Officer, CIT(A) and ITAT, in our view, no question of law much less any substantial question of law does arise for consideration by this Court. Tribunal is the final fact finding



authority on the subject. We may in this connection refer to judgement of the Supreme Court in Vijay Kumar Talwar vs. CIT(A)-(2011) 1 SCC 673 wherein the Supreme Court noted that the High Court refused to interfere with the order of Tribunal holding that no substantial question of law is involved. The Supreme Court held that the conclusion of the Tribunal to the effect that the assessee has failed to prove the source of the cash credits cannot be said to be perverse, giving rise to a substantial question of law. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference therewith by this Court is not warranted.

In the result, the appeal is dismissed.

(GOVERDHAN BARDHAR),J

(MOHAMMAD RAFIQ),J

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