

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 405/AHD/2020
निर्धारण वर्ष/Asstt. Year: 2016-2017

Shri Ashokbhai kanubhai Patel, 8, Parul Society, Opp. Memnagar Fire Station, Navrangpura, Ahmedabad-380009. PAN: ARRPP4895J	Vs.	A.C.I.T., (Int. Taxation)-1, Ahmedabad.
---	-----	---

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Vijay Patel, A.R
Revenue by :	Shri Dinesh Singh, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **23/04/2021**
घोषणा की तारीख / **Date of Pronouncement**: **31/05/2021**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-13, Ahmedabad, dated 13/03/2020 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-2017.

2. The assessee has raised the following ground of appeal:

On the facts and circumstances of the case as well as in law, the Ld.CIT(A) has grossly erred in rejecting the contention of the appellant and sustaining impugned addition of Rs.4,77,58,546/- on account of appellant's claim of exemption u/s.54B of the Act, when the same is wholly unwarranted.

3. The solitary issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by denying the exemption claimed under section 54B of the Act for an amount of Rs. 4,77,58,546/- only.

4. The facts in brief are that the assessee in the present case is an individual and non-resident Indian. He is based in USA. The assessee along with his father and brother owns certain lands. The assessee along with them has sold these lands in the year under consideration for an amount of Rs. 16,98,96,300/- only. The share of the assessee in such sale consideration stands at Rs. 7,24,68,300/- only. The assessee on the sale of such lands declared long-term capital gain amounting to Rs.7,14,83,153/- only. The assessee against such long-term capital gain has claimed the exemption under section 54B of the Act amounting to Rs. 6,64,83,153/- on the purchase of another lands for the purpose of agricultural operations.

4.1 As per the assessee, the lands sold were used for the agricultural operations. In fact, the assessee along with co-owners during F.Y. 2013-14 and 2014-15 has let out such lands for the purpose of cultivation to a 3rd party (farmer) with the understanding that one third of the agricultural production shall be retained by such party and the remaining two thirds will be given to the landowners (i.e. assessee and his relatives). It was also submitted that as per the understanding all the expenses in connection with the agricultural operation has to be borne by the 3rd party and the assessee was nowhere involved in the agricultural operations. Therefore, no expense was incurred in connection with the agricultural operations by the assessee. It was further submitted by the assessee that the agricultural produce received by the landowners (two third of the total production) were used for the home consumption. In other words the agricultural produce received by the landowners were not sold in the market. Accordingly, the assessee contended during the assessment proceedings that he has not incurred any expense in connection with agricultural operations and simultaneously he has not made any sale of such agricultural produce in the financial year 2013-14 and 2014-15. However, some part of the agricultural produce being Paddy was sold which was cultivated in survey numbers 83 in the financial year 15-16, the year in dispute

amounting to Rs. 22,703/- only against which a net income of Rs. 13,203/- was earned by the assessee . The assessee in support of his contention has filed the copy of the invoice to the AO.

4.2 The assessee to justify his stand that there were agricultural operations carried out on the lands in dispute has filed extract 7/12 and 8A form before the AO during the assessment proceedings.

4.3 Similarly, the assessee also submitted that new lands purchased for Rs. 6,64,83,153/- were also used for the purpose of agricultural purposes and agricultural activity. For this the assessee filed the extract of form 7/12 before the AO.

4.4 Thus the assessee appealed that the conditions provided for claiming exemption under section 54B of the Act have been satisfied and therefore he is eligible for such exemption. The assessee, likewise, also submitted that similar claim were also made by the co-owners which were not disputed by the Income Tax Department in the assessment of such co-owners which was made under section 143(3) of the Act.

4.5 However, the AO during the assessment proceedings found that:

- i. The assessee has not furnished any detail with respect to the 3rd party carrying out the agricultural operations including the agreement if any with the party. In fact, the identity of the 3rd party carrying out agricultural operations was to be established to justify that there were agricultural operations on the lands in dispute.
- ii. Further there was no irrigation facility including the borewell available on the sites where the lands in dispute were situated. Accordingly the AO was of the view that no prudent farmer will take such land on lease for the agricultural operations and incur the expenses on cultivation in consideration of 1/3rd produce only.

- iii. Likewise, the assessee has shown a meagre income of Rs. 13,203/- in the year under consideration when assessee himself carried out agricultural operation which transpired that 3rd party income would be of very negligible value.
- iv. The contention of the assessee for the FY 2013-14 and 2014-15 that the agricultural produce received by him along with the co-owners were used for home consumption is just to avoid to file the documentary evidence. However, there was not any 3rd party engaged in the agricultural operations in the year under consideration which implies that the assessee along with the co-owners has carried out the agricultural activity. Thus the assessee must have incurred the expenses on such agricultural activity but he failed to file the details of such expenses.
- v. The agricultural produce shown in form 7/12 extract has been appearing since the year 1998-99 without there being any change. There has been shown the same agricultural produce i.e. Paddy, caster and other products which was produced in the previous year 2013-14, 2014-15 and 2015-16. As such the record in form 7/12 is maintained in a mechanical manner which were appearing from the year 1998-99.
- vi. The assessee has sold the agricultural land in terms of per square meters land basis which indicates that the land in dispute had commercial potential. This fact also establishes from the information that the buyer of the land has also subsequently sold the land in dispute within 3 years after earning profit on the sale of such land. The impugned land was sold as non-agricultural land.
- vii. There was inspector of income tax deputed to verify the credentials of the land who vide report dated 17-12-2018 submitted that the impugned lands became hard and does not show any evidence of agricultural activity carried for quite some years. Further the inspector of income tax has also attached the photographs of the land dispute in his report in which it observed that there were wild bushes grown on such lands. Similarly the photographs attached by the assessee with sale deed at the time of sale

of the impugned land also suggests that there was no agricultural operations carried out by the assessee.

- viii. On verification of the sale deed for transfer of the lands made by the assessee, it was found that the land in question was not capable of carrying out any agricultural activity. This fact has been categorically admitted by the assessee in the sale deed.

4.6 In view of the above, the AO concluded there was no agricultural operation carried out the lands in dispute. Thus the first condition as specified under section 54B of the Act for claiming exemption that the transferred land should be used for the purpose of agriculture activity in two immediate previous year from the date of transfer has not been satisfied.

4.7 Likewise, there was no agricultural income declared by the assessee with respect to new agricultural land purchased by it for the agricultural operations except a meagre amount of Rs. 38,963/- only in the F.Y. 2015-16 to 2017-18 which is negligible against the investment made by the assessee. The AO also found that the sale deed entered by the assessee for the purchase of new land clearly specifies that lands purchased by the assessee were not capable of carrying out the agricultural operations.

4.8 Equally, the assessee has not brought any evidence that he has incurred expenses such as digging the bore well etc for making such land fit for agricultural operations. Similarly, no expense shown in the year under consideration. Thus the 2nd condition specified under section 54B of the Act that the assessee shall make the investment of capital gain on transfer of land by acquiring a new land to be used for agricultural operations, has not been fulfilled by the assessee.

4.9 The AO also find that the every assessee is a different assessee and independent to each other. As such the assessments are framed based on the materials available on record but the assessee failed to provide enough material to satisfy the conditions provided under section 54B of the Act. Thus the contention of

the assessee that the claim under section 54B the Act was admitted by the revenue in the assessment framed for the co-owners does not have any binding force.

4.10 In view of the above the AO reached to the conclusion that the conditions specified under section 54B of the Act have not been satisfied and therefore exemption claimed by the assessee is not allowable. The reasons recorded by the AO for denying the exemption are reproduced as under:

(a) Assessee has failed to produce evidences that the land sold was used for agricultural purposes in the preceding two years from the date of transfer.

(b) The record brought on record shows that the new asset purchased was not for the purpose of agriculture.

(c) No agricultural income has been shown by the assessee in the ITR filed for AY 14-15 and AY 15-16 and, thus burden of proof lies on him had otherwise not been proved with documentary evidences.

(d) In the sale deed itself, the assessee has admitted that no agricultural income could be derived from the land and agricultural operations such as tilling, harvesting has become impossible in the nutshell land has been admitted to be "barren" in nature. The photograph attached to the sale deed also justifies the above admission.

(e) Crop noting in the revenue record cannot be conclusive to draw an inference that the land was used for agricultural purpose especially when it is found that the crop noting are made in 7/12 in a computerized manner without field visit even where no agricultural operations are carried out as per the findings given as aforesaid.

(f) Without prejudice to the above, even if the agricultural activity had been carried out in the small portion of the land, the same does not meet the requirement of the law to claim the deduction u/s 54B of the Act, in respect of entire land holding.

(f) It has been mentioned in the purchase deed of "new asset" that there is no possibility to get any agriculture produce from such land. The photograph attached to the purchase deed of new asset shows spontaneous growth & wild bushes and, thus not cultivable and, moreover, there is no intention of the assessee or his heirs to carry out agricultural operations as mentioned in the sale deed.

(f) No evidence for new asset claimed to be purchased through banakhat for Rs.7,00,000/- has been filed and thus, the claim of deduction to that extent was clearly inadmissible. It has now been admitted that the transaction agreed did not took place.

5. Aggrieved assessee preferred an appeal to the learned CIT (A):

5.1 The assessee before the learned CIT(A) again reiterated that the cultivation on land in dispute was carried out by the third party on contract basis and all the expenses in relation to the cultivation was born by such third party. The assessee further submitted that the details of the third party was not furnished to the AO because the same was not asked for by the AO during the assessment proceedings. Accordingly the assessee furnished the detail of the third party namely Shri Hemrajbhai R Rabari along copy of confirmation from him. The assessee also submitted that the finding of the AO that no prudent farmer will carry out cultivation for 1/3rd of agricultural produce is baseless. As such Shri Hemrajbhai R Rabari was carrying cultivation on lands belonging to others also. Further the extract of 7/12 form was showing agricultural activities carried out on the land in dispute in the last two previous years which constitute a strong piece of evidence. The assessee claimed that noting in form 7/12 are done by land revenue authority. For this purpose land authority visit to area and make noting based on the crops being cultivated on specific lands. The extract 7/12 is a Government record and one can obtain only by approaching to the land revenue authority. The assessee further submitted the inspector of income tax visited at the site of land in December 2018 which is almost after the lapse 3 years from the date of transfer. Accordingly, the report submitted by the inspector cannot be relied upon for holding that no agricultural activity was carried on in the last 2 previous years from the date of transfer. The assessee with regard to the photograph attached with sale deed submitted that the photograph were taken during summer time and usually during summer period no crop is cultivated. Similarly, with regard to the finding recorded in sale deed that the land in dispute is not capable for agricultural activity, the assessee claimed that the translator of deed erred in translating the document. As such it was mentioned therein that carrying out the agricultural activity is difficult but the translator translated the same as not capable of carrying out agricultural activity. But the agriculture activity was carried out on such lands as established from the confirmation/ affidavit from third party as well as extract of form 7/12.

5.2 Similarly the assessee further submitted that capital gain was invested for the purchase of agricultural land and the agricultural activity was carried out on the same as evident from the extract of 7/12 form.

6. However, the learned CIT (A) disregarded the contention of the assessee and confirmed the order of the AO by observing as under:

The assessee is non-resident and has been staying in USA for very long time and has been visiting India as and when required. It has been submitted by the appellant that himself that the appellant is an NR living in USA since long, that his parents and his real brother residing in India have supervised/carried out and looked after the agricultural activity carried out on the said land and that the agricultural activity was carried out on the said land by a third party on crop sharing basis. The words of the appellant are that "It is learnt that they have given the said agricultural land for cultivation to the farmer on sharing basis upto F. Y.2014-15. The supervision was to be done by the appellant, his parents and his real brother Shri Nitin K Patel The farmer was given 1/3rd share in the agricultural produce. All the related expenses were to be borne by the farmer. Further more in respect of agricultural income not shown in earlier years, it is submitted by the appellant that the agricultural produce was not sold in the market but consumed in the family, friends and relatives and also by the servants and since, no agricultural produce sold in the market, no corresponding agricultural income was shown in the ITR.

5.12 The response of the appellant is no doubt, very smart and is meant to circumvent any occasion for/requirement of producing any type of documentary evidences. The appellant has produced the affidavit of the person who has deposed to have carried out agricultural activities on the land sold and that as per 7/12 extract the land was used for cultivation. In this regard in view of various judgments relied upon by the AO and also narrated above, it has to be held that all these by themselves do not establish the claim of the appellant because the affidavit of the share cropper remains a self serving evidence because he also has not given the evidences and the expenses incurred by him for carrying out the agricultural activity on that land. Even the appellant's brother residing in India is a professional (advocate) and the family in India is urban, On the totality of circumstances and on preponderance of human probabilities, I do not find the story of agricultural activities on crop sharing basis that to only 1/3rd of share which in my considered view is not feasible and moreover no agricultural activities can be undertaken unless there is some arrangement for irrigation. Agricultural activities on/use of land should be self evident and cannot be left to devising of explanations. If it is not apparently evident, it is not there. Even the appellant as seller has stated in various transfer deeds about land being no more used/fit for agriculture. This is also proved by the site inspection report of the Inspector. Thus I find myself inclined to go with the assessing officer and to hold that the original agricultural land sold were not put to agricultural use.

5.13 Similarly the facts related to the new assets purchased do not give the confidence that the new land purchased was for being used for agricultural purposes because as rightly noted by the AO these lands were purchased on per sq.mt. basis, many of them were not capable of in cultivated and even some of them were to be converted into non-agricultural land (NA). These are clearly established by the deeds of conveyance.

*5.14 Accordingly the disallowance of claim of deduction u/s.54B and the consequential addition of Rs.4,77,63,118/- as made by the AO in the assessment order impugned in the appeal under consideration is **confirmed**.*

7. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us

8. The learned AR before us filed a paper book running from pages 1 to 133 and contended that there were agricultural operations carried out on the lands in dispute in the earlier years. For this purpose, the learned AR drew our attention on the extract 7/12 along with form No. 8 which are placed on pages 41 to 106 and the affidavit of the party who carried out the agricultural operations on such lands which is placed on pages 35 to 40A of the paper book.

8.1 The learned AR further submitted that the land which was owned by the assessee jointly with the father and the brother, the exemption under section 54B of the Act was allowed in their assessment framed under section 143(3) of the Act. The copies of the assessment order are placed on pages 110 to 133 of the paper book.

8.2 The learned AR to support the contention of the assessee that there were agricultural operations carried out on the lands in dispute has also filed the screenshot of Google Maps which are placed on pages 107 to 109 of the paper book.

8.3 It was also contended that the report of the inspector of income tax cannot be relied upon as he visited on 7 December 2018 after almost 3.5 years from the date of transfer of the land.

8.4 The learned AR further contended that the assessee has been showing agricultural income on the new lands purchased by him. For this purpose, the learned AR drew attention on the income tax return filed by the assessee in the subsequent year which are placed on pages 16 to 24 of the details filed on 27th April 2021. These details were filed on the request of the ITAT.

9. On the other hand, the learned DR contended that the forms 7/12 cannot be treated as a conclusive evidence to hold that the assessee was carrying out the agricultural operations. Furthermore, the form 7/12 has not been issued in the name of the assessee.

9.1 It was also contended by the learned DR that the Google Maps does not have any authenticity until and unless it is approved by some government agency.

9.2 There was not any irrigation facility on the lands in dispute. Without having such facility, it is not possible for the assessee or any other party to carry on the agricultural operations.

9.3 The affidavit issued by the party who claimed to have carried out the agricultural operations was dated 13th February 2019 and therefore no credence can be placed on such documents. As such the affidavit furnished by the assessee is afterthought and to avoid the tax liability.

9.4 It is not available on record with respect to the co-owners whether their assessments were carried out after conducting the enquiries about the exemption claimed under section 54B of the Act.

9.5 The assessee being NRI has not carried out any agricultural operations on the alleged lands as he was not available in India during the relevant time. The learned DR vehemently supported the order of the authorities below.

10. We have heard the learned counsels of the parties and we have given due consideration to their respective submissions. The provisions of section 54B of the Act provides for exemption in respect of capital gains arising to an assessee on transfer of land used for agricultural purposes. For availing of this exemption the following conditions have to be fulfilled:

- (i) The gain should arise from transfer of a capital asset, being land.
- (ii) The land transferred should have been used by the assessee or his parents or HUF for at least two years immediately preceding the date of transfer for agricultural purposes.
- (iii) The assessee should purchase within a period of two years after the date of transfer, other land being used for agricultural purposes.

10.1 Now coming to the facts of the present case. The assessee owns certain pieces of adjoining agricultural lands in respect of which he was claiming that these lands were used for agricultural operations. The details of the lands bearing different survey number stand as under:

1	85	12444 Sq. Mtr.	Village: Khoraj Dist. Gandhinagar	20.05.2015	Pujan Rajesh Bhai Joshi	4,97,76,000
2	83	19425 Sq.Mtr.	Village: Khoraj Dist. Gandhinagar	20.05.2015	Pujan Rajesh Bhai Joshi	7,77,00,000
3	84/2-B	1113 Sq.Mtr	Village: Khoraj Dist. Gandhinagar	20.05.2015	Pujan Rajesh Bhai Joshi	33,39,000
4	57/2-A	1619 Sq.Mtr.	Village: Khoraj Dist. Gandhinagar	20.05.2015	Pujan Rajesh Bhai Joshi	48,57,000
5	56/1	3642 Sq.Mtr.	Village: Khoraj Dist. Gandhinagar	20.05.2015	Pujan Rajesh Bhai Joshi	78,30,300
6	56/2+84/2-A	8798 Sq.Mtr.	Village: Khoraj Dist. Gandhinagar	20.05.2015	Pujan Rajesh Bhai Joshi	2,63,94,000
					TOTAL	16,98,96,300
					Share of assessee	7,24,68,300

10.2 Before we test whether the conditions specified under section 54B of the Act in case of assessee have been satisfied, it is pertinent to note that the land bearing survey No. 83 was jointly owned by the assessee. The co-owners were the father and the brother of the assessee namely Shri Kanubhai Patel and Shri Nitinbhai Kanubhai Patel. The assessee against the sale of such jointly owned land bearing survey No. 83 has purchased another agricultural land jointly. Similarly Shri Kanubhai Patel and Shri Nitin Kanubhai Patel claimed deduction under section 54B of the Act on the sale of such land. Their return were selected for limited scrutiny for the purpose of examining the correctness of capital gain declared and claimed of deduction against such capital gain. The extract of notice under section 143(2) of the Act in case of Shri Nitin Kanubhai Patel reads as under:

This is for you kind information that the return of income for Assessment Year 2016-17 filed vide ack.no.354760630310716 on 31/07/2016 has been selected for scrutiny.

Following issue(s) have been identified for examination:

- i. Whether value of consideration for computation of capital gains has been correctly shown in the return of income.*
- ii. Whether deduction from capital gains has been claimed correctly.*

In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before 17/07/2017 at 12.12 PM

10.3 Accordingly notice under section 142(1) of the Act was issued dated 03-08-2018 requiring the assessee to furnish the details with respect to sale of property bearing survey no.-83 and details of purchase of new agricultural land. The copy of the same is available on pages 13 to 14 of additional paper book. The AO after verifying the details accepted the claim of the assessee without any modification which can be verified from the assessment order under section 143(3) placed on pages 114-115 and 127-128 of paper book. The relevant finding of the AO in case of Shri Nitin Kanubhai Patel reads as under:

"In response to the notices generated through ITBA and also issued through e-mail for e-assessment, the assessee furnished relevant details for compliance to notices which are verified and placed on record. During the year under consideration assessee earned income from capital gain and income from other source."

10.4 From the above, there remains no ambiguity that the Revenue in respect of the land bearing survey No. 83 which was jointly owned by the assessee, has allowed the deduction under section 54B of the Act.

10.5 In view of the above, we note that the revenue cannot take stand against the assessee in the given facts and circumstances as the revenue in the case of the co-owner has extended the benefit of deduction under section 54B of the Act.

10.6 Moving to the other lands where the assessee was having the absolute/part ownership. The details of such land have already been reproduced here in above and the reasons for denying the deduction under section 54B of the Act has already been discussed somewhere in the preceding paragraph.

10.7 One of the reason for denying the deduction under section 54B of the Act was that the assessee has not furnished any detail of third party who was carrying

out the agricultural operations on the lands belonging to the assessee on sub-letting basis. In this regard we find that the assessee has furnished the affidavit of the person being Shri Hemrajbhai R. Rabari who carried out the agricultural operations on the lands on sharing basis. It was the contention of the assessee before the learned CIT (A) that the AO during the assessment proceedings did not require the details of such person therefore the same was not furnished. The contention of the assessee before the learned CIT (A) reads as under:

The learned AO has not asked the name and address of the farmer with whom the sale agricultural activity was being carried out. If the same would have been asked by the learned AO, the undersigned appellant would have given the name and address of such farmer. However, for the sake of convenience, the undersigned appellant is giving the name and address of the farmer as under.

10.8 However, the learned CIT (A) rejected the contention of the assessee by observing that the assessee failed to file the corroborative evidences such as the expenses incurred in connection with such agricultural operations. Once the assessee has taken the stand that he carried out the agricultural operations on the land in dispute after engaging a person who was responsible to bear the expenses in connection with the agricultural operations, it is implied that the assessee was not supposed to incur such agricultural expenses. Accordingly, no liability can be fastened on the assessee to produce the details of the expenses with the supporting vouchers. In fact the assessee shifted his onus upon the revenue by furnishing the affidavit of the party who admitted to have carried out agricultural operations on the lands of the assessee. In the event of any doubt or the requirement for furnishing the details of the expenditure, the revenue was empowered to collect the necessary details from the impugned third party under the provisions of section 133(6)/131 of the Act. But we find that the revenue has not exercised its power granted under the statute. Accordingly we hold that, the affidavit furnished by the assessee cannot be rejected without assigning any strong reason with corroborative evidence. Accordingly, the finding of the authorities below that no prudent farmer will carry out agricultural operations on the lands of the assessee in the absence of irrigation facility such as borewell, seems to be based on surmise and conjecture. As such crop can be cultivated even on deserted land. It depends upon what type

of crop cultivated. Once the assessee has discharged the onus, then it is the duty of the revenue to prove it wrong based on corroborative evidences rather finding out the procedural lapses. In holding so, we draw support and guidance from the judgment of Hon'ble Rajasthan High Court in case of CIT vs. Jai Kumar Bakliwal reported in 45 taxmann.com 203 the relevant extract of the judgment reads as under:

The logical interpretation will be that while the assessee has to prove as special knowledge i.e. from where he has received the credit and once he disclosed the source from which he has received money, he must also establish that so far as his transaction with his creditor is concerned, the same is genuine and his creditor had the creditworthiness to advance the loan which the assessee had received. When the assessee discharges the burden so placed on him, onus then shifts to the Assessing Officer, if the Assessing Officer assessee the said loan as the income of the assessee from undisclosed source he has to prove either by direct evidence or indirect/ circumstantial evidence that the money which the assessee received from the creditor actually belong to and was owned by the assessee himself. [Para 18]

11. We also find that the assessee has furnished form 7/12 along with form 8 with respect to all the lands which are in dispute. The details of the same are placed on pages 41 to 106 of the paper book. However, the revenue did not believe on these details on the reasoning that these have been maintained in mechanical manner. As such the crop produced on the lands in dispute have been shown in these forms since the year 1998-99 to the year under consideration without any change and further for next 3 year though no agricultural activity was claim by the purchaser of the land. Accordingly it was inferred by the revenue that such forms cannot be relied upon to draw an inference that assessee was engaged in the agricultural operations.

11.1 Let us understand what is form 7/12 and form 8 is. In this connection we note that, the 7/12 extract is an extract from the land register maintained by the revenue department of the governments of Maharashtra and Gujarat, states in India. The extract gives information of the survey number of the land, the name of the owner of the land and its cultivator, the area of the land, the type of cultivation - whether irrigated or rain fed, the crops planted in the last cultivating season. It also records loans extended to the land owner given by government agencies, including the purpose - such as loans or subsidies for buying seeds,

pesticides or fertilisers, for which the loan was given, the loans could be given to the owner or the cultivator. It is one of the documents that provides evidence of the ownership of the land it represents. In rural areas the ownership of a particular plot of land can be established on the basis of the 7/12 extract. It is called as "Record of Rights" or "Record of Land Rights"

11.2 From the above, we find that the certificate was issued by the government authorities and therefore it cannot be rejected or presumed to be defective on their face value. These are the data and statistics maintained by the land revenue authority for various purposes. In the event of any doubt on the genuineness of such certificates, the revenue should have enquired from the respective authorities. But the revenue failed to do so. It is also pertinent to note that the name of the subsequent buyer of the land in dispute is appearing in the certificates. Thus it is implied that there were changes in the records of revenue authorities but without having any doubt on the crop shown therein as cultivated in the different years. We also note that the Hon'ble Pune Tribunal in the case of Majid Khan Nisar Khan vs. ITO reported in 88 taxmann.com 841 has held that the documents filed by the assessee in the form of 7/12 is sufficient enough to hold that the agricultural activity was carried out on impugned land. The relevant finding of the Hon'ble bench reads as under:

We are of the considered view that the claim of the assessee cannot be rejected merely on the ground that the traders have not maintained books of account or have not filed return of income. The assessee in his return of income for the past several years has been disclosing income from agriculture and the Department has been accepting the same without any query. The Land Revenue records clearly indicate that land is under cultivation and Jowar and Soyabean crops were grown. The Land Revenue records are maintained by the Govt. Department. There is an element of credibility in the records maintained by the Govt. agencies.

11.3 Once the assessee has discharged his onus based on the primary documents as discussed above, the secondary information such as no availability of the details of the expenditures incurred for cultivation and declaration of low agriculture income cannot be of any assistance to the revenue. Likewise, the assessee has furnished the details of the agricultural produce on the lands in dispute which is available on pages 6 & 7 of the assessment order. The reasonableness on the quantity of

agricultural produce per acre shown by the assessee were not doubted by the authorities below.

11.4 It is also pertinent to note that what is the precondition under section 54B of the Act for claiming the deduction is that prior to the sale of the land, it should be used for agricultural operations for 2 years from the date of transfer. In the case on hand these lands have been sold by the assessee in the beginning of the year under consideration i.e. 20th May 2015. In other words, the lands in dispute should have been used minimum for 2 years beginning from 20th May 2013 to till 19th May 2015. As such, the assessee in the year under consideration has used the land only for 50 days approximately as the same was sold on 20th May 2015. Admittedly, the assessee for part of the year has claimed to have carried out agricultural operations at his own or by his father without engaging 3rd party. Thus, certainly the assessee should have produced the vouchers in support of the expenses incurred in connection with such agricultural operations for part of the year. But the assessee failed to do so. However, we are not inclined to take any adverse view against the assessee for such short period of time in the year under consideration for the reason that it has been held for the earlier year that the land in dispute has been used for the agricultural operations for the substantial time.

11.5 One of the allegation was that the land in dispute has been sold based on the rate of per square metre which normally does not happen with respect to the agricultural land. As such, the basis for selling the land per square meter is used for the lands which are capable of commercial use. However we are not convinced with the finding of the AO that the agricultural land cannot be sold based on the rate per square metres.

11.6 We also find that the learned CIT (A) in his order has held that the assessee being NRI was not engaged in the agricultural operations. However, the provisions of section 54B of the Act were brought under the statute for those persons who are carrying out the agricultural operations and earning their bread and butter from agriculture operations. Under the provision, it was to protect them from the tax

liability in the event they sale the agricultural land subject to investment of the gain in acquisition of new agricultural land. In this regard, we note that the provisions of section 54B of the Act does not require the assessee to carry out the agricultural operations himself. Rather the provisions states that even the parents of the assessee or family member of HUF may carry out the agricultural operations. In such a situation, the assessee shall be eligible for the deduction. Admittedly, this fact has not been disputed by the authorities below that the father of the assessee has not carried out any agricultural operation on the lands in dispute. Therefore, there is no violation of the provisions of law.

11.7 Going further, the report furnished by the inspector of income tax cannot be relied upon as it was furnished dated 17 December 2018 whereas the case before us pertains to the F.Y. 2015-16 and the land was transferred dated 25th May 2015. The report was furnished after almost 3½ years from the date of transfer of land. There can be a lot of changes in the land and in the surrounding area subsequent to the sale of land by the assessee, but to our mind such change cannot be used to draw an inference against the assessee. Furthermore, the photographs attached by the inspector of income tax cannot be used to draw any adverse inference against the assessee for denying the benefit extended under section 54B of the Act as they were taken in the subsequent period.

11.8 Coming to the sale deed wherein it was mentioned that the land in dispute was not capable for agricultural operations. The relevant extract of the sale deed is as under:

6.4 During the course of the assessment proceedings, the assessee was asked to furnish the English translation of the sale deeds. On examination, it is seen that the assessee being seller has himself admitted that no agricultural activities are being carried out. Such admission of the assessee while selling the land in case of some sale deeds is reproduced hereunder:

Sale Deed: Survey Number 56/1 : Rs.78,30,000/-

"No income is of agricultural is made available over this land and sale with hereon are now under the land, there is no possibility to get any agricultural produce from this land. Our children's are not interested to farming over this land."

Sale deed of Survey No.57/2A: Rs.48,75,000:

*"This land is of agricultural nature, but no any income is made available from the said land and adjacent lands are being sold have from time to time with high **prices** for the non-agricultural usages etc.*

*Taking of crops/ harvesting is becoming impossible over this land, and our children's are not at all interested to do agricultural activities. You are paying us very good amount for this land. This cost is proper and even marketable. Its interest amount is becoming more than that of producing crops over this land. We are **in the** position to maintain our self on the strength of this income of sale. This amount is sufficient for the progress and uptiftment of our family*

Survey No.83 Choraj: Rs.7,77,00,000

*" This land is an agricultural land, but no income is made. available over this land, and that the adjacent land hereof now under the .sale from time to time-however, taking of **crop**, harvest is not possible over this.land, ding fanning over this land became very difficult **over** this land. Our heirs are not interested in farming activity. We have sold this land to you at reasonable. We are getting more interest income from this sale amount rather than income from farming. We are maintaining our families on the strength of the income from sell. We are not interested in farming hence we are selling you the same, for the benefits of our families."*

11.9 We are also conscious to the fact that the entry of the land in the revenue records as agricultural land is not a conclusive evidence as contended by the learned DR at the time of hearing. Indeed, the contention of the learned DR appears to be true in the light of the judgment of constitution bench of Hon'ble Supreme Court in the case of Commissioner of Wealth Tax vs. Officer-in-Charge (Court of Wards) reported in 105 ITR 133 wherein it was held as under.

If there is neither anything in its condition, nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with an agricultural purpose, the land could not be "agricultural land" for the purposes of earning an exemption under the Act. Entries in revenue records are, not conclusive and such entries can raise only a rebuttable presumption, they are, however, good prima facie evidence.

11.10 However, the onus is upon the revenue to prove that the land in dispute was not used for the purpose of agricultural operations by bringing tangible material on record which can be used against the assessee and against the form 7/12 along with form 8 available on record. In the case on hand, the assessee has furnished the necessary details such as affidavit of the party who carried out the agricultural operations as well as form 7/12 along with form 8 which have rejected by the authorities below but without assigning sensible reason and bringing any

corroborative evidence on record. Accordingly, we are inclined to reverse the order of the authorities below and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

12. In the result, the appeal filed by the assessee is **allowed**.

Order pronounced in the Court on 31/05/2021 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

**(True Copy)
31/05/2021**