

SHAILESH T SHAH & CO. (HUF) vs. ASSISTANT COMMISSIONER OF INCOME TAX

IN THE ITAT BOMBAY BENCH 'H'

SHAMIM YAHYA, AM & PAVAN KUMAR GADALE, JM.

ITA No. 6597/Mum/2019

Aug 2, 2021

(2021) 62 CCH 0377 MumTrib

Legislation Referred to

Section 45(2)

Case pertains to

Asst. Year 2013-14

Decision in favour of:

Assessee (Partly)

Capital gains—Computation of long term capital gain on non agricultural land— Assessee has converted its agricultural land into Non-agricultural land as stock-in-trade after obtaining necessary approvals from competent authorities and carried out plotting for industrial use — Assessee has thus derived income from Business and Long Term Capital Gains — AO noted that while computing long term capital gain, assessee has taken only proportionate cost for plot area and market value of that only has been shown in computation of capital gain — AO is of opinion that entire chunk of land is converted into Non-agricultural land and thus, fair market value of land is to be taken value of land proportionate to only saleable area should not be taken for LTCG purpose as roads of loading and unloading area is integral and inseparable part of saleable plots — CIT(A) also upheld view of AO — Held, upon conversion of agricultural land into Non-agricultural land, act mandates that fair market value of same should be taken for purpose of computation of capital gain on date of conversion — In other words, stock-in-trade has to be valued — Assessee by way of this ground wishes to claim long term capital gain only with reference to saleable plot — Now, it is admitted that assessee will be selling only plots — Roads and other areas will certainly not be sold as such but they will add to price which plot of land will fetch — Road and peripheral development cannot be sold in isolation — In fact they will be common to all plots — Hence, loading cost of these areas on saleable plots would no doubt increase capital gain in hands of assessee, it will go on to

increase value of stock-in-trade and hence, when plots are sold, resultant profit will be smaller — That rate of taxation on long term capital gain is much lower than tax of normal profits — In this view of matter, query were raised as to what prejudice does assessee's claim cause to Revenue — Assessee is making a claim to value stock-in-trade only on value of saleable plots which are stock-in-trade —A assessee's claim to compute long term capital gain with reference to saleable plot is revenue neutral in as much as on sale of plots as business income resultant income would be much higher and would be taxed at a higher rate — Moreover road and peripheral development in isolation have no market value — Hence, this claim of assessee would be revenue neutral — When on an issue tax effect is neutral, same should not be agitated — In this view of matter, this claim of assessee by way of ground raised above is allowable — This is more so when assessee is not pressing other grounds relating to cost of improvement, etc — Assessee's appeal partly allowed.

Held

Upon conversion of agricultural land into Non-agricultural land, the act mandates that fair market value of the same should be taken for the purpose of computation of capital gain on the date of conversion. In other words, stock-in-trade has to be valued. The assessee by way of this ground wishes to claim long term capital gain only with reference to saleable plot. Now, it is admitted that assessee will be selling only the plots. Roads and other areas will certainly not be sold as such but they will add to the price which the plot of land will fetch. The road and the peripheral development cannot be sold in isolation. In fact they will be common to all the plots. Hence, loading cost of these areas on the saleable plots would no doubt increase the capital gain in the hands of the assessee, it will go on to increase the value of stock-in-trade and hence, when the plots are sold, the resultant profit will be smaller. That rate of taxation on long term capital gain is much lower than the tax of normal profits. In this view of the matter, the query were raised as to what prejudice does the assessee's claim cause to the Revenue. Assessee is making a claim to value the stock-in-trade only on the value of saleable plots which are stock-in-trade. The assessee's claim to compute long term capital gain with reference to saleable plot is revenue neutral in as much as on the sale of plots as business income the resultant income would be much higher and would be taxed at a higher rate. Moreover the road and peripheral development in isolation have no market value. Hence, this claim of the assessee would be revenue neutral. When on an issue the tax effect is neutral, the same should not be agitated. In this view of the matter, this claim of the assessee by way of the ground raised above is allowable. This is more so when assessee is not pressing the other grounds relating to cost of improvement, etc. Assessee's appeal partly allowed.

(para 5)

Conclusion

Assessee's claim to compute long term capital gain with reference to saleable plot is revenue neutral in as much as on the sale of plots as business income the resultant income would be much higher and would be taxed at a higher rate.

In favour of

Assessee (Partly)

Counsel appeared:

Dilip Kumar for the Assessee.: Gurbinder Singh for the Revenue

SHAMIM YAHYA, AM.

1. This appeal by the assessee is directed against order of Id.CIT(A)- 34, Mumbai dated 02/07/2019 and pertains to assessment year 2013-14.

2. The grounds of appeal raised by the assessee read as under:-

"Assessment of Long Term Capital Gain U/sec 45(2) :

On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals - 34) Mumbai, erred in confirming the Long Term Capital Gain u/sec. 45(2) on Sale of Land at Rs.95,12,524/- as against Rs.16,22,135/-computed by the appellant.

The said C.I.T. - (A) erred in not allowing indexed cost of improvement of land incurred in A.Y. 1993-94 amounting to Rs.1,83,230/- claimed U/sec 48 ignoring the fact that the same were never claimed against agricultural income and was towards cost of improvement of the said land.

1.3 On the facts and circumstances of the case, the said C.I.T.-(A) erred in computing notional sale consideration at Rs.2,28,16,029/- u/sec 45(2) as against Rs.1,61,84,861/- ignoring the fact that the saleable area of the said land was 32,049.23 sq. meters, and not 44,314 sq. meters when the business income has been computed on the said area of 32,049.23 sq. meters by the said A.O.

*1.4 Without Prejudice to above, the said CIT (A) erred in ignoring the fact that notional sale value should be Rs.61,31,093/- (2,28,16,029/44,314*11,908) being the value of actual sale of plots of 11,908 Sq. meters of land only and not the total land area of 44,314 sq.meters, meters when the business income has been computed on the said area sold of 11,908 sq. meters by the said C.I. T.(A).*

2. The appellant craves leave to add, amend, alter, modify, delete and / or change all or any of the above grounds on or before the date of hearing.

3. At the outset, the Id. Counsel of the assessee submitted that he shall be pressing only ground No.1.4. The Id. Counsel further submitted that there are some mistakes in the above said ground No.1.4 which have been amended to read as under:-

"1.4 Without prejudice to above, the said C.I.T. (A) erred in ignoring the fact that notional sale value should be Rs. 1,41,45,938/- (2,28,16,028 x 62 / 100) being the land value of 62% of the stock-in-trade sold during the year and not on entire land converted into stock-in-trade when only 19,908.39 sq meters of plot area out of 32,049.29 has been sold during the year and business income is also computed on sale of 19,908.39 sq. meters of plot area only"

3.1. Brief facts of this issue are that during the year under consideration, the assessee has converted its

agricultural and encompassing 44,314 sq.mtrs. at village Dehri, Taluka Umergaon, Distt. Valsad, Gujarat into Non-agricultural land as stock-in-trade after obtaining necessary approvals from the competent authorities and carried out plotting for industrial use. The assessee has thus derived income from Business and Long Term Capital Gains. In this regard, Id. AO noted that assessee has stated that the HUF which was holding the land as a capital asset has converted the land into its stock-in-trade on 01/07/2012, with a view to develop the same by dividing the same into different plots and selling the said plots and engaging into Real Estate Business from the said date.

3.2. Assessee also stated that it got the market value report of the said Non-Agricultural land from an approved valuer who has estimated the market value of the said plot admeasuring about 44,314 sq.mts. as on 01/07/2012 at Rs.2,23,78,600/-. The Id. AO made a reference u/s.55A dated 09/09/2015 to the Valuation Officer. The Id. AO noted that the Valuation Officer vide report dated 22/02/2016 has valued the said land at Rs.2,21,570/- as on 01/04/1981 and Rs.2,28,91,500/- as on 01/07/2012. The Id. AO further noted that the Id. AR vide order sheet noting dated 01/03/2016 has agreed to adopt the valuation for the purpose of computing long term capital gains. As regards to the computation of long term gain on the conversion of agricultural land into stock in trade, it was pointed out by the assessee that as per Collector's order, 44314 sq.mtrs of the land was converted into Non-agricultural land. That out of this, 9447.07 sq.mtrs was to be used as roads-drainage plus 2817.70 sq.mts was to be used as common place i.e. loading and unloading area that will be considered as External Amenities at Rs.61.937 Lakhs. The Id. AO noted that while computing long term capital gain, assessee has taken only proportionate cost for the plot area i.e. Rs.161.85 Lakhs and the market value of that only has been shown in the computation of capital gain. The Id. AO is of the opinion that the entire chunk of land is converted into Non-agricultural land and thus, the fair market value of the land is to be taken. He was of the opinion that the value of land proportionate to only saleable area should not be taken for LTCG purpose as he was of the opinion that roads of loading and unloading area is integral and inseparable part of the saleable plots.

4. The Id. CIT(A) also upheld the view of the Id. AO. Now, assessee has raised the ground as above.

5. We have heard both the parties and perused the records. We find that upon conversion of agricultural land into Non-agricultural land, the act mandates that fair market value of the same should be taken for the purpose of computation of capital gain on the date of conversion. In other words, stock-in-trade has to be valued. The assessee by way of this ground wishes to claim long term capital gain only with reference to saleable plot. Now, it is admitted that assessee will be selling only the plots. Roads and other areas will certainly not be sold as such but they will add to the price which the plot of land will fetch. The road and the peripheral development cannot be sold in isolation. In fact they will be common to all the plots. Hence, loading cost of these areas on the saleable plots would no doubt increase the capital gain in the hands of the assessee, it will go on to increase the value of stock-in-trade and hence, when the plots are sold, the resultant profit will be smaller. That rate of taxation on long term capital gain is much lower than the tax of normal profits. In this view of the matter, the query were raised to the Id. Departmental representative as to what prejudice does the assessee's claim cause to the Revenue. The Id. DR could not offer any cogent explanation. In our considered opinion, the assessee is making a claim to value the stock-in-trade only on the value of saleable plots which are stock-in-trade. The assessee's claim to compute long term capital gain with reference to saleable plot is revenue neutral in as much as on the sale of plots as business income the resultant income would be much higher and would be taxed at a higher rate. Moreover the road and peripheral development in isolation have no market value. Hence, in our considered opinion, this claim of the assessee would be revenue neutral. As held by the Hon'ble Supreme Court in the case of Excel Industries Ltd., when on an issue the tax effect is neutral, the same should not be agitated. In this view of the matter, in our considered opinion, this claim of the assessee by way of the ground raised above is allowable and accordingly, we allow the same. This is more so when assessee is not pressing the other grounds relating to cost of improvement, etc.

6. In the result, appeal of the assessee is partly allowed as above.

Order pronounced on 02/08/2021 by way of proper mentioning in the notice board.

Customized Notes

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