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**Income Tax Appellate Tribunal - Ahmedabad**

**Pravinbhai J.Pandya, Baroda vs Assessee on 18 July, 2013**

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD "B" BENCH

Before: Sri D.K Tyagi, Judicial Member

and Shri Anil Chaturvedi, Accountant Member

ITA No. 3290/Ahd/2010

Assessment Year 2007-08

Sri Pravinbhai J. Pandya ITO

200/201, Devdeep Nagar Ward-2(3),

Soc, Old Padra Road, Vs Baroda

Baroda (Respondent)

PAN: AJCPP4967E (Appellant) Revenue by: Sri P.L. Kureel, Sr.D.R.

Assessee by: Sri S.N. Divetia, A.R.

Date of hearing : 18-07-2013

Date of pronouncement : 31-07-2013

आदे श/ORDER

PER : D.K. TYAGI, JUDICIAL MEMBER:-

This is the assessee's appeal against the order of Ld. CIT(A)-II, Baroda dated 24-09-2010.

2. The assessee has taken following grounds of appeal:- I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 2 Pravinbhai J. Pandya vs. ITO "1. The learned Commissioner of Income Tax (Appeals) has erred in law and on the facts of the appellant's case in confirming the action of Ld. A.O. of taxing long term capital gain at Rs 6,34,960/- instead of loss of Rs. 4,44,608/-.

The appellant most humbly submit that on the facts and circumstances of the case and in law the addition made by the Ld. A.O. is erroneous as the capital loss retuned by the appellant is correct and prays that your Hon'ble ITAT be pleased to hold so now and delete the addition.

2. The learned Commissioner of Income Tax (Appeals) has erred in law and on the facts of the appellant's case in confirming the action of Ld. A.O. of considering fair market value of the property sold as agriculture land as on 1.4.1981 instead of non-agriculture considered by the appellant.

The appellant most humbly submit that on the facts and circumstances of the case and in law the fair market value of the property sold should have been considered as non agriculture by the Ld. A.O. and prays that your Hon'ble ITAT be pleased to hold so now.

3. The learned Commissioner of Income Tux (Appeals) has erred in law and on the facts of the appellant's case in confirming the action of Ld. A.O. of considering fair market value of the property sold at Rs. 2.32 per Sq. Ft as on 1.4.1981 instead of Rs. 18/-pcr Sq. Ft. valued by approved valuer.

The appellant most humbly submit that on the facts and circumstances of the case and in law the fair market value of the property sold considered by the appellant is the correct value and prays that your Hon'ble ITAT be pleased to hold so now."

3. The issue involved in this appeal is taxability of long term capital gain on sale of land. During the year under appeal, assessee has sold his ancestral land situated at village Atladara bearing revenue survey no. 559. The total I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 3 Pravinbhai J. Pandya vs. ITO area of land was about 12,747 sq. mt. out of which there is a proposed road line and land about 2149.92 was under road line. Thus, the balance land of 9798 sq. mt was sold to Bharat Sumanbhai Modi and others for total consideration of Rs. 89,64, 000/-. The assessee was having half share in the said land and thus received a sum of Rs. 44,82,000/-. This land was ancestral property which was inherited by the assessee from his forefathers. On 06-01-2001, this land was transferred in the name of the assessee and his brother. This land was an agricultural land and the same was converted into non-agricultural on 21-03-2005. Thereafter, this land was sold for the total consideration of Rs. 89,64,000 and the assessee received his half share of Rs. 44,82,000/- during the year and balance amount in subsequent year. While going through the computation of income, assessing officer noted that while computing the income from capital gain on sale of land the index cost of acquisition was taken at Rs. 49,26,608/- (half share) based on valuation report dated 11-02-2008 valued by approved architect and valuer Sri I.N Gajjar. Since, the land was ancestral property and the land was received in inheritance, the value of the land for the purpose of computing the income from capital gain was valued as on 01-04-1981. The value was taken by the registered valuer as on 01-04-1981 @ 18 per sq. ft. On going through the valuation report, it was observed by AO that as per column no. 40, it was stated by the valuer that rate has been obtained by the local inquiries. The valuation of the immovable property was valued treating the land as "other than agricultural land". The AO was of the view that value of land as on 01- 04-1981 by the valuer was on higher side. He therefore requested the Mamaltdar, Boardo city, Baroda through the Talati village Atladara Dist. Baroda to furnish the sale instances of the Atladara village as on 01-04-1981 I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 4 Pravinbhai J. Pandya vs. ITO for sale of agricultural land and also for non-agricultural land. In compliance the Talati village vide letter 04-12-2009 furnished the sale instances and the Mamlatdar Baorda city furnished the copy of extracts of Haq Patrak during the 2006. The details of which were summarized as under:

Entry No. of Revenue Description Date of Area Remarks Rate

Form No. Survey of Sale sale of

6(Haq Number proceedings land

Patrak)

1608/15.9.81 465,458 Rs. 14.8.81 36876 Non Rs. 4/-

Agricultu per Sq.

147504/- Sq.Mt

ral Mt.

1609/20.9.81 477 Rs. 30350/- 30.4.81 1214 Agricultu Rs.2.32

Sq. ral Land per Sq.

Mt. Ft.

1610/20.9.81 477 Rs. 30350/- 30.4.81 1214 Agricultu Rs.2.32

Sq. ral Land per Sq.

Mt. Ft

1611/20.9.81 477 Rs. 30350/- 30.4.81 1214 Agricultu Rs.2.32

Sq. ral Land per Sq.

Mt. Ft

1612/20.9.81 477 Rs. 30350/ 30.4.81 1214 Agricultu Rs.2.32

Sq. ral Land per Sq.

Mt. Ft

Considering the above sale instances, AO valued the value of non- agricultural land @ 4 per sq. mt. and value of agricultural land at Rs. 2.32 per square ft for the year 1981. The assessee was asked as to why the cost of land for purposes of computing long term gain should not be adopted as Rs. 2.32 per sq. ft. The assessee was also given the copy of Haq Patrak in Form No. 6 which was obtained from the Mamlatdar village Baroda city, Baroda. In response to this assessee filed following written submissions: I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 5 Pravinbhai J. Pandya vs. ITO "The assessee has sold non-agriculture land. The indexation of the said property should be accordingly made. The value as on 01.04.1981 of non-agricultural land is to be taken. The valuation report from the registered valuer has been furnished and as per the said Report, the value of the said land as on 01.04.1981 is Rs. 18 per Sq. Ft.

Over and above, the assessee furnished a copy of valuation report on 01.04.1981 of land bearing RS NO. 630,631/1, 631/2, and as per the said report the value on 01.04.1981 is Rs. 100 per Sq. Mt. The said land is situated behind Transpek-silox, where as the land of assessee is just near Miles India Ltd., which has better location than that of land for which valuation, report is furnished. Accordingly, the value adopted by assessee is quite reasonable looking to the better location which may be please be accepted. It further stated that the land of the assessee is just 500 meters far from the Akshar Chowk.

The sale instances quoted is pertains to land which fell under the ceiling Act. The rate of and which fell under [U.L.C Act](https://indiankanoon.org/doc/1005850/) is fixed by the Government at Rs. 20/- per Sq. Mt. i.e. Rs. 2- per Sq. Ft. The sale instances of land is free hold land have not been quoted. Accordingly, the value adopted by he assesses is correct and may please be accepted. There is no question of adopting value @ Rs. 2.32/- per Sq. Ft. Without prejudice to above, if the value of land as on 01.04 1981 is adopted of agriculture land, then deduction for, expenses of Rs. 2,86,481/- being N.A. charge paid of Rs. 17.845/- being scrutiny fees paid to VUDA may please bee granted as deduction at cost price indexation of the same may please be granted".

4. After taking into consideration the submission of the assessee the AO calculated the long term capital gain at Rs. 38,47,040/- by observing as under:

"7. The contentions put forward by the assessee are not at all on the facts as well as on the records/information procured from the Local Bodies /Govt. Entities. The records of the Government entities are substantially authentic and scientific than what the assessee has submitted. There is no denying to fact that the land in question was agricultural land in the initial stage and it should be the basis for the I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 6 Pravinbhai J. Pandya vs. ITO purpose of indexation from 01.04.1981. In no case the valuation should be adopted on the character of the land as "non-agricultural" land.

As a matter of fact, the undersigned had given an opportunity to the assessee to produce the cogent proofs if at all any improvement any cost had incurred by the assessee. The assessee furnished the details of the cost incurred towards the payment to the Govt. authorities for conversion process of non-agricultural land from agricultural land. On verification of the computation of long term capital gain furnished by the assessee, it is seen that the assessee has not considered any cost of improvement while arriving at the cost of acquisition. In this matter, the Hon'ble Supreme Court in the case of [Goetze (India) Ltd vs. Cit-284 ITR](https://indiankanoon.org/doc/718801/) 323 (SC) has held that the assessing officer has no power to entertain claim for deduction otherwise than by filing a revised return. In other words the power of the Assessing officer is restricted to entertain claim of deduction by way of revised return. Looking to the position of law, the details with evidences filed by the assessee for considering the same for the purpose of cost of improvement for indexation, are therefore, not considered in view of the judgment of Hon'ble Supreme Court as cited Supra.

8. In view of the above, for the purpose of computing the capital gain on sale of land, the cost of the acquisition as on 1.04.1981 being agriculture land is adopted at Rs. 2.32 per Sq. Ft. as discussed above. As against Rs. 18/- adopted by the assessee considering the cost of land as on 01.04.1981 being non-agriculture land as per the valuation report earlier filed. Penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income have been initiated separately.

Subject to the above and information available on record, the total income of assessee is computed as under:

"Income from Long Term Capital Gain:-

Sale of land at village Atladar (1/2 share of sale consideration Rs. 89,64,000/- ) Rs. 44,82,000/-

I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 7 Pravinbhai J. Pandya vs. ITO Less: Index cost of acquisition (Area of land sold 9798 Sq. Mt=105468 Sq. Ft.) Cost of acquisition as on 01.04.1981 being Agriculture land @ 2.32 per Sq. Ft.

105468\*2.32 = Rs. 2,44,686/-

=2,44,686\*519/100=Rs. 12,69,920/-

½ share of the assessee will be Rs. 6,34,960/-

Long term capital Gain Rs. 38,47,040/-"

5. Aggrieved by this order, assessee went in appeal before Ld. CIT(A) and relied on the following written submission:-

"The appellant objects to both the contentions of the Ld. AO that is considering the fair market value as 1.4.1981 as agricultural land and taking the fair market value of the subject land at Rs.2.32 per sq.ft. The detailed submission on both the contention are as under.

3.4.1. Regarding the first contention of the Ld. A.O. that the fair market value of the subject land is to be considered as agricultural land, the appellant most humbly submit that the contention of the Ld. AO is erroneous both in law and facts of the matter. Since the said land was converted by the appellant at his own cost to non- agricultural land and sold as non-agricultural land, the value of the said land should has been considered as non-agricultural land.

3.4.2. The appellant further submits that as per the provision of [Section 55(2)](https://indiankanoon.org/doc/1005850/) (b) where the capital asset becomes the property of the assesses before 1.4.81, the cost of acquisition of as such assets can be substituted by the fair market value of such asset on 1st April 1961 at that option of the assesses. The appellant most humbly submit that this provision has to be interpreted logically and cannot be interpreted in absurd manner. When the subject land has been sold as non- agricultural land, its fair market value has to be considered on 1.4.81 as non-agricultural land only. It is important to note that the land sold by the appellant is non-agricultural and price received is also for a non-agricultural land.

I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 8 Pravinbhai J. Pandya vs. ITO The appellant further submits that intention of the legislature in allowing to replace the cost of acquisition by the fair market value as on 1.4.81 is to exempt the capital gain arising on account inflation and other factors which has artificial affected in increase in the price of the land. Now since the asset sold is non-agriculture, it is natural corollary that its fair market value is to be replaced by non- agricultural fair value and then only the justice can be made. In a common parlance, we have to compare square with square or horse with horse end we cannot compare square with round or Horse with Donkey.

3.4.3. The appellant further submit that the Ld. A.O. ought to have substantiated his action of taking value as agriculture and should not have rejected the appellant's contention in summary manner. He has neither given any reasons for disregarding the appellant contention that the value as per non agriculture should be considered nor proved his contention that value as agriculture should be considered.

3.4.4. As far as the second contention of Ld. A.O. of taking fair market value of the subject land for Rs. 2.32, the appellant most humbly submits that the value considered by the Ld. A.O. is not at all a fair market value. On the contrary that sale instances quoted by the Ld. A.O. are absurd. We have to draw your honour's kind attention to the sale instances quoted by the Ld. A.O. on page 5 Para 6, wherein the Ld. A.O. has given 5 sale instances. The first sale instance is dated 14.8.1981 and is of non-agricultural land and per which price of land sold was of Rs. 4/- per Sq. Mtr. and the remaining 4 instances are of the one agriculture land sold on 30.4.1981 but sold in 4 parts, in other words there are only 2 sale instances.

As far as putting reliance on the same is concern, the appellant most humbly submit that no reliance can be placed as they are absurd. As per the said sale instance, value of non agriculture land in 1981 was just Rs. O.37 (Paisa only) as against this value of agriculture land was Rs. 2.32. This is totally unbelievable as under no circumstances the value of the non-agricultural can be lower than agricultural land. I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 9 Pravinbhai J. Pandya vs. ITO The appellant also submits that the sale value of each land varies from one and another and in addition to its nature, it depends upon many factors like location, surrounding, size, payment period, installments, need of seller, need of buyer, taxation cost, FSI etc. and in the sale instance quoted by the Ld. A.O. is totally silent on it and it seems either he has no such information or it has been not provided to the appellant. He is totally silent why is adopting same, he neither compared with the appellant's land specification with that of sale instance relied on by him.

The Ld. A.O. has in real sense given only 1 instances and has chosen it as it was suitable to him, but he has not all proved that the value determined by the Approved Valuer is high.

In view thereof, the appellant most humbly submit that the sales instances quoted by the Ld. A.O. are not reliable, on the contrary it is self contradictory and hence the same cannot be considered.

3.4.5. As far as the value adopted by the appellant is concern the appellant most humbly submit that the same is the fair market value as the same is based on report of registered valuer who is qualified as Architect & Civil Engineer. He is also an approved as valuer by the Income Tax Department. He has vast experience in the field including valuation. The appellant further submit that neither he nor the Income Tax officer is competent to value the said land.

The appellant further submit that since the land sold by him is situated on main road to GIDC Opp. famous Industrial unit, facing road and having very good width facing road. Its value as 1.4.1981 is reasonable on facts.

The appellant also submit that up to 1996, the [Urban Land Ceiling Act](https://indiankanoon.org/doc/1005850/) was in operation and as per the said Act, the value of land which was surplus as per the said act was Rs. 2/- per sq. Ft, while the value considered by the Ld. A.O. is Rs, 2.32 which is very negligible as the land in question was free from [Urban Land Ceiling Act](https://indiankanoon.org/doc/1005850/) and in the reality the price of free land used to more than the at least ten times of the ULC rate.

I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 10 Pravinbhai J. Pandya vs. ITO The appellant also submit that the Ld. A.O. has not pointed out any defects, inconsistency in the valuation report of the approved valuer to disregard his valuation.

The appellant further submits that during course of hearing he had submitted the sale instances of the nearby places as well as copy of the valuation report of other valuer who had valued land situated in nearby area in support of his contention that valuation made by the approved valuer is reasonable. The copy of the same is enclosed herewith as Annexure 4 & 5.

From the Annexure- 4 being an report of the approved valuer Shri Rajesh P. Rajpara, your honour will observe that he has valued the fair market value of the land situated behind the unit of Transpack - Silox Ltd. at Rs. 10/- Sq. Ft. The land valued by him is nearest to the chemical unit so it has pollution problem, while the land sold by the appellant is almost half K.M. before it and on the opposite side on main road facing. The size and other factors are more or less same. Looking to the said factors etc the fair market value of Rs. 18/- per Sq. Fts. valued by the approved valuer is reasonable on facts.

From the Annexure - 5 being copy of sale instances of nearby area, your honour will observe that as per the said sale instance, the value of the land in the nearby area was Rs. 57/- in the year 1988 as against Rs.18/-considerad by the appellant in the year 1981. So if we calculate reverse by applying cost of inflation index, the value of the appellant's land comes to Rs. 33/- per Sq. Fts as against Rs. 18/- per Sq. Ft. taken by the appellant.

The appellant is also attaching herewith the copy of valuation report of the nearby land as Annexure - 6. From the same your honour will observe that the value of the similar land in the same area as on 21/5/1931 was Rs. 45.35/- per Sq. Ft. (Rs. 499/- per Sq. Mts). This land is on Atladara - Padra main road so has better location but it is about 1 km away from appellant's land. Accordingly the fair market value of the appellant's land at Rs. 18/- per Sq. Ft. is reasonable as against Rs, 46.35/-."

I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 11 Pravinbhai J. Pandya vs. ITO

6. After taking into consideration the submission of the assessee Ld. CIT(A) partly allowed the appeal of the assessee by holding that since land under consideration was agricultural land as on 01-04-1981, the valuation taken by the AO at Rs. 2.32 per sq. ft as on 01-04-1981 has rightly been taken for calculating the long term capital gain. While doing so, Ld. CIT(A) has also distinguished the case law of Jahanganj Cold Storage (Agra) (133 TTJ 278) relied by the AO. Ld. CIT(A) however directed the AO to include the cost incurred for improvement/conversion for the purpose of working of capital gain.

7. Assessee still aggrieved has come in appeal before us.

8. At the time of hearing learned counsel of the assessee reiterated the submissions made before the lower authorities and further submitted that in case assessing officer did not believe the valuation report of the registered valuer submitted by the assessee, he should have referred the mater to DVO for valuation as per provisions of sec. 55[A of the Act](https://indiankanoon.org/doc/1656199/). Since the same has not been done, it was prayed that ld. AO be directed to refer the matter to DVO and after obtaining his report of capital gain calculation may be done. Ld. DR on the other hand relied on the order of lower authorities.

9. After hearing both the parties and perusing the record, we find that there is no dispute about the fact that land under consideration was agricultural land as on 01-04-1981. It is also not disputed that it was converted into non-agricultural land only in the year 2005. The assessee's consistent contention has been that land should have been valued as non- I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 12 Pravinbhai J. Pandya vs. ITO agricultural land as on 01-04-1981 and the valuation of non-agricultural land as on 01-04-1981 should be adopted for calculating the long term capital gain on the ground that since the land when sold was non-agricultural land after conversion, it should be treated as non-agricultural land even before the date of conversion. This contention was backed by another argument that such treatment of agricultural land would bestow greater benefit on assessee which was the purpose of the provisions of law regarding applying cost inflation index while calculating long term capital gain. We find this argument devoid of merit in view of the factual matrix of this case that as on 01-04-1981 land was agricultural land and to apply cost inflation index the same cannot be treated as non-agricultural land as on 01-04-1981 simply because the same was converted into non-agricultural land subsequently in the year 2005 when the same was sold as non-agricultural land. Therefore lower authorities have rightly treated this land as agricultural land as on 01- 04-1981 and assessing officer has rightly taken the valuation of the land @ 2.32 per sq. ft on the basis of comparable instances obtained by him from the concerned authorities. The another contention raised by learned counsel of the assessee was that AO should have referred the matter to DVO u/s 55[A of the Income Tax Act](https://indiankanoon.org/doc/789969/), in case he was not satisfied with the registered valuer report submitted by the assessee. As per the provisions of [section 55A](https://indiankanoon.org/doc/1005850/) of the Act, the assessing officer may refer the matter to DVO in case valuation of any property on the basis of registered valuer has been shown by the assessee less than the market value. In this case the situation is revere as in this case the assessee has shown value of the land as on 01-04-1981 more than the market value, and therefore these provisions are not applicable to the facts of this case.

I.T.A No.3290/Ahd/2010 A.Y. 2007-08 Page No 13 Pravinbhai J. Pandya vs. ITO In view of the above discussion, we feel no need to interfere with the order passed by Ld. CIT(A) and the same is hereby upheld..

10. In the result, assessee's appeal is dismissed.

Order pronounced in open court on the date mentioned hereinabove at caption page Sd/- Sd/-

(ANIL CHATURVEDI) ( D.K. TYAGI)

ACCOUNTANT MEMBER JUDICIAL MEMBER

Ahmedabad : Dated 31/07/2013

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आदे श कȧ ूितिलǒप अमेǒषत / Copy of Order Forwarded to:-

1. अपीलाथȸ / Appellant

2. ू×यथȸ / Respondent

3. संबंिधत आयकर आयुƠ / Concerned CIT

4. आयकर आयुƠ- अपील / CIT (A)

5. ǒवभागीय ूितिनिध, आयकर अपीलीय अिधकरण, अहमदाबाद / DR, ITAT, Ahmedabad

6. गाड[ फाइल / Guard file.

By order/आदे श से, उप/सहायक पंजीकार आयकर अपीलीय अिधकरण, अहमदाबाद