

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
MISS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER

ITA No.77/Ahd/2023  
Assessment Year : 2016-17

Hiten Tulshibhai Engineer 8, Shraddha Nagar Society Highway Mehsana 384 002 Ahmedabad 380009. PAN : AAAP E 7572 K	Vs.	ITO, Ward-1 International Tax Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
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Assessee by :	Shri Anil Kshatriya, Advocate
Revenue by :	Shri Rajdeep Sigh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 09/08/2023

घोषणा की तारीख /Date of Pronouncement: 13/09/2023

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The present appeal has been filed by the assessee against the order of the ITO, Ward-1, International Tax, Ahmedabad dated i.e. 17-03-2022 passed under section 147 read with Section 144C of the Income Tax Act, 1961("the Act" for short) pertaining to the assessment year 2016-17.

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

*"1. On facts and circumstances of the case and in law, the order passed by the A.O. is bad in law, illegal and being in violation of set procedure in law as such it is liable to be quashed and set aside.*

*2. On facts and circumstances of the case and in law, the A.O. has grossly erred in making addition of Rs.3,56,70,539/-on account of undisclosed capital gain, whereas the sale proceeds of agricultural land duly disclosed in the return of income filed u/s. 139 of the IT. Act and the land in question*

*was not a capital asset within the meaning of section 2(14) of the Act, as such, no such addition is warranted. The same deserves to be deleted.*

*3. On facts and circumstances of the case and in law, the A.O. has grossly erred in initiating proceedings u/s.271(l)(c) of the Act, when no such proceeding is attracted in the case of the appellant.*

*4. On facts and circumstances of the case and in law, the A.O has grossly erred in charging interest of Rs.82,299/- U/S.234A and Rs.67,48,518/- u/s.2346 of the Act, when the appellant has not committed any such default.”*

3. Ground no.1 was not pressed for adjudication and the same is therefore dismissed. Ground no.3 raised against initiation of penalty proceedings being premature is not being dealt with by us. Ground no.4 against levy of interest under section 234A, B, C being consequential needs no adjudication.

4. The Id.counsel for the assessee submitted that the only effective ground needing adjudication and which is being pressed before us, is ground no.2. As is evident from the perusal of the same, the grievance raised by the assessee in the said ground against the order of the Ld.CIT(A) is against confirmation of the addition made by the AO to its income on account of capital gain amounting to Rs.3,56,70,539/-.

5. The facts relating to the case are that the AO, on perusal of the case records and information available with him, gathered that the assessee had sold land during the year to a company for a consideration of Rs.3,86,98,710/-, but had offered no income/capital gains from the said transaction for taxation. Accordingly, reassessment proceedings u/s 147 of the Act were initiated, during the course of which the assessee contended that the land sold by him did not qualify as “capital asset” in terms of section 2(14)(iii) of the Act being “rural agricultural land”, and therefore, the capital gain earned thereon had not been returned to tax. The AO, however, was

not convinced with the reply of the assessee, noting that the land had been purchased by the company for “industrial purposes” under section 63AA of Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997. He, therefore, held the land sold by the assessee to be deemed as “non-agricultural land”, and accordingly he rejected the contention of the assessee that it did not qualify as “capital asset”. The ld.AO, therefore, concluded that the capital gain earned thereon was liable to tax, which he computed at Rs.3,56,70,539/-. Since the assessee is a non-resident, the AO proposed the addition in a draft order passed in terms of section 144C(13) of the Act. The assessee filed an objection to the same before the Dispute Resolution Panel (DRP) who, after considering the submissions made before it, dismissed the objection of the assessee holding that the AO had rightly treated the land sold as non-agricultural, and capital gain earned thereon had, therefore, been correctly subjected to tax. The AO, thereafter, on receiving directions of the DRP passed a final order under section 147 read with section 144C(3) of the Act making the addition of capital gain earned, amounting to Rs.3,56,70,539/- to the income of the assessee. Aggrieved by the same the assessee has filed appeal before us.

6. Before us, the contention of the ld.counsel for the assessee was that –

- i) It had been suitably demonstrated to the authorities below, both the AO and the DRP that, the land sold by the assessee was agricultural land, which fact found mention in the sale deed through which it had been sold to the company;

- ii) The basis with the AO for treating the land as non-agricultural, that the land had been purchased by the company for “industrial purposes” under section 63AA of Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997, was irrelevant, since it did not impinge upon the factum of the character of the land in the hands of the assessee till it was sold to the corporate entity being agricultural, and that only subsequently its character was changed to non-agricultural purposes by the purchaser of the land.

The Id.DR, however, supported order of the AO.

7. We have heard both the parties. The short issue to be adjudicated is vis-à-vis the character of the land sold by the assessee, whether agricultural land or not, so as to determine its qualification as a “capital asset” in terms of section 2(14)(iii) of the Act, and thus facilitate finding whether capital gain earned thereon is taxable or not in terms of the provisions of law in this regard. The assessee’s contention being that the land was agricultural in nature, as opposed to the Revenue contending that the land was non agricultural and thus qualified as “capital asset”, the capital gains earned thereon therefore being liable to tax.

8. Before proceeding further, we would like to bring out pertinent facts relating to the issue. During the impugned year, the assessee had sold four pieces of land as tabulated in page no.3 of the AO’s order. The land had been sold to a company viz. M/s. Steel Strips Wheels Ltd., having its registered office at Village Somaheri/Lehli, P.O. Dappar, Tehsil Derabassi, Mohali. The lands were agricultural land purchased by the company for *bona*

*fide* industrial purposes under section 63AA of the Gujarat Tenancy and Agricultural Land Laws (Amendment) Act, 1997 (“GT&ALL”). The transaction was initiated with the purchaser receiving permission to buy the said lands for *bona fide* industrial purposes from the Industrial Commissioner Gujarat vide letter no.1057874 dated 4.4.2015. Subsequently the land was sold on 15-06-2015. Thereafter notice for actual use of land purchased for Industrial Purposes was given by the purchaser company to the Dist. Collector, Mehsana on 22-12-2015 . And certificate for change of land use from agriculture to non-agriculture was issued by the Collector, Mehsana dated 29.8.2016.

9. There is no dispute with respect to the above facts. The assessee evidenced the land being agricultural land from various clauses of the conveyance deed itself, wherein it was repeatedly noted as “agricultural land” sold to the purchaser. This contention of the assessee finds mention at page no.4 of the order as under:

(i). On page-2, at unnumbered para-4, it is specifically stated that “the vendor is the lawful owner and obsolete title holder in possession of Agricultural land of old tenure....”

(ii). On page-4, at unnumbered para-3, it is stated that the vendor has been in continuous possession.....his income.

(iii). On Page-4, at unnumbered para-4, it is stated that “the purchaser being desirous of purchasing the Schedule Agricultural Land from the Vendor”

(iv). On page-5, at unnumbered para-3, it is stated that “the Vendor has got absolute right, title, interest and full authority convey the Schedule Agricultural Land to the Purchaser....”

(v). On page-5, at item no. (d), it is stated that “The Vendor has fully complied with all the applicable local & municipal laws in respect of the Schedule Agricultural Land and that the proposed transfer of the Schedule Land to the Purchaser is not violative of any local, municipal law etc.”

(vi). The Schedule of Agricultural Land appearing on page-13 of each of the sale deed specifically reads under (subject to variance of block number and area vis-à-vis sale consideration):

“All the piece and parcel of agricultural lands in the state of Gujarat, Tejpur Village, Tal. Jotana, District Mehsana, District Sub-Registry Office at Jotana, comprised in Block number 114 bearing village from 8/A A/C. No. 237 measuring an extent of about 21044 sq. mtrs. Along with all amenities, liberties, easements, appurtenances, facilities, trees, water ways, etc. in the pertaining to or in any manner connected with the said Schedule Agricultural Land and bounded as follows...”

10. The AO/DRP treated the land to be non-agricultural noting that it had been bought by a company for industrial purpose and the purchaser company had received permission for usage of the land

for industrial purposes, even prior to the date of purchase of land, under section 63AA of the “GT&ALL”. Also it was noted by the AO that as per prevalent land laws in Gujarat, a non-agriculturist could not buy agricultural land, and therefore, the impugned lands were first converted into non-agriculture land, and then sold by the assessee. The AO noted the stamp duty to have been charged at non-agricultural land rate, and he further noted that the land record were changed reflecting the conversion of land to non-agricultural which was done on 29.8.2016. Thus, noting that statutory authorities like Industrial Commissioner Gujarat, Stamp Duty authority and Collector, Mehsana had noted the land to be non-agricultural in nature, the said land, therefore, was characterized as non-agricultural land by the Revenue authorities. The finding of the AO in this regard is at para Ra-5.3 to 5.8 of the order as under:

5.3 The AO does not agree with the assessee. His first finding is that the land has been sold to a Corporate, namely, Steel Strips Wheels Ltd, Mohali, Punjab. The said company is not engaged in any agricultural operations but intends to set up an industrial unit at the impugned land. Here, the AO has mentioned that the sale deeds of the impugned land ( 4 such deeds ) are dtd 15-06-15. However, the AO has noted that the purchaser company has already received necessary permission from the Industrial Commissioner, Gujarat vide letter no 1057874 dtd 04/04/2015, for the land to be used for bonafide industrial purposes. Thus, it is noticed that much before the sale deed was executed, requisite permission had already come for the use of land for industrial purposes.

This was done u/s 63AA of Gujarat Tenancy and Agricultural Lands Laws ( amendment) Act, 1997.

5.4 The assessee says that this fact is immaterial. That, the purchaser company has got the land converted in to industrial land at their own cost. Since the assessee has not spent anything on the conversion, this conversion is not important for deciding the issue.

5.5 The AO says that in Gujarat, a non-agriculturist can not buy an agricultural land in the first place. A non-agriculturist can buy only a non-agricultural land. That's why, the impugned land was converted in to a non-agricultural land first and thereafter, the sale could happen.

5.6 The AO has further noted that the stamp duty has also been charged and paid on the impugned parcels of land as if it were non-agricultural land. That is to say, the stamp duty has been paid at a higher rate. This means that the Stamp Authorities are also treating the impugned land as non- agricultural land.

5.7 Moving further, the AO has observed that in Gujarat, the land record 7/12 changes only when the land is converted in to a non-agricultural land. The Collector, Mehsana also has passed an order dtd 29-08-16 to this effect. The said order has been scanned and made part of the assessment order too.

5.8 We have carefully considered the .entire facts and circumstances of

*the issue concerned. We find that there are enough, sufficient and good grounds to treat the impugned land as non-agricultural land as on the date of sale. At least, three Government departments, namely, Industry Commissioner, Gujarat, Stamp duty Authorities, Mehsana and the Collector, Mehsana, have already adjudicated that the said land is non-agricultural. We are afraid, there is no more scope for us to disagree from the stand of the fellow Government Departments. The factum of the land being situated around 21 Kms away and the population being around 1400 have become irrelevant now. Once appropriate Government Authorities have already declared the land to be non-agricultural and accordingly, charged stamp & other duties and have allowed the sale to take place to a Corporate body, as otherwise, a sale to a nonagriculturist would not have been possible itself in view of Gujarat Laws, there hardly remains any scope for further arguments and debate. The definition of Capital asset given in the Income Tax Act, 1961, does not override or nullify, as the assessee would like, typical situations like this as, surely, making such type of gain as exempt must not be the intention of legislature. What was intended was to spare the poor farmers from paying Capital Gains Tax on sundry and petty gains from sale of agricultural land which he or She might be doing for making both ends meet or to bear expenses of marriage or such types of social obligations. Surely, a sale which can bring an amount of Rs 3.86 crores to the so-called farmer would never be intended to be spared the taxation. The exemption law is old but, the economic development of a state like Gujarat is happening at a fast pace.*

11. Having heard both the authorities and having gone through all relevant provisions of law, we hold that the Revenue authorities have wrongly held the land to be non-agricultural in nature and have totally mis-appreciated the relevant provisions of the Land Laws, i.e Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997, in this regard. Our reasoning for the same follows.

The AO deems the land to be non agricultural noting the fact that the assessee had sold the land to M/s. Steel Strips Wheels Ltd. who had purchased it for *bona fide* industrial purposes under section 63AA of Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997. Since the emphasis is on 63AA of GT&ALL, we shall elaborate on the said provision so as to understand its implication.

12. Section 63 of the Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997, prohibits transfer /sale of

agricultural land to non-agriculturist. Section 63AA of the said Act however provides an exemption from the same in respect of agricultural lands which are designated for *bonafide* industrial purposes under section 65B of the Bombay Land Revenue Code, 1879. Such agricultural lands, which as per section 65B of the Bombay Land Revenue Code, 1879 require no permission on change of land use, can be sold to non-agriculturist in terms of section 63AA of GT&ALL.

13. Section 63 & 63AA of the Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997 are reproduced hereunder for clarity:

### **Gujarat Tenancy and Agricultural Lands Act, 1997**

***“63. Transfers to non-agriculturists barred. - (1) Save as provided in this Act,-***

***(a) no sale (including sales in execution of a decree of Civil Court of for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or***

***(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, [or]***

***[(c) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein.]***

***shall be valid in favour of a person who is not an agriculturist [or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer]:***

*Provided that the Collector or an officer authorised by the [State] Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, [or for such agreement] on such conditions as may be prescribed.*

*[Provided further that, no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.]*

*[(1A) The State Government may, by notification in the Official Gazette, exempt from the provisions of sub-section (1), for the transfer of any agricultural land to any public trust established for the charitable purpose and which is non-profitable in nature, for the use of such land in the field of health and education, subject to such conditions as may be specified therein.] (2) Nothing in this section shall be deemed to [prohibit the sale, gift, exchange, or lease, or the agreement for the sale, gift,*



exchange or lease of] a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan [or a person carrying on any allied pursuit].

[(3) Nothing in this section shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society for any transfer declared to be a mortgage by a court under section 24 of the Bombay Agricultural Debtors' Relief Act, 1947 (Bombay XXVIII of 1947),].

[(4) Nothing in section 63A shall apply to any sale made under sub-section (1).]

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**[63AA. Sale of land for bonafide industrial purpose permitted in certain cases. –**

**(1) Nothing in section 63 shall prohibit the sale or the agreement for the sale of land for which no permission is required under sub-section (1) of section 65B of the Bombay Land Revenue Code, 1879 (Bombay V of 1879) in favour of any person for use of such land by such person for a bonafide industrial purpose:**

Provided that-

- (a) the land is not situated within the urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976),
- (b) where the area of the land proposed to be sold exceeds ten hectares, the person to whom the land is proposed to be sold in pursuance of this subsection shall obtain previous permission of the Industries Commissioner, Gujarat State or such other officer, as the State Government may, by an order in writing, authorise in this behalf,
- (c) the area of the land proposed to be sold shall not exceed four times the area on which construction for a bonafide industrial purpose is proposed to be made by the purchaser:

Provided that any additional land, which may be required for pollution control measures or required under any relevant law for the time being in force and certified as such by the relevant authority under that law shall not be taken into account for the purpose of computing four times the area,

[Provided further that where the land is sold to a purchaser which is a company as defined by clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), it may offer the equity shares of the company, to the person by whom such land is being sold, in lieu of the sale price of such land and if such person is in agreement for accepting such equity shares, either in full or partly, then it shall be incumbent upon such company to allot such equity shares of equivalent amount, either in full or partly, to such person,]

(d) where the land proposed to be sold is owned by a person belonging to the Scheduled Tribe, the sale shall be subject to the provisions of section 73AA of the Bombay Land Revenue Code, 1879 (Bombay V of 1879).

(2) Nothing in section 63A shall apply to any sale made in pursuance of sub-section (1).

(3) (a) Where the land is sold to a person in pursuance of sub-section (1) (hereinafter referred to as "the purchaser"), he shall within thirty days from the date of the purchase of the land for a bonafide industrial purpose, send a notice of such purchase in such form alongwith such other particulars as may be prescribed, to the Collector and endorse a copy thereof to the Mamlatdar.

(b) Where the purchaser fails to send the notice and other particulars to the Collector under clause (a) within the period specified therein, he shall be liable to pay, in addition to the non-agricultural assessment leviable under this Act, [after one month from the date of such purchase, such fine of one per cent. of the prevailing jantri every month, as the collector may, subject to rules made under this Act, direct].

(c) Where, on receipt of the notice of the date of purchase for the use of land for a bonafide industrial purpose and other particulars sent by the purchaser under clause (a), the Collector, after making such inquiry as he deems fit-

(i) is satisfied that the purchaser of such lands has validly purchased the land for a bonafide industrial purpose in conformity with the provisions of sub-section (1), he shall issue a certificate to that effect to the purchaser in such form and within such time as may be prescribed,

(ii) is not so satisfied, he shall, after giving the purchaser an opportunity of being heard, refuse to issue such certificate and on such refusal, the sale of land to the purchaser shall be deemed to be in contravention of section 63.

(d) (i) The purchaser aggrieved by the refusal to issue a certificate by the Collector under sub-clause (ii) of clause (c) may file an appeal to the State Government or such officer, as it may, by an order in writing, authorise in this behalf.

(ii) The State Government or the authorised officer shall, after giving the appellant an opportunity of being heard, pass such order on the appeal as it or he deems fit.

(4) (a) The purchaser shall comply with the provisions of any law for the time being in force or any order or direction of the Central Government or State Government or any Corporation owned or controlled by such Government, Government company, local authority or statutory authority in relation to use of land for industrial purpose before the land is put to use for such purpose."

14. As is evident from a perusal of the above the GT&ALL prohibits sale of agricultural land to a non agriculturist, but relaxes this prohibition in case of lands which are designated for *bonafide* industrial purposes and require no permission on change of land use as per the Bombay Land Revenue code, 1879. Further section 63AA(3) of GT&ALL requires purchasers of such agricultural lands designated for *bonafide* industrial purposes, to notify the concerned collector of purchase of such land within thirty days. The Collector is required to issue a certificate to the effect that the purchaser shall use the land for *bonafide* industrial purposes, after making necessary verification in this regard.

15. Coming to the Bombay Land Revenue code, 1879, section 65 & 65A of the said code requires prior permission for conversion of an agricultural land to a non-agricultural land or non-agricultural land to agricultural land respectively, meaning thereby any conversion of land use is to be done after prior permission as per the provisions of Land Revenue Code. But section 65B states that where development authorities or the State designates certain land for industrial purpose, usage of the land can be converted from agriculture to *bona fide* industrial purpose, without seeking prior permission, and only a notice of conversion of land usage is to be given to the Collector. Thus, section 65B recognizes agriculture land, which has been designated either by the development authorities or the State authorities, to be possibly used for industrial purpose also and thus requiring no prior permission on change of land use. Section 65 - 65B of the Bombay Land Revenue code, 1879 is reproduced hereunder for clarity:

**Bombay Land Revenue Code, 1879**

***“65. Uses to which occupant of land for purposes of agriculture may put his land. - [(1) Any occupant, of land [assessed or held for the purpose of agriculture] is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient [use for the purpose aforesaid].***

***Procedure if occupant wishes to apply his land to any other purpose. - But, if any occupant [wishes to use his holding or any part thereof for any other purpose] the Collector's permission shall in the first place be applied for by the [\* \*] occupant.***

*[The Collector, on receipt of such application,*

*(a) shall send to the applicant a written acknowledgement of its receipt, and*

*(b) may, after due inquiry, either grant or refuse the permission applied for: Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgement within seven days from the date of receipt of the application, be reckoned from the date*

*of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.]*

*Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the [\*\*\*] occupant.*

*[\*] [\*\*\*]*

*[(2) Notwithstanding anything contained in sub-section (1) but subject to any terms and conditions laid down by the State Government in this behalf, where an occupant has his holding in an area comprising a gram and such area is not within an urban agglomeration or within a radius of five kilometres from the limits of a municipal borough or notified area or industrial estate and such occupant wishes to use his holding or a part thereof only for a residential purpose, it shall not be necessary for him to obtain permission of the Collector under sub-section (1).*

*Explanation. - For the purposes of this section-*

- (i) "gram" means a gram within the meaning of the Gujarat Panchayats Act, 1961 (Gujarat VI of 1962);*
- (ii) "industrial estate" means an industrial estate within the meaning of the Gujarat Industrial Development Act, 1962 (Gujarat XXIII of 1962);*
- (iii) "municipal borough" or "notified area" means respectively, a municipal borough or a notified area within the meaning of the Gujarat Municipalities Act, 1963 (Gujarat 34 of 1964);*
- (iv) "urban agglomeration" means an urban agglomeration within the meaning of the urban Land (Ceiling and Regulation) Act, 1976.] (83 of 1976.*

***[65A. Procedure if occupant wishes to apply his land from one non-agricultural purpose to another non-agricultural purpose. - Where the occupant of any land assessed or held for any non-agricultural purpose wishes to use such land or part thereof for any other non-agricultural purpose, the Collector's permission shall in the first place be applied for by him and the provisions of section 65 shall, so far as may be, apply to such application.***

*Explanation. - In this section, and in section 67A "non-agricultural purpose" means any of the purposes specified in clauses (b) to (e) of sub-section (1) of section 48.]*

***[65B. Use of certain lands for bona fide industrial purpose. - (1)***

***Notwithstanding anything contained in section 65 or 65A, where-***

- (a) any land used or held for the purpose of agriculture or, as the case may be, for any non-agricultural purpose not being an industrial purpose is,-***



Thus the Bombay Land Revenue Code allows change of land use from agriculture to non agriculture and vice versa only after seeking necessary permission from the concerned authorities. But in cases of agricultural lands which have been designated for *bonafide* industrial purposes by the State or other authority specified, seeking such permission on change of land use is done away with and only notice of change of land use is required to be given to the collector, who in turn is required to verify the fact of *bonafide* user of land for industrial purposes and issue a certificate accordingly in this regard.

16. What transpires from a conjoint reading of the relevant provisions of Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997 and the Bombay Land Revenue Code, 1879, is that in case of agricultural lands designated by authorities for *bona fide* industrial purposes the requirement of seeking prior permission for land use change is done away as per the Bombay Land Revenue Code, 1879. Such agricultural lands can be transferred to non agriculturist as per section 63AA of the GT&ALL Act, which Act otherwise prohibits such transfers.

Thus Lands purchased u/s 63AA of Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997, is nothing but agricultural land.

17. Applying this to the facts of the present case wherein the land has been sold u/s.63AA of the GT&ALL, undoubtedly the said land is agriculture land. This fact is further evidenced by various covenants of the conveyance deed stating the character of the land sold in clear terms to be agricultural.

Also, as noted above, as per the relevant land laws, once the agriculture land is sold to a non-agriculturist for *bona fide* industrial use, the notice of change of land use is to be given by the purchaser to the collector who after verification issues certificate of valid user for *bonafide* industrial purposes.

18. As per the facts of the present case the purchaser of land, i.e the company, after purchase of the agricultural land from the assessee u/s 63AA of the GT&ALL Act, notified the purchase of agricultural land for *bonafide* industrial use and was issued a certificate in this regard by the collector after verifying its user for *bonafide* industrial purposes. Thus, it was subsequent to purchase of land, that its use was changed to non-agriculture purpose.

19. We hold therefore that the AO/DRP has erred in interpreting section 63AA of the Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997 to mean that the land sold by the assessee had been converted into non-agriculture prior to the date of sale. At the cost of repetition, we may state that what it only implies is that the land was **designated** for use for non-agriculture purpose. It was only designated so, and its user for non-agriculture purpose was completed only when the non-agriculture usage was commenced and notified to the Collector, which in the present case was done by the company, which purchased the land subsequent to its purchase. The conveyance deed, all along mentions the land sold by the assessee as agricultural land. Its conversion from agricultural to non-agricultural land is certified by the Collector post-sale of the land.

20. The land sold by the assessee, having been held to be agricultural land, and since there is no dispute vis-à-vis its distance

from the municipal limits, the impugned land, we hold, did not qualify as “capital asset” in terms of section 2(14)(iii) of the Act. The claim of the assessee to the entire capital gain earned on these piece of land amounting to Rs.3,56,70,539/-, as not being liable to tax is, we hold, in accordance with law. The order passed by the AO, therefore, treating the land sold by the assessee, as non-agricultural and subjecting to capital gain thereon to the tune of Rs.3,56,70,539/- as liable to tax, is set aside.

Ground of appeal No.2 of the assessee is allowed.

21. In the result, appeals of the assessee is partly allowed.

**Order pronounced in the Court on 13<sup>th</sup> September, 2023 at Ahmedabad.**

*Sd/-*

**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

*Sd/-*

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 13/09/2023