आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.108/PUN/2013
निर्धारण वर्ष / Assessment Year: 2007-08

The Income Tax Officer,
Ward 8(4), Pune .... अपीलार्थी/Appellant

Vs.

Shri Yogesh Surendra Shah
10, Audyogik Kamgar Hsg. Society,
Mahesh Nagar, Pimpri,
Pune – 411018 .... प्रत्यर्थी / Respondent

PAN: ASFPS0080F

आयकर अपील सं. / ITA No.109/PUN/2013
निर्धारण वर्ष / Assessment Year: 2007-08

The Income Tax Officer,
Ward 8(4), Pune .... अपीलार्थी/Appellant

Vs.

Shri Surendra S. Shah
Shop No.17, D Wing,
Prestige Classic,
Chinchwad Station, Chinchwad,
Pune – 411019 .... प्रत्यर्थी / Respondent

PAN: BHEPS3991N

आयकर अपील सं. / ITA No.110/PUN/2013
निर्धारण वर्ष / Assessment Year: 2007-08

The Income Tax Officer,
Ward 8(4), Pune .... अपीलार्थी/Appellant

Vs.

Smt. Chaya S. Shah
Shop No.17, D Wing,
Prestige Classic,
Chinchwad Station, Chinchwad,
Pune – 411019 .... प्रत्यर्थी / Respondent

PAN: BHEPS3989L

आयकर अपील सं. / ITA No.111/PUN/2013
निर्धारण वर्ष / Assessment Year: 2007-08

The Income Tax Officer,
Ward 8(4), Pune .... अपीलार्थी/Appellant

Vs.

Shri Dinesh Surendra Shah
10, Audyogik Kamgar Hsg. Society,
Mahesh Nagar, Pimpri,
Pune – 411018 .... प्रत्यर्थी / Respondent

PAN: ABXPS8204L

अपीलार्थी की ओर से / Appellant by : Shri Hitendra Ninawe
प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख / **Date of Hearing : 02.01.2017**		घोषणा की तारीख / **Date of Pronouncement: 05.01.2017**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of four appeals filed by Revenue are against respective orders of CIT(A)-V, Pune, all dated 29.10.2012 relating to assessment year 2007-08 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The appeals of Revenue were fixed for hearing from date to date, which were adjourned at the request of the assessee. On the appointed date of hearing, none appeared on behalf of the assessee nor any application was moved for adjournment. We proceed to decide the appeals after hearing the learned Departmental Representative for the Revenue.

3. All the appeals filed by the Revenue relating to connected assessee on identical issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, reference is being made to the facts and issue in ITA No.108/PN/2013 to adjudicate the issue.

4. The Revenue in ITA No.108/PN/2013 has raised the following grounds of appeal:-

1. *Whether the on the facts and circumstances of the case and in law, the CIT(A) was justified in treating the land sold as 'agricultural land' and allowing the claim of the assessee for exemption u/s. 2(14)(iii) in respect of sale of the said land when the assessee has failed to produce any details regarding expenditure relating to agricultural operations and has also not shown any agricultural income in his return of income filed.*
2. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in measuring the distance in terms of approach road by ignoring the provisions contained in Sec. 11 of the General Clauses Act which clearly specifies that unless a different intention appears, distance has to be measured in a straight line on a horizontal plane. The said provisions are mandatorily applicable to the Income Tax Act being a Central Act and further supported by the decisions of the Hon'ble*

Supreme Court in the cases of Chief Inspector of Mines vs. Lala Karam Chand Thapar AIR 1961 SC 838 and CIT vs. H.E.H. Mir Osman Ali Bahadur (1966) 59 ITR 666.

5. The issue arising in all the appeals filed by the Revenue is against the assessability of gain arising on sale of agricultural land and whether the same is exempt from tax.

6. Briefly, in the facts of the case, the assessee had sold his share in the plot of land situated at Gat No.116, Village Mouje Chandkhed and the long term capital gain arising on sale of said agricultural land was claimed as exempt. The Assessing Officer in order to verify exact location of plot of land in question wrote a letter to the Asst. Director, Town Planning Pune Branch, Pune and requested to furnish exact location of the land and the aerial distance from municipal limits of PMC/PCMC. In response thereto, vide letter dated 05.12.2009, it was reported that the plot of land in question was situated at about 7150 meter from the municipal limits of Pimpri-Chinchwad Municipal Corporation. The Assessing Officer thus, noted that the plot of land in question was situated within eight kilometers from the municipal limits of Pune and as such, was capital asset as defined under section 2(14)(iii)(b) of the Act. Therefore, the gain arising on sale of land was held to be assessable as long term capital gains. The second aspect noted by the Assessing Officer was as to whether the plot of land could be characterized as agricultural land. In support of its claim, the assessee produced copy of 7/12 extract but the same was rejected by the Assessing Officer for the following reasons:-

"5.6 The assessee's submission is carefully considered. However, I am not inclined to accept the explanation submitted by the assessee for the following reasons:

(1) The Plot of lands sold by the assessee in question situate in a pre-dominant developed area and its physical characteristics, surrounding situation and use of the land in the adjoining area also indicate that the land is not an agricultural land.

> *(2) As per agreement dated 16/03/2007 the plot of land was sold to 11 parties and thus the land was sold for the use of non-agricultural purpose and as such the answer to 11th test is Yes.*
>
> *(3) On examination of the 7/12 extract of the said plot of land, it is seen that said plot of land is characterized by the revenue authority being barren land (Pad & Gavat Mal - being grass grown) and no other major crops were grown or cultivated. Copy of 7/12 extract is enclosed as Annexure-II with this order for better appreciation of the facts.*
>
> *(4) The 13th test lays out that -" Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield- The answer to this test is definitely NO. As the purchaser has not purchased the plot of lands sold by the assessee for carrying out any agricultural activities and that the owner had not sold the land valuing it as a property yielding agricultural produce on the basis of its yield.*
>
> *(5) The plots of land in question though classified in the revenue record as agricultural land, but the facts are that the assessee is not earning any agricultural income from the said plots of land.* ***Thus, the answer to test no 7 is also negative.***
>
> *In view of the above facts, it is crystal clear that the plots of land sold by the assessee is situated in the predominant developed area and it did not fulfilled the test laid down by the Hon'ble Supreme Court in case of Sarifabibi Mohmed Ibrahim And Other. Vs Commissioner of Income-Tax 204 ITR 631. Therefore, the plots of land sold by the assessee are characterized as "Capital Asset" as defined in section 2(14) of the I T Act, 1961 and as such assessee is liable to pay Long Term Capital Gain.*
>
> *Further, as discussed in 5.3 above, the plot of land in question is situated within 8 kilometers from the municipal limits of PCMC and is a "Capital Assets" as defined in section 2(14) of the I T Act, 1961. Therefore, the Long Term Capital gain claimed exempt is brought to tax as the asset sold by the assessee is a capital asset and assessee is liable to pay Long Term Capital Gain Tax on the said assets.*
>
> *In view of the above discussion, the Long Term Capital Gain claimed exempt by the assessee is brought to tax under the head* ***"Long Term Capital Gain".*** *Penalty proceedings u/s 271(1)(c) is initiated separately for filing inaccurate particulars of income."*

7. The Assessing Officer obtained the Valuer's report from the DVO as on 01.04.1981 and confirmed the income from long term capital gains.

8. Before the CIT(A), the assessee filed detailed submissions as well as additional evidence in respect of certificate from Talathi regarding the distance of plot in question as well as the valuation of report of Registered Valuer as on 01.04.1981. The plea of the assessee before the CIT(A) was that the said evidence could not be produced before the Assessing Officer who had failed to

provide proper opportunity and time. The CIT(A) sought the remand report from the Assessing Officer vis-à-vis additional evidence filed under Rule 46A of Income Tax Rules and as well as on merits of the case. The remand report of the Assessing Officer is reproduced at pages 5 and 6 of the appellate order. The assessee in reply explained the sequence of events which is reproduced under para 7 along with his submissions at pages 8 and 9 of the appellate order. The CIT(A) noted that the assessee was confronted with the Town Planning Report on 10.12.2009 and the assessment was completed on 22.12.2009, therefore, there was justification in the grievance of assessee that he was prevented by sufficient opportunity. The CIT(A) also noted that the Assessing Officer had not provided sufficient time to meet the valuation report of DVO. Therefore, the additional evidence was admitted by the CIT(A). With regard to the merits of case, the CIT(A) observed that the land in question was situated in agricultural and no development zone. As per 7/12 extract, land revenue was paid and agricultural activity was carried out for various years, which are tabulated under para 8 at page 10 of the appellate order. The CIT(A) thus, observed as under:-

> *"8…..*
> *From the above, it is seen that in the year 2002, 2003 & 2004, major part of land has been shown as Gras land (Gavat) i.e. 10.73H. Thereafter, the Gavat land has been shown at 1.73 H and rest of the land has been shown under various crops as stated above. As far as Gavat land is concerned, the appellant submits that this is not the barren grass land but animal feed grass land which is used as a cattle feed. From the extract of 7/12, it is seen that major part of the land i.e. 10.73 has been under grass land up to 2005. Thereafter, the same has been shown under cultivation. The appellant has not been above to prove as to how the grass land was converted into agricultural cultivable land and what was the expenditure associated with it. It is settled law that entries in revenue records are presumed to be true unless proved otherwise. The Assessing Officer has also not examined this issue as to how major portion of grass land was converted into cultivable land and how the expenditure was met. It is also seen that the Assessing Officer had not examined as to how the cultivation was carried out by the appellant. Whether the same was carried out by the appellant himself or by some other person employed for this purpose. No such details have been brought on record in this regard. The Assessing Officer could have very well proved the same, had he examined the issue in detail on the above lines. However, despite giving the opportunity in the remand order, the Assessing Officer has failed to do the same. Therefore, the issue is being decided on the basis of facts available on record. In this case the entries in 7/12 extracts showing cultivation of land remains uncontrovorted."*

9. The CIT(A) further relied on the ratio laid down by the Pune Bench of Tribunal in Haresh G. Milani Vs. JCIT reported in 111 TTJ (Pune) 310 and held that the facts of the case were similar to that of assessee and the entries in 7/12 extract evidencing the cultivation of land remained uncontroverted. Thus, the land was held to be agricultural land. Vis-à-vis, the distance issue, the CIT(A) vide para 11 has held as under:-

> "*11. As far as the distance issue is concerned, it is seen that the Assessing Officer has asked the Asstt. Director Town Planning Department to provide aerial distance from the Municipal limits. It is settled law that the distance is to be measured in terms of approach road. In the case of CIT Vs. Satinder Pal Singh, 229 CTR 82, Hon'ble Punjab & Haryana High Court has held that for measurement of distance for the purpose of deciding the character of land, whether agricultural or not is to be done in terms of the approach road and not by a straight line distance or horizontal plain or as per crow's flight. In this case, the appellant has submitted the certificate from Talathi, stating that the distance from Municipal limits is about 13 Kms. Therefore, on this count too, the land has to be treated as agricultural. Accordingly, in view of the above, it is held that the Assessing Officer was not justified in taxing the sales consideration in respect of plot of agricultural land as Capital Gains. Accordingly, the Assessing Officer is directed to delete the addition of `70,16,335/-. In view of relief allowed as above, the question of valuation of land as on 01.04.1981 has become academic and therefore the same is not being adjudicated."*

10. The Revenue is in appeal against the order of CIT(A) on both the issues.

11. The first issue as to whether any agricultural activity is being carried out or not has been elaborately considered by the CIT(A) and he has given finding that the entries in 7/12 extract evidenced the cultivation of land and the same remained uncontroverted. The Revenue before us has also failed to controvert the finding of CIT(A) in this regard and hence, we find no merit in the ground of appeal No.1 raised by the Revenue. Vis-à-vis, the distance to be taken note of, the Hon'ble Punjab & Haryana High Court in CIT Vs. Satinder Pal Singh (supra) had held that for measurement of distance for the purpose of deciding the character of land, whether agricultural or not is to be done in terms of the approach road and not by a straight line distance or horizontal plain or as per crow's flight. The Talathi in the certificate has certified that the distance from municipal limits was about 13

kilometers i.e. beyond eight kilometers, copy of which is placed at page 8 of the Paper Book. Accordingly, we uphold the order of CIT(A) in holding that the gain arising from sale of agricultural land is not to be taxed in the hands of assessee. Upholding the same, we dismiss both the grounds of appeal raised by the Revenue.

12. The facts and issue in ITA Nos.109/PN/2013 to 111/PN/2013 ar e identical to the facts and issue in ITA No.108/PN/2013 and our decision in ITA No.108/PN/2013 shall apply *mutatis mutandis* to ITA Nos.109/PN/2013 to 111/PN/2013.

13. In the result, all the appeals of Revenue are dismissed.

Order pronounced on this 5th day of January, 2017.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 5th January, 2017.

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u> :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-V, Pune;
4. आयकर आयुक्त / The CIT-V, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune