

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “C” BENCH**

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT  
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 286/AHD/2018  
(Assessment Year: 2014-15)**

<b>Kaushalkumar G Patel, Opp. Grand Bhagwati Hotel, S.G. Highway, Bodakdev, Ahmedabad- 380054</b>	<b>V/S</b>	<b>Income Tax Officer, Ward- 3 (3)(12), Ahmedabad</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: ACPPP 9442G**

**Appellant by : Shri P. B. Parmar, AR  
Respondent by : Shri Lalit P. Jain, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 27 -09-2019

Date of Pronouncement : 14 -10-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal filed by the Assessee is directed against the order of the Id. CIT(A)-7, Ahmedabad dated 06.11.2017 pertaining to A.Y. 2014-15 and that only one ground stating that Id. CIT(A) has erred in not affording an

opportunity of hearing to the assessee and passed ex parte order, which is in violation of principles of natural justice.

2. Facts of the case are that the assessee is engaged in the business of Trading of Goods, Logistic Services & Goods Transport Agencies. And assessee derived income from Profits and Gains of Business or Profession and Income from Other Sources.
3. During the course of assessment proceedings, from the details furnished by the assessee, it has been found that the assessee has sold following following jointly held immovable property situated at Adalaj, Gandhinagar during the year under consideration:

Sl. No.	Revenue Block No.	Total Sale Consideration	Share of Sale Consideration received by you	Regd. No. and Date
1.	Block No.- 52	Rs.1,54,80,000/-	Share-17% Rs. 26, 31, 600/-	6693 dated 08.5.2013
2.	Block No. -48	Rs. 1, 36,57,000/-	Share-17% Rs. 23,21,775/-	6690 dated 08.5.2013
3.	Block No.-57	Rs. 1,27, 98, 500/-	Share-17% Rs. 21, 75,745/-	6695 dated 08.5.2013
Total Share Received in Sale Consideration			Rs. 71,29,120/-	

4. However, the assessee had not offered any capital gain for tax on sale of above mentioned immovable property. On being asked, the assessee had submitted his reply vide letter dated 22.11.2016. The crux of the reply furnished by the assessee is as under:

*""The assessee had sold three agriculture land which were bearing block no. 52, 48, and 57. All the agricultural land is situated at Adalaj.*

*The above agricultural land were rural agricultural land and as per the provision of Section 2(14) "Capital Assets" Rural Agricultural land were exempt from the capital gain. As per the definition of Section 2(14) (iii)(a) it means if the agricultural land situated in any area which is comprised within the jurisdiction of municipality (whether known as municipality, Municipality Corporation, notified area committee, town committee or by any other name) and its population should be less than 10,000 as per the last published census. That starting words of Section 2(14)(iii)(a) read us land situated in any area, which means that section is applicable area wise and not as per municipality wise. That the section is talking about the area in which the land is situated and the population of that area need to be consider only and not the population of the municipality, hence the assessee land fall in the jurisdiction of GUDA i.e. Gandhinagar Urban Development Authority and the population of that area is less than 10,000.*

*Hence, both the conditions are fulfilled and the land hereunder shall be treated as rural agricultural land and capital gain on the same shall be exempt.*

*Even otherwise if we consider that the GUDA is not the municipality that as per the definition of section 2(14)(iii)(b) if situated outside the limit of municipality etc. it should be situated certain kilometers away from the local limits of any municipality etc. as may be specified by the Central Government in the official Gazette. The Central Government can notified urban land upto maximum 8 km from the limits of municipality etc.*

*The assessee land is situated at adalaj which is outside the limites of Gandhinagar and as per the provision, land should be situated certain kilometer away from the Gandhinagar municipality, and as per notification no. 9447 dated 06.01.1994 of the department of revenue has specified area upto 4 km from the Municipality limits of the Gandhinagar as urban area. Further any property situated outside the 4 km will be considered as rural area. That the letter given by GUDA clearly mentin that the land is 5 km away from the Gandhinagar municipality, hence the above condition is fulfilled that the land is away from the municipality limit and hence qualify for the rural agricultural land.*

*Hence, looking to the above facts and evidences the land is any case i.e. if it is situated in GUDA Gandhinagar Urban Development Authority the population is less than 10,000 and if Gandhinagar is municipality limit, than also it is certain distance away from the municipality limits, hence in any case it qualify for the rural assets and is exempt from the capital gain.""*

5. The assessee's submission that land in question is situated at Adalaj which fall under the Gandhingar Urban Development Authority (GUDA) and the same is equivalent to a municipality and as the population of Adalaj as per census 2001 is less than 10,000, the land in question is not a capital asset as per the definition of Section 2(14)(iii)(a) of the Act, is not found acceptable. Provisions of Section 2(14)(iii)(a) of the Act says as under:

2(14) "capital asset" means property— of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(//) agricultural land in India, not being land situate—

(a) *in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand [\*\*\*];*  
or

(b) *in any area within the distance,, measured aeriially,—*

(i) *not being more than two kilometres, from the local limits of any municipality*

*or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or*

(ii) *not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or*

(iii) *not being more than eight kilometres, from the local limits of any municipality or cantonment board eferred to in item (a) and which has a population of more than ten lakh.*

6. It can be seen clearly from the provisions of Section 2(14)(iii)(a) of the Act that it talks about total population of municipality in which area the asset falls and not about the population of a particular area. The assessee has submitted in his reply that Adalaj, in which land in question was situated, falls under Gandhinagar Urban Development. Authority(GUDA) is equivalent as municipality. Therefore, population of Gandhinagar Urban Development Authority is required to be taken for deciding the capital assets as per the provisions of Section 2(14)(iii)(a) of the Act. It is an undisputed fact that the population of Gandhinagar (GUDA) was in lacs as per 2001 census. Therefore, land in question situated at Adalaj sold during the year is capital asset as per the provisions of Section 2(14)(iii)(a) of the Act and gain arising on sale of these lands are required to be taxed as per the provisions of the Act.

7. Even other-wise also, with a view to verify the fact that whether the aforesaid land situated at Adalaj sold during the year under consideration was Capital Asset or not as per the provisions of section 2(14)(iii) of the Income Tax Act, 1961, enquiries were made by issuing a notice u/s 133(6) of the Act dated 28.11.2016 to the Sr. Town Planner, GUDA, Gandhinagar. In response to this notice, reply from Gandhinagar Urban Development Authority(GUDA) has been received vide Ref. No. : No. GUDA/Tantrik/6359/2016 dated 05.12.2016. The details of distance of Land in question from the limit of Gandhinagar Municipality as provided by the GUDA is as under :

Sl. No.	Name of the Village	R.S. No. / Block No.	Distance from Gandhinagar Municipality Limit
1.	Adalaj	52	5.63
2.	Adalaj	48	5.61
3.	Adalaj	57	5.74

8. Therefore, the Land in question is situated within 6 K.Ms, from the limit of Gandhinagar Municipality and therefore, capital assets within the meaning of Section 2(14)(iii)(b) of the Act, inserted w.e.f. 01.04.2014. A copy of letter received from the Town Planner, GUDA, Gandhinagar has also been given to the assessee.
9. Even other-wise also, with a view to verify the fact that whether the aforesaid land situated at Adalaj sold during the year under consideration was Capital Asset or not as per the provisions of section 2(14)(iii) of the Income Tax Act,



	1	2	3	4	5	6	7
1.	Block No.- 52	Rs. 26, 31, 600/-	6,84,216/-	19,47,384/-	Rs,28,382/- [2006-07]	51,3507-	Rs.18,96,034/-
2.	Block No.- 48	Rs. 23,21, 775/-	-	23,21,775/-	Rs. 25, 109/- [2006-07]	45,428/-	Rs.22,76,347/-
3.	Block No.- 57	Rs. 21,75,745/-	-	21,75,745/-	Rs.19,2447- [2006-07]	34,8177-	Rs. 21,40, 928/-
Total							Rs. 63, 13,309/-

12. In view of the above, vide show-cause notice dated 07.12.2016, the assessee was requested to show-cause as to why the Long Term Capital Gain of Rs.63,13,309/- on transfer of the above land in question be not brought to tax. In view of this, the assessee furnished his reply vide letter dated 19.12.2016. The reply furnished by the assessee is as under:

*"That during the year the assessee had sold three agriculture land which were bearing block no.52, 48 and 57. All the Agriculture land were situated at Adalaj. That the above agriculture land were rural agriculture land and as per the provision of section 2(14) "Capital Assets" Rural Agriculture land were exempt from the capital gain. For classifying a rural agriculture land one must fulfill and of the condition specified in section 2(14)(iii)*

*2(14)[(iii) [agricultural land<sup>^</sup> in India, not being land situate—*

*(a) in any area which is comprised within the jurisdiction of a municipality<sup>^1</sup> (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population— of not less than ten thousand, according to the last preceding census of which the relevant figures have been published before the first day of the previous year.*

*(b) in any area within such distance, measured aerially,—*

*(i) not being more than two kilometres, from the local limits of any municipality or*

*cantonment board referred to in item (a) and which has a population of more than ten*

*thousand but not exceeding one lakh; or*

*(ii) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh*

*but not exceeding ten lakh; or*

*(iii) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh*

*Thus, as per the definition of section 2(14)(iii)(a) it means if the agriculture land situated in any area which is comprised within the jurisdiction of municipality (whether know as municipality, Municipal Corporation, notified area committee, town committee or by any other name) and its population should be less than 10,000 as per the last published census. That starting words of section 2(14)(iii)(a) read us land situated in any area, which means that section is applicable area wise. That the section is talking about the area in which the land is situated and the population of that area need to be consider only, and not the population of the municipality, hence, the assessee land fall in the jurisdiction of GUDA i.e. Gandhinagar Urban Development Authority and the population of that area is less than 10,000 for which details are enclosed herewith and the same marked as annexure.*

*Hence both the conditions are fulfilled and the land hereunder shall be treated as rural agriculture land and capital gain on the same shall be exempt.*

*Even otherwise if we consider that GUDA is not the municipality that as per the definition of 2(14)(iii)(b) If situated outside the limit of municipality etc. it should be situated certain kilometers away from the local limits of any municipality etc as may be specified. The assessee land is situated at adalaj whiah is outside the limits of Gandhinagar and as per the provisions, since the land is situated certain kilometer away from the Gandhinagar municipality as specified hence the same is rural agriculture land.*

*Hence, looking to the above facts and evidences the land is any case i.e. if it is situated in GUDA Gandhinagar Urban Development Authority the population is less than 10,000 and if Gandhinagar is Municipality Limit than also it is certain distance away from the municipality limits, hence in any case it qualify for the rural assets and is exempt from the Capital Gain."*

13. But reply of the assessee could not convince the Assessing Officer and held that the land, subject matter of sale, is a capital asset falling within the scope of clause (iii) of section 2(14) and made addition of Rs. 63,13,309/-.

14. Against the said order, assessee preferred first statutory appeal before the Id. CIT(A) issued three notices to the appellant but because of some reason could not appeared before the Id. CIT(A) and in limine Id. CIT(A) without discussing any merit of the case just confirmed the order of the Assessing Officer.
15. We have gone through the relevant record and impugned order. As we can see, without discussing the merit of the case, Id. CIT(A) has confirmed the order of the Assessing Officer. In our considered opinion, same is amounting to miscarriage of justice.
16. In support of its contention, Id. A.R. cited an order of Co-ordinate Bench wherein with following observation Co-ordinate Bench has allowed the appeal of the assessee for statistical purpose.
- 4. We have duly considered rival contentions and gone through the record carefully. We find that in para-2 of the impugned orders, the Id.CIT(A) has noticed the details of hearing and how the assessee has complied with the directions, No doubt the hearings in all these appeals were fixed on seven occasions. Out of seven occasions, the assessee appeared on six occasions, but hearing was adjourned. On the seventh occasion, no one could appear before the Id.CIT(A),*
- 5. The Id.CIT(A), has concluded the hearing and dismissed the appeals by way of separate orders on 15.11.2016. Sub-section (6) of section 250 of the Income Tax Act, 1961 contemplates that the Id.CIT(A) would states the points in dispute and thereafter assign reasons in support of conclusions. On perusal of the impugned orders would indicate that the Id.CIT(A) has simply concurred with the AO without formulating specific points and taking note of details available before the Id.CIT(A). In a way, the appeals were dismissed in summary manner. This exercise of power at the end of the Id.CIT(A) is not in coherence with the mandate of section 250(6) of the Act, therefore, we set aside all these orders and restore all*

10 ITA No. 286/Ahd/2018  
A.Y. 2014-15

*the issues in these three assessment years to the file of the Id.CIT(A) for deciding them on merit. We further direct the assessee to cooperate with the Id.CIT(A) and refrain himself from seeking unnecessary adjournments.*

*6. In the result, appeals of the assessee are allowed for statistical purpose.*

17. In our considered opinion, Id. CIT(A) is required to pass a speaking and reasoned order and we also direct the assessee to cooperate with the Id. CIT(A) and will not seek unnecessarily adjournment.

18. In the result, appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in Open Court on	14 - 10- 2019
-----------------------------------	---------------

Sd/-

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER** True Copy  
Ahmedabad: Dated 14/10/2019

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad