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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2011 OF 2018

Prashant Jaipal Reddy
C/o Dhanpat Kothari & Associates
Office No.50, Fort, Mumbai-400050. …Appellant

Versus

1. Income Tax Officer Ward-9(1)(3)
   Room No.224, Aaykar Bhavan,
   M.K.Road, Mumbai-400020.
2. Pr. Commissioner of Income Tax-9
   Aayakar Bhavan, M.K.Road,
   Mumbai-400020. …Respondents

Mr Naresh Jain a/w Ms Nikita Anchlia, for Appellant.
Mr Suresh Kumar, for Respondent.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 13 February 2025

<u>PC (Per M.S.Sonak, J.):-</u>

1. Heard learned counsel for the parties.

2. Mr. Jain, learned counsel for the appellant, proposes the formulation of the following substantial questions of law:

> *a) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in taxing surplus of Rs.1,99,56,849/- arising on sale of agricultural land by accepting the same as Capital Assets, without appreciating that, the said land was an agricultural land*

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till the date of sale and which was evident from 7/12 extract of Land Revenue ?

b) Whether on the facts and in the circumstances of the case, the appellant land was a agricultural land as provided u/s. 2(14)(iii) of the Act and therefore not a capital asset?

*c) Whether on the facts and in the circumstances of the case, the Appellant Tribunal erred in following the ratio of the decision in the case of **Sarifabibi Mohamed Ibrahim & Ors.**[1] which is factually distinguishable ?*

d) Whether on the facts and circumstances of the case the order of Tribunal is perverse and contrary to the facts on records ?

3. In this case, the Assessing Officer (AO), First Assessing Officer (FAA) and the Income Tax Appellate Tribunal (ITAT) have recorded concurrent findings of facts that the land in question was not used for any agricultural purpose and therefore, the income derived from sale of such land was chargeable to tax. In effect, therefore, the challenge in this appeal, by proposing formulation of the above questions, is to the findings of fact concurrently recorded by the three authorities that the land in question was not used for any agricultural purpose.

4. Mr. Jain, learned counsel for the appellant submitted that the 7/12 extract (land revenue record) indicated that this land was used for agricultural purpose. He submitted that the ledger was furnished to the AO showing expenses incurred by the Assessee towards the agricultural activities undertaken on the said land. He submitted that the authority did not consider this vital material or piece of evidence, and therefore, the finding recorded is vitiated by perversity.

[1] (1993) 204 ITR 631 (SC)

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5. Mr Jain relied on ***Vijay Kumar Talwar Vs Commissioner of Income-tax, New Delhi***[2] to submit that even the finding of fact may give rise to a substantial question of law if such findings of fact is based on no evidence and/or while arriving at such finding, relevant admissible evidence was not considered or if inadmissible evidence was considered or if legal principles were not applied in appreciating the evidence or where the evidence has not been decided.

6. Mr. Jain submitted that the decision in the ***Sarifabibi (Supra)*** *case* was distinguishable and did not apply to the facts of the present case. He submitted that in ***Sarifabibi (Supra)****,* there was admission that no agricultural activities were undertaken on the land in question. He further submitted that the three authorities erred in relying upon ***Sarifabibi (Supra)*** **.**

7. Mr. Jain relying on ***Shri Shankar Dalal & Ors Vs Commissioner of Income Tax, Panaji-Goa***[3]***, Commissioner of Wealth-tax, Poona Vs H.V. Mungale***[4] ***and PR. Commissioner of Income Tax Central -4 Vs Smt Mamta Parekh***[5] submitted that the Coordinate Benches of this Court, in facts very similar to those in the present case, had held that the land in question was being used for agricultural purposes. He submitted that the findings recorded by the three authorities conflict with the ratios of these decisions, and therefore, the findings warrant interference.

8. Mr. Suresh Kumar learned counsel for the respondents defends the concurrent findings of fact recorded by the three

2 (2011) 196 Taxman 136 (SC)
3 2017 (4) TMI 190
4 1982 SCC OnLine Bom 161
5 2019 (1) TMI 867

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authorities. He submitted that the three authorities have, in detail, dealt with the material on record, including the entry in the survey records or the so-called ledger entries and recorded clear and categorical finding of fact. He submitted that the three authorities have also considered several other relevant circumstances, including the admission of the assessee, the admission flowing from the conveyance by which the assessee sold the property, the fact that very soon the property was developed into plots and sold of commercially, the proximity of the property to well developed areas, letters etc.

9. Based on all these, Mr. Suresh Kumar submits that there was no perversity in the record of finding of fact and an appeal under Section 260A of the Income-tax Act was the third appeal where findings of fact could not be reviewed on the grounds of sufficiency of evidence or because, according to the appellant, some other view was possible.

10. Mr. Suresh Kumar submitted that the decisions relied upon by Mr. Jain turned on their peculiar facts and were not applicable in the facts of the present case. For all these reasons, He submits that this appeal involves no question of law, much less any substantial question of law. He urged for dismissal of this appeal.

11. Rival contentions now fall for our determination.

12. As is evident, this case entirely turns on the appreciation of factual material on record. The AO, FAA, and ITAT have recorded concurrent findings that the property in question was not used for agricultural purposes. Practically, the entire

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material and all the contentions now raised before us were considered by the three authorities threadbare.

13. Therefore, unless the appellant can make out a case of perversity i.e. case that the factual finding is based on (no evidence) or that vital and relevant material or the evidence was 'excluded from consideration', that the finding is premised on some material/evidence which was 'irrelevant or inadmissible' or that the fact-finding authority has erred in applying some legal principles while appreciating or evaluating the material on record, there is no question of interfering with such a finding in the exercise of our limited jurisdiction under Section 260A of the Income-tax Act.

14. There is no merit in the contention that the three authorities did not consider form 7/12 (revenue record) or the ledger entries. In this case, almost all three authorities, including mainly primary fact-finding authority, i.e. AO, have dealt with the significance of the revenue record. The revenue record is only one of the pieces of evidence that the assessee could have been legitimately relied upon. However, that was by no means any conclusive piece of evidence, as was explained by Hon'ble Supreme Court in the case of ***Sarifabibi (Supra).*** Similarly, the authorities have dealt with the self-serving ledger entries but quite correctly disbelieved those entries. Even after indulging the assessee, the authorities have held that those expenses are consistent with even the commercial development of the property in question.

15. After elaborately examining the effect of survey records and other evidence that the assessee relied upon, the three authorities have recorded clear and cogent findings of fact.

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The authorities have referred to the assessee's admission about not undertaking agricultural activities and considered the improvement made to this statement by saying that since the net income from the agricultural activities after excluding the expenses involved was negligible, no complete disclosures were made regarding the agricultural income.

16. The authorities have considered the effect of clauses in the conveyances by which the assessee purchased this property. These clauses referred to such sale being made for development purposes. The three authorities have also considered the conveyance by which the assessee, after developing this property into plots, sold the same to other parties. The three authorities have also considered the fact that said property was proximate to Kalyan, Bhiwandi, Thane and Mumbai.

17. The authorities have also considered that though the assessee purchased this property for approximately Rs.1 Crore, almost 50% of this amount, i.e. Rs.50 Lakhs, was expended for developing this property. There is a detailed discussion regarding several facts which outweigh inference that could have been drawn in favour of the assessee due to the entry in the survey record or, for that matter, the so-called self-serving ledger entry which, in any event, did not inspire any confidence.

18. The FAA pointed out that after the assessee purchased the land for Rs.1,02,20,245/-, the assessee incurred an expenditure of Rs.48,22,906/-, which comes to 47.18% of the total cost to develop the purchased open/vacant land and render it commercially exploited. The FAA also considered the

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assessee's letter dated 18 October 2013 in which the assessee admitted that no agricultural activities were ever done since the land was allegedly in the primary stage of development and cultivation. The AO had also noted that no agricultural activity was done on the property. The AO also recorded the findings of fact that the property or rather chunks of the property were sold even before starting agricultural activity.

19. The fact-finding authorities have also correctly referred to the contradictory stances of the assessee. The moment one of the defences was found untenable, the same was sought to be substituted or explained by yet another stance. From the perusal of the three orders, we agree with the fact-finding authorities that the assessee was bent upon adopting inconsistent and contrary stances on the issue of property being used for agricultural purposes. The various inferences drawn by the three fact-finding authorities from the holistic consideration of the material on record are most reasonable and can hardly be described as perverse. The FAA had observed that one could not ignore the fact that the property under reference was near Kalyan, Bhiwandi, and suburban parts of Mumbai. From this, the FAA correctly inferred that this property was embedded with commercial opportunity and viability for commercial exploitation. The future conduct of the assessee has only confirmed this.

20. This is not a case where the authorities have not considered the material placed on record by the assessee. However, after considering and evaluating such material and weighing it against the other material available on record, the three authorities have concluded the property in question was not used for any agricultural purpose by the assessee. None of

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the three authorities has violated any legal principles regarding evaluating such material.

21. In an appeal under Section 260A, there is no question of this Court going into the sufficiency and adequacy of evidence. This Court is not exercising powers of the First Appellate Court when dealing with appeals under Section 260A of the Income-tax Act. In this case, the findings of fact are supported by more than adequate material on record. The three authorities have ignored no vital pieces of evidence. There are no allegations that the findings are based on irrelevant or inadmissible evidence. No legal principle concerning the appreciation of evidence has been violated. Considering all these circumstances, we see no reasonable ground to entertain this appeal.

22. The decisions relied upon by Mr. Jain entirely turn on the peculiar facts. Such facts do not obtain in the present case. In any event, the case of ***H.V. Mungale (Supra)*** was the matter where the revenue had appealed, and the Co-ordinate Bench of this Court found that there was no perversity in the record or findings of fact by the final fact-finding authority, i.e. ITAT. ***Shri Shankar Dalal (Supra)*** was a matter where the ITAT had recorded a finding that 1/5th of the land was cultivated, and the balance 4/5th was not agricultural land. The Coordinate Bench of this Court found no basis for making such a distinction and, therefore, interfered with the ITAT's conclusion.

23. So also in ***Mamta Parekh (Supra),*** the revenue was in appeal, and this Court did not think that the ITAT's finding suffered from any perversity. Besides, as noted earlier, all

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these decisions turned on their facts, which are incomparable to the facts in the present matter. Therefore, based on these three decisions, no case is made to entertain this appeal.

24. We note that in this matter, the appellant did not even bother to file any affidavit under Rule 10 of the Income Tax (Appellate Tribunal) Rules, 1963, pointing out that none of the Commissioner's findings were contrary to the evidence on record or that the Commissioner or other authorities had grossly misread the documents on record. Typically, such affidavits are filed, and the correction is applied before the same authority. Even after overlooking this omission, we have independently assessed the material on record and find no grounds to sustain any such argument.

25. For all the above reasons, we find no reasonable grounds to interfere with the finding of fact recorded by the three authorities concurrently.

26. No questions of law, much less any substantial question of law, are involved in this appeal. Accordingly, this appeal is liable to be dismissed and is hereby dismissed. No costs.

(Jitendra Jain, J) **(M.S. Sonak, J)**

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