

Matter remanded to check legitimacy as assessee was engaged in large no. of purchases & sales of agricultural land's

Summary – The High Court of Bombay in a recent case of Shankarlal Bhagwatiprasad Jalan, (the Assessee) held that where Tribunal held that profit earned by assessee from sale of agricultural land was not liable to tax, in view of fact that there were large number of instances of purchase and sale of land and, moreover, pieces of land were located within eight kilometers of local municipal limit and, thus, profit might be taxed as capital gain, impugned order was to be set aside and, matter was to be remanded back for disposal afresh

Facts

- The assessee carried on business as a timber merchant and also derived agricultural income from the land owned by him. The assessee filed his return declaring certain taxable income.
- During the course of assessment proceeding, Assessing Officer noticed that the assessee had made profit on sale of agricultural land to the extent of Rs. 1.40 crores. The assessee contended that the gain made on account of sale of agricultural land was a sale of his 'capital asset' and therefore, not chargeable to tax as agricultural lands sold, were excluded from the meaning of 'capital asset' under section 2(14).
- The Assessing Officer took a view that the assessee was engaged in trading of agricultural land, therefore said land did not constitute his capital asset but its stock-in-trade and, thus profit arising from sale of agricultural land was taxable as business profits.
- The Commissioner (Appeals) upheld the order passed by Assesing Officer.
- The Tribunal, however, held that the lands purchased and sold were agricultural land. Besides said land was used for agricultural purposes. The Tribunal also recorded a finding that assessee had agricultural income consistently over the years which was accepted by the revenue. The Tribunal thus set aside addition made by authorities below.
- On revenue's appeal:

Held

- The Tribunal while allowing the appeal of the assessee has not rendered any finding on the factual aspects which led the Assessing Officer and the Commissioner (Appeals) to conclude that he was a trader in agricultural land. Both the Assessing Officer and Commissioner (Appeals) have held that three of the four lands sold are at a distance of about four kilometers (less than eight kilometers as prescribed in section 2(14) from the limits of the Municipal Corporation. There is no consideration of the above aspect. This is important as even if it is held that the assessee is not a trader in agricultural land, he could be taxed on sale of the lands under the head 'capital gains', depending upon the finding of the Tribunal about the distance of the land from the municipal limits.

- Further, the finding of fact arrived by the Commissioner (Appeals) and the Assessing Officer that in last six years there were purchase instances of 23 properties and the return on agriculture in the context of the purchase price is indicative of the fact that the assessee is a trader, have not been examined by the impugned order of the Tribunal. These are all issues of fact and only on a finding being rendered on these facts can the test laid down by the Court to determine whether assessee is a trader or investor be applied to decide the character of the assessee's income.
- Also, on the decision of the distance of the agricultural lands from the limits of the municipal corporation will be the issue of the lands being excluded from capital asset, can only be decided on the basis of facts found. Moreover, in matters such as these the result is entirely dependent upon facts.
- In view of above, impugned order is set aside and matter is restored to the Tribunal for final disposal after rendering a findings on facts.