IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 21 OF 2016

THE PRINCIPAL COMMISSIONER OF
INCOME TAX, PANAJI. ... Appellant
Versus
MRS. SANJANA S. MORAJKAR. ... Respondent

Ms. Asha A. Desai, Advocate for the Appellant.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 29th March, 2016

ORAL ORDER : (Per F.M. REIS, J.)

Heard Ms. Asha Desai, the learned Counsel appearing for the appellant.

2. The above appeal under Section 260-A of the Income Tax Act challenges the orders passed by the authorities below whereby they came to the conclusion that the subject land was agricultural land and not subject to capital gains.

3. The learned Counsel for the appellant has submitted that both the authorities below have misconstrued the provisions of law to come to the conclusion that the land was an agricultural land. The learned Counsel has submitted that in order to qualify the land to be an agricultural land the assessee has to use such land for agricultural purposes by carrying out agricultural activities at least two years

prior to the sale of the property. The learned Counsel further submits that this aspect has not been considered by the learned Tribunal and, consequently, the finding are perverse. The learned Counsel has further taken us through the impugned orders and pointed out that both, the Commissioner of Income Tax as well as the Income Tax Appellate Tribunal have misconstrued the relevant provisions of law to come to the conclusion that the subject land is an agricultural land. The learned Counsel has also submitted that inspection report of the Assessing Officer has been disbelieved by the Commissioner of Income Tax whilst deciding the appeal preferred by the Assessee.The learned Counsel, as such, submits that there is a substantial question of law which arises in the above appeal.

3. We have given our thoughtful consideration to the submissions of the learned Counsel and we have also gone though the records. On perusal of the order of the Income Tax Appellate Tribunal there is a categorical finding of fact that the subject land has cashew trees, mango trees and other fruit bearing trees therein. This itself implies that the land was an agricultural land. Apart form that, the records also reveal that the respondent/Assessee had sought permission for a farm house which would also mean that such land is an agricultural land. Besides that, the Tribunal whilst dismissing the appeal has taken into consideration the guidelines settled by the Apex Court to ascertain the nature of the agricultural land.

4. In such circumstances, we find that there is no perversity in the finding arrived at by the authorities below. The concurrent finding of fact arrived at by the authorities below cannot be interfered in the present appeal unless there is perversity in such findings. No perversity in such finding has been pointed out by the learned Counsel for the appellant. Hence, no case made out for admission of the above appeal. Hence, the appeal stands rejected.

NUTAN D. SARDESSAI, J. F. M. REIS, J.

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