**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Tax Case (Income Tax Appeal) No. 98 of 2018**

Deputy Commissioner of Income Tax 1(1), Bhilai, Durg, Chhattisgarh

**---- Appellant**

**Versus**

Shri Ketan Moolchand Shah, Block A-5, Surya Vihar, Junwani, Bhilai, District Durg, Chhattisgarh.

**---- Respondent**

For Appellant : Ms. Naushina Ali, Advocate.
For Respondent : None

**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**
**Hon'ble Shri Prashant Kumar Mishra, Judge**

**Judgment on Board**

**Per P.R. Ramachandra Menon, Chief Justice**

**10/05/2019**

**1.** Challenge is at the instance of the Revenue. Grievance is against the order passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur (for short 'the Tribunal') granting relief to the Respondent-Assessee.

**2.** The factual matrix reveals that assessment finalized in respect of year 2010-2011 as per order dated 06.03.2013 (Annexure A/3) came to be affirmed by the appellate authority vide order dated 18.12.2015 (Annexure A/2). This was sought to be challenged by the Assessee by filing further appeal before the Tribunal which led to passing of the impugned order dated 01.02.2018 (Annxure A-1) whereby relief has been granted to the Assessee directing the Assessing Officer to delete the addition of Rs.1,37,72,502/-. This made the Revenue to challenge the said verdict contending that the land in question is not an agricultural land coming within the purview of Section 2(14)(iii) of the Income Tax Act, 1961 and further that it is not in conformity with the law declared by the Apex Court in ***Smt. Sarifabibi Mohammed Ibrahim v. Commissioner of Income Tax***; (1993) 204 ITR 631 SC.

**3.** It is in the said circumstances that the above appeal has been filed, suggesting the following substantial questions of law:

> "1. Whether in law and on the facts and circumstances of the case, the ITAT was justified in setting aside the order of CIT (A) and directing the AO to delete the addition on account of LTCG on sale of agricultural land made at Rs. 7,39,063/- holding it to be entitled for exemption u/s. 2(14) of the Income Tax Act, 1961?
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> 2. Whether in law and on the facts and circumstances of the case, the ITAT is justified in ignoring the decision relied upon by the AO of Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim reported in 204 ITR 631 wherein the Hon'ble Court has approved the decision of a Division Bench of the Hon'ble Gujarat High Court in the case of CIT v Siddharth J Desai (1982) 28 CTR (Guj) 148-(1983) 139 which has laid down few tests/factors that are required to be considered and after due verification /consideration of the same, the question whether the land is an agricultural land or not, was to be decided or answered?
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> 3. Whether in law and on the facts and circumstances of the case, the ITAT is justified in deleting the order of CIT (A) who has confirmed the order of the AO accepting the findings by the latter and from the evidences on record regarding the impugned land being regarded as non agricultural land, inter alia falling within the ambit of decision of Capital Asset u/s. 2(14)(iii)(a) of the IT Act thereby erred by giving a finding which is contrary to the evidence on record, which is factually incorrect and thereby rendering the decision, which is perverse?
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> 4. Whether in law and on the facts and circumstances of the case, the ITAT is justified in setting aside the order of CIT (A) thereby giving a decision in favour of the assessee and against the revenue though there is no nexus between the conclusion of fact and primary fact upon which the conclusion is based? "

**4.** When the matter is taken up for consideration, learned Standing Counsel for the Revenue fairly concedes that the appeal was filed way back in June, 2018. By virtue of the 'new litigation policy' and the circular issued subsequently on 11.07.2018 by the Central Board of Direct Taxes (CBDT), the subject matter of litigation for approaching the High Court shall be of a minimum value of Rs. 50,00,000/- which requirement is not satisfied in the instant case, as in the present case, the tax effect is to the extent of Rs. 2,36,480/- only.

**5.** This Court is also aware of the fact that the scope of the said circular was considered by the Apex Court and in terms of the contents of such circular, it has been held that the same is having retrospective application i.e. in respect of the pending litigations as well.

**6.** In view of the above circumstances, the learned Standing Counsel seeks permission of this Court to withdraw this appeal.

**7.** It is ordered accordingly. The appeal is dismissed as withdrawn.

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| Sd/- | Sd/- |
| ( P.R. Ramachandra Menon) | (Prashant Kumar Mishra) |
| **CHIEF JUSTICE** | **JUDGE** |

Amit