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

INCOME TAX APPEAL NO.1875 OF 2016

The Pr. Commissioner of Income Tax-1 .... Appellant
versus
Late Abdul Latif Ismail Kagdi ... Respondent
…....

- Mr.Sham Walve, Advocate for Appellant.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 25th MARCH, 2019.

P.C. :

1. This Appeal is filed by the revenue to challenge the judgment of Income Tax Tribunal Appellate. Following questions were presented at the time of argument.

> *"A) Whether on the facts and circumstances of the present case and in law, the Hon'ble ITAT was correct in upholding the Ld. CIT (A) order who in turn erred in accepting the valuation report of the Registered Valuer as on 01/04/1981 valuing the land sold at Rs.48,80,000/- and deleting the addition of Rs.2,54,91,600/-?*

B) Whether on the facts and circumstances of the present case and in law, the Hon'ble ITAT was correct in deleting the addition made by AO, who worked out the capital gain on sale of the land at Rs.4,70,90,000/- by considering the value of land as on 01/04/1981 at Rs.5 lakhs and indexed cost of acquisition at Rs.29,10,000/- as against the sale consideration received of Rs.5 crores, after allowing set off of Rs.1,35,008/- for short term loss AO made addition of Rs.4,69,54,992/- to total income on account of Long Term Capital Gain?"

2. The Respondent-Assessee owned certain agricultural land within the periphery of Nashik Municipal Corporation. Such land was sold during the period relevant to the assessment year 2009-2010 for sale consideration of Rs.5 Crores. The assessee pointed out that in agricultural land, capital gain arising out of sale of such land was not eligible to tax. The question of valuation of the land as on 01/04/1981 for the purpose of computation of capital gain was also at issue between the assessee and the department. The department contended that the land was not agricultural land because grass

grew naturally on said land. With respect to the status of the land and the capital gain arising out the sale of land, the tribunal held that the land was agricultural land, but that the same was situated within a distance of less than 8 Kms. from the Nashik Municipal Corporation and the capital gain arising out of the sale of land was assessable to tax.

3. The central dispute that survives between the department and the assessee is with respect to the market value of the land on 01/04/1981. The Assessing Officer adopted such valuation at Rs.5 lakhs relying on the statement of the Stamp Registration Authorities, that the land would be valued at Rs.14.70 lakhs as on 01/04/1989 upto which the records with the said authority were available. The Assessing Officer undertook backward integration and believed that the cost of land would have appreciated three times during the period from 01/04/1981 to 01/04/1989, i.e. how he came to arrive at the valuation of Rs.5 lakhs of the land in question as on 01/04/1981.

4. The CIT appeals permitted the assessee to place on record the Government approved valuer's report of the market value of the land as on 01/04/1981 and after putting the Assessing Officer to notice, accepted such valuation for the purpose of computation of capital gain tax. The tribunal while confirming this decision of the CIT Appeals held that the CIT appeal correctly accepted the valuation as per the report of the Registered valuer. In exercise of appellate powers, he could have permitted such additional material to be brought on record. The tribunal also noted that the valuer had taken into account the relevant considerations such as the fact that the land was an irrigated land, was a Bagayat land and had perennial source of irrigation.

5. In our opinion, the issue is based on appreciation of evidence on record. CIT (A) having taken into account the relevant factors, had given partial relief to the assessee. The Tribunal confirmed this view. We do not find any question of law arising. Income Tax Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**