IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA.No.729/Hyd/2013
Assessment Year 2008-2009

DCIT, Circle 1(3) Hyderabad.	vs.	Mr. M. Kalyan Chakravarthy, Secunderabad. PAN AIGPM0641K
(Appellant)		(Respondent)

For Revenue : Mr. Rajat Mitra
For Assessee : Mr. A.V. Raghuram

Date of Hearing : 15.10.2014
Date of Pronouncement : 24.10.2014

ORDER

PER B. RAMAKOTAIAH, A.M.

This appeal by Revenue is directed against the Order of the Ld. CIT(A)-V, Hyderabad dated 31.01.2013. The issue in the appeal is with reference to levy of capital gains on transaction entered by assessee on sale of agricultural land to M/s. Ramky Estates and Farms P. Ltd. It was the Assessing Officer's contention that transaction of GPA entered indicates that land was meant for commercial exploitation and did not have the character of agricultural land at the time of transfer.

2. Briefly stated, assessee purchased ac.30.00 gts of land at Survey No. 230, Srinagar village, Maheswaram Mandal on 22.08.2002 for a consideration of Rs.8,03,450/- from M/s. Vishwas Agri Plantation P. Ltd., Assessee entered into an agreement of sale on 08.02.2006 with M/s. Ramky Estates and Farms P. Ltd., for sale of the above land for a consideration of

Rs.13.44 crores and received an advance of Rs.7.70 crores. However, on 05.05.2007, assessee as 'guarantor' executed irrevocable General Power of Attorney in favour of M/s. Ramky Estates & Farms P. Ltd. Assessee declared capital gains on this transaction at NIL claiming that the land sold is an agricultural land and situated beyond 8 KM from any municipality. The property conveyed through this irrevocable GPA was treated as sale by A.O. and relying on some clauses of irrevocable GPA, held that the land was meant for commercial exploitation on the date of transfer. He accordingly, brought to tax the long term capital gain and allowed deduction under section 54F to the extent assessee invested in House at Banjara hills and taxed an amount of Rs.2,33,73,151 as long term capital gain.

3. Before the Ld. CIT(A), it was contended that transaction is of sale of agricultural land which is beyond 8 KMs from GHMC. A.O. was of the opinion that the amount of Rs.14.50 lakhs spent by assessee was towards development of land and conversion from agriculture to non-agriculture. It was contended before the Ld. CIT(A) that this was not development expenditure but towards ratification charges of title. It was further contended that the land in question was assessed by land revenue authorities as the agricultural land and assessee never applied for conversion of the said land into non-agricultural land and has filed pattadar pass books in confirmation thereon. Assessee relied on various decisions, as extracted by the Ld. CIT(A) in his order, to contend that the transaction does not result any capital gains. Ld. CIT(A) after considering the submissions accepted the contention and deleted the same by stating as under :

"5.2. I have gone through the assessment order, submissions and evidences filed by the appellant. Going by the facts involved in the present case, I find there is merit in the contentions of the appellant. The appellant in the return of income admitted that he had sold the land in question during the year through an irrevocable GPA to M/s Ramky Estates and Farms Pvt Ltd. The contention of the appellant is that the land so conveyed to the vendee is an agricultural land and in support of the above, he has filed the copy of purchase deed and also the irrevocable GPA wherein it was mentioned that the transaction is in respect of agricultural land. The revenue records certify that-the land so sold by the appellant during the year is an agricultural land. The appellant at no stage applied to revenue authorities for conversion of his land as non-agricultural land.

5.2.1. As regards the view of the Assessing Officer that the appellant has spent Rs.14.50 lakhs towards development of the agricultural lands, it was clarified by the appellant that the amount spent is not for development of the land but the same is towards ratification deed for the property purchased. The facts relating to this expenditure were explained that at the time of original purchase of land, one of the vendor, Sri K. Anand Rao was a minor and the lands were sold to M/s Vishwas Agro Plantations in the year 1993. The appellant purchased the land in the year 2002 from Mls Vishwas Agro Plantations. In the year 2006, the appellant the appellant got a ratification deed from the hitherto minor, Sri K. Anand Rao in favour of M/s Vishwas Agro Plantations, the seller to the appellant, and paid the amount of Rs.14.50 lakhs to them. In support of the above claims, the appellant filed ratification deed and also an affidavit from Sri K. Anand Rao.

5.2.2. From these documentary evidences, it is clear that what the appellant incurred is towards ratification charges for purchase of land and not developmental expenditure as held by the Assessing Officer in the assessment order. The next contention of the Assessing Officer is that the appellant changed the nature of land at the time of sale. This observation of the Assessing Officer is not founded on any material but on the surmise that the appellant is selling the land to a company, which may use the land for commercial purposes. However, the intention of the purchaser has nothing to do with the

nature of land so sold by the seller at the time of sale. What the appellant sold during the year to the purchaser is agricultural land and this was evidenced and certified by the revenue records. The decision of the Bombay High Court in the case of ClT v. Debbie Almao and Joaqyam Atrnao reported in 339 ITR 59 (Bombay) squarely applied to the facts of the present case. In this case it was observed by the Assessing Officer that the assessee sold the lands within two years of its purchase to a purchaser for the construction of a Beach report only showed that the assessee has purchased the property with an intention of selling it for non-agricultural purposes. The huge difference in price nearly 10 times to purchase price would indicate that the land was purchased with an eye on the non-agricultural potential. On these observations, the Court held that the land shown as agricultural land in revenue records and has not obtained any permission for non agricultural use by the assessee, there arose no capital gains.

5.2.3. From the above discussion, it is clear that what the appellant conveyed in favour of M/s. Ramky states & Farms Pvt Ltd., is agricultural land which is 8KM away from any municipality and there cannot be any incidence of capital gains on this transaction. Accordingly, the Assessing Officer is directed to delete the computation of capital gains made in this case at Rs.13,19,59,6l8/-.

4. Learned D.R. submitted that by virtue of the Hon'ble Supreme Court judgment in the case of Sarifabibi Mohmed Ibrahim and others 204 ITR 631 the land in question has to be proved as agriculture land and relied on various principles stated therein to submit that assessee has not established that the land in question was agricultural land. On a query by the Bench whether the A.O. has examined whether any agricultural income has offered in earlier years, learned D.R. fairly admitted that this aspect was not examined by the A.O. at all.

5. Ld. Counsel however, contended that Revenue has come in appeal only on the reason that the purchaser meant it for use of commercial purpose and that does not take away the

fact that assessee's land in question was not agricultural land. He relied on the decision of Hon'ble Madras High Court in the case of Mr. Srinivas Naicker and others vs. ITO 292 ITR 481 the proposition that purchaser could put the land for non-agricultural purpose was not relevant for allowing the exemption from capital gains on sale of agricultural land. He also relied on the decision of Hon'ble Delhi High Court in the case of Hindustan Industrial Resources Ltd., vs. ACIT 335 ITR 77 for the same proposition. He also relied on the Coordinate Bench decision in the case of Tulla Virender ITA.No.550/Hyd/2012 dated 04.07.2013 in support of the contentions.

6. After considering the rival contentions and perusing the orders of the authorities, we have no reason to differ from the findings of the Ld. CIT(A). A.O. himself accepts that assessee had filed evidence that lands are situated beyond 8 KMs from GHMC limits and they were put to agricultural use earlier. The only reason the A.O. treated the land as non-agricultural land was that 'agreement of sale' read with 'Irrevocable GPA' does not indicate that land retained the character of agriculture at the time of transfer. This was also the ground raised by Revenue in the appeal that M/s. Ramky Estates and Farms P. Ltd., may put the property to commercial use, therefore, the land was meant for commercial exploitation and did not have the character of agricultural land at the time of his transfer. These observations of A.O. are not based on any evidence on record. There is no dispute that assessee has purchased agricultural land and put to agricultural use as such earlier. This fact was admitted by AO in the order itself Even though A.O. considered that amount spent of

Rs.14,50,000/- towards development of agricultural land, the fact was that the same was spent for ratification deed and not for any development activity on the agricultural land. Therefore, the facts indicate that assessee has sold only agricultural land which was also used and put to agricultural use earlier and the purpose for which the purchaser utilized the land cannot be considered as an evidence of change of nature of land as was considered by Assessing Officer.

7. In the case of M.S. Srinivasa Naicker and others vs. ITO (supra), the Hon'ble Madras High Court held as under :

> *"A perusal of s. 45 shows that the requirement as on the date of sale of transfer is that the asset must be capital asset, considering the description under the Act. The chargeability to tax under s. 45 arises only if on the date of sale, the lands in question retained its character as a capital asset, which means, an asset, which does not answer the definition of a capital asset and which is an agricultural land falling within the definition of s. 2(11) (sic) would automatically be outside the scope of s. 45.*
>
> *It is an admitted fact that till the assessee sold the land, agricultural operations, in fact, were carried out by the assessee. The assessing authority, in its order, states that the land was actually under cultivation till the date of sale. A perusal of s. 45 shows that the requirement as on the date of sale of transfer is that the asset must be capital asset, considering the description under the Act. The chargeability to tax under s. 45 arises only if on the date of sale, the land in question retained its character as a capital asset, which means, an asset, which does not answer the definition of a capital asset and which is an agricultural land would automatically be outside the scope of s. 45. It is no doubt true that the purpose for which the purchaser had purchased was totally different from what the transferor had intended to use the land in question but with the admitted finding that the lands in question were under agricultural operation on the date of sale for the purpose of considering the meaning of capital assets, it matters very little how the subsequent purchaser intended the land in question to be put to use. In the circumstances, there is no*

reason to accept the plea of the Revenue that the asset in question is a capital asset and it attracts levy of capital gains tax, it having shed its character as an agricultural land on the sale effected. In the absence of any contra indication that the assessee was using it or intending to use it for non-agricultural purposes, it is difficult to accept the stand of the Department."

8. The Hon'ble Delhi High Court in the case of Hindustan Industrial Resources Ltd., vs. ACIT (supra) on similar facts held as under :

"The Tribunal's finding of fact is contrary to its own record and, therefore, is in the realm of perversity. This is so because the Tribunal clearly held that at the point of time when the assessee purchased the said land, it was agricultural land. There is no dispute with regard to this. The Tribunal also noted that the award passed by the District Collector (Land Acquisition), was a document which established beyond doubt that the land in question was agricultural land. Thus, on the date of purchase, the land in question was agricultural land and on the date of acquisition, the character of the land continued to be agricultural. When these two clear findings have been returned, it is apparent that in the transitional period, that is, between purchase and acquisition, the nature and character of the land did not change. The fact that the assessee intended to use the land for industrial purposes did not in any way alter the nature and character of the land. The further fact that the assessee did not carry out any agricultural operations did not also result in any conversion of the agricultural land into an industrial land. It is nobody's case that the assessee carried out any operations for setting up any plant or machinery or of the like nature so as to lead to an inference that the nature and character of the land had been changed from agricultural to industrial. The mere fact that the assessee did not carry out any agricultural operations did not alter the nature and character of the land. In any event, this discussion is not relevant in the backdrop of the clear finding given by the Tribunal that on the date of the purchase and as also on the date of acquisition, the land in question was agricultural land. Having come to such a conclusion, the Tribunal ought not to have gone into question of intention of the assessee and definitely not into the question of intention of the land

acquiring authority, the latter being a wholly irrelevant consideration. In these circumstances, the land acquired from the ownership of the assessee was agricultural land".

9. Ld. CIT(A) in his order has followed the decision of Hon'ble Bombay High Court in the case of CIT vs. Debbi Almao and Joaqyam Almao reported in 339 ITR 59 (Bom.) (HC) which also considered similar facts and accepted the contention that no capital gains arises on the sale of agricultural land even though purchaser purchased the property with an intention of selling it for non-agricultural purposes. In view of the legal proposition as stated above and also on facts that assessee's land was used as agricultural land and is away from GHMC limits beyond 8 KMs, the said transaction does not give rise to taxable capital gains. Accordingly, we find no merit in Revenue grounds and are dismissed.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 24.10.2014.

Sd/-	**Sd/-**
(SAKTIJIT DEY)	**(B.RAMAKOTAIAH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated 24th October, 2014

VBP/-

Copy to

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2.	Mr. M. Kalyan Chakravarthy, 3-6-100/1, West Maredpally, Secunderabad.
3.	CIT(A)-V, Hyderabad
4.	CIT-IV, Hyderabad
5.	D.R. ITAT "B" Bench, Hyderabad.