

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1396/Bang/2019
Assessment Year : 2014-15

Shri Kamanahalli Pilla Reddy Nagesh, Kamanahalli Village, Kagur Post, Sarjapura Road, Anekal Taluk, Bangalore – 562 125. PAN: ADFPN8365H	Vs.	The Income Tax Officer, Ward – 4 [3] [5], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Guruswamy, ITP
Revenue by	:	Shri V.S. Chakrapani, CIT- DR

Date of Hearing	:	01-06-2022
Date of Pronouncement	:	21-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 28.03.2019 passed by Ld.CIT(A)-9, Bangalore for A.Y. 2014-15 on the following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the assessment order passed u/s. 143[3] of the Act despite the fact that no valid notice u/s.143[2] of the Act was served

upon the appellant taking recourse to the provisions of sec. 292B of the Act and holding that the appellant was not entitled to raise the said challenge under the facts and circumstances of the appellants case.

3. Without prejudice to the above, the learned CIT[A] is not justified in upholding the assessment of Rs. 2,01,92,432/- as Long Term capital gains in the hands of the appellant in individual capacity under the facts and circumstances of the appellant's case.

4. The learned CIT[A] ought to have appreciated that the property sold by the appellant was received upon partition of the bigger HUF of which the appellant was a coparcener earlier and thus, the said property received upon partition belonged the appellant's branch of HUF of which the appellant was the karta, which also stood disrupted and therefore, the assessment of capital gains on the sale of the said property in the hands of the appellant in Individual capacity was misconceived.

5. Without prejudice to the contention that the property sold does not belong to the appellant in individual capacity but to the erstwhile HUF of the appellant, the learned CIT[A] ought to have granted deduction of brokerage paid a sum of Rs. 75,000/- while computing capital gains under the facts and in the circumstances of the appellant's case.

6. Without prejudice to the contention that the property sold does not belong to the appellant in individual capacity but to the erstwhile HUF of the appellant, the learned CIT[A] ought to have granted deduction towards indexed cost of improvement of Rs. 29,90,446/- being the expenditure incurred towards the construction of the compound by the erstwhile joint family of the appellant, which the appellant is otherwise entitled to as per law under the facts and in the circumstances of the appellant's case.

7. Without prejudice to the contention that the property sold does not belong to the appellant in individual capacity but to the erstwhile HUF of the appellant, the learned CIT[A] ought to have granted deduction u/s.54B of the Act of Rs. 1,66,75,000/- being the extent of agricultural lands purchased by the erstwhile joint family of the appellant, which the appellant is otherwise entitled to as per law under the facts and in the circumstances of the appellant's case.

8. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s.234-A and 234B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

9. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. Facts of the case are that the A.O. made addition of Rs.2.06 crores as long term capital gain arising from sale of land situated at Survey No.40, Chikkanahalli Kammanahalli, Sarjapur hobli, Anekal Taluk, Bengaluru. The assessee claimed that the said land is situated beyond the Municipal limits 10 kms. and therefore, it is not a capital asset as per section 2(14) of the Act. According to the Ld. A.R., the sale of agricultural land outside municipal limit is to be treated as agricultural land and should be exempted u/s 10(1) of the Act. However, the A.O. held that, the land was converted for non-agricultural purposes before execution of sale deed, therefore, it is a capital asset u/s 2(14) of the Act, and it cannot be exempted u/s 10(1) of the Act. Accordingly, the same was brought into taxation as capital gain.

On appeal, the Ld. CIT(A) confirmed the above finding of the A.O.

Against this, the assessee is in appeal before us.

The Ld. A.R. submitted that, the assessee entered into sale agreement on 15/4/2013 to sell subjected property and the land was got converted as per condition laid down by the purchaser in sale agreement. As per this condition in sale agreement, the Ld.AR submitted that, the assessee got converted the said land for non-agricultural purposes on 16.9.2013 by order of Dy. Commissioner of Bangalore district OM No.ALN(S)-SR/37/13-14 dated 16.9.2013, and, the assessee entered

into sale deed on 18.9.2013. It was submitted that the conversion of said property for non-agricultural purpose was only to fetch good price and not any other intention. The Ld.AR submitted that, the property was sold within a period of 2 days after the order of conversion, and the land was not subjected to use for non-agricultural purpose on any day and the sole intention of conversion was to get good price that cannot be reason to hold that the land sold by assessee is non-agricultural land.

Further, it was submitted that, land has been used by the assessee till the date of transfer as agricultural land and also assessee declared income from agriculture in its return of income which was not accepted by the department.

Further, the Ld.AR drew our attention to the record of rights, wherein it was classified as non-agricultural land and the land was subjected to cultivation, wherein assessee cultivated cashew nut and Neilgiri. He also submitted that the endorsement issued by the Dy. Tahsildar, Sarjapur Hobli, Anekal vide no.Sanaaka/MNK/MSC/20/2014-15 dated 13.1.2015, the land is situated 10 kms away from the local municipality. He relied on the following judgements:-

- a) *Shri M.R. Pattabhiram (HUF), in WTA No.34-36/Bang/2014 dated 16.10.2015.*
- b) *Shri M.R. Anandaram (HUF), ITAT Bengaluru Bench in ITA Nos.1169 to 1172/Bang/2015 & CO Nos.220 to 223/Bang/2015*
- c) *Hon'ble Jurisdictional High Court of Karnataka in the case of CIT Vs. Smt. K. Leelavathy (2012) 21 taxmann.com 148 (Kar) dated 2.1.2012*
- d) *Smt. K. Leelavathi, ITA No.997 & 998 (Bang) 2010.*

The Ld.AR submitted that though the property was within limits of BMRDA, that itself cannot be treated as the land is situated within the municipality or local authority in terms of section 2(14)(iii)(a) of the Act. For this purpose, he relied on the order of the *Tribunal* in the case of

WTA No.34-36/Bang/2014 dated 16.10.2015 in the case of M.R. Pattabhirama (HUF).

3. On the other hand, the Ld. D.R. submitted that the land was converted for non-agricultural purpose before sale and the sale of converted land for non-agricultural purpose should be liable for tax as it is not an agricultural income in terms of section 2(14) of the Act.

We note that assessee has filed following additional grounds.

It is submitted that no new facts needs to be adjudicated and accordingly application dated 28.04.2022 stands allowed.

"1. The Appellant begs to submit the following additional grounds of Appeal for Adjudication in addition to the grounds of Appeal already urged in the Appeal Memorandum.

2. Additional Ground

The Ld.AO has erred in holding a sum of Rs. 2,01,92,432/- as income from Capital Gains on the sale of Agricultural Lands situated at Sy.No. 40, Chikkanahalli Kamanahalli, Sarjapur Hobli, Anekal Taluk, Bangalore jointly sold by the Appellant along with his family members vide Sale Deed dtd: 18-09-2013 without appreciating the fact that the Land sold were the Agricultural Lands not liable for Capital Gain Tax.

3. The Appellant submits that the additional ground is absolutely necessary for Adjudication for the cause of advancement of substantial justice and equity since the adjudication is required in accordance with Law and facts of the case.

4. The Appellant submits that the admission of additional grounds does not cause any prejudice to the revenue since the matter in appeal needs to be adjudicated on merits of the case in accordance with law. On the otherhand if the additional grounds are not admitted the Appellant would be put to hardship and denial of justice admissible in accordance with law.

5. The Appellant begs to place reliance on the following decisions

i. The Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd v/s. CIT 229 ITR 383 (SC)

ii. *The Hon'ble Supreme Court in the case of CIT v/s. Kelvinator of India Ltd (2010) 320 ITR 561 (SC)*

6. *Therefore the Appellant respectfully prays that this Hon'ble Bench be pleased to admit the Additional Grounds of Appeal for adjudication in the interest of equity and substantial justice."*

4. It is also submitted by the Ld.AR that in the event the additional grounds is considered, assessee would not press on the main grounds raised in the grounds of appeal. He also submitted that assessee had also raised additional grounds vide application dated 28.04.2022.

5. The Ld.AR at the outset submitted that on identical facts in case of co-owner *Shri K.P. Manjunatha Reddy vs. ITO* in ITA No. 977/Bang/2019 vide order dated 25.03.2022, the *Coordinate Bench* of this *Tribunal* held the land sold not to be liable for capital gain being an agricultural land.

The Ld.DR however submitted that the issue may be remanded to the Ld.AO to verify the same.

6. We have perused the submissions advanced by both sides in the light of records placed before us.

7. We note that on identical facts, *Coordinate Bench* of this *Tribunal* in co-owner's case observed and held as under:

"4. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessee sold property situated at Survey No.40, Chikkanahalli Kammanahalli, Sarjapur hobli, Anekal Taluk, Bengaluru and claimed it as an agricultural land. However, the A.O. observed that the land was subjected to conversion before sale agreement on 15.4.2013 and the assessee got converted the said land for non-agricultural purposes on 16.9.2013 by order of Dy. Commissioner of Bangalore district OM No.ALN(S)-SR/37/13-14 dated 16.9.2013. Later, the assessee entered into sale deed on 18.9.2013. However, assessee furnished Record of rights issued by

revenue authorities that land was subjected to cultivation, wherein assessee cultivated cashew nuts and Neilgiri in the assessment year under consideration. The assessee also produced the certificate from Dy. Tahsildar, Sarjapur Hobli, Anekal, wherein he has stated that the land is situated 10 kms. away from the municipal limits. These facts support the case of assessee to hold that land is an agricultural land and only to facilitate to get good price, the assessee converted the land and at the time of entering into sale agreement, land was not converted into non-agricultural land. The assessee also declared agricultural income from the said land as an agricultural income at Rs.9 lakhs, which was accepted by the department and there was no disturbance on this count. The situation of land within the BMRDA limits cannot be considered as the land is situated within the limit of municipality and moreover, BMRDA is not a municipal or local authority in terms of section 2(14)(iii)(a) of the Act. This proposition is verified by the order of the Tribunal in the case of M.R. Pattabhiram (HUF) Vs. ACWT in WTA Nos.34 to 36/Bang/2014 dated 16.10.2015, wherein Tribunal held as under:

7. The next is came up for our consideration, is whether the CWT(A), right in holding the impugned lands are urban lands and the BIAPPA is municipality or notified area as defined in section 2(14)(iii) of the Act. The Id. Authorised representative brought to the notice of the bench that the issue in this appeal is covered by assessee own case in ITA.No. 262/B/2013. We find that the co-ordinate bench of this tribunal in assessee own case in ITA No. 2628/2013 for the assessment year had considered whether the impugned lands situated at Akkalenahalli- Mallenahalli Village pertaining to the assessee which are subject matter of appeal before us are urban lands as defined in section 2(14)(iii) of the Income tax Act, 1961 and are capital assets and the gain from transfer of these lands are liable for capitalain tax. The ITAT had examined the issue whether the lands in question are capital assets, situated within the municipal limits of BIAPPA and the BIAPPA is a municipality or notified area. The Tribunal after considering the relevant details has come to the conclusion that the impugned lands are not capital assets within the meaning of section 2(14). The relevant portion is reproduced hereunder.

8. It is now for us to consider as to whether the order passed by the co-ordinate bench of this Tribunal in the case of **M.R. Seetharam (HUF)** in ITA

No.16154/BangI2012 dt.13.6.2014 is applicable to the facts of this case.

The land in question, which are sold by the assessee and subjected to the charge of LTCG by the authorities below, became the properties of the assessee's virtue of a family settlement of land purchased by Late Sri M.S. Ramaiah in 1951. In the said family settlement in 1970, the assessee and other family members including M.R. Seetharam were allotted lands belonging to the said family. The lands sold by the assessee, some other family members, as well as the lands sold by M.R. Seetharam are contiguous in nature and possess the same physical attributes. Admittedly these lands were converted for non-agricultural purposes, but no development was effected by the assessee in respect of the said land. Agricultural activities were continued thereon right up to the date of sale thereof on 8.2.2008 and the same has been accepted by the Income Tax Department while determining the assessee's income and computing the taxes thereon. In fact no development activities have taken place on these lands even after six years after the date of sale and this was evident from the physical inspection undertaken by the Members of the Co-ordinate bench prior to the passing of the appellate order in the case of M.R.Seetharam (HUF). Considering the fact that the assessee's lands are contiguous to the lands of M.R.Seetharam (HUF) and have the same physical properties, they are identical to the lands which formed the subject matter of the order in the case of M.R. Seetharam and therefore we are in no doubt that the order passed in the case of M.R. Seetharam (HUF) in ITA No.1654/Bang/2012 dt.13.6.2014 is applicable to the appeal in the case on hand. •

9.1 We now proceed to examine and take up for consideration the issues and reasons cited / raised by revenue in written submissions dt.12.9.2014 as to why the order of the co-ordinate bench of this Tribunal in the case of M.R. Seetharam (HUF) is not to be applied to the case in hand:-

" 1. Various factual and legal aspects of the order delivered in case of M R Seetharam (ITA No.1654/Bang/2012) need to be deliberated upon once again, especially in the context of the above mentioned appeals and only after such deliberation the Ld. Bench may arrive at a conclusion in case of the above mentioned appeals."

The above reason being general in nature no finding or adjudication is called for thereon.

" 2. The issues involved in the above mentioned appeals (viz. status of land-agricultural or non-agricultural, status of BIAPPA etc.) have huge revenue implications given the fact that the sale considerations are high due to the lands being located in the vicinity of the Bangalore Airport."

Revenue must bear in mind the sacrosanct principle that the Tribunal should not concern itself with the possible implications on Revenue that the orders passed by it may have. The Tribunal is expected to pass orders which, in its opinion, are correct in law, based on facts and circumstances, irrespective of implications on the revenue or for that matter on the assessee's case also.

" 3. Apart from the above mentioned assessees, many other assessees have sold lands in this area which is arguably one of the areas with very high commercial potential due to its location being near the Bangalore International Airport. Thus, the judgement in the above mentioned cases is going to affect taxation of many high value land transactions in this prime area of Bangalore."

These issues do not and should not have any bearing on the Tribunal arriving at a decision which is in accordance with law.

" 4. Most importantly the judgment in the above mentioned cases would decide a very important question-"what is the definition of a converted land in the state of Karnataka." " The order of this Tribunal will confine itself to deciding the taxability or otherwise of the gains arising from the sale of the lands in question in accordance with the provisions contained in the Income Tax Act, 1961. If Revenue expects this Tribunal to decide the question framed in the above cited reason, then such expectation is either borne out of ignorance or mischievous in nature. If mischievous, then Revenue would be well advised to avoid such tongue-in-check arguments.

9.2 On careful consideration of the above four reasons cited by Revenue (supra), we are of the considered view that none of them survive as they are wholly extraneous in arriving at a decision in accordance with the provisions of law.

10.0 We now proceed to carefully consider the several other issues raised by Revenue and examine these in the light of the order passed by the co-ordinate bench of this

Tribunal in the case of **M.R. Seetharam (HUF)** (*supra*). On a careful reading of the above, we draw the following conclusions as regards the decision rendered in the order in the case of **M.R. Seetharam (HUF)**: -

10.1: There is no dispute as regards the fact that the lands in question stood converted, as on the date of sale, in the records of the land revenue authorities of the State Government, as but for this fact, the sale of the lands in question to corporates could not have taken place in the State of Karnataka. Thus the fact that the lands sold are therefore non-agricultural as on the date of sale is also not in dispute.

10.2 The assessee admittedly obtained an order of conversion to put the land to use for non-agricultural purposes. One of the mandatory conditions stipulated in the conversion order was that the lands should be put to non-agricultural use before a period of two years from the date of the said order of conversion, failing which the permission granted would automatically lapse' and stand cancelled. The assessee has taken this as one of the reasons to support the proposition that the land continued to be agricultural lands as the permission was not acted upon within the given time and that the lands in question continued to be used only for agricultural purposes. The co-ordinate bench of this Tribunal at para 7.2.6 of its order in the case of **M.R. Seetharam (HUF)** (*supra*), citing the mandatory condition in the conversion order, observed that -

".... 10. The land should be used for the said purpose within two years from the date of this order [Refer pages 8(' to 92 (including English transaction) of paper book of A.R.] " only for the limited purpose of stating that the Assess* Officer is not correct in taking a stand that once the agricultural land is converted for nonagricultural purposes, the land cannot be treated as agricultural land even though it continues to be used only for agricultural purposes. The fact that the mandatory condition was not complied with by the assessee was not the reason by the co-ordinate bench of this Tribunal held that the lands sold are agricultural lands and not capital assets u/s. 2(14) of the Act.

10.3 The co-ordinate bench of this Tribunal has proceeded to hold that the lands sold are agricultural lands and not capital assets u/s.2(14) of the Act on the

basis of its findings rendered from paras 7.2.7 to 7.3.10 of its order in the case of *M.R.Seetharam (HUF) (supra)* and has come to the following important conclusions :-

- (i) The lands in question do not cease to be agricultural lands merely because it stood converted in the records of the land revenue authorities of the state government.
- (ii) The land continued to be agricultural land for the limited purpose of determining whether the same falls under the definition of capital asset under section 2(14) of the Act in view of the following facts :-
 - (a) The said land was put to use as agricultural land by the assessee right up to the date of sale and the assessee has also been declaring the agricultural income earned therefrom in the returns of income filed before the Department in this period;
 - (b) The assessee did nothing to change the physical character of land from agricultural to non-agricultural even after obtaining the permission to convert;
 - (c) The land continued to be agricultural land in actual physical condition even after a period of six years after its sale.
 - (d) The assessee obtained permission to convert the land merely to facilitate its sale to corporate entity as the sale would otherwise not been possible.

10.4.1 The co-ordinate bench of this Tribunal only after satisfying itself that the above facts were present in the case of **M.R.** Seetharam (HUF) (*supra*) held that the lands sold are agricultural lands and not capital assets under section 2(41) of the Act. In coming to this decision, the co-ordinate bench of this Tribunal placed reliance of these earlier decisions of different co-ordinate benches of the Bangalore Tribunal, in the following cases :-

- (i) *H.S. Vijaykumar V ACIT, Hassan* (ITA No.108/Bang/2009 dt.28.11.2006).
- (ii) *T. Suresh Gowda & Others* (ITA Nos.1464 & 1465/Bang/2008; 177, 178, 262 & 305/Bang/2009 dt.30.12.2009).

The Tribunal also placed reliance on the decision of the Hon'ble jurisdictional High Court of Karnataka in the case of –

- iii) *CIT V. Smt. K. Leelavathy* reported in (2012) 21 t'dxmann.com 148 (Kar) dt.2.1.2012.

10.4.2 In all the above three cited cases (*supra*) the

facts are that the respective assessees sold their Agricultural lands, after getting the same converted for non-agricultural use, to persons who were not going to continue any agricultural activity. Further, in all the above three cases, the assessee's therein :-

- (i) continued to carry on agricultural activities on the land in question up to the date of sale;*
- (ii) did not act upon the conversion by carrying out any non-agricultural activity on the said lands; and*
- (iii) obtained the conversion order merely to facilitate sale to non-agriculturists.*

*In fact in the case of H.S. Vijaykumar (supra), the assessee therein sold the land to a corporate entity as in the case on hand. All the requirements which led the co-ordinate bench of this Tribunal to hold that the lands sold are agricultural lands and not capital assets under section 2(14) of the Act in the case of **M.R. Seetharam (HUF)** (supra) are also found in the case on hand before us.*

10.4.3 The co-ordinate bench of this Tribunal in the case of M.R. Seetharam (HUF) (supra) has also placed reliance on the decision of the Hon'ble jurisdictional High Court of Karnataka in the case of CIT V Smt. K. Leelavathy (supra), which upheld the decision of the Tribunal in that case. The Hon'ble Court had occasion to analyse the provisions of section 2(14) r. w. sections 45 and 48 of the Act. The two questions of law which were raised by the Revenue in the case of Smt. K. Leelavathy (supra) were as under :-

"1: Whether the appellate authorities were correct in holding that the land which is the subject matter of sale is agricultural land as on the date of sale without taking into consideration the conversion of land to non-agricultural purpose and consequently recorded a perverse finding ?

2. Whether the appellate authorities were correct in holding that though the land is converted into nonagricultural, in view of the cultivation of the land till the date of sale, the land should be treated as agricultural land and the same is exempt from capital gains in view of section 2(14) read with sections 45 and 48 of the Act ? "

10.5 The Hon'ble Court after considering the averments of both parties and the orders of the authorities below held as under :

"5. We find from the record that the Appellate Commissioner as well as the Tribunal followed an earlier ruling of the Tribunal rendered on December 30, 2009, in the case of T.Suresh Gowda [ITA NO.262/Bang/2009] wherein it appears, the question was resolved by looking into the date of permission for conversion as the cut-off line to decide as to whether the land was an agricultural land or otherwise.

6. It appears, the Tribunal had opined that the land retained its agricultural character till the date of order permitting non-agricultural use and, thereafter, it is not an agricultural land and, therefore, can be treated as capital asset.

7. The Appellate Commissioner as well as the Tribunal has applied this norm and while they did hold that the sale transaction in respect of the following extent of land:

Conversion Notification No. and date	Sy. No	Extent of area	Date of sale	Sale consideration
No.ALNSR/94/98-99 DT.29.4.1999	75	3A 38G	7.4.2004	Rs. - - - - -
	77	3A 00G		
No.ALNSR/8/2004-05 DT.10.5.2004	15.15	0A 10G	2.6.2004	Rs.1,82,50,000
	16	4A 14G		
	17	2A 17G		
	86.1	5A 31G		
	87	5A 12G		
		23A 22G		
Total				Rs.2,32,50,000

In respect of the sale transaction dated June 2,2004, it was taken as a sale of capital asset as this sale was after the date of permission for non-agricultural use granted by the Asst. Commissioner, viz., after May 1072004, whereas the earlier sale transaction dated April 7, 2004, is held to be in respect of an agricultural land. We do not find the reasoning and the principle enunciated by the Tribunal for making a distinction as to whether the land was agricultural land or otherwise in the case of T. Suresh (supra) apply to the present case to be obnoxious or violating any statutory provisions and,

therefore, we d not find any illegality in the finding recorded by the Appellate Commissioner and the Tribunal."

The Hon'ble High Court has answered both the substantial questions before it (supra) in favour of the assessee and against Revenue. An analysis of the above two substantial questions of law and the conclusion / finding of the Hon'ble High Court would, in our considered view, go to mean that land which was converted from agricultural to non-agricultural and continued to be used as agricultural land till the date of sale, should be treated as agricultural land and the same is exempt and not exigible to tax from capital gains in view of section 2(14) r. w. sections 45 and 48 of the Act despite the fact that the land in question was a converted land as on the date of sale. The co-ordinate bench of this Tribunal in its order in the case of M.R. Seetharam (HUF) (supra) has only followed this proposition of law laid down by the Hon'ble jurisdictional High Court of Karnataka, vindicating the stand of the Tribunal in tire cases of H.S. Vijaykumar V ACIT, Hassan (supra), T. Suresh Gowda & Others (supra) and Smt. K. Leelavathy.

10.6 *It is important to take note of the fact that the decisions rendered by the various co-ordinate benches of this Tribunal in the cases of H.S. Vijayshankar (supra), T. Suresh Gowda & Others (supra) and M.R. Seetharam (HUF) (supra) and that of the Hon'ble jurisdictional High Court in the case of Smt. K. Leelavathy (supra) is only for the limited purpose of determining whether a land is agricultural land or a capital asset u/s.2 (14) of the Act wend not to determine the definition of converted land in the state of Karnataka and other issues pertaining to the status of land as sought for by the Revenue in its written submisSions. We also find that the decision in the case of Madhav Bhandhopanth Kulkarni 2003(5 Kar. L 113, relied on b; Revenue, is not germane to decide the issue before us.*

10.7 *In the order of the co-ordinate bench in the case of M.R. Seetharam (HUF) (supra), the co-ordinate bench of this Tribunal at paras 7.343 to 7.3.10 of its order has also found merit in the arguments put forth by the learned Authorised Representative therein that owing to the peculiar features of the law prevailing in the state, an agriculturist in the state of Karnataka has to necessarily get his agricultural land converted if he has to sell the same to a non-agriculturist and hence is placed at a disadvantage as compared to an agriculturist in Tamil Nadu, Andhra Pradesh, etc. who can directly sell their agricultural lands to non-agriculturists without getting the same converted. In this regard the co-*

ordinate bench of the Tribunal at paras 7.3.8 to 7.3.10 of its order has observed and held :-

" 7.3.8. Finally, the most important aspect which requires to be considered is that agriculture is a State subject and different States have different reforms (laws) as to who can purchase/own agricultural lands in the respective States. To illustrate further, in Karnataka, non-agriculturists and industrial companies are prohibited from purchasing of lands which are classified as 'agricultural' in the revenue records. If an agriculturist intends to sell his agricultural lands to a company/non-agriculturist for the use of non-agricultural purposes, he must possess a conversion order obtained from the revenue authorities to utilise the subject land for non-agricultural purposes. However, the same law/rule is not prevalent in the neighbouring States of Tamil Nadu, Andhra Pradesh or in Maharashtra, Delhi etc. In other words, the agriculturists of the said States are free to sell their lands as shown in the revenue records to non-agriculturists/Corporates without obtaining a conversion order.

7.3.9. Thus, it is evident from the fact that the agriculturists in other States can sell their agricultural lands without getting the same converted whereas the agriculturists in Karnataka cannot do so due to the Land Reforms Act prevailing in the State. As such an agriculturist in Karnataka is on a different footing from his counterparts in other States. If one were to conclude that since the present assessee had obtained a conversion order to enable it to sell its lands to a non-agriculturist (a Corporate), the subject land ceased to be a nonagricultural and, thus, become a Capital asset, though the subject land remains an agricultural land, the assessee then stands discriminated in the eyes of law vis-er-vis its counter-parts in other States. Had the State Reforms Act permitted the assessee to sell its agricultural & without conversion to a Corporate as in the case of other States (supra), the assessee would not then be required to get the land converted merely to facilitate its sale to a corporate and the gains arising from such sale would not have been exigible to Capital Gains tax which is the subject of a Central Act (Income-tax Act). In the instant case as mentioned earlier even after conversion, assessee was carrying on agricultural operation and conversion was done only to facilitate sale of subject property to a corporate entity/ non agriculturist. In substance, the Income-tax Act — a Central Act — is to be administered in

such a manner to ensure that an assessee is not subjected to suffer due to different State laws.

7.3.10. Taking into account all the aspects as discussed in the fore-going paragraphs and also in conformity with the judicial pronouncements on the issue (*supra*), we are of the view that though the subject land was converted into non-agricultural purposes, cultivation of the land for agricultural purposes till the date of sale was continued unabated and as such, the land should have been treated as **agricultural land** and, thus, exempt from capital gains in view of s. 2 (14) of the Act. It is ordered accordingly."

The extracted portion at paras 7.3.8 to 7.3.10 of the order in the case of M.R. Seetharam (HUF) (*supra*) indicates that the co-ordinate bench of this Tribunal came to the conclusion that mere conversion of land from agriculture to non-agriculture could not be taken as the sole criteria to hold it as a capital asset under section 2(74) of the Act and that if that land is used for agricultural purposes till the date of sale, despite the fact that it is converted to non-agricultural use are agricultural lands and not capital assets under section 2(14) of the Act.

Whether BIAPPA can be treated as a Municipality and consequently the issue falls within the purview of section 2(14)(iii)(a) of the Act.

11. Another issue that requires to be addressed is whether BIAPPA is to be treated as a municipality as contemplated by the provisions of section 2(14) of the Act. The co-ordinate bench of this Tribunal in its order in the case of M.R. Seetharam (**HUF**) (*supra*), agreeing with the view taken by the Hon'ble High Court of Kerala in the case of CIT V Murali Lodge reported in (1992) 194 ITR 125 (Ker), has held that BIAPPA is not a Municipality, but a mere planning body. The relevant portion of its order at paras 8.3 to 8.3.5 is extracted hereunder:-

" 8.3. We have carefully considered the reasoning of the authorities below and also the divergent contentions of either of the party on the issue. Indeed, BIAAPA performs only planning and zoning functions, but, does not perform any other municipal functions as canvassed by the Revenue. Other major municipal/panchayat functions are required to be performed only by an elected body, namely, the respective municipality/panchayat within the ambit of the area covered by BIAAPA, but, not BIAAPA which is, admittedly, a mere planning authority. We are also differ with the interpretation of the CIT (A) that municipality need not necessarily be an elected body. In this 'context, we refer to the Article 243P(e) of the Constitution of

India which explicitly defines 'Municipality' means an Institution of self-Government constituted under Article 243Q and Article 243R requires that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and, thus, clear that a municipality has to necessarily be an elected body whereas BIAAPA was not an elected body, but, an appointed body and, therefore, BIAAPA does not qualify to be considered as a Municipality.

8.3.1. To strengthen the above view, it is appropriate to refer to the judgment of the Hon'ble Kerala High court in the case of CIT v. Murali Lodge reported in (1992) 194 ITR 125 (Ker). The issue before the Hon'ble Court was Whether the land in question situated within Guruvayur Township can be treated as a capital asset within the definition of section 2(14) of the I.T. Act? After having comprehensively, dealt with the issue of 'Whether the local authority is a Municipality?' as under:

"(On page

127).....

From the plain and unambiguous language employed in the section [2(14)(iii)(a)], it is clear that, if the agricultural land is situated outside the jurisdiction of a municipality then no tax on any profits or gains arising from the transfer of such land will be chargeable under the head 'capital gains'. The question, therefore, is: Whether the agricultural land of the assessee sold in public auction can be said to be situated in an area which is comprised within the jurisdiction of a municipality. The case of the Revenue is that it is, because the Guruvayur Township is a municipality within the meaning of that word in the section. On the other hand, counsel for the assessee submits that the Guruvayur Township, though a local authority cannot be said to be a municipality and, therefore, the agricultural land in dispute cannot be said to be situated in an area which is comprised within the jurisdiction of a municipal. The word 'municipality' used in the section considered in the light of the various expressions used in the brackets, namely, 'whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name' must be held to take in its fold a township also, counsel for the Revenue submits. Of the various words included in the brackets, learned counsel for the Revenue laid emphasis on the words 'by any other name'. These words, counsel argues, take colour from the preceding words, and, if that be the position, the Guruvayur Township also can be called a municipality. May be that the Guruvayur township can be called a local*

authority. But all local authorities cannot be called municipalities. Only those local authorities which have all the trappings of a municipality can be treated as a municipality within the meaning of the section. Therefore, to find a solution to the problematic dispute, we have to give a meaning to the word 'municipality' which stands undefined in the Act. Generally understood, 'municipality' means a legally incorporated or duly authorised association of inhabitants of a limited area for local governmental or other public purposes [Black's Law dictionary]. The above definition more or less is reflected in the provisions contained in Chapter III of the Kerala Municipalities Act, 1960. The council constituted under section 7 with the assistance of the standing committee of the council, chairman, commissioner, etc., will administer the provisions of the Act. The council consists of such number of members as are prescribed. They are called councilors. They are elected by the residents of the area coming within the jurisdiction of the municipality. The chairman and vice-chairman of the municipality are elected by the members of the council. The commissioner is appointed by the Government in consultation with the council. It is the duty of the 'Commissioner to carry into effect the resolutions of the council unless it be that the said resolution is suspended or cancelled by the Government. The municipality contemplated under section 2(14)(iii)(a) must be one which satisfied the above requirements. All the local authorities included in the brackets must satisfy the above requirements to be known as a 'municipality'. The position, however, would have been different had the section contained a definition which takes in its fold the local authorities included • in the brackets, namely, municipal corporation notified area committee, town area committee, town committee or such other similar local authority'. In that event, the Guruvayur Township can be said to be a municipality. The plan language employed in the section, however, makes it clear that the intention of the Legislature is not to treat every local authority as a municipality; but, on the other hand, only those local authorities which have all the trappings of a municipality as stated above can be said to be municipalities within the meaning of the section.

The Guruvayur Township, constituted under the Guruvayur Township Act, considered in this backdrop, cannot be said to be a municipality. The Guruvayur Township is not an autonomous body like a municipality.

It is constituted by the Government by a Notification issued under the Guruvayur Township Act. To put it differently, the members of township committee are not elected representatives of the residents of the area. That 'the Central Government also has understood the position thus is obvious from the draft notification dated February 8, 1991, published in the Gazette issued under section 2(14)(iii)(b) of the Income-tax Act

8.3.2. We have, with due regards, perused the judgment of the Hon'ble P & H High Court in the case of CIT v. Sint. Rani Tara Devi (supra) as relied on by the learned DR. The only issue before the Hon'ble Court was: **Whether the land owned by the assessee which was acquired under the provisions of the Land Acquisition Act, was an agricultural land or a capital asset within the meaning of s. 2 (14) of the Act in order to determine the taxability of amount of compensation received by the assessee?** After taking into account the relevant facts of the case, the Hon'ble Court was of the view that it was to be regarded as a capital asset within the meaning of s. 2 (14) of the Act for the following reasons:

"(i) that the acquired land was situated between the developed sectors of Panchkula on one side and on the other side, it was 1 KM from the district headquarters;

(ii) that the land was extensively developed area and nearer to colleges, hospitals, district headquarters etc.,

(iii) with regard to the assessee's claim that in terms of s 2(14) an agricultural land was excluded from the capital asset, if it was not a land situated in an area which was comprised within the jurisdiction of municipality etc., it was held by the Court that Haryana Urban Development Authority was a local authority in terms of s. 3 of the Haryana Urban Development Authority Act, 1977 and, thus the local authority in terms of s. 3(31) of the General Clauses Act means a Municipality. Therefore, conversely, the expression 'Municipality' in s. 2 (14) of the Act would include a local authority; &

(iv) in view of the above, it was held the land, subject matter of acquisition, was a capital asset falling within the scope of clause (iii) of s. 2 (14).

8.3.3. In this connection, we would like to point out that the said land was situated between the developed sectors of Panchkula on one side and on the other-side it was within a radius of 1 KM from the District headquarters, colleges, hospitals etc., whereas in the present case, the subject property was surrounded by lush green agricultural lands. Therefore, we are of the view that the case law relied on by the Revenue is not directly applicable to the issue on hand.

8.3.4. Further, while deciding the issue against the assessee, the Hon'ble Court had distinguished the judgment of Hon'ble Kerala High Court in Murali Lodge's case (*supra*) in an identical issue, with the following observations:

"29. With respect, we are unable to agree with the view expressed by the Kerala High Court in the aforesaid judgment. The expression 'by any other name' appearing in item (a) of clause (iii) of section 2(14) has to be read *ejusdem generis* with the earlier expressions i.e., municipal corporation, notified area committee, town area committee, town committee. The Court has also not considered the scope and ambit of section 3 (31) of the General Clauses Act defining local authority."

8.3.5. At this juncture, we would like to point out that there are two views on the issue, one in favour of the assessee as held by the Hon'ble Kerala High Court [in Murali Lodge's case] and other against the assessee as ruled by the Hon'ble P & H High Court (*supra*). Apparently, there is no judgment rendered by the Hon'ble jurisdictional High Court on this issue. In the given circumstances, following the judgment of the Hon'ble Supreme Court in the case of CIT v. Vegetable Products Limited reported in 88 ITR 192 (SC), we hold that where two views are possible on an issue, the view in favour of the assessee has to prevail. Accordingly, in conformity with the judgment of the Hon'ble Kerala High Court in Murali Lodge's case (*supra*) which is directly applicable to the present case, we hold that the authorities below were not justified in holding that the subject land could not be treated as agricultural lands and that the proceeds received from its sale was exigible to tax under the head 'capital gains'. It is ordered accordingly."

We are also in agreement with the view taken by the co-ordinate bench in the case of M.R. Seetharam (HUF)

(supra) that BIAPPA is not a Municipality but a mere planning body.

12. With respect to the issue raised by the learned Departmental Representative on the acceptance of additional evidences filed in the case of M.R. Seetharam (HUF) (*supra*), it is clear from the records of that case that these evidences were not filed by the assessee, suo moto but were filed at the instance of the bench.

13. As regards the issue raised by the learned Departmental Representative with reference to the physical inspection of the lands in question by the Members of the co-ordinate bench, the inspection, carried out in the presence of the learned Departmental Representative of revenue and the learned Authorised Representative of the assessee, was done to satisfy themselves about the physical characteristics of the lands in question. On inspection thereof having been satisfied that no non-agricultural activity had taken place even after six years of its sale, the Members of the co-ordinate bench were convinced that the lands were agricultural in nature (i.e. having orchards, etc.) as on the date of sale. The presence or absence of the present owners at the time of the inspection, in our view, is immaterial in coming to a satisfaction about the physical characteristics of the land in question. It was apparent from the physical inspection that there were mango orchards and coconut groves with thousands of fruit/nut bearing trees and not "... some fruit bearing trees" as mentioned by Revenue in its written submissions.

14. In the light of the above discussion of the facts and circumstances of the case at paras 2.1 to 13 of this order (*supra*), we are of the considered view that the conclusions reached by the co-ordinate bench of this Tribunal in the case of M.R. Seetharam (HUF) (*supra*) squarely applies to the facts of the case on hand. We, therefore, following the decisions of the co-ordinate benches of this Tribunal in the cases of H.S. Vijayakumar (*supra*), T. Suresh Gowda and Others (*supra*), M.R. Seetharam (HUF) (*supra*) and the Hon'ble Karnataka High Court in the case of Smt. K. Leelavathy (*supra*) hold as under :-

(i) The lands in question, which were sold in the case on hand, are agricultural lands and not capital assets under section 2(14) of the Act, and

(ii) BIAPPA is not a Municipality as contemplated in section 2 (14) of the Act. We, accordingly, direct the Assessing Officer to delete the addition made to the income of the

assessee under the head 'Capital Gains' on sale of the said agricultural lands in question, in the order of assessment for Assessment Year 2008-09.

8.

A

similar issue came up for consideration before the co-ordinate bench of this tribunal in bunch of Wealth-tax cases in WTA No.16/B/2014 to 29/B/2014, wherein the ITAT under similar set of facts held that the impugned lands are not urban lands exigible for wealth tax. The relevant portion is reproduced below.

"Since the Tribunal, in the assessee's own case in income tax proceedings with regard to the same subject matter, has taken the stand and held the land to be agricultural land and definition of capital asset in the Income-tax Act is similar to the definition of 'urban land' under wealth-tax Act, we respectfully follow the order of the coordinate bench of the Tribunal and hold the said land to be not urban land exigible to wealth — tax."

9.

Ther

efore, respectfully following the co-ordinate bench decisions in assessee own case in ITA.No. 262/B/2013 and also coordinate bench decision in WTA. No. 16/B/2014 to 29/B/2014, we hold that the impugned lands are not urban lands within the meaning of section 2(ea) of the Wealth tax Act, 1957 and not exigible to wealth-tax. Accordingly, we set aside the CWT(A) order and delete the additions made by the assessing Officer."

5. Further, similar issue came for consideration before this Tribunal in the case of Shri D. Dasappa Vs. Deputy Commissioner of Income-tax in ITA Nos.2222 & 2223/Bang/2016 dated 9.2.2022, wherein Tribunal held as under:-

"16. We have heard both the parties and perused the material on record. The assessee sold the agricultural land for Rs.1,95,00,000 by Sale Deed dated 16.7.2007 entered into between 1. Sri. T Prasanna Kumar Gowda (aka T. Prasanna Gowda) S/o. Sri. M Thimme Gowda 2. Smt. K Leelavathi W/o. Sri. M Thimme Gowda & 3. Sri. Dasappa, S/o. Late Sri. Singrigowda (The Vendors) and M/s. Goodlife Shelters Pvt Ltd., having its Registered Office at 25/6, AG 6 Brigade Majestic First Main, Gandhinagar, Bangalore-560009. The description of schedule of properties has already been extracted in the earlier part of this order.

17. According to the AO, it is clear from the description of schedule of properties that the lands are

converted from agricultural to non agricultural residential purpose. Therefore the nature of the lands is non agricultural when the transfer took place. Further, as per section 80 of the Karnataka Land Reforms Act, 1964, the agricultural land cannot be transferred to a non agriculturist. Hence, in view of the above status of law in Karnataka an agricultural land can be transferred only to an agriculturist. The above mentioned lands were transferred to GSPL It means that the lands were transferred to a person who is other than agriculturist also because of the fact that the lands transferred were converted from agricultural to non agricultural residential purpose.

18. According to the AO, the above land was duly converted as non-agricultural land and sale of above land constitutes capital asset in terms of section 2(14) of the Act. Further the assessee placed following evidence with regard to agricultural income earned from the above property and also produced details of RTC which have been reproduced in the earlier part of this order.

19. Thus, the assessee made a plea that the said land was subject of cultivation from AY 2006-07 to 2012-13. However, the AO disputed that the income disclosed by the assessee as agricultural income is derived from the land sold by the assessee situated at Manchanayakanahalli and on the other hand, the land sold by the assessee was situated at Devarakaggalahalli. No bills and vouchers for carrying out the agricultural activities. The land was sold to GSPL for the purpose of housing project. was urban land and on transfer liable for capital gains tax. The plea of the assessee that though the said land was converted into non-agricultural land, the cultivation of land continued till date and income disclosed from the said land was outrightly rejected by the AO on the ground that the income disclosed by the assessee was situated at Manchanayakanahalli whereas the land sold was situated at Devarakaggalahalli. In our opinion, the AO cannot reject the claim of assessee without due verification. The land was converted by the assessee to sell it to a corporate entity so as to get better price and conversion is only to facilitate the sale and gains arising from such sale could not have been liable for capital gain.

20. It is not in dispute that the assessee has been owning the said land since long period and all the surrounding lands were also subject to agricultural activities and the said land was not put any non-agricultural purpose within the period of two years from

the date of conversion order, the conversion itself becomes questionable. In fact, the land which was hitherto agricultural land does not automatically become a capital asset on the mere fact of conversion to non-agricultural purpose. The land even though converted for non-agricultural purpose continues to be agricultural land and does not become capital asset u/s. 2(14) if agricultural activities are being carried out on such land and no piece of land was used for non-agricultural purpose.

21. *In the present case, even though the subject property was converted into non-agricultural land by the competent authority, the assessee continued agricultural operations in converted land and there was no evidence regarding non-agricultural activities brought on record by the AO. On the other hand, the assessee has filed copies of RTC which were obtained much after the date of sale of the land which shows that the crops Ragi and Paddy were cultivated in the said land. In such circumstances, it is not possible to hold that the land was non-agricultural land liable for capital gains tax. In other words, the AO unilaterally decided that the land was not subject matter of agricultural operations without any basis. Had he brought any material to suggest that the said land was not subject to agricultural operations by bringing on record evidence to suggest that land was not used for agricultural purposes, then our decision would have been different. In our opinion, similar issue came for consideration before this Tribunal in ITA No.1169 to 1172/Bang/2015, order dated 27.5.2016 in the case of Shri M.R. Anandaram (HUF) & Ors. wherein it was held as under:-*

“9. But in the instant case, the issue in dispute is with regard to chargeability of the capital gain on the impugned transaction. Our attention was drawn to the order of the Tribunal in the connected cases i.e., Shri M.R. Seetharam v. ACIT in ITA No.1654/Bang/2012 dated 13.6.2014, in which the Tribunal has held that the agricultural land was transferred to buyer and the issue was raised, whether capital gain has accrued on such transactions. The Tribunal has held that though the subject land was converted into non-agricultural land purpose, but cultivation of land continued till the date of sale. Thus, the land should have been treated as agricultural land and exempt from capital gains in view of section 2(14) of the Act. While holding so, the Tribunal has also observed that had the State Reforms Act permitted the assessee to sell its agricultural lands without conversion to a corporate as in the case of other States, the assessee would not then be required to get the land converted merely to facilitate its

sale to a corporate and the gains arising from such sale could not have been exigible to capital gains tax which is the subject of a Central Act. The Tribunal has also observed in that case that, even after conversion the assessee was carrying on agricultural operation and conversion was done only to facilitate sale of subject property to a corporate entity/non-agriculturist. The relevant observations of the Tribunal rendered in that case are extracted hereunder for the sake of reference:-

7.2. We have carefully considered the rival submissions, perused the relevant materials on record and also the various judgments of judiciary on a similar issue relied on by either of the party. The assessee-HUF had sold lands situated at Akklenahalli and Mallennahalli villages of Devanahalli Taluk to an extent of 6 acres and 1 gunta for a total consideration of Rs.45,58,12,500/- vide a registered Sale Deed dated 12.4.2007 and, accordingly, admitted an income of Rs.14,17,87,795/- as Capital Gains from the above transaction in its original return of Income furnished to the Department. Subsequently, in its revised return of Income dated 15.6.2009, the assessee had admitted income of Rs.22,90,570/-, on the ground that the capital gains which arose on the sale of the said lands was wrongly offered in the original return in as much as the same was exempt from tax being agricultural lands and hence excluded from the definition of 'capital asset' as per the provisions of s. 2 (14)(iii) of the Act.

7.2.1. The prime issues for consideration before us are two-fold, namely:

(i) Whether the land can be treated as agricultural land even after conversion of agricultural land for non-agricultural/residential purpose?

(ii) Whether the authorities below were justified in treating 'BIAAPA' as a municipality?

7.2.2. Before analysing the arguments of the assessee on the issue, we shall now proceed to deal with the sequence of events which apparently took place, chronologically, as under:

7.2.3. The assessee had in its possession certain acres of agricultural lands, out of which, lands to the extent of 6 acres and 1 gunta situated at Akkalenally and Mallenahally converted as non- agricultural vide Conversion order No.ALN(D) SR 30/2004-05 dated 19.7.2004 [source: Page 88 to 92 of PB AR] were sold to M/ s. ETL Corporate Services Private Limited for a sum of Rs.45.58 crores. The subject property was a part of around 600 acres of lands known as 'Gokula Farm' which was originally purchased by Late Sri M.S.Ramaiah, the father

of Sri M.R. Seetharam - HUF - way back in 1951 [Source: Page 6 of Sale Deed dt.12.4.2007]. The same has been jointly cultivated by the family, comprising of 10 children of Late M.S.Ramaiah. These lands were, subsequently, partitioned in 1970 and after the death of Sri M.S. Ramaiah, the lands were further portioned [Refer: Para 3.2. of the Asst. order]. Even though, the subject property, among others, was converted as non-agricultural lands way back in 2004, agricultural activities, deriving agricultural income from the said lands, were continued unabatedly by the assessee and incomes admitted by it from such operations were accepted by the revenue from the AYs 2004-05 to 2009-10, the details of which are as under:

Asst. year	Agrl. Income [in Rs.]
2004-05	22,00,000
2005-06	22,00,000
2006-07	16,50,000
2007-08	16,50,000
2008-09	16,50,000
2009-10	16,50,000

7.2.4. Though the said land was converted into non-agricultural purposes in the year 2004-05 and one of the mandatory conditions specified in the conversion order dated 19.7.2004 was that if the converted land was not used for the purpose for which it was converted within a period of two years from the date of conversion, the order of conversion stands cancelled. Apparently, the assessee had continued the agricultural operations in the converted lands also which is evident from the fact that incomes derived from such agricultural operations on the said lands declared by the assessee in its returns of Income were accepted by the revenue for the AYs 2004-05 to 2009-10 (*supra*). No evidence was brought on record by the Revenue to suggest that the subject lands were utilized for any other purposes other than that of cultivation after conversion. This is evident from the fact that the incomes derived from such lands duly declared by the assessee which were accepted by the revenue.

7.2.5. Incidentally, the subject property was inspected on 10-4-2014 by us accompanied by the learned DR, the AO and the learned AR of the assessee. During the course of inspection, we have noticed that the subject property was a part of large track of land having agricultural operations which consist of fully grown up fruits-yielding trees such as mangoes, sapota, coconut, jack-fruit, apple, guava etc., appear to be existing in the subject property even on the date of sale. This clearly attributes the assessee's assertion that even on the date of transfer, the subject

land was held to be agriculture. In this regard, we would like to refer to the Certificate of Senior Assistant Director of Horticulture (Zilla Panchayat) Devanahalli, Government of Karnataka, dated 23.4.2014 wherein it has been certified as under:

"This is to certify that M.R.Seetharam, s/o (of) Late M. S. Ramaiah residing at Gokula House, Dr M. S. Ramaiah Road, Gokula, Bangalore, have, in their land situated in Akkelenahalli - Mallenahalli Village, Kasaba Hobli, Devanahalli Taluk bearing Sy Nos. 29, 30/1, 30/2, 37/1p, 37/4p, 37/6p, 37/7p, 37/10p, 37/13p, 37/16p, fruit yielding mango, sapota, coconut, cashew, coco, jack-fruit, rose apple, guava trees aged 25 - 30 years."

7.2.6. Ostensibly, neither the AO nor the CIT (A) had disputed the fact in clear terms that even after the conversion of the land for non- agricultural purposes, the assessee has been carrying on agricultural operations and also admitting incomes from such lands in its returns of income. The AO's stand that once the agricultural lands were converted into non-agricultural, even though agricultural activities continued; the lands cannot be termed as agricultural land is, in our view, not the correct proposition of law. This is apparent from the fact that one of the mandatory conditions contained in the conversion order that "10. The land should be used for the said purpose within two years from the date of this order [Refer: Pages 88 to 92 (including English translation) of PB AR]".

7.2.6. As a matter of perception, s. 2(14) defines 'capital asset'. Capital asset does not include agricultural land. However, agricultural land situated within any municipality, notified area committee, town area committee, town committee will cease to be an agricultural land. Whether the subject land is agricultural or otherwise is essentially a question of fact. In coming to a definite conclusion, a number of tests will have to be undertaken as laid down by the Hon'ble Supreme Court in the case of *Sarifabibi Mohamed Ibrahim v. CIT* reported in 204 ITR 631 (SC). The tests prescribed by the Hon'ble Supreme Court as under:

- (i) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?
- (ii) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?
- (iii) Whether such user of the land was for a long period or whether it was of a temporary character or by any stop gap arrangement?

- (iv) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?*
- (v) Whether the permission under Land Revenue Code was obtained for the non-agricultural use of the land, if so, when and by whom [the vendor or the vendee]; whether such permission was in respect of the whole or a portion of the land; if the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the use of the said portion of the land on the material date;*
- (vi) Whether the land, on the relevant date, had ceased to be put to agricultural use, if so, whether it was put to an alternative use; whether such ceasing and / or alternative use was of a permanent or temporary nature;*
- (vii) Whether the land, though entered in the revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled; whether the owner meant or intended to use it for agricultural purposes?*
- (viii) Whether the land was situated in a developed area; whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?*
- (ix) Whether the land itself was developed by plotting and providing roads and other facilities;*
- (x) Whether there were any previous sales of portions of the land for non-agricultural use?*
- (xi) Whether permission under Tenancy and Agricultural Lands Act was obtained because the sale or intended sale was in favour of non-agriculturist, if so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural use?*
- (xii) Whether the land was sold on yardage or on acreage basis? &*
- (xiii) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"*

7.2.7. In view of the norms prescribed by the Hon'ble Supreme Court in its judgment (*supra*), we are of the view that the facts making in the present case, the issue requires to be decided as to whether the subject land was an agriculture land. The land in question was inherited by the assessee (HUF), among others, as the same having been purchased by his father as an investment. As could be seen from earlier documents of purchase which explicitly exhibit that the subject land had put to exclusive

use for agricultural purposes only and in fact a grove [orchard] had been grown with fruits-yielding trees such as mangoes, sapota, coconuts, jack-fruits, etc., Incidentally, the surrounding lands were also subjected to agricultural activities as in the case of the property under dispute. Though the present assessee became the legitimate owner of the subject property on inheritance/in a partition/family arrangement as the case may be, the nature of the land use had not, however, undergone any change.

Whether the lands which were used as agricultural lands even after its conversion lose its character of agricultural lands?

7.3. The stand of the AO was that once the agricultural lands were converted into non-agricultural, even though agricultural activity continues, the lands cannot be considered as agricultural lands. Countering the AO's assertion, the learned AR had argued that as per the mandatory conditions mentioned in the Certificate of conversion, if the subject land was not put to non-agricultural use within a period of two years from the date of conversion order, the conversion itself will become null and void. In this connection, the learned AR had placed strong reliance on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT v. Smt. K.Leelavathy (supra).

7.3.1. It is a fact that the land which was hitherto agricultural land does not automatically become a capital asset upon a mere fact of its conversion to non-agricultural purpose. The land even though converted for non-agricultural purpose, continues to be agricultural land and does not become a capital asset u/s 2 (14) of the Act, if agricultural activities were being carried out on such a land as on the date of its sale despite a fact that the land stands converted for non-agricultural purpose.

7.3.2. In the present case, as already discussed, even though the subject property was converted for non-agricultural purpose vide Conversion Order dated 19.7.2004, the assessee continued the agricultural operations in the converted lands which was evident on our site visit and also from the fact that incomes derived from such agricultural operations on the said lands declared by the assessee in its returns of income which were accepted by the Revenue for the AYs 2004-05 to 2009-10.

7.3.3. At this juncture, we would like to refer to the findings of the earlier Bench of this Tribunal in the case of H.S.Vijaya Kumar v, ACIT, Hassan in ITA

No.108/Bang/05 dated 28.11.2006. After taking into account the rival submissions of an almost identical issue to that of the present issue under dispute, the Tribunal has held as under:

"6.4. In this case also various conditions imposed by the Deputy Commissioner, Hassan were not fulfilled by the assessee prior to the sale of the said land. It is observed that permission has been accorded for residential purposes and whereas the sale has been made to Indian Oil Corporation for putting up a service station. This contradiction itself goes to show that the permission accorded does not militate against the land becoming non-agricultural land. The first appellate authority also went by the fact that the land was sold on yardage basis to Indian Oil Corporation. This single circumstance in our considered opinion does not change the character of the land for the reason that no layout plan was obtained, nor the land had been subject to any change in physical characteristics. A person can obtain higher amount by adopting a particular methodology of valuation and this by itself does not result in an asset becoming a capital asset. Non-payment of land revenue for a period of one month and 10 days from 8.2.99 to 20.3.99 cannot also be a circumstance which can be held against the assessee. This is too short period and it is not the case of the revenue that land revenue has (have) not consciously levied agricultural land tax. No adverse inference can be drawn. The Id. Counsel for the assessed tried to demonstrate that as per the Karnataka Land Revenue Act, 1964, section 83(2) read with sec. 95(2) mandates that the land holder should continue to pay the land revenue even after conversion. We need not go into this aspect for the reason that the period is too short a period and it is not a case where the revenue authorities have refused to levy land revenue by showing the reason of conversion or for the reason that the assessee has refused to pay such land revenue. The AO has recorded a finding that the land revenue records to show that ragi and horse gram were grown on the said land. The reasons recorded by the assessing officer as well as the CIT (A), to our mind, are not relevant for coming to the conclusion as to whether a particular asset is a capital asset within the meaning of sec. 2 (14) of the Income-tax Act. The issue whether a particular land is agricultural land or not has been the subject matter of dispute in many a cases. In each of the judgments broad outlines have been given and it is suffice to say that the unanimous view of all the Hon'ble Courts is that the issue should be decided on the facts and circumstances of the

case. As we find that the facts of the case clearly point out that the land in question continued to be agricultural land and was put to use as such, prior to sale to Indian Oil Corporation, despite the permission obtained from the concerned authorities, we accept the contention of the assessee and hold that agricultural land in question are not a capital asset and, thus, the levy of capital gains is bad in law.

6.5. Before parting, we feel that mere evidences of Government Notification or orders on a likely use of a particular land would not ipso facto affect or on the same day change the character of the land. For example, the Government has notified many areas for setting up of special economic zones or industrial parks or for infrastructural developments such as road ways and railways. After identifying particular areas, the Government notifies that a particular area would be used for non-agricultural purposes. It is thereafter only that the acquisition start and accordingly the land of farmers are acquired. It would be travesty of justice, if a view has to be taken that when once a Notification is given by the Government, the agricultural land becomes non-agricultural land i.e., even prior to the issue of acquisition notices. As long as there is no change in the physical characteristics of the land in question, we cannot be held that there is a conversion. "

7.3.4. The jurisdictional High Court in the case of CITG v. Smt K. Leelavathy reported in (2012) 21 taxmann.com 148 (Kar) dated 2.1.2012 had an occasion to analyse the provisions of s. 2 (14) read with sections 45 and 48 of the Act. Briefly, the substantial questions of law raised by the Revenue before the Hon'ble Court was that -

"1. Whether the appellate authorities were correct in holding that the land which is the subject-matter of sale is agricultural land as on the date of sale without taking into consideration the conversion of land to non-agricultural purpose and consequently recorded a perverse finding? & 2. Whether the appellate authorities were correct in holding that though the land is converted into non-agricultural, in view of the cultivation of the land till the date of sale, the land should be treated as agricultural land and the same is exempt from capital gains in view of section 2(14) read with sections 45 and 48 of the Act?"

7.3.5. After taking into account the submissions of the either of the party and also the perusal of the orders of the authorities below, the Hon'ble Court had held as under:

"5. We find from the record that the Appellate Commissioner as well as the Tribunal followed an earlier

ruling of the Tribunal rendered on December 30, 2009, in the case of T. Suresh Gowda [ITA NO. 262/ Bang/ 2009] wherein it appears, the question was resolved by looking into the date of permission for conversion as the cut-off line to decide as to whether the land was an agricultural land or otherwise.

6. It appears, the Tribunal had opined that the land retained its agricultural character till the date of order permitting non- agricultural use and, thereafter, it is not an agricultural land and, therefore, can be treated as capital asset.

7. The Appellate Commissioner as well as the Tribunal has applied this norm and while they did hold that the sale transaction in respect of the following extent of land:

Conversion Notification No. and date	Sy.No.	Extent of area	Date of sale	Sale consideration
No.ALNSR/ 94/ 98-99	75	3A 38G	7.4.200	Rs. 50,00,000
DT.29.4.1999	77	3A 00G	4	
No.ALNSR/ 8/ 2004-05	15.15	OA 10G		Rs 1,82,50,000
DT.10.5.2004	16	4A 14G	2.6.200	
	17	2A 17G	4	
	86.1	5A 31G		
	87	5A 12G		
		23A 22G		
Total				Rs.2,32,50, 000

In respect of the sale transaction dated June 2,2004, it was taken as a sale of capital asset as this sale was after the date of permission for non-agricultural use granted by the Asst. Commissioner, viz., after May 10,2004, whereas the earlier sale transaction dated April 7, 2004, is held to be in respect of an agricultural land. We do not find the reasoning and the principle enunciated by the Tribunal for making a distinction as to whether the land was agricultural land or otherwise in the case of T. Suresh (supra) apply to the present case to be obnoxious or violating any statutory provisions and, therefore, we do not find any illegality in the finding recorded by the Appellate Commissioner and the Tribunal."

7.3.6. In the case of M. Thimme Gowda [(i) Sri M. Thimme Gowda, (ii) Sri M.N. Manjunath, (iii) Sri Dasappa, (iv) Sri T. Suresh Gowda, (v) Sri T. Prasanna Gowda v. Department of Income-tax, the earlier Bench of this Tribunal, in its findings in ITA 1464, 1465/B/08; 177,178,262 & 305/B/09 dated 30.12.2009, had dealt with an identical issue to that of the present issue under consideration. The main issue before the earlier Bench was: Whether the land sold by the assessee was agricultural in nature or not? After duly analysing the rival

submissions and also various judgements of judiciary as mentioned in its findings and also deliberating upon the sections 80 and 84 of the Karnataka Land Reforms Act, 1961, the earlier Bench had recorded its findings as under:

"37

.....
 (On page 22)

Coming to the instant case of the assessee, it is not disputed that in the revenue records, the entry is not changed, it continues as agricultural land. According to the revenue, the intention and purpose of the sale is for the use of Tibetan Childrens' Village for the setting up of educational institutions and other related purposes. According to the assessee, the land in his hands had retained the agricultural character till the date of sale, for the reason that the assessee was doing agricultural activity. We have hereinabove in para 34 mentioned that the department had estimated the agricultural income at Rs.53 lakhs for 2004-05 and estimated agricultural income of the group at Rs.56 lakhs. Therefore, it is difficult to come to the conclusion that in the hands of the assessee, the character of the land had changed. Merely because the original owners had made application to change the character of the land from agricultural to non- agricultural and certificate was issued to that effect. Even for the revenue, there is no case that the land has been used for the intended purpose.

38. In the decision of Gujarat High Court relied upon by the DR, in the case of Gordhanbhai Kahandas Dalwadi v. Commissioner of Income-tax (1981) 27 ITR 664, the Hon'ble High Court held that the potential non-agricultural use does not alter the character of the land. This was a case wherein the land was purchased in 1954 and, subsequently, sold in 1969. The entries in the revenue records showed that the land was agricultural continued to be so. The land revenue paid was for agricultural use, but permission for non- agricultural use was obtained but not before the date of the sale. In these circumstances, the Hon'ble High Court upheld the presumption that the land is agricultural. The Hon'ble High Court came to the above conclusion in spite of the fact that this land was situated in an industrially developed area where the potential use of the land as non-agricultural land was very high but the Hon'ble High Court held that the use of the land as non-agricultural is totally immaterial. Entries in the record of rights are good prima facie evidence regarding land being

agricultural and if the presumption raised either from actual user of the land or from entries in revenue records is to be rebutted, there must be material on the record to rebut the presumption. The approach of the fact-finding authorities, namely, the income-tax authorities and the Tribunal, should to consider the question from the point of view of presumption arising from entries in the record of rights or actual user of the land and then consider whether that presumption is dislodged by other facts in the case. While coming to the above conclusion, the Hon'ble High Court considered the following facts. The presumption for non-agricultural used was obtained by the assessee before the sale of the land. Coming to the facts in the instant case, the previous owner made an application for conversion, obtained the permission, but with the condition that the land should be used for the intended purpose within two years, otherwise the original character of the land, i.e., agricultural nature, would be restored. Then the assessee or the subsequent purchaser has to pay penalty and make a further application to obtain permission to revive the land for intended purpose. The assessee has not done this even according to the revenue. This was done by the subsequent purchaser i.e., Tibetan Childrens' Village, which compels to conclude that what the assessee held at the time of sale was agricultural land. It is true the facts is on border line, but the evidence produced before us in the form of RTC showing agricultural income etc., is in assessee's favour.

Secondly, the Hon'ble Gujarat High Court considered the land revenue paid was for agricultural use of the land. In the instant case of the assessee also what was paid by the assessee was agricultural revenue. The non-agricultural revenue was paid by the subsequent purchaser after making an application for the second time to revive the nature of the land which is evidenced by the letter dt 1.3.2005 which was written to the Secretary, Manchanayakanahally Gram Panchayat by the Tibetan Childrens' Village. In the case decided by the Hon'ble High Court, it was held that the correct test to be applied was whether on the date of sale of the land whether the land was agricultural or non- agricultural and not the intended purpose and how the purchaser was going to use land.

.....
ITA.305/Bang/2009 - By the Revenue in the case of T. Suresh Gowda A Y 2005-06

53. The revenue had taken an additional ground that is with regard to taking fresh additional evidence filed by the assessee without giving opportunity to the assessing

officer. In this case, the assessing officer noticed that the assessee had sold land measuring 40 acres and 20 guntas at Seshagirihalli for Rs. 4, 50, 00, 000/- on 7.4.04 to Tibetan Childrens' village and claimed exemption from capital gains which worked out to Rs.3,68,01,771/- on the ground that the land situated in a rural area i.e., 8 Kms away from the limits of Bangalore Mahanagara Palike and the land is located as notified u/ s 2 (14)(iii)(b) of the Act as the transaction relates to sale of agricultural land. The assessing officer observed that the land was converted for residential purpose before the sale and, therefore, it is immaterial whether the land was situated outside the city limits or beyond 8 KMs. He further held that the cultivation of land till disposal is also irrelevant. He further held that no documentary evidence was produced to the effect that the land converted was treated as agricultural land within the meaning of s. 2 (14)(iii)(b).

.....

54. On similar issues in the connected case, we had held that the evidence produced by the assessee before the assessing officer and Commissioner of Income-tax (A) to the effect that assessee was doing cultivation of ragi etc., was sufficient to treat the land as agricultural land in the hands of the assessee, particularly because in the document, the nature of the land has been recorded as non-agricultural under the Karnataka Land Reforms Rules, 1966. While coming to the above conclusion we also held that this is a document maintained by the Government officials and treating the same as not valid in the absence of strict evidence to the contrary cannot be upheld.

55. On similar set of facts in the connected other cases, we have held that the land sold by the assessee is to be treated as agricultural land and the reasons given is applicable in the instant case of the assessee as the facts are identical"

7.3.7. The fact that the assessee had continued the agricultural operations unabated in the subject property on the date of sale even though the said land was converted for non-agricultural purposes by a Conversion Order of the State Government way back in 19.7.2004 with a rider that the land should be used for the purpose for which the conversion was granted within two years from the date of issue of the said order. However, on the date of sale i.e., on 12.4.2007, the subject land was under active cultivation for agricultural purpose only. This is evident from the fact that when we inspected the same on 10.4.2014, the said land - a part of large track of land - was having

agricultural operations with fully grown up fruits-bearing trees. Thus, the conversion order dated 19.7.2004 had lost its sanctity since the said property was not put use for non-agricultural purposes within two years for which conversion was granted.

7.3.8. Finally, the most important aspect which requires to be considered is that agriculture is a State subject and different States have different reforms (laws) as to who can purchase / own agricultural lands in the respective States. To illustrate further, in Karnataka, non-agriculturists and industrial companies are prohibited from purchasing of lands which are classified as 'agricultural' in the revenue records. If an agriculturist intends to sell his agricultural lands to a company / non- agriculturist for the use of non-agricultural purposes, he must possess a conversion order obtained from the revenue authorities to utilise the subject land for non-agricultural purposes. However, the same law/rule is not prevalent in the neighbouring States of Tamil Nadu, Andhra Pradesh or in Maharashtra, Delhi etc. In other words, the agriculturists of the said States are free to sell their lands as shown in the revenue records to non-agriculturists / Corporates without obtaining a conversion order.

7.3.9. Thus, it is evident from the fact that the agriculturists in other States can sell their agricultural lands without getting the same converted whereas the agriculturists in Karnataka cannot do so due to the Land Reforms Act prevailing in the State. As such, an agriculturist in Karnataka is on a different footing from his counterparts in other States. If one were to conclude that since the present assessee had obtained a conversion order to enable it to sell its lands to a non- agriculturist (a Corporate), the subject land ceased to be a non-agricultural and, thus, become a Capital asset, though the subject land remains an agricultural land, the assessee then stands discriminated in the eyes of law vis-a-vis its counter-parts in other States. Had the State Reforms Act permitted the assessee to sell its agricultural lands without conversion to a Corporate as in the case of other States (supra), the assessee would not then be required to get the land converted merely to facilitate its sale to a corporate and the gains arising from such sale would not have been exigible to Capital Gains tax which is the subject of a Central Act (Income-tax Act). In the instant case as mentioned earlier even after conversion, assessee was carrying on agricultural operation and conversion was done only to facilitate sale of subject property to a corporate entity/non agriculturist. In substance, the

Income-tax Act - a Central Act - is to be administered in such a manner to ensure that an assessee is not subjected to suffer due to different State laws.

7.3.10. Taking into account all the aspects as discussed in the foregoing paragraphs and also in conformity with the judicial pronouncements on the issue (supra), we are of the view that though the subject land was converted into non-agricultural purposes, cultivation of the land for agricultural purposes till the date of sale was continued unabated and as such, the land should have been treated as agricultural land and, thus, exempt from capital gains in view of s. 2 (14) of the Act. It is ordered accordingly."

10. Moreover, in the instant case, the JDA was also finally cancelled vide Deed of Cancellation dated 5.5.2015 and copy of which is available at pages 240 to 254 of the compilation and the refundable security received by the assessee was returned back to the developer. Through JDA, though it was agreed to hand over possession of land to the developer, but in fact possession was never handed over to the developer for further activities of development. Therefore, there was no transfer of asset in favour of the developer at any point of time. In the instant case, undisputedly agricultural activities are being undertaken on the disputed land till date. Therefore, from any angle, it cannot be said that there is any transfer of capital asset on which capital gain has accrued to the assessee. In light of these facts, we are of the view that the CIT(Appeals) has properly adjudicated the issue and we do not find any mistake therein. We accordingly confirm the order of the CIT(Appeals)."

22. Further, in assessee's own case, the issue came before this Tribunal in ITA No.1464 & 1465/B/2008 & 262/B/2009 wherein vide order dated 30.12.2009 it was held as under:-

"2. Brief facts of the case are as follows. There was a survey u/s.133A in the case of Shri. M. N. Manjunath, proprietor of P. M. Concrete Blocks at his business premises at No.119, Sheshagirihalli, Bidadi Hobli, Ramanagaram Taluk on 25.1.2006. During the course of survey action, certain copies of sale deeds and sale agreements in respect of purchase and sale of property effected by the assessee during the assessment year under consideration was found and they were impounded. There was no regular return for the year under consideration on the date of survey. On the basis of the evidence found, notice u/s.142(1) was issued on 2.2.2006 calling the assessee to file the return on or before 15.2.2006. The assessee filed a belated return on

13.3.2006 declaring income of Rs.7,67,570/-. There was no offer of any income on account of sale of property or investment in property. To the return the assessee appended a note to the effect that the assessee sold agricultural land at 77/74, Sheshagiri halli, Bidadi Hobli, Ramanagaram taluk, during April, 2004 for a total consideration of Rs.90,00,000/-. However, it was stated that it does not result in any capital gain since the land sold was agricultural land situated beyond 8 kms from corporation limit of Bangalore city as defined in section 2(14)(iii)(a) of the Act. This land measuring 9 acres was converted for non-agricultural purpose. It was further stated that though the land was converted, agricultural activities were carried on up to the date of sale. Therefore, what was sold was agricultural land within the meaning of section 2(14) and there was no capital gains tax arising out of such sales within the meaning of the definition of the term "capital asset". Since the assessee did not offer any capital gain and claimed that it was agricultural land though it was converted into non-agricultural residential purpose, the case was selected for scrutiny and notice u/s.143(2) was issued on 26.6.2006.

2. The Assessing Officer formed the opinion that the land sold was non-agricultural as evidenced by document impounded during the course of survey and also on the basis of the registered agreement deed dt.25.2.2004. The assessee sold the immovable property held by him as GPA holder to the extent of 9 acres to M/s. Tibetan Childrens' Village having its office at Dharmsala, Centt - 176216, Kangra District, Himachal Pradesh, for a consideration of Rs.90 lakhs. The Assessing Officer noticed as per the GPA, the above land was already converted from agricultural land to non-agricultural residential purpose during the financial year 2005-06 itself by the original owners of the land. All the three original owners made an application before the Assistant Commissioner, Ramanagara Sub-division for conversion of the land and the same was approved by orders, dt.15.5.1995 in respect of two owners and order dt.20.12.1995 in respect of the one owner. Subsequent to the conversion of the land, the original owners had formed residential layouts with the approval of the Manchanayakanahalli Grama Panchayat. The relevant portion of the GPAs detailing the ownership of the property, conversion of the land from agricultural to non-agricultural residential purpose are briefly set out by the Assessing Officer in his order at pages 5 to 7. In the GPA executed by Narasimhaiah and Chikkaputtaiah, they stated that they are the owners of the land admeasuring 3

acres each and further stated that they had applied for conversion of the land from agricultural to non-agricultural residential purpose and the Assistant Commissioner, Ramanagara Sub-division, vide his order dt.15.5.95 had granted their request and now the land had been converted to non-agricultural purpose and subsequent to the conversion, they stated they had formed residential layout obtaining from Manchanayakanahalli Grama Panchayat and since they were unable to manage the affairs in respect of the sale of the sites, they thought it fit, necessary and convenient to appoint the assessee as their GPA holder to sell their sites. They permitted the assessee to negotiate on terms for and enter upon and conclude any contract, agreement or sale in respect of the scheduled property either in full or in part to any purchaser or purchasers of his choice and gave the assessee an absolute discretion to cancel or repudiate the contracts etc., Further, they authorized the assessee to receive any earnest money or to receive advance and also the full amount and then to sign and execute and deliver the conveyances in favour of the said purchaser/purchasers or their nominee or nominees or assignee or assignees. With respect to two other properties also similar GPA was executed by Shashidhar Reddy and Rachaiah in favour of the assessee almost on the same lines.

4. From the above the Assessing Officer came to the conclusion that the original owners already formed the layout subsequent to the conversion of the agricultural land for non-agricultural residential purpose and the GPA was only for specific and exclusive purpose of making arrangement to sell the sites as mentioned above. The Assessing Officer held that the character of the land has already been changed. He further noted as per the conversion orders issued by the Assistant Commissioner, Ramanagara Sub Division, the land so converted were required to be put to the use for the purpose intended (non-agricultural) within two years from the date of the conversion order, otherwise the order was to be treated as null and void automatically. Particularly clause (10) of the conversion order specified as under :

“10. The conversion of land hitherto shall be utilized for the proposed purpose within two years otherwise the land conversion shall be considered as cancelled.”

Any lapse on the part of the applicant to fulfill the conditions was a punishable offence u/s.96 of the Karnataka Land Revenue Act, 1964, as per clause 11 of the conversion order. As per clause (12), the land revenue

for the converted land would be levied from the date of the order. The Assessing Officer held after the lapse of two years the assessee has not approached the Assistant Commissioner, Ramanagara Sub-Division with fresh application for conversion of the land and it is proved that the land has been put to use for the purpose for which it was converted within the period of two years. He further held this fact has been confirmed by the recital of the agreement entered into between the assessee and the Tibetan Childrens' Village wherein it is clearly stated that the land was converted in 1995-96 by virtue of the orders passed by the Assistant Commissioner, Ramanagara Sub-Division. Thereafter the schedule of the properties are detailed out at pages 9 and 10 of the assessment order. This property was purchased by Tibetan Childrens' Village through their representative Mr. Tenzin Chodak Gyalpo. A statement u/s.131 was recorded from him.

5. It was always the case of the assessee that though the land was converted into non-agricultural purpose, the assessee was continuing the agricultural activities and there were standing crops on the land purchased by the Tibetan Childrens' Village and, therefore, in the light of clause (10) of the conversion order, i.e., if the land is not used for the intended purpose within two years from the date of the order, it will be deemed to be restored to the original position, is an established fact. So as to verify the same, in the statement, Mr. Tenzin Chodak Gyalpo, was specifically asked whether at the time of purchase, any amount was paid towards the standing crops. The answer was, he did not remember the position, but he confirmed that Tibetan Childrens' Village had not paid any amount towards the standing crops at the time of sale. Thus the Assessing Officer concluded that since the land was already converted and put to use for formation of layout by the original owners, way back in the financial year 1995-96 itself, the assessee's version that the land was being used for non-agricultural purpose, was not justified. The Assessing Officer summoned the Assistant Commissioner, Ramanagara Sub-Division, calling for the original filed in connection with the conversion of the land, for inspection. A sworn statement was recorded u/s.131 on 5.12.2007. The conversion of the land into non-agricultural purpose was confirmed again by the Assistant Commissioner. He was again asked about the specific guidelines given by the State Government while giving permission for use of agricultural land to non-agricultural use. Answering to this question, he stated that there are about 12 conditions stipulated in the conversion order issued to the assessee.

He was again asked if the land is not used for the specific non-agricultural residential purposes, what would be the repercussion. Answering to this, he stated that if the land is not used for the specific purpose for which it has been converted within the stipulated period of two years from the order, conversion order is deemed to be cancelled.

6. In the instant case, Assessing Officer noticed from the case records produced by the Assistant Commissioner, the original owners submitted layout plan as approved by the local Grama Panchayat authorities. Subsequent to receipt of the conversion order, the original owners gave an undertaking before the Assistant Commissioner that the land would be used for the purpose for which it was converted, i.e., non-agricultural residential purpose, that too within a period of two years. From the above facts, the Assessing Officer came to the conclusion that the land has lost its original agricultural nature and characteristics in April 1999 by virtue of the conversion order. These facts were put before the assessee's representative asking why the land under reference should not be considered as capital asset within the meaning of section 2(14) of the IT Act. The simple reply of the assessee's representative was that though the lands were converted, agricultural activities were going on.

7. The Assessing Officer held though the assessee's representative was harping that the agricultural activities were carried on till the date of the sale, even after availing more than 20 months since the survey action u/s.133A, the assessee could not adduce any evidence in support of the above claim. The Assessing Officer further noted as per the local enquiries conducted by the Income-tax Inspector ('ITI' for short), the land under reference and also the adjacent lands were not put to use for agricultural purposes for quite a long time as formation of layouts were under progress. He held there is no strength in the assessee's argument that he had carried on agricultural activities till the date of the sale.

8. Coming to the next point how the lands were utilized subsequent to transfer, he noted that the purchaser Tibetan Childrens' Village, bought the land only for the purpose of non-agricultural activities. The land was to be utilized for construction of schools for Tibetans. Tibetan Childrens' Village had purchased about 160 acres of land located in Sheshagirihalli and Manchanayakanahalli, which includes the land admeasuring 13 acres and 9 guntas held in the name of the assessee, sold for Rs.14 acres during the financial year 2004-05. He further noted the statement recorded from the buyer, Mr. Tenzin Chodak

Gyalpo. In his statement, Mr. Tenzen stated that the intention was to construct building for education like nursing college, degree colleges etc., They were also taking steps to get recognition as a deemed university. The Assessing Officer found that the lands were acquired for the purpose of running educational institutions such as nursing college, degree college and to get recognition as a deemed university which he held proves that the land was purely non-agricultural at the time of purchase by that party. Consequentially, the assessee after conversion sold it as a non-agricultural land. He further noted that the land purchased by the Tibetan Childrens' Village had constructed buildings for office premises and construction of hotel building was going on and one building for college building was also under progress. This was found out by the ITI and report by his report dt.28.12.2007 which also established the status of the land at the relevant point of time.

9. Coming to the land surrounded by or adjacent to the land in dispute whether it is urban or rural, the Assessing Officer made the following observations. He found that the land stood adjacent to well-known high traffic density state highway running between Bangalore and Mysore at about 18 kms away from the corporation limits of Bangalore and is also located in the thickly populated industrial belt. It was a fast growing industrial area and hence, the assessee could fetch good price of Rs. 10 lakhs only because of this. The Assessing Officer further found from the enquiry conducted with the land revenue authorities that the jurisdiction for collection of land taxes in respect of agricultural land lies with the Revenue Officer headed by Tahsildar. In other words, collection of taxes from sites and lands converted for non-agricultural purpose lies with the Grama Panchayat. In the instant case taxes were being collected by the Grama Panchayat instead of Tahsildar, which strengthens the departmental stand that the land was non-agricultural. On the basis of the above facts, he concluded that the lands under reference were non-agricultural and there cannot be exemption u/s.2(14) from the capital gains tax. These points were considered by the various decisions of the Apex court and High Courts and he, particularly relied on the following decisions :

- i) CIT v. Gemini Pictures P. Ltd., (1996) 220 ITR 43 (SC);*
- ii) Mahaveer Enterprises v. Union of India (2000) 224 ITR 789 (Raj);*
- iii) CWT v. Officer-in-charge (Court of Wards) Paigah (1976) 105 ITR 133 (SC);*

iv) *G. M. Omer Khan v. Addl. CIT* (1992) 196 ITR 269 (SC);
v) *Smt. Sarifabibi Mohmed Brahim v. CIT* (1993) 204 ITR 631(SC)

On the basis of the above, the assessee was liable to pay capital gains tax. Aggrieved by the above assessee approached the first appellate authority.

10. The Commissioner of Income-tax (Appeals) vide page 3 of his order records the report of the Assessing Officer, dt.13.6.2008 which is as under :

“None of the above factual position as contented by the LAO is disputed. However, what is disputed is his conclusion to contend that there was no agricultural cultivation carried out by the appellant. Though the lands were converted for non-agricultural purposes, it was never put to use for such converted purposes. This is evident from the governmental records, in the form of RTC, which consistently showed that there was a cultivation of ragi”.

The Commissioner of Income-tax (Appeals) further held that the assessee was not disputing the above facts which was clear from the assessee’s rejoinder dt.21.7.08, but only objection of the assessee was that though the assessee’s land was converted for non-agricultural purpose, but it was never put to use for such converted purpose which was evident from the Government record in the form of RTC.

11. The assessee’s contention was not accepted by the Commissioner of Income-tax (Appeals). He held the criteria for determination whether the land is agricultural or non-agricultural has been amplified in the treatise of Sampath Iyengar which briefly he records vide page 4 and 5 of his order. Accordingly, two tests were adumbrated in different cases, viz., (i) whether the price of land is such that no bonafide agriculturist would purchase the same at such price for genuine agricultural operations, and (ii) whether the price is such at which no prudent owner would agree to sell it even if he worked out the price on the capitalization method, taking into account its optimum yield in most favourable circumstances. In short, the price which the land fetches is an important criteria. The other criteria, is whether the land has been assessed to land revenue or not; whether agricultural activities are carried on or not; whether the land is capable of agricultural operations or not; the intention of the owner for which he is retaining the land and such intention not being fluctuating or ambulatory; character of adjoining land; description of the land in the official records, etc.,

12. The Commissioner of Income-tax (Appeals) held that RTC record alone is not the determinative factor of the

nature of the land. In the instant case, the land revenue records show that the land was converted and also the tax records show that non-agricultural tax was paid on the land during the relevant period. The Commissioner of Income-tax (Appeals) further held the most of the facts found by the Assessing Officer support the view that the land is non-agricultural. Even if there were some agricultural operations, at best, he held it was a stop-gap arrangement which would not entitle the land for exemption u/s.2(14) of the Act. Aggrieved by the above order, assessee is in appeal before the Tribunal.

13. Except for variations in the dates of issuance of notice by the revenue authorities, area of the land sold, schedule of the property, date of conversion of the land etc., the facts are identical in the case of Dasappa in ITA.1465/Bang/2008.

14. The learned representative for the assessee produced a written submission in the case of Dasappa. Briefly his submissions are as under. The assessee sold 13 acres, 29 guntas lands in sy. No.77, Seshagirihalli, Bidadi Hobli on 7.4.2004 for a total consideration of Rs.137.25 lakhs to M/s. Tibetan Childrens' Village. These lands were bought by the assessee in the year 1995. These lands converted to non-agricultural and residential purposes on 29.4.1999 except an area of 31 guntas which was converted on 10.5.2004. The assessee claimed that the lands were sold as agricultural lands and, therefore, the assessee was not exigible to tax within the definition of capital asset as given in section 2(14) of the IT Act. However, the Assessing Officer did not accept the same, for the reason that the lands were not agricultural lands since they were converted for non-agricultural and residential purpose. According to the assessee, Assessing Officer did not consider the following important factors. Though the conversions were done, it was mandatory that the purpose for which it was converted should be implemented within two years from the date of conversion order or else the conversion order becomes null and void. This fact is highlighted by the statement of the State Government Officer, Shri. Karigowda, Assistant Commissioner, Ramanagar Sub Division, who appeared on 5.12.2007 and stated that if the land is not used for the specific purpose within two years of conversion, the conversion shall be deemed to have been cancelled. It is further submitted the lands were not put to residential use. This is evidenced by the photographs taken by the ITI at the time of enquiry on 27.12.07 i.e., almost three years and eight months after the sale. The photographs are

found at pages 67 to 69 of the department's paper book. There is no sign of residential sites having been formed. The schedule to the sale deed reproduced at pages 4 to 6 of the assessment i.e., pages 1 to 43 of the department's paper book shows that the lands are sold in the measuring form of acres and guntas and not as residential sites. The report of ITI indicates that there is no sign of layout or residential sites having been formed. These factors indicate the lands were not put to use for the purpose for which it was converted. Thus, the lands to the extent of 12 acres and 38 guntas had lost their non-agricultural status as on 28.4.01 i.e., on the completion of two years from the date of conversion order.

15. Coming to the objection of the Departmental authorities that the lands were not used for agricultural activities, the assessee's representative submitted the facts in brief as follows. The lands were used for agricultural activities. This is evident by documents like RTC extracts produced before the Assessing Officer and the appellate authorities. This fact of producing RTC is evidenced by the observation of the Assessing Officer at page 18 para 7 and page 24, para 2 of the departmental paper book and also at page 14 last paragraph and page 15 of the Commissioner of Income-tax (Appeals)'s order in the departmental paper book. It is further admitted that the assessees did not maintain any records for the agricultural activities. The assessee's representative submitted RTC is an official record to show that the nature of usage of land situated in the specific revenue jurisdiction of the State Government and this land has thus been shown to have been used for agricultural cultivation. The assessee's representative brought our attention to the paper book dt.27.1.1999, particularly page 4 which is the conversion order issued by the Assistant Commissioner, Ramanagara Sub-Division. He particularly brought our attention to the condition no.5 which stipulates as under :

"5. In terms of Bangalore Mahanagar Regional Development Authority Order No.APABT/14-95-96 dt.22.7.85 prior permission be obtained before commencement of work"

and submitted such permission has never been sought and obtained before commencement of the work. He further brought our attention to clause (10) which reads as under :

"It may be construed that this converted land must be utilized for the purpose permission has been accorded within two years."

It is an admitted position that no further action was taken by obtaining permission from the BMRDA or the assessee had complied with condition no.10. No activity was undertaken within the two years. In other words the conversion has been now been deemed to have been cancelled. The assessee's representative further submitted the assessee never paid any amount as tax to the Grama Panchayat. The learned representative for the assessee brought our attention to paper book pages 10 to 13 i.e., RTC form no.16 in which the land revenue authorities have mentioned that the assessee had carried on certain agricultural activities. We find at page 12 the land used was to the extent of 1.38 acres and the crop grown was Ragi. So also at page 14 it is mentioned that the extent of land utilized was two acres for growing Ragi. He reiterated the submission made before the Departmental authorities that RTC form is a record issued by the Government which consistently show that there were agricultural activities going on.

16. He further submitted inviting our attention to written submission made before the Commissioner of Income-tax(A) on 21.7.2008 particularly at page 4, briefly which is as under. It was submitted that the LAO has concluded that the sites were formed for formation of layout. This conclusion is wrong for the reason if the sites had been formed by the original owners as held by the LAO at page 4 of the assessment order, the RTC records proves it wrong. Secondly, it was further submitted a very strong denial is also in the form of photographs taken by the ITI wherein one could see the construction of buildings by the Tibetan childrens' Village, but there is no evidence of any sites having been formed in the area. The photographs were taken as late as December, 2007, i.e., almost 3 and half years after the sale of land, and thirdly if the sites had been formed what could have been sold to the Tibetan Childrens' Village should have been in terms of these sites and not the land as a whole without any mention of the site plans. The schedule to the sale deed indicates that the land is sold as a consolidated survey number and only a reference to the conversion order has been made. The above facts clearly proves that the sites were never formed either by the original owners or by the assessee. The assessee owned 12 acres and 29 guntas at Sheshagirihalli. Of these 11 acres and 38 guntas were converted into non-agricultural purpose under conversion order dt.29.4.1999, while 31 guntas were converted under conversion order dt.10.5.2004. The assessee transferred the lands on 7.4.2004 and the conversion of 31 guntas

was done on 10.5.2004, after the transfer of lands. At least 31 guntas remained agricultural land which is also a fact not taken note off by the Assessing Officer. Within two years of the conversion, the land should have been utilized for the purpose it was intended ie., non-agricultural purpose. It was never acted upon. The assessee utilized the land for agricultural purpose only. On the premises of the above facts the assessee's representative submitted the decision of the Hon'ble Supreme Court in the case of CWT v. Officer-in-charge (Court of Wards) Paigah (1976) 105 ITR 133 is clearly in assessee's favour. The Hon'ble Supreme Court laid down the broad parameters as to what could be considered as agricultural land. He submitted originally the land was an agricultural land. The original owners made a request for conversion in order to fetch good price. But the converted land was never used for the intended purpose as per the conversion order which stipulates that if the land is not put to use for the intended purpose within two years from the date of conversion, then the land reverts to the original status, which was confirmed by the Assistant Commissioner, Ramanagara Sub Division in his sworn statement. In other words, the land on the date of sale was retaining the character of agricultural land. The finding of the Assessing Officer that the RTC entries are not relevant is an archaic finding. Inviting our attention to the written submission before the CIT(A), dt.20.10.08, the assessee's representative submitted since the land which was converted to non-agricultural purposes was not put to use for the converted purpose, it retains its original status which is also evident from the statement given by the Assistant Commissioner, Ramanagara Sub Division. The finding of the Assessing Officer that the data was filled year after year without verification is incorrect. The reality is that RTCs are not entered mechanically. The Village Accountants are expected to do the entries by actually carrying out the inspection in the land coming within the jurisdiction during the year. The entries in the RTC are made thereafter. The Commissioner of Income-tax(A) is wrong in confirming the finding of the Assessing Officer to the contrary. It is a government record and it cannot be simply brushed aside. It may be true in stating "...the entries in the RTC alone shall not be considered as conclusive evidence to prove the case of the assessee." In the instant case, the Assessing Officer has not rebutted that assessee carried out the cultivation activities. In the absence of any rebuttal, the recordings in the RTC and also the facts of cultivation, coupled with the lapse of two years brings back the

character of agricultural land. He further objected to the Assessing Officer's finding that the assessee had not declared agricultural income for the purpose of income-tax. The assessee did not disclose any income because he was having no income from agricultural operations. The character of the adjoining land is not the sole criteria. The assessee fetched high price because of the location of the land. In view of the above, the high price fetched by the assessee cannot be a point against the assessee and it does not change the character of land as such. The learned representative for the assessee has produced a copy of the certificate issued by the Village Accountant, Ramanagara Taluk, dt.22.6.2006, to the effect that the assessee had grown ragi, vegetables and horsegram in sy.no.77:43, 77:44 and 77:43 in a total area of 9 acres during the years 2002-03, 2003-04 and 2004-05.

17. The assessee's representative produced a letter from Tibetan Childrens' Village authorities dt.1.3.2005 that was addressed to Manchanayakanahalli Grama Panchayat to the effect that the Tibetan Childrens' Village authorities purchased land to the extent of 143 acres and 27 guntas and the land was converted for residential purpose between 1996 and 1999 in respect of different parts of the land. Though the conversion order was issued for the purpose of forming residential layout, no such activity was formed by the original owners. The land also remained on the records of the land revenue authorities as same. Further the Tibetan Childrens' Village authorities informed that they are intending to carry out educational activity. Therefore, they requested for renewal of the conversion order, because there was no application for renewal from the assessee, after the lapse of two years and therefore, the Tibetan Childrens' Village authorities intimated the concerned authorities that that they are willing to pay the requisite charges and conversion fees for renewal of the orders. Bringing our attention to the agreement for sale, the assessee's representative submitted the sale deed was dated 26.9.1995, therefore, he submitted that from the certificate issued by the competent authority on 22.6.2006, it is clear that the land remained as agricultural land and the conversion took place only after the sale took place. The assessee purchased the land from Smt. Narasamma by deed dt.26.9.95. It is almost similar in the case of other assessee where they have purchased the land from various persons. Though the land was purchased on the basis of the certificate issued by the Village Accountant of Ramanagara taluk dt.22.6.2006 mentioned above, the assessee's representative submitted it is clear that the

assessee was cultivating ragi, vegetables and horsegram on the land. Merely because the assessee did not disclose any income, it does not mean that the agricultural activities were not undertaken as claimed by the revenue authorities.

18. *Inviting our attention to the report of the Income-tax Inspector, Ward-3, Mandya, dt.27.12.2007, the representative submitted it is clear that even after conversion of the agricultural land into non-agricultural, assessee has not made any tax payment to Tahsildar or to the Grama Panchayat which is also clear from the letter hereinabove mentioned dt.1.3.2005.*

19. *Inviting our attention to the written submission at page 44, the learned representative submitted the conclusion of the Assessing Officer that the assessee had not carried out any agricultural activity is wrong. While answering to question no.8, the assessee stated that the assessee carried out agricultural activities. Since the assessee has not made any application, it shows that even after the conversion, the assessee had put the land for agricultural purpose and not for non-agricultural and residential purpose. In the hands of the assessee, the character remains as agricultural land. It is an admitted position that the assessee has not paid any conversion charges as the assessee was using the land for agricultural purpose. The conversion by making the penalty is a subsequent event that is subsequent to the sale of land by the assessee to Tibetan Childrens' Village.*

20. *In the premises of the above facts, the assessee's representative again brought our attention to the decision of the Gujarat high Court decision in the case of Dr. Motibhai D. Patel v. Commissioner of Income-tax (1981) 127 ITR 671 wherein the Hon'ble High Court held that the permission to convert the land to non-agricultural use does not make the land non-agricultural. If the permission is not obtained before the date of sale and fetching of high price is not the potential criteria. He further submitted the smallness of the income derived from sale of agricultural land is also not relevant.*

21. *The learned counsel further relied on the decision of the Gujarat High Court in the case of Gordhanbhai Kahandas Dalwadi v. Commissioner of Income-tax (1981) 127 ITR 664 and submitted the mere obtaining of conversion order of agricultural land into non-agricultural land is not sufficient to hold that the nature of the agricultural land has been changed. In this case, assessee's representative submitted the assessee obtained permission from the land revenue authorities u/s.63 of the*

Bombay Tenancy and agricultural Lands Act for putting the land into non-agricultural activities. The land was situated near Amul dairy, Ganesh Dugghalaya and Charotar Tobacco Company. Charotar Iron Factory, Krishna Iron Factory and other industrial concerns were also in the vicinity of the land. In the Land Records, no entry of change i.e., from agricultural to non-agricultural was made and, therefore, looking to the claim of the assessee that assessee was doing agricultural activity though on a small scale, the Hon'ble High Court held that the nature of the land had not been changed.

22. *The learned representative for the assessee submitted the decision relied by the revenue authorities in the case of Commissioner of Income-tax v. Gemini Pictures Circuit P. Ltd., (1996) 220 ITR 43 is distinguishable on facts as the Hon'ble Supreme Court had referred to Gordhanbhai Kahandas Dalwadi 127 ITR 664 (supra). In the instant case, non-agricultural taxes were collected from the Tibetan Children's Village and it was not the assessee who had paid conversion charges and penalty for failure for using the land for certified purpose. He again invited our attention to the decision of the Supreme Court in Commissioner of Income-tax v. Raja Benoy Kumar Sahas Roy (1957) 33 ITR 466.*

23. *He further submitted that in the case of Prasanna Gowda, one of the assessee's before us, the Commissioner of Income-tax(A) has decided the issue in assessee's favour on facts and particularly assessee's representative relied on the decision at page 5 para 4 of his order. In this case, according to the Commissioner of Income-tax(A), the Assessing Officer considered the land as capital asset because of the orders of conversion of land for non-agricultural purpose. However, the Commissioner of Income-tax(A) took note of clause (10) of the conversion order which shows that if the land remains unutilized for the purpose for which it was converted within two years from the date of the order, then the order becomes unoperational. He held the conversion order was not valid on the date of sale, except a portion of the land in the case of the assessee i.e., Prasanna Gowda in ITA.177/Bang/2009. Thus, he held that it is a strong presumption that the status of the land was an urban land. Therefore, in the case of Prasanna Gowda, the Commissioner of Income-tax(A) allowed the appeal partly and in the case of Timme Gowda in ITA 178/Bang/2009, the appeal was allowed. The learned representative thus submitted the facts are identical in all the cases.*

24. The main issue involved in this case is whether the land sold by the assessee was agricultural in nature or not. The DR submitted that in order to decide whether a piece of land is agricultural in character or it is a capital asset is essentially a question of fact to be determined by the cumulative effect of all the relevant factors. The burden of establishing the above fact by cogent and reliable evidence that the land was used as agricultural land or was capable of being used so at the relevant point of the time is on the assessee. If the assessee carried out agricultural activities on the date of the transfer and if it is proved then it is agricultural land. Otherwise it is a capital asset within the meaning of section 2(14) of the Income tax Act, 1961. Even if at this stage the assessee, the learned DR submitted, is not in a position to prove that he has not carried out any agricultural activity, then it is a conclusive proof that the assessee had not carried out any agricultural activity till the date of transfer. Even after presuming but not admitting that the assessee had carried out agricultural activities, the land has to be treated as non-agricultural in character.

25. The assessee has not produced any evidence in support of the claim that he had carried out agricultural activity on the land under reference till the date of the transfer except furnishing of RTC obtained from village accountant. Though this is prima facie evidence of agricultural holdings in the name of the assessee, but this is not sufficient evidence to prove the case of the assessee that he carried out agricultural activities on the land. The assessee has not adduced any evidence in support of the claim of agricultural activities other than RTC. The assessee was questioned and requested to produce the details of the crops cultivated, yield per acre, expenses incurred towards agricultural operations and the gross amount of sale proceeds on account of the sale of agricultural produce. There was no evidence forthcoming from the assessee. On the other hand, the department sufficiently established that no agricultural activities were carried out, as under :

- a) Conversion of land from agricultural purposes to non-agricultural purposes, i.e., development of residential layout had taken place in the Financial Year 1995-96, i.e., 10 years before the date of transfer of the land;
- b) The assessee has acquired the land in the Financial Year 1995-96 by way of execution of GPA by the original landlords in favour of the assessee for the purpose of sale of sites formed by the landlord. As such, the fact has been

clearly highlighted in the registered GPA without any ambiguity;

c) Subsequent to conversion of the land for non-agricultural purposes, the taxes were collected by the Grama Panchayat instead of Tahashildar, indicating that no agricultural activities were conducted subsequent to conversion of the land;

d) At the time of transfer of the land, no standing crop or trace of agricultural activities were found as evidenced from the contents and description of the property recorded in the registered sale deed ;

e) The property under reference is located in the thickly populated industrial belt/suburb of Bangalore which is about 18 kms away from the corporation limits of Bangalore;

f) The price fetched i.e., Rs.10 lakhs per acre cannot be construed as high on account of the land being a non-agricultural since the actual cost of acquisition of the lands was Rs.3 lakhs i.e., about Rs.33,000/- per acre in the year 1995-96;

g) The lands under reference were actually acquired by the buyer for the purpose of construction of educational institutions such as nursing college, degree colleges etc., and to get recognition in the long run as deemed university. This once again goes to prove that the land was purely non-agricultural in nature at the time of sale;

h) The assessee had not shown any income from the so-claimed agricultural activity in the return filed by the assessee for Assessment Years 1995-96 to 2004-05. This was sufficient proof to show that no income from agricultural activities was derived by the assessee.

In the premises of the above facts, the learned DR relying on the following judgements submitted the appeal by the assessee is liable to be dismissed and the appeal by the revenue is to be allowed :

i) *Merchant (ZM) v. Commissioner of Income-tax - 177 ITR 512(Bom)*;

ii) *Fazalbhoy Investment Co. P. Ltd., v. Commissioner of Income-tax - 176 ITR 523 (Bom)*;

iii) *Commissioner of Income-tax v. Shiv Chand Satnam Paul - 231 ITR 663 (P&H)*

26. Replying to the above, the learned DR submitted the assessee made an application to the land revenue authorities to get the records changed from agricultural to non-agricultural lands. Subsequently, the buyer, the Tibetan Children's Village, paid non-agricultural tax on the land and also the penalty to get the land converted from agricultural to non-agricultural. It shows that the intention

of the assessee at the time of selling was that the land should be treated as non-agricultural land, and it is clear from the sale deed. The learned DR submitted the RTC certificate was not in existence and even if it existed, it is not the final word. He invited our attention to para 3.10 of the Commissioner of Income-tax(A)'s order in the case of Suresh Gowda dt.10.2.2009. The facts in para 3.10 narrated therein as under:

3.10 The Hon'ble ITAT, Bangalore in the case of Shri. M. V. Chandrashekar v. DCIT, Circle -2(1), Bangalore (ITA No.663/Bang/2002 dt.6.12.2002), which was also affirmed by the Hon'ble High Court of Karnataka, decided a similar issue vide ITA No.209/2003 dt.2.1.2008. The facts of the case are that the assessee is an agriculturist who purchased agricultural land of about 41 acres between 1977 and 1992 at Goolimangala village, Sarjapur Hobli, Anekal Taluk and the entire land purchased was agricultural land, which was not a converted land. The land so purchased is also in green belt area and even the assessee never applied for conversion of land use. During the previous year relevant to the Assessment Year 1998-99 the assessee sold about 35 acres of land and the remaining was still with the assessee. Some plantation was made and was converted into smaller size of plots and after incurring development expenses, sold the same to different parties. The Assessing Officer held that the transaction carried by the assessee indicate an intention to earn profit which is in the nature of trade. The view of the Assessing Officer was upheld by the Commissioner of Income-tax(A). In appeal before the ITAT, the assessee raised two grounds.

- i) That the surplus on sale of agricultural land would be subject to tax only under the head income from capital gains and not as income from business;*
- ii) That, as the lands sold being beyond the notified area, the surplus of sale would not be liable to tax under the head income from capital gains.*

The Hon'ble ITAT after considering the facts of the case, held that the transaction should be regarded in the nature of capital assets and not a business transaction.

27. The learned DR submitted the facts are identical in the instant case as well. The DR submitted from the date of conversion, the agricultural character of the land has been lost. In the agreement, sale deed etc., it is referred as the sale of non-agricultural land. The learned DR submitted Section 80 the Karnataka Land Reforms Act, 1961, bars transfer of agricultural land to a non-agriculturist. If it is violated then u/s.84 of the above Act,

uncultivated land may be required to be cultivated at the instance of the government and in the instant case of the assessee, no such steps have been taken by the government which goes to prove that the land was utilized for the converted purpose. In the instant case of the assessee, the purchaser is undisputedly the Tibetan Children's Village and the purchase was for starting educational institutions and in the long run to get recognition as a deemed university.

28. The learned DR further submitted in the case reported in *Musthafa Ummer and Another v. Appropriate Authority and Others* (2002) 254 ITR 135, the Hon'ble Kerala High Court held that the land ceases to be agricultural land when the assessee agrees to sell the same for use as house sites. The Hon'ble Supreme Court in the case of *Sarifabibi Mohmed Ibrahim and Others v. Commissioner of Income-tax* (1993) 204 ITR 631, held all these factors must be cumulatively considered. So also in the case of *Gemini Pictures* (supra).

29. The learned DR invited our attention to page 10 and 11 of the assessee's paper book dt.20.2.95 i.e., order of the Addl. Deputy Commissioner, Ramanagaram, particularly the conditions 8 and 9 which read as under :

(8) It may be construed that this converted land must be utilized for the purpose permission has been accorded within two years.

(9) This order is issued as per the written agreement of the individual dt.27.7.94 and the individual is covered by agreement terms. In the event if the individual violates the terms of agreement the government is at liberty to initiate action against such individual as per the provisions of the land revenue act clause 84 of 1996.

30. In reply to the above, assessee's representative briefly submitted as under. The assessee is an agriculturist. Inviting our attention to the decision of the Commissioner of Income-tax(A) in the case of *Thimme Gowda* (ITA.178/B/09), he submitted the undisputed facts are that the lands are situated beyond 8 kms from the corporation limits. The lands were converted to commercial/residential usage in 1999, but was never put to use for the converted purpose. The land was used for agricultural cultivation. He further submitted that for the land to be treated as agricultural land, carrying on of agricultural activities is of paramount importance. Phani extracts was produced before the Assessing Officer to prove the facts that the lands were under cultivation of the crop ragi. Evidence to the effect that the lands were used for agricultural purpose even on the date of sale, in the

form of record of rights and Phani extracts (RTC) were issued by the Village Accountant in Form no.2 of the Karnataka Land Reforms Rules, 1966. This is a statutory record maintained by the government as required under the Karnataka Land Reforms Rules, 1966. Though request for conversion was made and order was passed, two years were lapsed and the agricultural activities were continuing. Even the Assessing Officer apparently has not disputed the facts. In the case of T. Prasanna Gowda, 2 acres of land was converted during 1995, 53 acres of land was converted in 1999 and 10 acres; 10 guntas was converted in 2004. Still the facts remain that the lands were never used for non-agricultural purpose. No sites were formed nor any houses were built. The Assessing Officer deputed the Inspector for enquiry only in 2007. Even at this time, there was no layout formed except the building constructed by the Tibetan Children's Village for their office. The land was agreed to be sold to Tibetan Children's Village in the early part of 2003-04. If the land was to be registered in their name, as per the rules the land need to be converted to non-agricultural purpose without which it could not have been registered in their name. The conversion charges were thus paid by them after registration. But what was being held by the assessee as on the date of agreement was agricultural land. He further submitted that revenue records were not changed at the time of sale of the land by assessee. This fact is evident from the fact that the land is mentioned by survey number and not the khata number, in the sale deed. The survey numbers is used for agricultural land and revenue khata number is used for non-agricultural land. On the sale date, lands are identified as 'survey numbers' and not 'khata numbers' which leads to an irresistible conclusion that in government records the land remained as agricultural land. The decision of the Supreme Court in the case of Officer-in-charge, Court of Wards (105 ITR 133) (supra) laid down parameters as to what is to be considered as agricultural land. The assessee does not fall into the broad parameters in view of the fact that though the land was converted in 1995, 1999 it was not put to use for the intended purpose within the specified period of two years from the date of conversion. Agricultural land regained the character of agricultural land in 1997, 2001 i.e., after two years. The taxes paid in respect of the land was levied as agricultural land and not as non-agricultural land. This is evidenced by phani extracts in respect of these lands which show that the taxes were levied as

agricultural land and not as non-agricultural land. Evidence to this effect was also produced.

31. The learned representative for the assessee again brought our attention to the application made by the Tibetan Childrens' Village, dt.1.3.2005 in which it was stated that assessee had not made renewal application after the lapse of time and Tibetan Childrens' Village. It was they who not only paid the penalty but also got the land converted by making renewal application. If the land had been used for intended purpose, there was no need of renewal application and payment of penalty.

32. Inviting our attention to page 5 of the paper book dt.27.1.09, the assessee's representative submitted the report of the Horticultural, Agricultural and Sericultural Departments of the Government of Karnataka is found in the assessment record of Thimme Gowda for earlier years which bears the evidence for existence of grown crops like coconut, sapota and mango which are permanently yielding year after year. The income has been increasing as against reduced expenditure towards maintenance year after year. The income was divided between the land owners ie., Thimme Gowda and Suresh Gowda for the Assessment Year 2005-06, which was estimated at Rs.53 lakhs. During the assessment proceedings for Assessment Year 2004-05, after examining the circumstances pertaining to agricultural income, the ACIT estimated the income of the assessee group at Rs.56 lakhs. Condition of cultivation remained almost the same with regard to yield and production and rates. Hence, the assessee's representative submitted appeal by the assessee is liable to be allowed.

33. Hearing the rival submissions, going through order of revenue authorities and relevant materials before us and the cases cited by both the parties, we are of the view that the appeal by all the assessees are to be allowed. The revenue mainly relies among others on Sections 80 and 84 of the Karnataka Land Reforms Act, 1961 to show that agricultural land cannot be transferred to a non-agriculturist. The above section read as under :

Section 80 : Transfer to non-agriculturists barred. -(1)(a). No sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift or exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be lawful in favour of a person. -

(i) who is not an agriculturist, or;

(ii).....

By virtue of amendment brought to the section w.e.f.25.11.1980 the word 'valid' was changed to 'lawful'. In other words, prior to the amendment, the transfer to non-agriculturist was not valid, whereas after the amendment, the transfer is valid, but sale is unlawful. The intended purpose of the above change is that the transfer is no longer invalid but the person who violates the sale has to face the consequence since it is unlawful. Again, coming to section 84, it deals with the provisions for cultivation of uncultivated lands, which reads as under :

Section 84: Uncultivated land may be required to be cultivated.-- Where the Assistant Commissioner having jurisdiction over any area in which any land is situated is satisfied that any land within such area has remained uncultivated for a period of not less than two consecutive years without sufficient cause, he may be notice served upon the land owner and any other person entitled to be or in possession of the land require such persons to cultivate the land within one year from the date of service of such notice.

Reading of the section makes it clear that if the Assistant Commissioner having jurisdiction over the area is satisfied that the land within his jurisdictional domain remained uncultivated for a period of not less than two consecutive years without sufficient cause, he may issue a notice to the land owner or to any other person entitled to be in possession of the land requiring them to cultivate the land within one year from the date of service of the notice. The case of the Department is that no such notice was issued by the competent authority. Therefore, the land was utilized for non-agricultural purpose as intended. We are unable to agree with the above contention. Perhaps this would indicate the other way. If the land has not been used within two years of issue of conversion order, notice should have been issued to utilize the land for agricultural purpose within one year. Since the notice has not been issued, the claim of the assessee that the assessee was doing agricultural activity, prima facie to be accepted, in the light of the papers produced before us. The assessee has produced a letter from the Tibetan Childrens' Village to the Secretary, Manchanayakana Halli Grama Panchayati, to the effect that they had purchased 143 acres and 27 guntas of land in Seshagirihalli, the land was converted for residential purpose between 1996-1999. It further states that "though the conversion certificate was issued for the purpose of formation of residential layout, no such

layout was formed by our earlier owners, i.e., the 'assessee' ". It is further stated in the letter that the land remained on the records of Land Revenue authorities. In the absence of renewal application from earlier owners, they requested to renew the conversion granted and further submitted that they are willing to pay the requisite charges and fees for renewal of the conversion orders which impliedly proves the assessee's stand that no taxes had been paid towards non-agricultural land taxes. There is a specific averment also in the written submission of the assessee (Dasappa), which is also applicable to other cases herein as well) that there was no change in the land records at the time of sale of land and the survey number used in the sale deeds were old survey numbers and not the Khata numbers. Another evidence produced by the assessee to show that the agricultural character of the land had not changed is the certificate issued by the village accountant in all the above assessee's case to the effect that crops were grown in the lands in question during the years under appeal. This will lead to no different conclusion either in assessee's favour or of revenue. This alone cannot lead to a conclusion in favour of neither of the parties.

The next objection of the revenue is that the certificates issued by the village accountant were randomly issued without any physical verification by him. This general and evasive argument of the DR cannot be accepted, in the absence of any proof that the officer in-charge has not verified the area physically. The material available in the hands of the assessee is enough to show the nature of the land prima facie at the time of the sale and not the use by the subsequent purchaser. In the instant case, the above facts prima facie leads to the conclusion that the character of the agricultural land has not been lost. It is true the assessee had no case that the entire land was used for agricultural activities. But the RTC certificates produced by the assessee also indicates that the lands were used for agricultural activities.

However, we find that there is a specific finding by the Commissioner of Income-tax(A) in the case of Prasanna Gowda in ITA No.177/Bang/09 that 10 acres and 10 guntas of land sold on 2.6.06 converted on 2.4.06 was capital asset and he further directed to compute long-term capital gains on this sale. In the absence of any evidence to the contrary, we confirm the order of the Commissioner of Income-tax(A) in ITA.177/Bang/2009 to this extent on facts.

34. Coming to the decision relied by the DR reported in *Merchant (ZM) v. Commissioner of Income-tax - 177 ITR 512(Bom)*, wherein there was a specific finding by the Tribunal that there was no agricultural activity undertaken by the assessee. In this case, the said City Survey Officer said that the land bearing survey No.1393, 1394 and 1395 was agricultural land. The land fell within the town planning scheme and was also within the municipal limits of Surat city. There was a specific finding by the Tribunal that the City Survey Officer's report was inaccurate when it said that the land bearing the three survey numbers was agricultural land, but not used for agricultural purposes because it was common ground and there was a structure of their own which had been rented out to two tenants. It was in these circumstances, the Tribunal held that the land revenue assessment was not determinative of the issue. In these circumstances, the Tribunal held "In the absence of any evidence to show that the land was put to any agricultural use at any point of time prior to the date of sale apart from the activity of growing vegetables and grains for the domestic use of the assessee, it could not be treated as agricultural land. Coming to the instant case of the assessee i.e., Thimmegowda and Suresh gowda for the Assessment Year 2005-06, agricultural income was estimated at Rs.53 lakhs and for Assessment Year 2004-05, ACIT estimated the income of the assessee group at Rs.56 lakhs. Hence, on facts this decision is distinguishable.

35. Coming to the decision relied upon by the DR in the case of *Fazalbhoy Investment Co. P. Ltd., v. Commissioner of Income-tax - 176 ITR 523 (Bom)*, in this case land was acquired by the Government in the year 1951. A certificate was issued to the effect that the land was used for growing paddy during the Assessment Year 1941-42 and 1942-43. The Tribunal held in the absence of any evidence to establish that the land was agricultural, the Hon'ble High Court held that this is a reasonable conclusion because paddy had been grown on the land said land in 1941-42 and 1942-43 and because it ignored the Tahsildar's certificate which indicated that the said land was agricultural land till the year 1966. Coming to the instant case, assessee's claim that the assessee was using the land for agricultural purposes is without any evidence as to how much the assessee earned from agricultural activity and related expenses. However, assessee has produced certificate from the competent authorities that during these years assessee had used the land for growing ragi. In the absence of contrary evidence,

the evidence adduced by the assessee coupled with the Village Accountant's certificate, we have to come to a reasonable presumption that the assessee's assertion that the land was used for some kind of agricultural activity, is to be accepted.

36. *Coming to the decision relied by the learned DR in the case of Commissioner of Income-tax v. Shiv Chand Satnam Paul - 231 ITR 663 (P&H), this was a case wherein the Tribunal held that the land was located within the municipal limits and does not fall within the ambit of capital asset. The Hon'ble High Court held that the Tribunal become coming to such a conclusion should have satisfied itself regarding the remaining two ingredients mentioned in Section 2(14)(iii)(a) regarding population not less than 10,000 according to the last preceding census and the land was situated in any area within such distance, not being more than eight kilometres from the local limits. Therefore, this decision relied by the DR is not applicable to the instant case.*

37. *Coming to the decision reported in CWT v. Officer-in-charge (Court of Wards), Paigah, the issue involved was as to what could mean or what could be treated as agricultural land within the meaning of section 2(e)(i) of the Wealth-tax Act, 1957. The Hon'ble High Court held, the land could be treated as agricultural land for the following reasons :*

(i) the area was 108 acres abutting the Hussain Sagar tank;

(ii) the land had two wells in it;

(iii) it was capable of being used for agricultural purposes;

(iv) it had not been put to any use which could change the character of the land by making it unfit for immediate cultivation; and

(v) it was classified and assessed to land revenue as "agricultural land" under the A. P. Land Revenue Act.

On further appeal the Hon'ble Supreme Court held the first four features considered by the High Court and based upon absence of any user for non-agricultural purposes were inconclusive, and the fifth feature alone provided some evidence of the character of the land from the point of view of its purpose. The property was classified in the revenue records as agricultural land was not conclusive and such entries could raise only a rebuttable presumption. The Hon'ble Supreme Court further held, the character of the land and the purpose for which it meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What

really is to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality which will only affect its valuation as part of "assets", but its actual condition and intender user which has to be seen for purposes of exemption from Wealth-tax. If there is neither anything in its condition, nor anything in the evidence to indicate the intention of its owners or possessors so as to connect it with an agricultural purpose, the land could not be "agricultural land" for the purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence, the Hon'ble Supreme Court held.

Coming to the instant case of the assessee, it is not disputed that in the revenue records, the entry is not changed, it continues as agricultural land. According to the revenue, the intention and purpose of the sale is for the use of Tibetan Childrens' Village for the setting up of educational institutions and other related purposes. According to the assessee, the land in his hands had retained the agricultural character till the date of sale, for the reason that the assessee was doing agricultural activity. We have hereinabove in para 34 mentioned that the department had estimated the agricultural income at Rs.53 lakhs for 2004-05 and estimated the agricultural income of the group at Rs.56 lakhs. Therefore, it is difficult to come to the conclusion that in the hands of the assessee, the character of the land had changed. Merely because the original owners had made application to change the character of the land from agricultural to non-agricultural and certificate was issued to that effect. Even for the revenue, there is no case that the land has been used for the intended purpose.

38. *In the decision of Gujarat High Court relied upon by the DR, in the case of Gordhanbhai Kahandas Dalwadi v. Commissioner of Income-tax (1981) 127 ITR 664, the Hon'ble High Court held that the potential non-agricultural use does not alter the character of the land. This was a case wherein the land was purchased in 1954 and subsequently sold in 1969. The entries in the revenue records showed that the land was agricultural continued to be so. The land revenue paid was for agricultural use, but permission for non-agricultural use was obtained but not before the date of the sale. In these circumstances, the Hon'ble High Court upheld the presumption that the land is agricultural. The Hon'ble High Court came to the above conclusion inspite of the fact that this land was situated in*

an industrially developed area where the potential use of the land as non-agricultural land was very high but the Hon'ble High Court held that the use of the land as non-agricultural is totally immaterial. Entries in the record of rights are good prima facie evidence regarding land being agricultural and if the presumption raised either from actual user of the land or from entries in revenue records is to be rebutted, there must be material on the record to rebut the presumption. The approach of the fact-finding authorities, namely, the income-tax authorities and the Tribunal, should be to consider the question from the point of view of presumption arising from entries in the record of rights or actual user of the land and then consider whether that presumption is dislodged by other factors in the case. While coming to the above conclusion, the Hon'ble High Court considered the following facts. The presumption for non-agricultural use was obtained by the assessee before the sale of the land. Coming to the facts in the instant case, the previous owner made an application for conversion, obtained the permission, but with the condition that the land should be used for the intended purpose within two years, otherwise the original character of the land, i.e., agricultural nature, would be restored. Then the assessee or the subsequent purchaser has to pay penalty and make a further application to obtain permission to revive the land for intended purpose. The assessee has not done this even according to the revenue. This was done by the subsequent purchaser i.e., Tibetan Childrens' Village, which compels to conclude that what the assessee held at the time of sale was agricultural land. It is true the facts is on border line, but the evidence produced before us in the form of RTC showing agricultural income etc., is in assessee's favour.

Secondly, the Hon'ble Gujarat High Court considered the land revenue paid was for agricultural use of the land. In the instant case of the assessee also what was paid by the assessee was agricultural revenue. The non-agricultural revenue was paid by the subsequent purchaser after making an application for the second time to revive the nature of the land, which is evidenced by the letter dt.1.3.2005 which was written to the Secretary, Manchanayakanahally Gram Panchayat by the Tibetan Childrens' Village. In the case decided by the Hon'ble High Court, it was held that the correct test to be applied was whether on the date of sale of the land whether the land was agricultural or non-agricultural and not the intended purpose and how the purchaser was going to use the land.

39. Now, we proceed to deal with the various appeals separately, as under.

ITA.1464/Bang/2008 - By the assessee, Shri. M. N. Manjunath - Assessment Year.2005-06 :

40. In the first effective ground, the assessee's grievance is that the revenue authorities were not justified in bringing to tax the income on sale of land as non-agricultural.

We have elaborately dealt with this issue and given our findings in the paragraphs 33 to 38 above and we have concluded that the land was agricultural on the date of sale and hence, this ground by the assessee is allowed.

41. Coming to the second effective ground, the assessee's representative submitted he is under instruction not to press this ground. Hence, this ground is dismissed as not pressed.

42. Coming to effective ground no.3, which is against bringing to tax an amount of Rs.1,14,000/- as lease rentals when in fact the assessee was not entitled for the same nor had received any amount. This issue has been dealt with by the Commissioner of Income-tax(A) at page 6, by observing as under :

"The next issue raised is that the Assessing Officer has erred in bringing to tax an amount of Rs.1,14,000/- as lease rentals as the appellant was not entitled for the same nor received any amount (Ground no.4). It is seen from the assessment order that the addition has been made because as per lease agreement, the appellant was to get Rs.1,14,1000/- as lease income. The appellant's contention is that the lease agreement was not acted upon and therefore, he is not entitled to any income. However, the appellant has led no evidence in support of his contention. He has also not given any confirmation from the other party of the agreement that the lease agreement was not acted upon. Therefore, the action of the Assessing Officer in bringing to tax the above sum on the basis of lease agreement signed by both the parties has to be confirmed. This ground of appeal is, therefore, dismissed."

The ground was dismissed by the Commissioner of Income-tax(A) as no evidence was produced before him, in support of the contention that in spite of the entitlement as per the agreement the assessee did not receive it. Suffice to say that this finding of the Commissioner of Income-tax(A) has not been rebutted before us and no evidence has been produced before us to show that the finding of the Commissioner of Income-tax(A) is wrong. Appeal by the assessee on this ground fails and it is dismissed.

43. *In the result, appeal by the assessee is allowed in part.*

ITA.1465/Bang/2008 - By the assessee, Shri. Dasappa - Assessment Year.2005-06 :

44. *The first ground is general in nature and does not call for any specific dealing as such.*

45. *Coming to the second ground which is with regard to the sale of land, we have elaborately deliberated upon the issue and given our findings at paras 33 to 38 above wherein we have held that the revenue authorities were not justified in holding that the land sold by the assessee was not agricultural land and consequentially charging long-term capital gains on such sale.*

46. *Coming to the third ground which is against charging of interest u/s.234B, we hold that the Assessing Officer may give consequential relief after giving effect to our order.*

47. *In the result, appeal by the assessee is allowed.”*

23. *In the present case, the main reason for treating the land as non-agricultural is that the land was converted for usage of non-agricultural purposes. However, the assessee filed revenue records wherein it is stated that the land still continued to be agricultural land wherein crops like Ragi & Paddy were cultivated by the assessee. Further, it was brought on record by the assessee that the land revenue was paid as applicable to agricultural land only. The land got converted by the assessee for non-agricultural purposes and conversion permission was granted on the condition that the land should be used for non-agricultural purposes within two years, otherwise original character of the land i.e., agricultural in nature would be restored. The assessee has not used the land for non-agricultural purposes even after conversion of the land for non-agricultural purposes. In similar circumstances, in the case of Shri M.R. Anandaram (HUF) v. ACIT (supra), the Tribunal observed that though the said land was converted for non-agricultural purposes, but cultivation of land continued till the date of sale of the land. Thus, the land should have been treated as agricultural land and exempt from capital gain in view of section 2(14) of the Act. The Tribunal also observed that even after conversion, the assessee was carrying on agricultural operations and conversion was done only to facilitate the sale of subject property to a corporate entity/non-agriculturist. These observations of the Tribunal have been extracted in the earlier part of this order.*

24. *The Madras High Court in the case of CIT v. Ashok Kumar Rathi (404 ITR 173)(Mad) held that if the land is recorded as agricultural land in the revenue records, it would only enure in favour of the assessee as agricultural land and assessee is entitled to get exemption from tax.,*

25. *The Hyderabad Bench of the Tribunal in Tulla Veerender v. Addl. CIT (160 TTJ 435)(Hyd) held that when the land which does not fall under the provisions of section 2(14)(iii) of the Act and assessee is engaged in agricultural operations in such land and also being specific agricultural land in the revenue records, transfer of such land cannot be considered as a transfer of capital asset.*

26. *In the case of Harniks Park (P) Ltd. v. ITO (62 SOT 15)(Hyd) the Tribunal held that where land which does not fall under provisions of section 2(14)(iii) and an assessee who is engaged in agricultural operations in agricultural land and also being specified as agricultural land in revenue records, transfers such agricultural land as it is, in such circumstances, such transfer cannot be considered as a transfer of capital asset or transaction relating to sale of land was not an adventure in nature of trade so as to tax income arising out of this transaction as business income.*

27. *In the present case, the land sold by the assessee was classified as agricultural land in the revenue records. The RTC filed by the assessee before us shows that the assessee raised crops of Ragi and Paddy in certain portion and other portion was temporarily kept idle on account of certain difficulties. Being so, the status of the land therefore remained as agricultural land since mandatory condition stipulated in the conversion order is not complied with and on this count, the CIT(Appeals) was not correct in holding that the land which is subject matter of sale is not agricultural land on the reason that the land was converted for non-agricultural purposes. In view of this, the sale of the impugned land is to be treated as exempt from capital gain in terms of section 2(14) r.w. sections 45 & 48 of the Act. Accordingly, this ground of the assessee is allowed.”*

6. In view of the above discussions, we hold that the property sold by assessee is not liable for capital gains being an agricultural land. Accordingly, all the grounds raised by the assessee are allowed.”

8. Admittedly the assessee is a co-owner along with Shri K.P. Manjunatha Reddy in respect of the land under consideration in the present facts.

We note that revenue has not been able to bring anything on record to controvert the above observation. It is also not the case of the revenue that the land was used by the assessee for non-agricultural purposes.

Accordingly, we allow the additional grounds raised by the assessee.

9. As we have considered the issue raised by assessee in additional grounds in assessee's favour, we do not wish to dwell upon the other issues raised in the grounds of appeal filed by the assessee as submitted by the Ld.AR and they are left open to be adjudicated in an appropriate circumstances.

Accordingly, the appeal filed by the assessee stands allowed as indicated hereinabove.

Order pronounced in open court on 21st June, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st June, 2022.
/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore