

**IN THE OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS)-2,
HYDERABAD****SRI B.V. GOPINATH, IRS**Commissioner of Income Tax (Appeals)-2,
Hyderabad

ITA No.0453/CIT(A)-2/Hyd/2016-17

Dated:24th October, 2017(Instituted on 06.02.2017, from the order of Sri D. Sreenivasa Rao, ITO Ward-8(2),
Hyderabad.)

01	Assessment Year	2009-10
02	PAN	ADOPR1070J
03	Name and address of the appellant	Smt. Gaddam Renuka Reddy, F.No.302, Dr. YSR Residency, Panchavati Lay Out, Manikonda, Hyderabad - 500089.
04	Income assessed	Rs.2,85,71,126/-
05	Demand payable	Rs.1,27,34,780/-
06	Section under which order appealed against was passed	u/s.143(3) r.w.s. 147 of the I.T.Act, 1961
07	Date(s) of hearing	As per order sheet
08	Present for appellant	Sri Venkanna Ambati, Advocate
09	Present for Department	--

APPELLATE ORDER AND GROUNDS OF DECISION

Appeal in this case was filed against the order u/s.143(3) r.w.s. 147 of the I.T.Act, 1961 dated 27.12.2016 passed by the ITO Ward-8(2), Hyderabad for the AY2009-10.

2. Brief facts of the case are that the Assessing Officer (AO) received information from the ITO(Inv) Unit-II, Hyderabad that the appellant along with 11 others sold property admeasuring AC 2-35 Guntas situated at Raidurg Panmakta Village, Serilingampally Mandal, Ranga Reddy District vide Doc No.224/2009 dated 11.12.2008 for a consideration of Rs.38,92,05,000/- and the appellant received

Rs.2,84,95,500/- towards her share. On verification of the return filed by the appellant, the AO noted that she has shown capital gains on this transaction but claimed exemption u/s.54B on account of purchase of agricultural land. The appellant claimed the property as an agricultural land but as it is located within the municipal limits, it was taken as capital asset and the consideration received was invested in purchase of agricultural land and claimed deduction u/s.54B. The AO however noted that the appellant had not shown any agricultural income and no agricultural activity was noted or brought to the notice of the Department to treat the said land as agricultural land and therefore the said land is not qualified as agricultural land for claiming deduction u/s.54B.

2.1 In view of the above, the AO re-opened the assessment u/s.148. The AO held that the land sold by the appellant resulting in capital gains is not an agricultural land on the following grounds:-

- (i) No agricultural income was shown in the return.
- (ii) With regard to crops grown in the said land during the period 2006-07 to 2008-09, sale of agricultural produce etc. the appellant submitted that the land is owned by 12 persons and the watchman appointed had grown vegetables on the said land. The consideration received was used to pay his salary. Since considerable time lapsed, she could not recollect what crops were grown in the said land and she had never received consideration towards sale of produce. It was further submitted that she sold agricultural land and purchased another land which is also an agricultural land as per "pahani".

From the above, the AO concluded that the land was never intended to be used for agricultural purpose. Further, the land was in the vicinity of developing suburb and it was sold to M/s. Asara Theme Projects Pvt.Ltd., which is a real estate company. Though the land was



sold on acreage basis, the buyer has no intention of using it for agricultural purpose.

- (iii) Relying upon the tests/factors laid down by the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohammad Ibrahim (204 ITR 631) to decide whether the land is an agricultural land or not and other case laws, the AO held that the land was never intended to be used for agricultural purpose and also it was never ploughed or tilled and it had not been actually used for agricultural purpose.
- (iv) Information was collected from Joint Sub Registrar (JSR), Ranga Reddy regarding the nature of land in the records with necessary supporting proof. The JSR stated that the property was residential area.

2.2 The AO accordingly held that the land sold cannot be considered as agricultural land and therefore the claim of deduction u/s.54B is not allowable and disallowed Rs.2,84,24,346/-.

3. The above action of the AO was contested in as many as 25 grounds of appeal.

4. During the course of appeal proceedings, the AR of the appellant was asked to file precise grounds. The precise grounds of appeal filed by the appellant are reproduced here under:-

- 1. The impugned order of the Assessing Officer is violative of Section 54B of Income Tax Act, 1961.*
- 2. The Assessing Officer has erroneously charged the capital gain to income tax as income of previous year and has not acted in accordance with the deduction of taxable income prescribed for the valid assessee u/s.54B (i) & (ii).*
- 3. The Assessing Officer failed to consider that Assessee has claimed deduction of taxable income u/s.54B of Income Tax Act, 1961. In the present matter, the Assessee has declared capital gains income arising out*



of an agricultural land being used for agricultural purposes in its return filed on 30th July, 2009 admitting an income of Rs.2,85,80,346/-.

4. The Assessing Officer failed to consider that Assessee is a valid claimant for deduction under Section 54B of Income Tax Act, 1961. The Assessee has sold agricultural land dated 11.12.2008 and from the sale proceeds of the agricultural land purchased another agricultural land within 1 year of the transfer of the agricultural land dated 25.07.2009.
5. The Assessing Officer failed to deduct the amount of capitalgain u/s.54 B and erroneously added the amount claimed as deduction to the total income including salary and arrived at the taxable income of Rs.1,27,34,718/- including interest and surcharge.
6. The Assessing Officer failed to consider that in the present matter there is sale and purchase of Agricultural lands as classified in the land revenue records i.e. Pahani and the Assessee is a valid claimant for the deduction u/s.54B of Income.
7. Any other ground that may be urged at the time of hearing.

5. The submissions of the AR before me in this regard are summarized as under:-

5.1 The appellant was engaged in the cultivation of the said land which is evident from the "Pahani" produced before the AO. Pahani is an official record prepared by the Revenue Authorities as per the AP Rights in Land & Pattadar Pass Books Act, 1971. The appellant furnished Pahani for the years 2003-04 to 2008-09 wherein in Col.No.21, it was clearly mentioned that the appellant cultivated paddy, jowar and vegetables etc. Pahani is issued by the Tahsildar as per the Act mentioned above. Section 6 of the above mentioned Act mandates that "every entry in record of Rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act. Any mortgage or charge created in favour of a credit agency shall lose its priority if it is not entered in the pattadar pass book". This section clearly specifies that every entry in the Pahani shall be presumed to be true until the contrary is proved. The primary of Pahani as conclusive proof of a land being agricultural land was confirmed by following the decision of Hon'ble High Courts:-



- (i) Ajjapalli Papireddy & another vs. Ajjapalli Narayana Reddy & another 2014 (2) ALT 595.
- (ii) C.P. Roy vs. Special Court under A.P. Land Grabbing Act and another 2000 (3) ALD 766.
- (iii) Further the Hon'ble Supreme Court in the case of Gowdara Nanjappa vs Matada Basaiah & others 2008 (4) SCC 41 also confirmed the above position.

5.2 The action of the AO in coming to the conclusion that the said land was not an agricultural land in the light of the evidence produced before the AO of Pahani which clearly mentioned that the appellant was cultivating paddy and jowar, is erroneous and contrary to the facts. The reliance of the AO on the judgment of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohammad Ibrahim wherein 13 tests were prescribed to determine whether the land was agricultural or not, is misplaced since the tests laid down by the Hon'ble Supreme Court pertains to matters where there was no revenue record evidencing the fact that agricultural operations were being carried out. In the present case, Pahani, which is the primary document as per the revenue records, evidencing the agricultural operations has been produced before the AO and therefore the question of applying the tests as per the judgment of Apex Court doesn't arise.

5.3 The description of the land in the sale deed dated 11.12.2008 was mentioned as agricultural land. The physical characteristics of this land and surrounding lands was agriculture, yielding agriculture produce like Paddy, Jowar and Vegetables etc.

5.4 The AO contended that he got confirmation from the JSR who stated that it is a residential area. The said clarification has no relevance to the issue under consideration as (i) the very same JSR registered the sale deed which mentioned the property as agricultural land; (ii) It was measured in terms of Acres and not in square



yards; and (ii) the position of the property given by the JSR was in Dec 2016 and not when it was sold i.e. on 11.12.2008.

5.5 As mentioned in the assessment order, the appellant submitted that the said land of Acres 2 and 35 Guntas was owned by 12 persons and a watchman was appointed who has cultivated vegetables in the said land and the consideration received was used to pay his salary. Since, the agricultural income derived was small and further it had to be apportioned between 12 members, the appellant has not declared the insignificant agricultural income in the IT return.

6. I have carefully considered the issue and the submissions made by the AR. The AO went on to conclude that the land sold was non-agricultural land primarily for the following reasons:-

- (i) Agricultural income was not declared in the IT returns.
- (ii) The land was in the vicinity of developing suburb and it was sold to a real estate company, who have no intention of using it for agricultural purpose.
- (iii) The response from JSR that the said property was a residential area.

6.1 On the other hand, it is seen that the appellant produced primary evidence in the form of "Pahani" for the FYs 2003-04 to 2008-09, wherein it was clearly mentioned that the appellant along with others were cultivating paddy and jowar. The AO had not rebutted this evidence produced by the appellant to come to adverse conclusion. As per Section 6 of AP Rights in Land & Pattadar Pass Books Act, 1971 every entry in record of rights shall be presumed to be true until the contrary is proved. The case laws relied upon by the AR regarding evidentiary value of Pahani, issued by the Tahsildar confirm the above position. In view of this primary evidence, the conclusion of the AO that the said land was not used for agricultural operations without any contrary evidence, is erroneous and misplaced. Further, the contention of the AR that the appellant derived pittance of agricultural



income and therefore was not reflected in the IT return has substantial force since the land is only Acres 2 and 35 Guntas and there are 12 co-owners, the agricultural income to each co-owner is very limited which has been primarily spent to pay salary of the watchman. Further, as regards the clarification issued by the JSR, it is seen that the very same JSR has registered the document which mentions the said land as agricultural land and further it was sold in Acres and not in sq. yards. It appears that the said clarification that the property was residential area appears to have been issued regarding the position as on 14.12.2016 and not when the said land was sold on 11.12.2008 (the Real Estate Developer obviously brought the property from the appellant and others to develop the property into residential area, which is confirmed by the clarification given by the JSR).

6.2 In view of the above, it is held that the said land arising in LTCG is an agricultural land. Since the appellant bought agricultural land from the consideration so received, she is eligible for the claim of deduction u/s.54B. The AO is therefore directed to allow the claim of deduction u/s.54B as per the provisions of that section. In view of the above, **the grounds of appeal are allowed.**

7. In the result, **the appeal is allowed.**

sdt-

[B.V. GOPINATH, IRS]

Commissioner of Income Tax (Appeals)-2 (i/c),
Hyderabad.

Copy of the order forwarded to :-

- 1 The Appellant.
- 2 The Pr.Commissioner of Income-tax- 2, Hyderabad.
- 3 The Addl. Commissioner of Income-tax, Range-8, Hyderabad.
- 4 The Assessing Officer i.e. ITO Ward-8(2), Hyderabad.



G. Manikya Laxmi
G. MANIKYA LAXMI
Private Secretary
O/o. Commissioner of Income Tax
(Appeals)-2, Hyderabad.