IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
and
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.2227/Bang/2016
(Assessment year: 2011-12)

Smt.Anusuyamma,
8/1, BEML Township,
GM Palya, New Thippasandra Post,
Bengaluru-560075. … Appellant
PAN:AIOPA 0312 D

Vs.

Income-tax Officer,
Ward 4(3)(1),
Bengaluru. … Respondent

Appellant by : Shri V.Srinivasan, Advocate.
Respondent by : Shri G.Kamaladhar, Standing Counsel

Date of hearing : 02/03/2017
Date of pronouncement : 26/04/2017

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of the CIT(A)-4, Bengaluru, dated 31/10/2016 for the assessment year 2011-12.

2. The assessee raised 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 appellant's case.

2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

2.1 The learned CIT[A] is not justified in upholding the validity of the re-opening of the assessment without considering the request of the appellant for the copy of the reasons recorded to enable the appellant to file objections for the re-opening of the assessment under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the above, the learned CIT[A] is not justified in sustaining the assessment of Rs.5,44,40,400/- as Income from Long Term Capital Gains without appreciating that the appellant had sold agricultural lands, which was not a capital asset under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A] ought to have appreciated that the appellant had sold agricultural land that devolved upon her, which was situate beyond 8 Km from the municipal limits and that the conversion of the land for non-agricultural purposes was facilitated by the purchasers and not the appellant ad thus, the transaction entered into by the appellant was sale of the agricultural lands and not converted lands.

3.2 The learned CIT[A] ought to have appreciated that the appellant had received the entire consideration for the sale of the agricultural lands long before the conversion of the lands for non-agricultural purposes and had also put the purchaser in possession of the lands after the execution of the sale agreement and registered GPA on 20/07/2010 and at any rate much before the execution of the registered sale deed dated 16/09/2010 by the appellant's power of attorney holder and therefore, the transfer of the agricultural lands ought not to have been recognized after the conversion of the agricultural lands and on the date of execution of the registered sale deed, which finding is erroneous and liable to be vacated.

4. Without prejudice to the above, the extent of capital gains assessed in the hands of the appellant is highly excessive as the appellant is only one of the co-owners of the property that has been transferred and therefore, the assessment of the capital gains entirely in the hands of the appellant is unwarranted.

5. Without prejudice to the above, the cost of acquisition adopted by the learned A.O. is extremely paltry and the same requires to be enhanced substantially.

6. Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies herself liable to be charged to interest u/s.234A, 234-B and 234-C of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.

7. For the above and other grounds that may be urged at the time of hearing of the appellant, your appellant humbly prays that the appeal may be allowed and 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.

3. Briefly facts of the case are that the assessee is an individual deriving income from other sources. For the assessment year 2011-12, the assessee has E-filed the return of income on 28/09/2012 admitting income of Rs.4,16,090/-. The said return was processed u/s 143(1) of the Income-tax Act,1961 ['the Act' for short] and there was no scrutiny assessment. Subsequently, on receipt of information from Deputy Director of Income-tax (Inv.), Unit I(1), Bangalore, stating that the assessee had sold land at survey No.240 on 15/09/2010 for a consideration of Rs.5.7 crores, a notice u/s 148 was issued to the assessee on 04/03/2014. After receipt of notice u/s 148, it was submitted by

the assessee to the Assessing Officer (AO) that the original return filed on 28/09/2012 may be treated as return in response to notice u/s 148 vide his letter dated 13/05/2014. Thereafter, the AO issued notice u/s 143(2) and completed the assessment u/s 148 r.w.s. 143(3) in the order dated 5/03/2015 at total income of Rs.5,48,56,490/-. The disparity between the returned income and the assessed income is on account of assessing income of Rs.5,70,00,000/- on sale of property situated at survey No.237 (old No.240) situated at Sadahalli, II Village, Kasaba Hobli, Devanahalli, Bengaluru, measuring about 3 acres 24 guntas under the head 'capital gains'. The contention of the assessee that it was agricultural land and therefore cannot be assessed to capital gains was not accepted by the AO, for the reason that the assessee had not furnished the details of crops grown and also failed to establish that the assessee has actually carried on agricultural activities on the said land before the sale. The AO also held that on the date on which the subject land was sold, the land was converted into non-agricultural land. The contention of the assessee, that the land was sold on the date of entering agreement on 20/7/2010, was not accepted by the AO by drawing attention to clause 3 of the agreement to sell which says that the possession of the property has not been handed over to the purchaser. In nutshell, it is the contention of the AO that the land was converted into non-agricultural use by the revenue authorities vide order dated 24/07/2010. The transfer took place

when the sale deeds were executed and registered on 16/09/2010. On the date of sale, the character of land is non-agricultural and therefore brought to tax. The contention of the assessee that on the date of entering agreement on 20/07/2010 the transfer was complete, was not accepted by the AO by placing reliance on the decision of the Hon'ble Supreme Court in the case of *State of Rajasthan vs. Basant Nehata* (2015)(12) SCC 77. Accordingly, the AO brought to tax the transaction of sale of land as non-agricultural land and brought to tax as capital gain. The AO also rejected the contention that consideration paid to the sons of the assessee i.e. S/Shri Umesh and Venkatesh of Rs.230 lakhs and Rs.70 lakhs should be assessed in their respective hands, as according to the AO, the sons of the assessee had no right, title or interest in the property and also if the sons have right in property as to why other sons of the assessee viz., Kemparaju was not paid any consideration, The said consideration was paid to two sons of assessee viz., S/Shri Umesh and Venkatesh at the request of the assessee.

4. Being aggrieved, an appeal was preferred before the CIT(A) contending *inter alia* that there are no reasons to believe that income escaped assessment. Hence, it was contended that assumption of jurisdiction was bad. It was further contended that the land on which capital gains was assessed is an agricultural land and also that the consideration paid to sons of the assessee should be assessed in their respective hand and not in the hands

of the assessee. The CIT(A), considering the submissions of the assessee, upheld the re-assessment on the ground that the assessee had not requested for any reasons for reopening the assessment. On the issue of merits, the CIT(A) held that as per Agreement to sell dated 20/07/2010, entered by the assessee with his purchaser, no possession was given. The CIT(A) therefore held that on the date of agreement to sell there was no transfer of sale. Since the agricultural land was converted into agricultural on 24/7/2010, character of land ceased to be non-agricultural land and even prior to conversion, there was no proof that the assessee had actually carried on agricultural activity on the said land. The relevant finding of the CIT(A) is as under:

> The contentions of the appellant in this regard cannot be accepted for numerous reasons, as elucidated in the detailed discussion in the preceding paras. The fresh contentions of the Appellant cannot be accepted, for the reasons, discussed in detail in the preceding paras- some of which may be reiterated as under:
>
> - There is no justification to validate the admission of this crucial evidence, at this late stage, which ought to have been placed before the AO, in the 1st instance along with other relevant documents which were duly submitted.
> - The confirmation deed in itself does not prove the actual physical possession, when the duly registered agreement to sale deed dated 20/07/2010 categorically states that "physical possession shall not be handed over." The agreement to sale in itself stipulates the further conditionalities of execution of sale deed and balance considerations, which therefore runs contrary to the finality ascribed to the confirmation deed.
> - The Assessee has not negated the fact that actual physical possession alongwith original documents were handed over by virtue of subsequent sale deed dated 16/09/2010, through vendors and confirming parties, who continue to be the same.

- There is no valid justification as to why a proper sale-deed was not entered with Mr. John Colaco (who paid the consideration) to complete the process of transfer pursuant to the agreement to sale, which itself in several clauses, enjoins upon the respective parties to execute the same. The said sale agreement does not stipulates that possession was to be passed on to Mrs. Asha Colaco by way of GPA or confirmation deed.

- There is no justification as to why simultaneous agreement to sale (with husband Mr. J. Colaco) and GPA (with wife Mrs. S. Colaco) was entered on the same date, alongwith other supplementary documents, which is not found to be in the normal course.

It is apparent from the facts detailed above, that the land in question was non-agricultural in nature, during the year under consideration. This is not only for the reason that no agricultural activity was conducted by the Appellant but, more importantly the fact that. the character of its user after the order of conversion dated 24/07/2016. became non-agricultural as per Revenue-records. The multiplicity of agreements and deeds entered by the appellant with the purchasers Mr. John Colaco and his wife (Mrs. Asha Colaco) does not take away from this fact. The quantum of consideration paid for the property being the huge sum of Rs. 5.70 crores in itself evidences the fact that, the property under reference was ab-initio intended to be sold as a non-agricultural property. It is not possible for an agricultural land (meant for cultivation purpose) to attract such huge consideration. It is also crucial to note that, the agreement to sale dated 20/07/2010 does not specify the description of impugned land as cultivated or cultivable agricultural land. The description of the land in the GPA, would not in itself therefore change this character of the land, which in any event was converted to non-agricultural by way of the conversion order dated 24/07/2010. The multiplicity of agreements entered by the assessee with the purchaser (Shri. John Colaco) and his wife (Mrs. Asha Colaco) in itself, also does not alter the non-agricultural character of the impugned land. It is clear from the facts available on record that the intention behind sale and quantum of consideration; and conversion order dated 24/07/2011 that, what was transferred was a capital asset, which brings the impugned transactions within the ambit of capital gains provisions of the I.T. Act.

In these facts and circumstances I have not hesitation in holding that the AO has correctly, charged LTCG of Rs.5,70,00,000/- which is accordingly upheld.

As regards the amount to be assessed in the hands of the assessee, the CIT(A) confirmed the findings of the AO that the

assessee is absolute owner of the property, since sons of the assessee have no rights in the property, therefore, not entitled to any consideration. Thus, the appeal filed by the assessee came to be dismissed.

5. Being aggrieved, assessee is before us in the present appeal. It is contended by the learned AR of the assessee that initiation of re-assessment proceedings u/s 148 are not valid in law as no reasons were furnished to the assessee at any stage of proceeding. It is submitted that the assessee is not seeking relief on the ground of not furnishing of reasons but the reasons were required to be furnished to examine the satisfaction of the AO that there are reasons to believe that income escaped assessment. On direction from the Bench, learned DR furnished the copy of reasons for issuance of notice u/s 148. It was submitted that from the reasons recorded, it does not give a reason to believe that income escaped assessment. He further submitted that the land was converted into non-agricultural land after date of agreement of sale i.e. on 24/07/2010. Therefore, possession of land was already passed on to the purchaser pursuant to agreement of sale and General Power of Attorney on 28/07/2010, what was sold is only agricultural land which is not a capital asset as defined under the provisions of section 2(14) of the Act. Thus it was contended that the said transaction of land does not come within the purview of capital gains. As regards the activity carried on agricultural land, learned AR submitted that

additional evidence was filed before this Tribunal vide application dated 22/02/2017 along with affidavit in the form of letter from The Tahsildar, Devanahally dated 99/01/2007 stating that on the said land Eucalyptus and Nilgiris etc., were grown till date of conversion. The learned AR also filed final sale deed copies and deed of rectification etc., contending that final sale deeds were executed by the GPA Holder and not the assessee himself. He also placed reliance on the decision of the Hon'ble Supreme Court in the case of *Sanjeev Lal vs. CIT* (365 ITR 389) in support of the contention that consequent upon entering agreement of sale, interest in the property is alienated in favour of the purchaser thereby constituting transfer within the meaning of provisions of 2(47)of the Act. He also placed reliance on the decision of the co-ordinate bench in the case of *Shri M.R.Seetharam vs. ACIT,* in ITA No.1654/Bang/2012 dated 13/06/2014 in support of the proposition that if the said land was not put to agricultural use within period of 2 years from the date of conversion the conversion will become null and void. Thus learned AR submitted that the property sold was only agricultural land and therefore the transaction does not fall within ambit of section 2(14) of the Act.

6. On the other hand, learned standing counsel vehemently contended that even before conversion of land into non-agricultural land, there was no evidence to show that agricultural activity was actually carried on the said land. Therefore, the

property sold is nothing but capital asset and reliance was placed on the decision in the case of *Gopal C Sharma vs. CIT* (209 ITR 946)(Bom).

7. We heard rival submissions and perused material on record. At the outset, we shall deal with the preliminary ground challenging the very assumption of jurisdiction u/s 148 of the Act. The contention of the assessee, that there were no reasons to believe that income escaped assessment, cannot be accepted for the following reasons:

i. The transaction of sale of this property i.e. subject land was not disclosed in the original return of income filed.

ii. The fact that huge consideration was received on sale of subject land is good enough to believe that income escaped assessment especially in the light of the fact that the subject land was situated within the radius of 8 Kms of municipal limits of Bengaluru.

It is trite law that it is not incumbent upon the AO to prove conclusively that there is escapement of income at the time of initiating re-assessment proceedings. Reliance in this regard can be placed on the decision of the Hon'ble Supreme Court in the case of *Raymond Woollen Mills Ltd. vs. ITO* (236 ITR 34) Therefore, we hold that the AO was justified in assuming jurisdiction u/s 147 and initiating re-assessment proceeding. Thus, the grounds of appeal raised on re-assessment are dismissed.

8. Now, we shall deal with the merits of addition. The only issue that comes up for consideration in the present appeal is whether sale of subject land constituted agricultural land or capital asset within the meaning of provisions of section 2(14) of the Act. It goes without saying that if character of the land sold is agricultural, the transaction does not come within the ambit of the provisions of section 2(14) of the Act which defines the term 'capital asset'.

" 2(*14*) "capital asset" meansð

(*a*) property of any kind held by an assessee, whether or not connected with his business or profession;

(*b*) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not includeð

(*i*) any stock-in-trade [other than the securities referred to in sub-clause (*b*)], consumable stores or raw materials held for the purposes of his business or profession ;

(*ii*) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal us by the assessee or any member of his family dependent on him, but excludesð

(*a*) jewellery;

(*b*) archaeological collections;

(*c*) drawings;

(*d*) paintings;

(*e*) sculptures; or

(*f*) any work of art.

*Explanation 1.*ð For the purposes of this sub-clause, "jewellery" includesð

(*a*) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(*b*) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

*Explanation 2.*ð For the purposes of this clauseð

(*a*) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (*a*) of the *Explanation* to section 115AD;

(*b*) the expression "securities" shall have the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*iii*) agricultural land in India, not being land situateð

(*a*) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(*b*) in any area within the distance, measured aerially,ð

(*I*) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than ten thousand but not exceeding one lakh; or

(*II*) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than one lakh but not exceeding ten lakh; or

(*III*) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than ten lakh.

> *Explanation.*ð For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;
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8. Vide clause (iii) of the above section, agricultural land situated within limits of municipality or cantonment, board which has a prescribed population or within the prescribed distance from the local limits of such municipality or cantonment board or shortly referred as 'urban area', though land is agricultural land is treated as urban land and the agricultural land is treated as a capital asset. Therefore any gains or profits made on transfer from sale of such agricultural land are exigible to tax under the head 'capital gains'. But in case where the character of land is agriculture in nature and is situated beyond the prescribed limits of any municipality, then the transaction of sale of such land does not come within the purview of tax under the head income from capital gains. Then the issue boils down to determine nature or character of the land whether agriculture or non-agriculture. The Hon'ble Gujarat High Court in the case of *CIT vs. Siddharth J.Desai* (139 ITR 628) has laid down the following 13 tests for the purpose of ascertaining the character of the land at the time of sale:

> 1. Whether the land was classified in the revenue record as agricultural and whether it was subject to the payment of land revenue?

2. Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

3. Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?

4. Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the inve1stment made in purchasing the land?

5. Whether the permission under section 65 of the Bombay 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 user of the said portion of the land on the material date?

6. Whether the land, on the relevant date, had ceased to be put to the agricultural use? If so, whether it was put to an alternative use? Whether, such cesser and/or alternative user was of a permanent or temporary nature?

7. Whether the land, though entered in revenue record, 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?

8. Whether the land was situate 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?

9. Whether the land itself was developed by plotting and providing roads and other facilities?

10. Whether there were any previous sales of portions of the land for non-agricultural use?

11. Whether permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained

because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user.

12. Whether the land was sold on yardage or on acreage basis?

13. 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?

9. The above tests laid down by the Hon'ble Gujarat High Court in the case of *Siddharth J.Desai* (supra) were approved by the Hon'ble Supreme Court in the case of *Smt.Sarifabibi Mohamed Ibrahim vs. CIT* (204 ITR 631). Applying the above tests to the case on hand, it is clear that the land was surrounded by residential plots and the land was sold to non-agriculture purpose. On the date of sale, land was converted for non-agricultural use and the very fact that the assessee could not discharge the onus of proving agricultural activities was carried on before the sale goes to prove that the character of the land is nothing but non-agricultural. The Hon'ble Supreme Court in the case of CWT vs. Officer-in-Charge (Court of Wards) (105 ITR 133) held that mere potential or capable of being used as agricultural is not enough to hold it as agricultural land. The appellant had not adduced any evidence to show that agricultural operations are actually carried on the land, land had been assessed to revenue or not, classification of land in the revenue record. The Hon'ble

Supreme Court in the case of *Smt.Sarifabibi Mohamed Ibrahim vs. CIT* (204 ITR 631) has held that entering into agreement to sell the land for housing purpose, applying for and obtaining permission the land for non-agricultural purpose and its sale soon thereafter and the fact that the land was not cultivated prior to sale coupled with its location and price at which it was sold conclusively establish that the land was not agricultural land when it was sold. The relevant para. of the above decision is quoted below:

> ñ16. .....In our opinion, the entering into the agreement to sell the land for housing purposes, the applying and obtaining the permission to sell the land for non-agricultural purposes under section 63 and its sale soon thereafter and the fact that the land was not cultivated for a period of four years prior to its sale coupled with its location, the price at which it was sold do outweigh the circumstances appearing in favour of the appellants' case. The aforesaid facts do establish that the land was not an agricultural land when it was sold. The appellants had no intention to bring it under cultivation at any time after 1965-66 certainly not after they entered into the agreement to sell the same to a Housing Co-operative Society. Though a formal permission under section 65 of the Bombay Land Revenue Code was not obtained by the appellants, yet their intention is clear from the fact of their application for permission to sell it for a non-agricultural purpose under section 63 of the Bombay Tenancy Agricultural Lands Act.ò

Facts of the present case are identical to the facts in the above case and therefore the character of land is non-agriculture. The contention of the assessee that the land was sold on 20/07/2010 on entering into agreement to sell when the entire consideration, except Rs.1 lakh was received by the assessee and fees for conversion for non-agricultural purpose was paid by the purchaser does not come to the rescue of the assessee for the

simple reason that definition of 'transfer' u/s 2(47) is applicable only in respect of capital asset and is not applicable in respect of agricultural land even for argument sake that the said land is agricultural land. The transfer of agricultural land can take place only on execution and registration of instrument of sale deed. In the present case, the land was registered in the name of the purchaser by the GPA holder on 16/09/2010 on which date the land was already converted into non-agricultural land and it is needless to say that the character of land has to be determined as on the date of sale of the land. Reliance in this regard can be placed on the decision of the jurisdictional High Court in the case of *CIT vs. Smt.K.Leelavathi* (341 ITR 287). The appellant had failed to discharge the onus of proving that agricultural activities are actually carried on this land even at the time of entering into agreement to sell with the buyer. The AO had specifically directed the appellant to provide evidence. The observations made by the AO on this issue are as under:

> In this office letter dated 21/8/2014, the assessee was specifically requested to establish that the land in survey no. 237 was agricultural land and file details of crops grown for the financial year 2007-08 to 2010-11.
>
> Till Now the assessee has not furnished any evidence of the fact that the land in survey no. 237 was agricultural land or the details of crops grown except relying on the mention in the Agreement to Sell that the land was not converted to non-agricultural use. If the claims that the land was in fact used by her for agricultural use, it is for the assessee to establish that agricultural activity is carried on in the said land by adducing evidence. On the contrary the assessee has not admitted any agricultural income in the return of income filed for the assessment year 2011-12. In the absence of any evidence to establish that the land was put to agricultural use before 20/7/2010, I am compelled to hold that on point of fact the land was not agricultural in nature and hence is a **capital asset**.

10. The appellant had not filed any evidence in support of his contention that agricultural activities were carried on by it on the land either before the AO or the CIT(A). It is only before us that the appellant has filed certificate issued by the Tahsildar that Ragi crop was grown and from this certificate. Perusal of the certificate, it is clear that the Tahsildar had not referred to any evidence based on which the certificate was issued by him nor the assessee had filed any Adangal/register of the relevant period. Therefore, it is beyond our apprehension under what circumstances, the certificate came to be issued by the Tahsildar. Furthermore, the assessee had not made out any case as to why this evidence should be admitted before us. In the circumstances, the certificate issued by the Tahsildar has no evidentiary value and no credence can be given to the certificate for the reasons stated supra. In the circumstances, additional evidence in the form of Tahsildar certificate is not admitted as no application was made for admission of additional evidence and no case was made out for admission of such additional evidence. It is also evident that the land is surrounded by residential buildings and the property was purchased by the buyer for commercial purpose. The inference that flows out of cumulative consideration of all these facts is that the character of the land even as on the date of entering into agreement to sell is non-agricultural land. Therefore, the fact that the assessee entered agreement to sell on 20th July 2010 has no relevance as character of land was not

proved to be agricultural as stated supra. Even otherwise, the definition of the word 'transfer' as given in the provisions of section 2(47) is applicable only in relation to capital asset. Thus, the contentions advanced by the appellant are devoid of any merit and the land sold is non-agricultural land. Profit arising on the sale of such land is subject to tax under the head 'capital gains' as assessed by the AO. Thus, we confirm the orders of the lower authorities in this regard.

11. As regards the contention of the appellant that the only consideration paid to the appellant alone should be considered, it is crystal clear from the reading of the agreement to sell or the joint Power of Attorney that the sons of the appellant have no ownership rights in the said property. They are only party to sale deed agreements only as a confirming party. Nor is the case of the appellant that without passing on consideration to the sons the property could not be sold, as pointed out by the AO that no consideration was paid to the third son goes to prove that the sons have no rights in the title of the property sold. These grounds raised by the assessee are also dismissed.

12. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 26th April, 2017

Sd/-	sd/-
(LALIET KUMAR)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place : Bengaluru
D a t e d : 26/04/2017
srinivasulu, sps

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore