

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**(Before Sri S.S. Godara, Judicial Member & Sri M. Balaganesh, Accountant Member)**

**ITA No. 200/Kol/2016**  
Assessment Year: 2009-10

**Khaitan Lefin Limited.....Appellant**  
**46C, J L Nehru Road**  
**Kolkata - 700 071**  
**[PAN : AABCK 1371 L]**

**Vs.**

**Commissioner of Income Tax (Appeals)-11, Kolkata.....Respondent**

**Appearances by:**

*Shri Sanjay Bhattacharya, FCA & Arvind Agarwal, for assessee.*  
*Shri Pradip Majumdar, Addl. CIT D/R. for Revenue.*

Date of concluding the hearing : December 26<sup>th</sup>, 2018  
Date of pronouncing the order : January 25<sup>th</sup>, 2019

**ORDER**

**Per S.S. Godara, JM :-**

This assessee's appeal for Assessment Year 2009-10 arises against Commissioner of Income Tax (Appeals)-11, Kolkata's order dated 10/11/2015 passed in case No. ITA No.575/CIT(A)-11/CIR-8(1)/14-15/Kol, confirming the Assessing Officer's action making long term capital gain (LTCG) addition of Rs.3,09,77,775/-, in assessment order dt. 05/12/2011, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties reiterating their respective stands against and in support of the impugned LTCG addition. Case file perused.

2. We find at the outset that the CIT(A)'s detailed discussion affirming the Assessing Officer's action holding the assessee's land to be a capital asset giving rise to the impugned LTCG on transfer reads as under:-

## 4. The Assessing Officer made the following observations –

- a) “The submission of the assessee is considered and but found not tenable. It appears that the assessee made this claim not with a bona fide intent. The land is situated at Village Mamidipally and Grampanchayat Mamidipally, Mandal Saroornagar, Dist. Ranga Reddy, Andhra Pradesh. In both the purchase and sale agreements the land is mentioned as agricultural land as per land records. The Authorized Representative also produced a copy (not original) of the certificate purportedly issued on 21/01/2008 which is much prior to the date of sale of the impugned land and the date of filing of the Return of Income, stating that Mamidipally village, Saroornagar Mandal, Ranga Reddy District is a Grampanchayat and neither a municipality nor falls within 8 km radius of any nearest municipality. When all these facts were before the assessee at the time of filing of the return, the accounts were audited and tax audit report was also obtained, could there be any reason to offer the capital gains on sale of the impugned land? It is not very hard to find an answer. The impugned land was not at all cultivated in the recent past. The assessee purchased the land on 08/04/2004 for a purchase price of Rs.8,74,000/- and the assessee is not an agriculturist. The land was vacant, devoid of any agricultural cover, orchard or garden. Entries in revenue records may be good prima facie evidence. But

*the determination of the character of the land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What is really required 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. If there is nothing 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 purpose of earning an exemption under the Act.”*

- b) As far as the village Mamidipally is concerned, it has already become a hub of major non-agricultural economic activity including SEZ of Aviation Sector. It is known to the world that **the village Mamidipally is only 6 km far from the State Main City of Hyderabad**, even though its distance is about 46 km from the District Main City of Ranga Reddy. Even a google search on the web will confirm this fact. In the fact of such clear facts, there is very little or no merit in the assessee’s assertion that the impugned land was an agricultural land and it would be weird to say that the village<sup>2</sup> Mamidipally does not fall within a radius of 8 km from any nearest municipality/municipal corporation/cantonment board.
- c) Even an agricultural land situate in India comes to be treated as a capital asset within the meaning of section 2(14)(iii) when such land falls within 8 km radius from the local limits of a municipality whether known as a municipality, municipal corporation, notified area committee, town area committee or by any other name. in the instant case, the village Mamidipally is only 6 km far from the State Main City of Hyderabad. Vide **Notification S.O. 9447** issued from CBDT’s File No.164/3/87-ITA.I dated 06/01/1994, any agricultural land situated in areas within 8 km in all directions from the municipal limits of Municipal Corporation of Hyderabad is a capital asset within the meaning of section 2(14)(iii)(b).
- d) It is pertinent to note here that the **Greater Hyderabad Municipal Corporation** was formed on 16/04/2007 by merging 12 municipalities and 8 gram panchayats with the Municipal Corporation of Hyderabad. The municipalities are L.B. Nagar, Gaddi Annaram, Uppal Kalan, Malkajgiri, Kapra, Alwal, Qutubullapur, Kukatpally, Seilingampalle, Rajendranagar, Ramchandrapuram and Patancheru. The gram panchayats are Shamshabad, Satamarai, Jallapalli, **MAMIDIPALLY**, Mankhal, Almasguda, Sardanagar and Ravirala.
- e) In the light of above discussion, the assessee’s claim for exemption from capital gains tax arising out of sale of land situated at Mamidipally village is rejected outright. Since the value assessable by the stamp valuation authority in respect of the sale of land was much higher than the consideration received by the assessee, it is held that provisions of sub-section (I) of section 50C are applicable in the instant case and accordingly, the value assessable by the stamp valuation authority is deemed to be full value of the consideration received or accruing as a result of such transfer. Therefore, the long term capital gains on sale of the impugned land is determined and assessed as under:-

Party to whom the land was sold	Survey No.	Area	Sale price received (in Rs.)	Value as per stamp valuation authority (in Rs.)
G. Bhaskar Reddy	256	1 acre	20,00,000/-	55,00,000/-

M. Dharma Reddy	254	20 Guntas	10,00,000/-	27,50,000/-
L. Srinivas Reddy	253	06 Guntas	5,00,000/-	13,75,000/-
	256	04 Guntas		
A. Krishna Reddy	254	2 acres & 03 Guntas	41,50,000/-	1,14,12,500/-
A. Raghuvveer Reddy and A. Vasudev Reddy	253	2 acres	40,00,000/-	1,10,00,000/-
	Total →	5 acres & 33 Guntas	1,16,50,000/-	3,20,37,500/-

Full value of consideration (deemed u/s 50C)	Rs.3,20,37,500/-
Less: Indexed Cost of Acquisition – [Rs.8,74,000 x (582/480)]	<u>Rs. 10,59,725/-</u>
Long term capital gains as assessed	Rs.3,09,77,775/-

In view of the above, the long term capital gains on sale of land is assessed at Rs.3,09,77,775/-.”

#### 5. Ground Nos.1 to 9 :-

Ground nos. 1 to 9 involves a single issue and are disposed off together.

a) During the course of appellate proceedings before me the appellant filed written submissions dated 12.11.2012 which is as under –

(i) *“This appeal was filed against the Assessment Order for Assessment Year 2009-10 passed by Learned Assessing Officer where he has treated the Agriculture land as non-agriculture land for the purpose of Capital Gain Tax and levied tax on surplus as sale of agricultural land.”*

(ii) *“Learned Assessing Officer had mentioned in the order that village Mamidipally has already become a Hub of major non-agricultural economic activity including SEZ of Aviation Sector and village Mamidipally is only 6 km far from the state main city of Hyderabad. We are enclosing a letter No.R/177/TPS/HO/GHMC/2012/1023 dt.22/24.3.2012 issued by Greater Hyderabad Municipal Corporation Chief City Planner Town Planning Section (HO) issued by them under RTI Act that the Gram Panchayats of Shamshabad, Satamarai, Jallepally, Mamidipally, Mankhal, Almasguda, Saroor Nagar and Ravirala are not merged with Greater Hyderabad Municipal Corporation as on 1.4.2008. (Xerox copy enclosed) (Annexure 4). As such your goodself will appreciate that the Mamidapally village was a grampanchayat and does not fall under the radius of 8 km from the local limits of municipality, Municipal Corporation at the time of sale.”*

(iii) *“As the total land is agricultural land capital gain arising out of sale of agricultural land is not taxable. As per Section 2(14)(iii) the definition of Capital Assets inter alia does not include agriculture land in India not being land situate in any area within such distance, not be more than 8 kilometers from the local limits of any municipality or Cantonment Board referred (in term(a) as the Central Govt. may having regard to the extent or/and scope for urbanization of that are and other relevant consideration, specify in this behalf by notification in the Official Gazette. As the subject agricultural land is situated outside 8 km from the municipality/municipal corporation and in revenue records it is registered as agriculture land capital gain arising out of sale is not taxable.”*

(iv) *“From the above facts and circumstance, the aforesaid land is Agriculture land and does not attract capital gain and also section 50C of the Income Tax Act, 1961 does not apply.”*

**5.(b)** This office letters dated 16/11/2012, 24/12/2012 & 16/01/2013 were issued to the JCIT(OSD), Circle-8, Kolkata calling for Remand Report. Vide letter dated 22/01/2013, DCIT, Circle-8, Kolkata to the CIT(A)-VIII, Kolkata, the Assessing Officer informed that information has been sought u/s 133(6) of the Income Tax Act, 1961 from Greater Hyderabad Municipal Corporation. The gist of letter dated 10/12/2012 of DCIT, Cir-8, Kolkata to the Chief City Planner Greater Hyderabad Municipal Corporation, Hyderabad is as under –

1. *“Whether the village Mamidipally is within 8 km from the nearest location of main city of Hyderabad or not,*
2. *Whether Mamidipally Gram Panchayat was merged with Municipal Corporation of Hyderabad during the Financial Year 2008-09. If so, what was the date of merger.”*

**5.(c)** Vide letter dated 16/01/2015, the appellant filed written submission enclosing a letter of letter No.830/TPS/RTI/GHMC/2014/266 dated 18/08/14 / 14/09/14 and a copy of letter from the Deputy Collector & Mondal Revenue Collector, Saroonagar Mondal Ranga Reddy District Govt. of Andhra Pradesh. The appellant vide his letter dated 16/01/15 made the following submissions.

*“That a copy of letter received from Dy. Collector & Mondal Revenue Collector, Saroonagar Mondal Ranga Reddy District Government of Andhra Pradesh stating that the lands of MAMIDIPALLY, Village Saroonagar Mondal Ranga Reddy District are agriculture lands and the said village is a Gram Panchayet and neither a Municipality/Municipal Corporation nor falls within 8 km radius of any nearest Municipality/Municipal Corporation. A copy of the said Memo No. L No.A/Spl/2008 dated 21.01.2008 is enclosed.”*

**5.(d)** This office letter dated 20/01/15 to DCIT, Cir-8(1), Kolkata was issued, the relevant portion is quoted as under –

*“It is further seen that in the Assessment Order, it has been mentioned that Greater Hyderabad Municipal Corporation was formed on 16/04/2007 by merging 12 municipalities and 8 gram panchayets including Mamidipally with the Municipal Corporation of Hyderabad. However, the appellant has submitted copy of a letter received from Greater Hyderabad Municipal Corporation in response to its RTI query according to which Mamidipally Gram Panchayet does not come under the purview of Hyderabad Municipal Development Authority. A copy of the said letter is also enclosed herewith. You may offer your comments, if any, on the same also in your report.”*

**5.(e)** Vide letter dated 16/10/15 to the undersigned, Remand Report along with enclosures by DCIT, Cir.-8(1), Kolkata was submitted which is as under –

*“The copy of the reply received from Chief City Planner, GHMC in pursuance to notice u/s 133(6) dated 13/02/2015 was also enclosed with the letter dated 13/04/2015. The copy of the notification dated 16/04/2007 is enclosed for your kind perusal.”*

*As per section 2(14)(iii) of the Act, capital asset does not include any agricultural land in India, not being land situated in any area within eight kilometers, from the local limits of any municipality or cantonment board. The impugned land treated as capital asset in the order u/s 143(3) of the Act dated 05/12/2011 is situated in Mamidipally. The village Mamidipally is a hub of major non-agricultural economic activity including SEZ of Aviation Sector and the impugned land could not be considered as an agricultural land. Furthermore, the village Mamidipally is adjacent to GHMC limits and is within 8 km from the nearest municipality. This fact has been duly confirmed by Chief City Planner, Greater Hyderabad Municipal Corporation (GHMC). Accordingly, an amount of Rs.3.09 crore was rightly assessed as Long term Capital Gain on the sale of Land in the Assessment Order dated 05/12/2011."*

**5.(f)** This office letter dated 27/10/2015 was issued to the appellant to file rejoinder. Vide letter dated 04/11/2015, the appellant made the following submissions in the rejoinder. The relevant portion is quoted as under –

*"The enclosures with letter No.2214 dated 13/03/2015 of Chief City Planner Greater Hyderabad Municipal Corporation being Go.Ms No.261 dated 16/04/2007 has a mentioned about 12 Municipalities namely, 1. L B Nagar, 2. Gaddiannaram, 3. Uppal Kalan, 4. Malkajgiri, 5. Kapra, 6. Alwal, 7. Quthbullapur, 8. Kukatpally, 9. Serilingampalli, 10. Rajendranagar, 11. Ramchandrapuram and 12. Patacharu and 8 Gram Panchayats namely 1. Shamsabad, 2. Satamarri, 3. Jalapalli, 4. Mamidipalli, 5. Mankhal, 6. Almasguda, 7. Sardarnagar and 8. Ravarala. But in the Notification is only for merger of 12 municipalities in Greater Hyderabad Municipal Corporation. There is no mention of merger of Gram Panchayats in the notification. As the 8 Gram Panchayats were not merged, this notification is not applicable on us.*

*The Chief City Planner as per his reply No.R/177/TPS/HO/GHMC/1023 dt.22/03/2012 (copy already submitted now again enclosed) had mentioned that all the 8 Gram Panchayats namely Shamsabad, Satamarri, Jalapalli, Mamidipalli, Mankhal, Almasguda, Sardarnagar and 8. Ravarala were not merged with Greater Hyderabad Municipal Corporation as on 01/04/2008. The original letter is being produced for your verification.*

*In view of this it is submitted that the Notification referred by the Learned Assessing Officer is not applicable to our case since by such notification Mamidipally Gram Panchayat was not merged with GHMC."*

**5.(g)** I have gone through the Assessment Order, Remand Report of the Assessing Officer, Rejoinder and submissions of the appellant. The letter dated 10/03/2015 from Chief City Planner (GHMC) to DC, Cir-8(1), Kolkata enclosed by the Remand Report of DC, Cir.-8(1), Kolkata is quoted as under –

*"With reference to your letter cited above, it is to inform you that the Hyderabad City is within the Greater Hyderabad Municipal Corporation (GHMC) and covered with the area to an extent of 7250 kilometers. The Mamidipally village is adjacent to GHMC limits and is within the 8 km from the GHMC boundary. A copy of the site location plan is herewith enclosed for kind perusal."*

**5.(h)** As per Sec.2(14)(iii) of the Income Tax Act, 1961 capital asset does not include any agricultural land in India, not being land situated in any area within 8 kms from the local limits of any Municipality or Cantonment Board. The impugned land treated as capital asset in the order u/s 143(3) of the Act dated 05/12/2011 is situated in Mamidipally. The village Madimidipally is a hub of major non-agricultural economic activity including SEZ of Aviation Sector and the impugned land cannot be considered as an agricultural land. Furthermore, the village Mamidipally is adjacent to GHMC limits and is within 8 km from the nearest municipality. This fact has been duly confirmed by **Chief City Planner, Greater Hyderabad Municipal Corporation (GHMC)**. Accordingly, an amount of Rs.3,09,77,775/- crore was rightly assessed as Long Term Capital Gain by the Assessing Officer on the sale of Land in the Assessment Order dated 05/12/2011.

In view of the above, the action of the Assessing Officer is upheld and these grounds of appeal are dismissed.

3. We have heard rival contentions. Relevant case records comprising of the erstwhile Andhra Pradesh state government notification dt. 16/04/2017 merging 8 gram panchayats in the Greater Hyderabad Municipal Corporation (GHMC), copy of the city planner's letter dt. 22/03/2012 clarifying Mamidipally gram panchayat as not merged in the said gram panchayat as on 01/04/2008, Hyderabad Metropolitan Development Authority Director Planning-II letter dt. 19/03/2015 addressed to the DCIT, Circle-8(1) u/s 133(6) of the Act that the said panchayat consisted of three different villages, government of Andhra Pradesh revenue department memo dt. 21/01/2008 clarifying that the lands in the said panchayat in the village Saroonagar Mandal, Ranga Reddy district are agricultural not falling within 8 Kms. of any municipality or municipal corporation, copy of Government Notification dt. 06/01/1994 issued u/s 2(1A)(C) provisos under clause (II)(B) and Section 2(14)(III)(B) of the Act, copy of GHMC's letter dt. 18/08/2014 stating Mamidapally gram panchayat not to have been merged with the corporation, copy of remand report dt. 16/10/2015 along with covering letter, tax payers rejoinder thereto, sale deed related documents, purchase deed dt. 08/04/2004, agreement cum power-of-attorney and various returns as well as scrutiny related documents; stand perused.

4. There is no dispute that the assessee had indeed sold its land in question measuring 5.33 acres situated in village Mamidipally Mandal Saroonagar district Ranga Reddy in erstwhile Andhra Pradesh during the relevant previous year; The sole dispute in the instant lis that arises for our apt adjudication is as to whether the assessee's land sold was a capital asset or not falling within 8 Kms. of the "GHMC" u/s 2(14)(III)(B) of

the Act as applicable in the impugned Assessment Year. The taxpayer stand throughout is that its land is not a capital asset since it is situated beyond 8 Kms. distance of any municipality whereas the Revenue's case is that Mamidipally gram panchayat is adjacent to the GHMC limits. And also that it happens to be a hub of major economic activity including aviation sector. We find no merit in the latter's stand based on the lower authority's respective findings. We make it clear first of all that there is no rebuttal coming from the department that the land in question has ever been converted from agricultural to non-agricultural use at any point of time before the sale in question. The state government's revenue records strongly support the assessee's case rather than its lands are very much agricultural in nature. The Assessing Officer tried to apply "performance" test that for determination of land in issue what is required to be shown is connection with the agricultural purpose is the use and not the mere possibility of the land user by some possible future owner for agricultural objects. We see no merit in the impugned reasoning. The legislature makes it clear that agricultural lands beyond 8 Kms. from the local municipality etc.; as the Central Government may, having regard to the extent/scope for urbanisation and other consideration, specifically in the behalf. We keep in mind the statutory provision to hold that there is no evidence on record put forth at the Revenue's behest specifically quoting any road or surface connectivity of the assessee's lands to be within 8Kms. distance from any municipality including "GMCH". The lower authorities have strongly relied upon the some aviation sector "SEZ" which cannot be taken as the relevant factor is 8 Kms distance not fulfilled u/s 2(14)(III)(B) of the Act. They have further relied upon "Google" assistant in coming to the conclusion that the assessee's lands are within 6 Kms. of the GHMC limits. Such a method has nowhere been prescribed in the Act. The legislature; in Finance Act, 2013 *w.e.f.* 01/04/2013, has made it clear whilst substituting the earlier provision with the distance of the land in question has to be measured as per aerial distance. This is not the Revenue's case that the said amendment carries any retrospective operation. Meaning thereby that 8 Kms distance condition has to be measured in terms of the road only as held by the hon'ble Delhi High Court in the case of *CIT vs. Vijay Singh Kadan [2015] 378 ITR 71 (Delhi)*. The Revenue fails to dispute that neither of the lower authorities has quoted any surface link between the assessee's land and the nearest municipality namely GHMC so as to treat its lands as capital asset giving rise to long term capital gains on transfer. We therefore accept the assessee's sole substantive ground and direct

the Assessing Officer to delete the impugned long term capital gains addition of Rs.3,09,77,775/-.

5. This assessee's appeal is allowed.

***Kolkata, the 25<sup>th</sup> day of January, 2019.***

Sd/-  
**[M. Balaganesh]**  
Accountant Member  
Dated : 25.01.2019  
{SC SPS}

Sd/-  
**[S.S. Godara]**  
Judicial Member

*Copy of the order forwarded to:*

1. ***Kahitan Lefin Limited***

***46C, J L Nehru Road  
Kolkata - 700 071***

2. ***Commissioner of Income Tax (Appeals)-11, Kolkata***

3. CIT(A)-  
4. CIT- ,  
5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches