

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.143/Viz/2014  
(निर्धारण वर्ष/ Assessment Year: 2010-11)

Smt.Parimala Manickavel  
Director of Bharathi Cotton &  
Ginning Mill (P) Ltd.  
11/25, Gorantla  
Amaravathi Road  
Guntur

Vs. Deputy Commissioner of  
Income Tax  
Central Circle  
Vijayawada

[PAN : AHWPM9993P]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से / Assessee by : Shri G.V.N.Hari, AR  
राजस्व की ओर से / Revenue by : Shri D.K.Sonowal, CIT DR  
सुनवाई की तारीख / Date of Hearing : 06.02.2019  
घोषणा की तारीख/Date of Pronouncement : 20.03.2019

आदेश /ORDER

**Per Bench:**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Guntur vide I.T.A. No.385/CIT(A)/GNT/11-12 dated 29.01.2014 for the Assessment Year (A.Y.) 2010-11.

2. All the grounds of appeal are related to the addition of Rs.1,27,91,755/- claimed as exemption u/s 2 (14)(iii)(b) of the Act.

2.1. In this case, the assessee filed the return of income declaring total income of Rs.2,11,480/- and agricultural income of Rs.1,16,045/- on 11.07.2011. A search u/s 132 was carried out in the group cases of Arunachalam Manickavel on 15.10.2009 and the notice u/s 142(1) was issued to the assessee calling for the return of income and in response, the assessee filed a letter requesting to treat the return of income already filed on 13.07.2011 as return in response to the notice issued u/s 142(1). During the reassessment proceedings, the AO found that she claimed to have carried the agricultural operations in 12.595 acres of dry land located at Nidumukkala and Pedaparimi villages.

2.2. The AO further noticed that in the impugned assessment year, the assessee had sold 11.12 ½ cents of land located at D.No.281, 280 in Pedaparimi Grama Panchayath, Guntur vide document No.3513/2009 on 27.11.2009 to M/s Bharathi Consumer Care Products Private Ltd., for a consideration of Rs.1,40,00,000/- and claimed the same as exempt u/s 2(14)(iii) of the Act as sale of agricultural land. The purchaser company is incorporated on 06.08.2009 with the object of manufacturing and trading

of toilet soaps, detergent soaps etc., and the assessee Smt.Parimala Manickvel is the Managing Director of the said Company. The subject lands are located at Pedaparimi village and were originally purchased by the assessee during the A.Y. 2008-09 as per the details given below:

S.No.	Doc.No.	Date of Purchase	Extent of Land	Names of Sellers	Purchase Consideration (Rs.)
1	3221/01	03.08.2007	AC 11.12 ½ cents	Gorantla Brahma Naidu Gorantla Visalakshmi	11,12,500
2	3223/07	03.08.2007	0.09 cents	Gorantla Brahma Naidu	9,000

2.1. During the impugned assessment year the assessee has sold the agricultural land of 11.12½ acres and worked out the long term capital gains of Rs.1,27,91,755/- and claimed the same as exempt u/s 2(14)(iii)(b) of Act, resulting in Nil income. The AO during the assessment proceedings found that the payments were made by the assessee to Urban Development Authority for the above mentioned lands for conversion of the lands for non agricultural purpose as per the details given below :

S.No.	Date	Nature of Payment	Amount paid Rs.
1	9.5.2007	Cash paid Urban Development authority towards development charges	1,75,235
2	9.5.2007	Cash paid Urban Development Authority towards recommendation fee	17,500
3.	3.8.2007	DD No.980324 to Gorantla Vishalakshi for purchase of land as per purchase deed No.3221/07, dt.3.8.2007	5,00,000

4.	20.12.2007	Cash paid Urban Development authority towards application fee	12,000
5.	29.1.2008	Cheque towards payment of development charges to Urban Development authority	13,61,640
6.	29.1.2008	Cheque towards payment of Urban Development authority recommendation charges	42,000
	Total		21,08,375

2.2. When the AO has asked the assessee for the details and purposes of the payments made to Urban Development Authority, the assessee explained that the said amount was paid as fee to Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority for conversion of 2 acres of agricultural land located at Nidumukkala village which was purchased during the A.Y. 2002-03 and for Ac.11.21 cts of Pedaparimi village to industrial use so that the same can be used for the purpose of construction of factory building by M/s Bharathi Consumer Care Products Private Ltd. Since the assessee has made the application for conversion of land before the sale of land, the AO held that the land in question was a capital asset and not exempt u/s 2(14)(iii)(b) of the Act and accordingly rejected the exemption claimed by the assessee and brought to tax.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of the AO holding that the

land in question was a capital asset, not an agricultural land exempt u/s 2(14) of the Act. The Ld.CIT(A) allowed the conversion charges of Rs.16,41,450/- as expenditure for conversion of land on alternate submission made by the assessee. Accordingly, the appeal of the assessee was partly allowed.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal.

5. During the appeal hearing, the Ld.AR argued that the assessee had purchased the agricultural land in the year 2007 for a consideration of Rs.11,12,500/- and sold the same for a consideration of Rs.1,40,20,000/- vide document No.3513/2009 dated 27.11.2009. The assessee submitted the pass book copy of the previous owner of the land according to which the land purchased was an agricultural land. The assessee also submitted the copy of the sale deed and the nature of the land was mentioned in the sale deed as agricultural land. There is no dispute that the assessee had purchased the agricultural land and sold the agricultural land as per the documents placed before us. Merely because the assessee had initiated the process for conversion of the land by making the payment of conversion fee, it is incorrect to hold that the land in question was non-agricultural land. The second

reason for rejection of exemption was that immediately after the sale of land, the purchaser has converted the land as non-agricultural land and used for the non-agricultural purposes. The Ld.AR submitted that subsequent conversion of land has no effect on taxability of income in the hands of the assessee. Merely because of the reason that the assessee was the Managing Director of the company, which had purchased the land, the same fact cannot make the sale of agricultural land as non-agricultural land. The Ld.AR argued that the Ld.CIT(A) erred in holding the agricultural land as non-agricultural land and treating the same as capital asset and taxing the sale proceeds as capital gains. The Ld.AR further submitted that the order of the Ld.CIT(A) should be set aside and appeal be allowed.

6. On the other hand, the Ld.DR supported the orders of the Ld.CIT(A).

7. We have heard both the parties and perused the material placed on record. The assessee had purchased the agricultural land of 11.12 ½ acres vide document No.3221/07 for a consideration of Rs.11,12,500/- and 0.09 cents vide document No.3223/07 for a consideration of Rs.9,000/-. The said land was sold to M/s Bharathi Consumers Care Products for a consideration of Rs.1,40,20,000/- on 27.11.2009. The resultant gain was claimed as exempt u/s 2(14)(iii)(b) of the Act, since it was agricultural land. M/s Bharathi

Consumer Care Products is managed by the assessee and she happens to be the Managing Director of the Company. Immediately on purchase of the said land, the assessee had intention for converting the land for non-agricultural purposes and accordingly initiated the process for conversion of land to build the factory for M/s Bharathi Consumer Care Products Ltd., thus the assessee made the payment of Rs.21,08,375/- towards fee for conversion of the said land of Nidumukkala village as well as 11.21 ½ cents of agricultural land in Pedaparimi Village. The assessee accepted the fact that she had initiated the process for conversion of land for the sake of M/s Bharathi Consumers Products (P) Ltd. Since the company was not in existence at the point of time the process was initiated by her. The land was sold on 27.11.2009 and the application for conversion of land was submitted in the Revenue Divisional Office by Bharathi Consumer Care Products vide their letter 07.07.2010 as evidenced from page No.27 to 37 and page No.40 to 42 of the paper book. The Mandal Revenue Inspector has submitted the report on 09.08.2010 recommending the conversion of land which was placed at page No.43 of the paper book. The Tahsildar, Thullur has submitted a proposal recommending the conversion of agricultural land for non-agricultural purposes vide R.C. No.214/2010-B dated 23.08.2010 and the RDO Guntur has issued the proceedings for conversion of land vide order No.3142/2010/A dated

13.01.2012. The RDO allowed the conversion of land of 11.12 ½ cents and rejected the balance of 0.09 cents in Sy.No.280/3A. All the events of conversion of land for non agricultural purposes took place subsequent to the sale of the land. Therefore, it is observed from the above evidences that before the sale of the land, though the assessee had initiated the process of conversion, permission was obtained by the purchaser subsequent to the sale of the land. Even though the predecessor has requested for conversion of land of 11.21½ cents of agricultural land, the competent authority has permitted only 11.12 ½ cents of land which shows that mere application for conversion does not give any right to the land owner to use the land for non agricultural purposes and it is for the competent authority to reject or accord permission for conversion of land. Therefore, unless the process is completed and due permission is obtained for conversion of the land, the agricultural land cannot be treated as non-agricultural land and the same cannot be held to be the capital asset. In the instant case, though the assessee has initiated the process, the conversion was not completed and the land continued to be agricultural land. The process for conversion was completed and permission was finally given by the competent authority vide proceedings in Rc No.3142/2010/A dated 13.01.2012. The assessee has sold the agricultural land which is supported by the sale deed. It is undisputed fact that the land is not located in

the vicinity of municipal or cantonment area within the radius of 8 km to hold that it is urban land. The land is agricultural land and no developmental activity had taken place. The assessee also has submitted that the land was used for agricultural purposes and no other evidences were found to hold that the land in question was not agricultural land except payment of fee. No other development was made by the assessee to convert the agricultural land to non agricultural land. The land was sold in acres by the assessee, but not in square yards or square feet. The District Registrar also collected the stamp duty according to the acreage and per acre rate, but not per square yard rate. Evidences placed by the assessee in the form of sale deed, the recitals of sale deed, pass books of earlier vendors of the land, the purchaser's letter dated 07.07.2010 addressed to Revenue Divisional Officer for conversion of land placed in page No.42 shows that the land in question was agricultural land. The letter of Tehsildar placed in page No.45 of the paper book and the final proceedings of competent authority for conversion of land dated 13.01.2012 placed in page No.47 goes to prove that the conversion took place only subsequent to sale of the land. Therefore, we hold that the lands sold by the assessee were agricultural lands and the assessee is entitled for exemption u/s 2(14)(iii)(b) of the Act. Accordingly, we set aside the order of the

Ld.CIT(A) and direct the AO to allow exemption claimed by the assessee. The appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20<sup>th</sup> March, 2019.

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

**लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 20.03.2019

L.Rama, SPS

Sd/-

(वी.दुर्गा राव)

**(V. DURGA RAO)**

**लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 20.03.2019

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Smt. Parimala Manickavel, Director of Bharathi Cotton & Ginning Mill (P) Ltd., 11/25, Gorantla, Amaravathi Road, Guntur
2. राजस्व/ The Revenue – Income Tax Officer, Ward-1(4), Visakhapatnam
3. The Commissioner of Income Tax (Central), Hyderabad
4. The Commissioner of Income-Tax (Appeals), Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, Visakhapatnam