

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISA KHAPATNAM "SMC" BENCH, VISA KHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER**

**ITA No. 72/VIZ/2019  
(Asst. Year : 2013-14)**

Parvathaneni Ramakrishna, vs. DCIT, Circle-2(1),  
D.No. 54-20-9/5, Flat No.6, Vijayawada.  
Deepika Apartment, Srinagar  
Colony, Vijayawada.

PAN No. AIYPP 4347 F  
(Appellant)

(Respondent)

Assessee by : Shri C.Subrahmanyam, FCA  
Department By : Shri B.Rama Krishna, Sr.DR

Date of hearing : 06/01/2020.  
Date of pronouncement : 26/02/2020.

**ORDER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Vijayawada, dated 26/12/2018 for the Assessment Year 2013-14.

**2.** Facts of the case, in brief, are that assessee is an individual, filed his return of income by admitting total income of Rs.36,60,370/-. The Assessing Officer after following due procedure assessment was completed u/sec. 143(3) of the Act, dated 31/03/2016. In the assessment order, the Assessing Officer has noted that assessee has purchased agricultural land through

sale agreement and registered GPA during Financial Years 2006-07 to 2008-09 in Tavarekere village, the details of which are follows:

F.Y.	Date of transaction	Survey No.	Extent of land purchased
2006-07	09/08/2016	150/1	Ac. 8.20 guntas
2008-09	06/10/2008	141/3	Ac. 1.15.8 guntas
2008-09	21/07/2008	141/15	Ac. 0.05 guntas
Total			Ac. 10.05 Guntas

Subsequently, the assessee has converted the above agricultural land into non-agricultural land by obtaining necessary approvals from the Revenue authorities on the following dates:

Survey No.	Date of approval for conversion	F.Y.
150/1	01/01/2008	2007-08
141/3	01/08/2011	2011-12
141/15	19/04/2012	2012-13

The assessee subsequently divided the entire land into plots and sold the same to M/s. Reserve Bank Employees' Housing Welfare Society (REHWS) for a consideration of Rs. 380/- per sq.ft. through regd. agreement bearing document No.1992/2012-13, dated 13/08/2012. The assessee has shown the profit arising out of the sale of the plots as income from the capital gains, however, the Assessing Officer has not accepted the explanation of the assessee on the ground that assessee has purchased the lands with an intention to make a profit and therefore treated the

same as income from business and accordingly assessment is completed.

**3.** On appeal, Id. CIT(A) confirmed the order of the Assessing Officer.

**4.** Being aggrieved, the assessee is in appeal before this Tribunal.

**5.** Ld.AR has submitted that the assessee has purchased the agricultural lands. As per Karnataka land laws, the assessee cannot by agricultural lands, and therefore he converted the same into non-agriculture and divided into plots and entered into agreement with the REHWS and the land is developed by the REHWS and therefore profit received out of the entire sale consideration has to be treated as income from capital gains.

**6.** On the other hand, Id.DR has submitted that the assessee had purchased the agricultural lands with an intention to resale for making profit and therefore assessee without doing any agricultural operations, sold the same to the REHWS after conversion into plots, therefore the amount received out of the transaction has to be considered as 'adventure in the nature of trade' and he strongly supported the orders of the authorities below.

**7.** I have heard both the parties, perused the material available on record and gone through orders of the authorities below.

**8.** The assessee has purchased the agricultural lands on different dates and subsequently converted the same into non-agriculture. The very same land was plotted and entered into agreement with REHWS on 13/08/2012 and sold the same. One of the important facts in this case is that assessee had purchased the agricultural lands and no agricultural operations are carried out and converted into non-agricultural lands by taking necessary approvals from the competent authority and plotted the same. From the above, it is very clear that the intention of the assessee is to make profit out of the transaction, therefore in my opinion, the entire activity carried by the assessee i.e. purchasing the agricultural land converting into non-agriculture and plotted the same and sold the plots to the REHWS is the activity 'adventure in the nature of trade', therefore it has to be treated as business income and not capital gains. The Id. CIT(A) by following the judgment of the Hon'ble Supreme Court in the case of *G.Venkataswamy Naidu & Co. Vs. CIT* [(1959) 35 ITR 594] came to a conclusion that what is the intention of the assessee has to be seen to decide whether transaction is 'adventure in the nature of trade or not. The Id. CIT(A) by considering the principles laid

down by the Hon'ble Supreme Court in the above referred to judgment, in my opinion, he came to a correct conclusion that the activity carried by the assessee in the present case is 'adventure in the nature of trade' for the reason that from the beginning assessee's intention is to make profit out of the sale transaction and not to hold it. The relevant portion of the order of the Id.CIT(A) is extracted as under:-

*"This question has been the subject-matter of several judicial decisions; and in dealing with it all the judges appear to be agreed that no principle can be evolved which would govern the decision of all cases in which the character of the impugned transaction falls to be considered. When s. 2, sub-s. (4), refers to an adventure in the nature of trade it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterised by some of the essential features that make up trade or business but not by all of them; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade. Sometimes it is said that a single plunge in the waters of trade may partake of the character of an adventure in the nature of trade. This statement may be true; but in its application due regard must be shown to the requirement that the single plunge must be in the waters of trade. In other words, at least some of the essential features of trade must be present in the isolated or single transaction. On the other hand, it is sometimes said that the appearance of one swallow does not make a summer. This may be true if, in the metaphor, summer represents trade; but it may not be true if summer represents an adventure in the nature of trade because, when the section refers to an adventure in the nature of trade, it is obviously referring to transactions which individually cannot themselves be described as trade or business but are essentially of such a similar character that they are treated as in the nature of trade. It was faintly argued for the appellant that it would be difficult to regard a single or an isolated transaction as one in the nature of trade because income resulting from it would inevitably lack the characteristics attributed to it by Sir George Lowndes*

*in Commissioner of Income Tax v. Shaw Wallace and Company (1932) 59 I.A. 206 'Income their Lordships think', observed Sir George Loundes, " in this Act connotes a periodical monetary return coming in with some sort of regularity or expected regularity from definite sources Then the learned judge proceeded to observe that income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something which is often loosely spoken of as capital". In our opinion, it would be unreasonable to apply the test involved in the use of this pictorial language to the decision of the question as to whether a single or an isolated transaction can be regarded as an adventure in the nature of trade. In this connection we may, with respect, refer to the comment made by Lord Wright in Raja Bahadur Kamakshya Narain Singh of Ramgarh v. Commissioner of Income Tax [1943] 11 ITR 513 that " it is clear that such picturesque similes cannot be used to limit the true character of income in general ". We are inclined to think that, in dealing with the very prosaic and sometimes complex questions arising under the Income-tax Act, use of metaphors, however poetic and picturesque, may not help to clarify the position but may instead introduce an unnecessary element of confusion or doubt.*

*As we have already observed it is impossible to evolve any formula which can be applied in determining the character of isolated transactions which come before the courts in tax proceedings. It would besides be inexpedient to make any attempt to evolve such a rule or formula. Generally speaking, it would not be difficult to decide whether a given transaction is an adventure in the nature of trade or not. It is the cases on the border line that cause difficulty. If a person invests money in land intending to hold it, enjoys its income for some time, and then sells it at a profit, it would be a clear case of capital accretion and not profit derived from an adventure in the nature of trade. Cases of realisation of investments consisting Of purchase and resale, though profitable, are clearly outside the domain of adventures in the nature of trade. In deciding the character of such transactions several factors are treated as relevant. Was the purchaser a trader and were the purchase of the commodity and its resale allied to his usual trade or business or incidental to it? Affirmative answers to these questions may furnish relevant data for determining the character of the transaction. What is the nature of the commodity purchased and resold and in what quantity was it purchased and resold? If the commodity purchased is generally the subject-matter of trade, and if it is purchased in very large quantities, it would tend to eliminate the possibility of investment for personal use, possession or Government. Did the purchaser by*

*any act subsequent to the purchase improve the quality of the commodity purchased and thereby made it more readily resaleable? What were the incidents associated with the purchase and resale? Were they similar to the operations usually associated with trade or business? Are the transactions of purchase and sale repeated? In regard to the purchase of the commodity and its subsequent possession by the purchaser, does the element of pride of possession come into the picture? A person may purchase a piece of art, hold it for some time and if a profitable offer is received may sell it. During the time that the purchaser had its possession he may be able to claim pride of possession and aesthetic satisfaction ; and if such a claim is upheld that would be a factor against the contention that the transaction is in the nature of trade. These and other considerations are set out and discussed in judicial decisions which deal with the character of transactions alleged to be in the nature of trade. In considering these decisions it would be necessary to remember that they do not purport to lay down any general or universal test. The presence of all the relevant circumstances mentioned in any of them may help the court to draw a similar inference; but it is not a matter of merely counting the number of facts and circumstances pro and con; what is important to consider is their distinctive character. In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction; and so, though we may attempt to derive some assistance from decisions bearing on this point, we cannot seek to deduce any rule from them and mechanically apply it to the facts before us.*

*In this connection it would be relevant to refer to another test which is sometimes applied in determining the character of the transaction. Was the purchase made with the intention to resell it at a profit? It is often said that a transaction of purchase followed by resale can either be an investment or an adventure in the nature of trade. There is no middle course and no half-way house. This statement may be broadly true; and so some judicial decisions apply the test of the initial intention to resell in distinguishing adventures in the nature of trade from transactions of investment. Even in the application of this test distinction will have to be made between initial intention to resell at a profit which is present but not dominant or sole; in other words, cases do often arise 'Where the purchaser may be willing and may intend to sell the property purchased at profit, but he would also intend and be willing to hold and enjoy it if a really high price is not offered. The intention to resell may in such cases be coupled with the intention to hold the property. Cases may, however,*

*arise where the purchase has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it. The presence of such an intention is no doubt a relevant factor and unless it is offset by the presence of other factors it would raise a strong presumption that the transaction is an adventure in the nature of trade. Even so, the presumption is not conclusive; and it is conceivable that, on considering all the facts and circumstances in the case, the court may, despite the said initial intention, be inclined to hold that the transaction was not an adventure in the nature of trade. We thus come back to the same position and that is that the decision about the character of a transaction in the context cannot be based solely on the application of any abstract- rule, principle or test and must in every case depend upon all the relevant facts and circumstances.*

22. *As can be seen from the above, It was held by the Hon'ble Apex Court that if a person invests money in land intending to hold it, enjoys its income for some time and then sells it at profit, it would be a clear case of capital accretion and not profit derived from an adventure in the nature of trade and that cases of realisation of investment consisting of purchase and resale are clearly outside the domain of adventure in the nature of trade though profitable. It was also held by the Hon'ble Apex Court that where the purchase has been made solely and exclusively with the Intention to resell at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it, it would raise a strong presumption that the transaction is an adventure in the nature of trade.*

23. *The legal principles laid down by the Hon'ble Supreme Court as mentioned above have been applied to the facts of the assessee's case in order to decide the character of the transactions of purchase and sale of land carried out by the assessee. It is seen that the entire extent of agricultural lands of Ac. 10.05 Guntas held by the assessee were purchased by him during the F Ys 2006-07 & 2008-09. It is seen that after purchasing Ac.8.20 Guntas of Agricultural land in Survey No.-15C/1 in Tavarkere Village initially during the F.V. 2006-07, the assessee applied for conversion of the said land into nonagricultural land and obtained the necessary approval from the revenue authorities for such conversion during the F.Y.2007-08 on 01.01.2008. Subsequently, the assessee purchased further extent of agricultural land of Ac.0.05 Guntas in survey no. 141/15 of Tavarkere Village vide Sale agreement & registered GPA dated 21.07.2008 and agricultural land of Ac.1.15.8 guntas in survey no. 141/3*

*of Tavarkere Village vide sale deed dated 06.10.2008. These additional purchases of agricultural land made during F.Y. 2008-09 represented the land which is situated adjacent to the earlier land of Ac. 8.20 Guntas purchased in survey no.150/1. These additional lands purchased during F.Y.2008-09 were also converted into non-agricultural lands by the assessee during the F.Ys. 2011-12 & 2012-13 by obtaining necessary approval for such conversion from the revenue authorities on 01.08.2011 and 19.04.2012 respectively.*

*24. It is therefore seen that though the assessee purchased agricultural lands during the FXs. 2006-07 & 2008-09, no agricultural operations were carried out by him on the said lands and no agricultural income was derived by him from the said lands. The agricultural land of Ac.8.20 Guntas purchased during F.Y.2006-07 was immediately converted by the assessee into non-agricultural land during F.Y. 2007-08 itself. The fact that the agricultural land purchased by him was converted into non-agricultural land in the following year without carrying out any agricultural operations during the intervening period clearly brings out the intention of the assessee at the time of the purchase of the agricultural land itself to resell the same at a profit after converting it into nonagricultural land. Further, the inference of such an intention is strengthened by the fact that the assessee subsequently purchased adjoining agricultural lands during F.Y. 200809 and converted the said lands also into non-agricultural lands during FYs. 2010-11 & 2011-12 without carrying out any agricultural operations on the said lands also. The sequence of transactions carried out by the assessee and their nature leave no room for doubt that the purchases of the agricultural lands were not made by him with the intention of holding the said lands as an investment and derive income there from. The facts and circumstances unambiguously indicate that the assessee made purchases of agricultural lands with the sole and exclusive intention to resell the said lands at a profit after converting them into non-agricultural lands. In view of this, the purchases and sale of land by the assessee clearly fall under the ambit of 'adventure in the nature of trade' as per the legal principles laid down by the Hon'ble Supreme Court in the case of G.Venkataswamy Naidu & Co. Vs. CIT (Supra).*

*25. It has been contended by the assessee that the transactions carried out by him do not represent adventure in the nature of trade as the approval for layout from Ma 9' Planning authority was applied for and obtained as per the discussions held with REHWS and that the entire development work in the land was carried out by the said vendee society at its own cost and risk It was also contended that no marketing efforts were made by the assessee for sale of plots as all the plots were sold to the members of the said society at ,a.*

*predetermined sale price as per the registered sale agreement entered into with the vendee society. On examination, it is seen that though these contentions of the assessee are factually true, the same do not have any bearing on the issue under consideration and the inference drawn regarding the character of transaction in the preceding paragraph based on the legal principles laid down by the Hon'ble Supreme Court. These facts regarding obtaining the layout approval at the instance of the vendee society and undertaking-of the development work by the said society as per the approval layout do not alter the sole and exclusive intention of the assessee which, was present at the time of the purchase of the agricultural lands to resell the same at a profit after converting them into non-agricultural lands. At best, these facts would only indicate that the assessee was willing to allow the vendee society to derive the profits from carrying out the development works in the land while the profits from resale of the lands after converting them into non-agricultural lands is derived by the assessee. Hence, these contentions of the assessee are required to be disregarded as lacking in any merit.*

*26 In view of the foregoing discussion, it is held that the transactions of purchase of agricultural lands, conversion of the said lands into non-agricultural lands and sale of plots as per the approval layout in the said lands by the assessee bear the character of 'adventure In the, nature of trade' and consequently, the income derived by the assessee from the sale of plots during the year has been rightly assessed by the AO as income under, the head 'profits and gains of business'. The action of the AO is' accordingly upheld and this ground of appeal of the assessee is dismissed."*

**9.** I have considered the entire factual matrix of the case and find that assessee's intention is only to make profit out of the transaction, therefore in my opinion, Id. CIT(A) correctly decided that the activity carried by the assessee is 'adventure in the nature of trade', therefore I find no reason to interfere with the order passed by the Id. CIT(A).

**10.** So far as the development undertaken by the REHWS is concerned, it is not a material fact. The material fact in this case

is only intention of the assessee, therefore, I find no force in the argument of the Id.AR, therefore same is rejected. Thus, this appeal filed by the assessee is dismissed.

**11.** In the result, appeal filed by the assessee is dismissed.

Order Pronounced in open Court on this 26<sup>th</sup> day of Feb., 2020.

Sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 26<sup>th</sup> February, 2020.**

**vr/-**

*Copy to:*

1. *The Assessee - Parvathaneni Ramakrishna, D.No. 54-20-9/5, Flat No.6, Deepika Apartment, Srinagar Colony, Vijayawada.*
2. *The Revenue - DCIT, Circle-2(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.