

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI**  
**श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्रीजी.मंजुनाथ, लेखासदस्यके समक्ष**  
**BEFORE SHRIV.DURGA RAO, JUDICIAL MEMBER**  
**AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.No.2841/Chny/2019**

(निर्धारणवर्ष / Assessment Year: 2013-14)

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|---|----|---|
| M/s. Shri Santhosh Meenakshi Textiles Pvt Ltd.<br>15, Sehuram , Sundresa Iyer Layout<br>Trichy Road,<br>Coimbatore-641 018. | Vs | Income Tax Officer,<br>Corporate Ward-3,<br>Coimbatore. |
| PAN: AAJCS 4184M  |    |   |
| (अपीलार्थी/Appellant)   |    | (प्रत्यर्थी/Respondent)                                 |

|                                |   |                            |
|--------------------------------|---|----------------------------|
| अपीलार्थीकीओरसे/ Appellant by  | : | Mr.S.Sridhar, Advocate     |
| प्रत्यर्थीकीओरसे/Respondent by | : | Mr.G.Chandrababu, Addl CIT |

|                                     |   |             |
|-------------------------------------|---|-------------|
| सुनवाईकीतारीख/Date of hearing       | : | 22.02.2021  |
| घोषणाकीतारीख /Date of Pronouncement | : | 10. 03.2021 |

**आदेश / ORDER**

**PER G.MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of the learned CIT(A), Coimbatore dated 22.08.2019 and pertains to assessment year 2013-14.

2. The assessee has raised following grounds of appeal:-

*"1) The order of the learned CIT (A) is bad and erroneous in law and against the principles of natural justice.*

*2) The learned CIT (A) erred in not considering the written submissions in proper perspective.*

*3) The learned CIT (A) erred in not adjudicating Gr.No:8, dealing with disallowance of Electricity tax and charges by the Assessing Officer.*

4) *Taxability under Adventure in the nature of Trade”*

a) *The learned CIT (A) erred in simply endorsing the views of the Assessing Officer in the assessment order as well as those in the remand report, called for by him, as well as nature of the subject land.*

b) *The learned CIT (A) erred in not considering the material fact that the appellant has, all along, been showing the subject land, being agricultural, in its Balance Sheet right from the date of purchase, under Fixed Assets” schedule, thereby making its intentions clear.*

c) *The learned CIT (A) erred in not considering the very fact that the subject land has all along been agricultural in nature, supported by Adangal, copy of the same was produced before the Assessing Officer in the course of assessment proceedings.*

d) *The learned CIT (A) erred in not considering the material Fact that the subject land, being agricultural in nature, is not a capital asset, at all, more particularly because of its situation, warranting inclusion of the same in the taxable income.*

e) *Without prejudice to the above, the learned CIT (A) erred in not considering the fact that not all the sales have taken place during the year under consideration.*

*In other words, the learned CIT (A) erred in confirming the addition made under “Adventure in the nature of Trade” in this year, without considering the fact that all the sales have not taken place in this year.*

f) *Without prejudice to the ground taken specifically as to the very taxability, since the subject land is agricultural and not situated in the notified area, the learned CIT (A) erred in not considering the registered Power of Attorney in entirety, thereby erred in not considering the expenses incurred by him on half of the appellant company, to be deductible in its hands. And for other reasons that may be adduced at the time of hearing, the*

*appellant prays that this appeal be admitted, considered and justice be rendered.”*

3. Brief facts of the case are that assessee company is engaged in the business of manufacturing of cotton yarn and clothing and garments filed its return of income for the assessment year 2013-14 declaring total income of ₹ 62,21,900/- . During the year under consideration, the assessee has declared profit from sale of agricultural land of ₹ 6,27,72,525/- and claimed exempt from tax. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer called upon details of sale of agricultural land and from the details submitted by assessee, the Assessing Officer observed that the assessee company had purchased 54.89 acres of land on 06.10.2009 for a consideration of ₹ 50,13,300/-. The said property has been sold during the assessment year 2013-14 by way of registered power of attorney for a consideration of ₹ 24.40 lakhs per acre. The Assessing Officer called upon the assessee to justify claim of exemption on profit on sale of land for which the assessee stated that it has purchased agricultural lands for the

purpose of growing cotton, but due to unavoidable reasons lands could not be used for the purpose and hence, the same has been sold. The assessee further stated that said transaction has been completed through unregistered sale agreement dated 05.06.2012 coupled with registered power of attorney in favour of purchaser. Since the land was agricultural land, when it was purchased and remained agricultural land when it was sold, profit derived from sale of such land has been treated as non-taxable under the Act.

4. The Assessing Officer was not convinced with the explanation furnished by the assessee and according to her, land purchased by the assessee company on 06.10.2009 was never used for agricultural activities. Further, even before purchase there was no agricultural activities on the land and the land was not fit for agricultural operations. The assessee has also not claimed any agricultural income in its return of income. She further observed that soon after purchase, the assessee entered into oral agreement with Mr. K.Maruthapandian and Mr. Raja for developing lands during the year 2010 itself, which is clear from the sworn statement

recorded from purchaser. She further observed that intention of the assessee company to purchase land was not for the purpose of carrying out agricultural operations, but for the purpose of real estate development, which is evident from the fact that directors of the company are into real estate business in their individual capacity. After purchasing land in the name of the company, they had also purchased adjacent lands in their individual capacity with an intention of reselling for making huge profit. If they had any intention of doing any agricultural activity, they could have brought it by executing sale deed and kept it as investment. Therefore, she opined that purchase and sale of land and subsequent transactions between the assessee and buyer is very clear that the assessee has dealt in land as an activity of adventure in the nature of trade, which resulted in business income, but not agricultural income, which is exempt from tax. The Assessing Officer has discussed the issue in light of various facts including manner in which land was sold by assessee and subsequently used by purchaser. She had also recorded statement from purchaser to come to the conclusion that purchaser had purchased lands for the purpose of

commercial exploitation, which is evident from the fact that he had formed lay out and sold to various persons for residential purposes. Therefore, she opined that profit from sale of land is nothing but adventure in the nature of trade and resulted income is assessable as income from business. To arrive at such conclusion, she had taken support from certain judicial precedents including the decision of Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim Vs. CIT (1993) 204 ITR 631(SC). The relevant findings of the Assessing Officer are as under:-

*“13. From the above discussions it is clear that the assessee company has not done any agricultural activities in the land acquired, nor had any intention of doing any agricultural activities and hence cannot claim the sale proceeds of the land as exempted, being agricultural land sale, Whether a particular land is agricultural or not is a bone of contention, In the case of Mahaveer enterprises Vs Union of a(2000) 244 ITR 789 (Raj) it was pointed out that the mere fact land was appearing in the revenue records as agricultural land and land revenue was paid in respect of such land does not make it agricultural.*

*14. The Locus classicus on the subject is the decision rendered by the Supreme Court in the case of CWT Vs Officer-in-charge (court of wards), Paigah (1976) 105 ITR 133 (SC). There have*

*been further clarifications on the subject from the Apex Court in G M Omer Khan Vs. Addl. CIT (1992 ) 196 ITR 269 (SC) and Smt. Sarifabibi Mohammed Ibrahim Vs CIT(1993) 204 ITR 631(SC). In these cases Apex Court had laid down following tests to treat a land as agricultural or non agricultural.*

- 1] The proximity of the land to building and building sites.*
- 2) Sole of land for non agricultural purposes.*
- 3) Sale of land by a measure with reference to square yards and not acres.*
- 4) Price being such as to be non-volatile, if the land is put to agricultural use by the purchases, while its more consistent with the price fetched for urban plots than for agricultural land.*
- 5) Character of the land.*
- 6) The purpose for which the land was held by the present owner, A firm/company which holds it may well be presumed to have held it as stock-in- trade and not for carrying out agricultural operations.*
- 7] As regards to use of the land for agricultural purposes prior to sale, mere use in remote past though and revenue is paid, would not make it agricultural.*
- 8) Mere capability of being used as agricultural land is not enough.*

*14. The underlying object of exemption for agricultural land, it was held is to encourage cultivation so that the interpretation should accord with such object. The applicability of the above mentioned tests is a pre-condition to consider a land as agricultural land. It is not the mere potentiality but its actual condition and intended use which have to be seen for purposes of exemption. The determination of the character of 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. It must be seen whether it has been put to use for agricultural purposes for a reasonable span of time prior to the relevant date and further whether on the relevant date the land was intended to be put to use for agricultural purposes for a reasonable span of time in the future.*

*16. Considering the facts of the case and in view of the above judgments, it seems that there is no material in the contention of the assessee that the land sold was agricultural in nature, Accordingly a letter dated 7/03/2016 was issued to the assessee to show cause as to why it's claim of agricultural land sale shall not be disallowed and treat the same as adventure in the nature of trade.*

*17 In response to the show cause letter, a reply dated 21/03/2016 was filed by Sri.S.Ramachandran, Authorized representative of the assessee. Extracts of the same is reproduced below:*

*"To improve its business the Assessee wanted to procure quality cotton and for the said purpose it thought of experimenting various types! grades of cotton — with respect to the length and strength of the staple fibre of cotton. In fact the idea was to grow cotton of various types during various seasons on its own, find the suitable one that meets the requirement of the company and concentrate full- fledge on that quality. This is the next stage on expansion with backward integration of an integrated textile unit.*

*The assessee took the assistance of Dr.P.Sivasubramanian, Head of the Department of Entomology, Tamilnadu Agricultural University, Coimbatore, for the said object. As suggested by him a piece of land, the soil of which best suited for growing of cotton was purchased in the name of the company. The land purchased is a rain-fed area with black cotton soil, most suited for cultivation of cotton crop. (Please see a certificate attached). Accordingly, the assessee company purchased 54.89 acres of agricultural land at Pongalur & Madapur villages, Tirupur Taluk, for ₹ 50,13,300/- video sale deed dated 06/10/2009. The Company has further incurred a sum of Rs.4,01,064/- on stamp duty and a sum of Rs.50,585/- on registration fee. Thus, the cost of the land to the Assessee was Rs.54,64,949/-.*

*The Assessee was advised to dig 10 bore-wells on the land so that each bore-well can cater to 5 acres of land. The Assessee approached TNEB for power connection. However, since the entire State of Tamilnadu was reeling under terrific power shortage, no new power connection for agriculture was entertained. Also. since the power connection was for agricultural orations, which have to be provided free of cost TNEB already under severe financial losses was not committing for the same. Hence, the Assessee was not in a position to dig bore-wells and commence agricultural operations.*

*The caretaker of the land was however growing small crops (cholam) and cattle grass to meet his living apart from grazing of cattle. This growing of small craps is reflected in the Adangal extracts issued by the respective VAOs. In the Revenue records the land is agriculture in nature and your good-selves have already collected proof for the same. Thus the property is an*

*Agricultural land situated outside 8 Kms limit from the nearest Municipality and is not a Capital Asset U/s.2(14) of the IT Act,1951.”*

18. *The AR has enclosed a certificate from Dr.P.Sivasubramanian, Professor and Head, Department of Agricultural Entomology dated 28<sup>th</sup> February 2009. A letter addressed to The Chief Manager State Bank of Mysore, Tirupur dated 23<sup>rd</sup> March 2009 enquiring about Agricultural Loan and the reply from the banker dated March,2009 was also enclosed. These certificate and letters form part of this assessment order.*

19. *Dr.P.Sivasubramanian was a Professor & Head of the Department of Agricultural Entomology. Entomology is the study of pests and insects that affect crops. It is a known fact that no Govt. Servants in service, can issue certificates unofficially. Had the Assessee applied in proper channel for certifying the quality of land, there would have been the folio No! C.No./ref.no. which is absent in this certificate. It is surprising to see that the assessee approached an Entomologist for expert opinion on the land when persons, properly qualified for testing and certifying the soil are very much available in the Tamilnadu Agricultural University, Coimbatore. More surprisingly, the Entomologist not only certified the quality of land, but could also give the depth at which ground water is available, number of bore wells needed, requirement of submersible pumps etc. It is not known what exactly assessee had requested the Entomologist to certify. The question here is, whether he is an authorized person to give such a certificate? Is he specialized in this field? How he has ascertained the ground water level just by inspecting the land?*

*It is almost like an Orthopedic surgeon doing an open heart surgery.*

*20. Original certificate issued by Dr. P. Sivasubramanian was submitted. This certificate seems to be quite fresh, may be about a few days old only. But due to paucity of time, reference could not be made to forensic department to verify the age of this certificate. However, this certificate is not legally tenable as it is an unofficial one and issued by a non authorized person.*

*21. In the above said certificate dated 28 February, 2009 issued by Dr. P.Sivasubramanian, has mentioned that “ presently, no electric power is available in the nearby area”. A letter enclosing this certificate was submitted to the bank on 23<sup>rd</sup> March, 2009, seeking the possibility of agriculture loan and availability of subsidy for purchase of agricultural land & digging of bore-wells. The Chief Manager State Bank of Mysore, Tirupur Branch had replied to this letter on 30<sup>th</sup> March 2009, requesting the Managing Director of the assessee company to approach their specialized agricultural banking department at Bangalore. In this letter, The Chief Manager had mentioned the following:*

*“since the certificate that you have attached mentions of non-availability of power supply in the area. please ensure power supply before submitting your application before dipping bore-wells.”*

*It is very clear from the above that the assessee was well aware about the non availability of power, much before the purchase of land on 06/10/2009 Therefore the submission of the AR, which is reiterated below is far from truth.*

*The Assessee was advised to dig 10 bore-wells on the land so that each bore-well can cater to 5 acres of land. The Assessee approached TNEB for power connection. However, since the entire State of Tamilnadu was reeling under terrific power shortage, no new power connection for agriculture was entertained. Also since the power connection was for agricultural operations, which have to be provided free of cost, TNEB already under severe financial losses was not committing for the same. Hence, the Assessee was not in a position to dig bore-wells and commenced agricultural operations”*

*22. Purchasing the land after knowing very well the non availability of power and thereby not in a position to dig bore-wells to do agriculture, is a pointer to the fact that the intention of the assessee was never to do agriculture. Further the following submissions made by the Authorized Representative in his letter dated 21/03/2016 are misleading:*

*a) In fact the idea was to grow cotton of various types during various seasons on its own, find suitable one that meets the requirement of the Company and concentrate full- fledged on that quality. This is the next step on expansion with backward integration of an integrated textile unit. The assessee took the assistance of Dr.P.sivasubramanian, Head of the Department of Entomology, Tamilnadu Agricultural University for the said object. As suggested by him a piece of land, the soil of which best suited for growing of cotton was purchased in the name of the company.” No suggestion was made by, Dr. P.Sivasubramanian, Head of the Department of Entomology, Tamilnadu Agricultural University in his certificate for the purchase of land. His suggestion was to dig 10 bore-wells to*

*cater to an extent of 50 acres and had also mentioned that no electric power is available in the nearby area.*

*b) 'the assessee has approached TNEB for power connection. However, since the entire State of Tamilnadu was reeling under power shortage, no new power connection for agriculture was entertained. Also, since the power connection was for agriculture operations, which have to be provided free of cost, TNEB already under severe financial losses was not committing for the same. Hence assessee was not in a position to dig borewells and commence agricultural operations.' — This claim made by the AR is also baseless as the assessee was aware of non availability of power much before the purchase of land which is evident from the certificate of the agricultural expert as well as the letter of the Chief Manager, State Bank of Mysore.*

*c) "During 2011 one Mr.K.Maruthupandian and Mr.Raja from Virudhunagar approached the company and other adjoining Agricultural land owners with an offer to purchase their lands at a very attractive price, with intent to develop a major township in about 200 acres. They have acquired the adjoining lands of the assessee and only then approached the assessee. They paid Rs.6 crores (during Oct, 2011 to Jan,2012) to Mr.C.Udhayasankar, who was holding adjoining lands on power, and Rs.2 crores to the company during April 2012 to June, 2012 as advance for purchase of the property of the agricultural lands belonging to the said individual and the company, respectively and separately. The owner of the adjoining land who had received Rs.6 crores from the buyer paid that amount to the company on 5/06/2012, supported by a power of attorney dated 05/06/2012. These statements of the*

*AR is absolutely false. Why should Mr. K. Maruthupandian, one of the developer pay 6 crores to Mr.C.Udayasankar, who was holding adjoining lands on power? Later, exactly on 03.06.2012, the adjoining Land holder paid it back to the company and on the same day company gave power of attorney to Mr.K.Maruthupandian, the developer.*

*During the Asst Year 2012-13, 6 crores received as advance was not reflected in the books of the assessee company. When this was raised at the time of hearing, AR has come up with the story of making the payment to adjoining land holder. Since the adjoining land holder Sri.C. Udhayasankar happened to be the Managing Director of the assessee company who is holding 40.82% of shares in the assessee company, and has received 6 crores of company's money during the Asst Year 2012-13 and Later returned back on 5.06.2012, applicability of deemed dividend U/s2(22)(e) in the hands of the director has to be seen as the company was having Rs.2,57,98,355/- as reserves & surplus as on 31.03.2012.*

*Again in the letter from the assessee company, addressed to the Inspector of Police, Economic Offences Wing-II, Coimbatore, signed by Sri.D.Kathirvel authorized signatory of the assessee company, it was stated that the company had received Rs.8 crores from the said K.Maruthupandian & S.Raja on various dates between 14.10.2011 and 03.06.2012. Further to that, in the Notarized Affidavit of K.Maruthupandian & S.Raja dated 16.07.2013, they have stated the following:*

*'..hereby solemnly affirm and sincerely state as under: We entered into a sale agreement for buying 54.39 acres of*

*agricultural land situated at Pongalur and Mathapur villages, Palladam Taluk, Tirupur District, belonging to M/s. Shri Santhosh Meenakshi Textiles P. Ltd. having its registered Office at 'SETHURAM No.15, Sundaresa Iyer Layout, Trichy Road, Coimbatore and another 75.07 acres from Mr.C.Udayasankar, S/O Chellaiah Pillai, residing at No.6/4,5 A Kadhar Layout Angeripalayam Road, Tirupur for a total consideration of Rs.31,71,02,400/- at the rate of Rs.24,40,000/- per acre. No formal sale agreement was made for this but a sale receipt dated 14.10.2011 was obtained for payment of advance of Rs.2 crores.*

*Subsequently, a further sum of Rs.0.50 crores on 28.04.2012, a sum of Rs.2.50 Crores on 02.01.2012, a sum of Rs. 1.50 Crores on 06.01.2012, a sum of Rs. 1.25 crores on 23.04.2012 and a sum of Rs.0.25 crores on 05.06.2012, all totalling to Rs.6 crores was paid as advance towards the said sale agreement by party cited in (1] above, i.e. M/s. Shri Santhosh Meenakshi Textiles P. Ltd. Since there was a long delay in paying the agreed sale consideration, we also agreed for enhancement in sale consideration by ₹3 crores. on 05.06.2012, we formally entered into a sale agreement.”*

*The above statements shows that Rs.8 crores were paid to the Company only and not to Mr.C.Udhayasankar, in his individual capacity, It also points to the fact that there was an earlier agreement prior to the one dated 05.06.2012, may be not a formal one. Had this agreement dated 05.06.2012 was the first agreement, then why the enhancement of rate? Even in this agreement there is a mention that due to delay from the earlier*

*agreed date, Rs.3 crores has to be paid in addition to the agreed rate.*

*d) The contention of the AR that the Assessee has held the asset for more than 2 years and 5 months and hence cannot be called as stock-in —trade is not at all acceptable . Though the power of Attorney was given only on 05/06/2012, the developers were allowed to develop the land much before. The first instalment of Rs.2 crores was received on 14.10.2011. Even the assessee had agreed that the developers paid the money to the company by collecting it from the prospective purchasers of housing plot. Unless the land was developed and converted as housing plot, no one will be interested in investing in that land and the developers could not have collected 8 crores. Details of registrations collected from SRO, palladam shows that the developer , Mr.K. Maruthapandian, on receiving the power of attorney, sold about 310 plots in a span of 6 months. Initial registration of housing plots of 1200 sq.ft starts from 15/06/2012 onwards. 41 plots were sold in the month of June, 2012 itself. Therefore it is definite that the development of land had taken place before giving the power of attorney to the developer.*

*e) Another contention of the AR of the assessee is as follows: basically, a housing layout can be developed only if that area or nearby area has some basic facilities for habitation. The land is situated in a remote location and has no basic facilities and a nearby small (petty) shop is only at a distance of 3-4 kms. There is no water and also no electricity. The nearest habitation on one side is pongalur village around 3-4 Kms away and on*

*the other side Madampur village around 3-4 kms away. Thus, this land is not fit for conversion into a human habitation and there is no scope for conversion of these lands into plots and sell them." How the AR has come with such a contention is really surprising - Whether he is under the genuine belief that the developer had agreed to purchase agricultural land in this remote location, with no water and no electricity, at the rate of Rs.24.40 lacs per acre to do agriculture. How can he state that there is no scope for conversion of these lands into plots and sell them, when about 310 housing plots were sold in a short period of 6 months. Even in the power of Attorney given to the developer, it was mentioned that the possession is given to convert the land as housing plots and selling it.*

*f) AR has also mentioned in his letter that Mr.C.Udayasankar received Rs.2 crores as a Power Agent for Sumitra and Raghavan on 14.10.2011 and not received on behalf of the company. This is also a false statement. The AR himself has submitted a copy of sale agreement between Mr.C.Udayasankar and Sumitra and Raghavan dated 24.09.2012, wherein it was mentioned that a power of Attorney was given to Mr,C,Udayasankar on 31.10.2011 which is registered in the Registrar's Office Tirupur in No.2918/2011. Therefore Mr.C.Udayasankar cannot receive Rs. 2 crores on 14.10.2011 as power agent for Sumitra and Raghavan.*

*g) Along with the letter from the AR 8Nos. Of Adangal extracts which cover the SF nos, Under consideration was enclosed. Land converted as housing plots are in S.F No. 281, 282 and S.F No. 284 of Pongalur village &Madhapur village ,where as the adangal extracts relates to some other S.F Nos. Only S.F.*

*No.282 of Madhapur village is appearing in these Adangal copies and is mentioned as nadapathai” meaning pathway.*

*23. From the above discussions it is clear that the AR's submissions are contradictory to the evidences submitted by him, before me at the time of hearing. From the activities of the company as detailed in this order, it is unambiguously proved the intention of the assessee was only to sell the land and to make huge profit out of that. The assessee had never even attempted to do any agricultural activities to claim that the intention of the purchase was for doing agriculture. In the light of the aforesaid facts, assessee's claim of ₹ 6,27,72,525/- as exempted income, being proceeds from sale of agricultural land is not accepted and is treated as business income from adventure in the nature of trade.”*

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before, the learned CIT(A), the assessee has filed elaborate written submissions on the issue, which has been reproduced at para 5 on page 6 to 10 of learned CIT(A) order. The sum and substance of arguments of the assessee before the learned CIT(A) are that profit derived from sale of land is exempt from tax, because the land was agricultural land and any income derived from transfer of agricultural land is outside the scope of tax as per the provisions of section 2(14) of the Income Tax Act,

1961. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents held that purchase and sale of agricultural land within a short span as adventure in the nature of trade. Although, the land is an agricultural land as per revenue records, the assessee has not been able to establish that land was purchased with an intention of carrying out agricultural activity. The learned CIT(A) further observed that purchase and subsequent sale of land after splitting it into flats is adventure in the nature of trade and income derived there from is to be taxed as business income. Therefore, he opined that there is no error in the findings recorded by the Assessing Officer to arrive at a conclusion that profit derived from sale of land is assessable under the head income from business and hence, affirmed the findings of the Assessing Officer and rejected the appeal filed by the assessee. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

6. The learned AR for the assessee submitted that learned CIT(A) has erred in simply endorsing the findings of the

Assessing Officer without appreciating the fact that the assessee has all along been showing the subject land being agricultural in its balance sheet right from the date of purchase under the head fixed assets thereby making its intention clear that land in question was asset and the same has been acquired for the purpose of agricultural operations. The learned AR further submitted that learned CIT(A) has erred in not considering the very fact that as per revenue records, the land was agricultural land and further, the assessee has filed a certificate from the agricultural scientist to prove that land was fit for agricultural operations, more particularly, for growing cotton which is main raw material for business of the assessee. The AR further submitted that learned CIT(A) has erred in arriving at the conclusion that transactions of purchase and sale of land is in the nature of adventure in the nature of trade, without considering the fact that assessee has made a solitary single transaction of purchase and sale of land, that too after a period of more than two years, therefore, it is incorrect on the part of authorities below to come to the conclusion that the assessee is indulged in the activity of business of purchase

and sale of land for making huge profit. The AR further submitted that there is no dispute with regard to the fact that land in question was of agricultural land as per revenue records and further, same was situated beyond 8 kms from the vicinity of nearby municipality and hence, the same is outside the definition of capital asset as defined under section 2(14) of the Act and thus, any profit on sale of such land is outside the scope of capital gain tax.

7. The AR further referring to various observations of the Assessing Officer submitted that observations made by Assessing Officer in light of statement of purchaser that land was used for business purposes after the purchase, is not based on any evidence, because what is relevant to decide the issue is whether the land in question was agricultural land when it was sold, but subsequent development or purpose of buyer is immaterial to decide nature of income. No doubt, purchaser of the land subsequent to the date of purchase may have used the land for business purposes, but subsequent decision of the purchaser is no way alter the characteristic of the land or position of taxation of profit derived from sale of

land. Therefore, he submitted that Assessing Officer as well as learned CIT(A) were completely erred in coming to the conclusion that land in question is although agricultural land, but purpose of buying and selling agricultural land is not for agricultural operations and consequently, profit derived from said land is taxable as business income. In this regard, he relied upon decision of Hon'ble Madras High Court in the case of CIT Vs KPR Developers Ltd. (2020) 117 Taxmann.com 882. The assessee has also relied upon the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Kiasan House 117 Taxman.com 687.

8. The learned DR, on the other hand, strongly supporting the order of the learned CIT(A) submitted that facts brought out by the authorities clearly indicate that purpose of purchase and sale of land is to derive profit from activity but not for the purpose of carrying out agricultural operations, which is evident from the fact that there is no agricultural operations carried out in the land in the past and in subsequent years. The DR further submitted that the Assessing Officer has brought out various

facts to come to the conclusion that the impugned land is not fit for agricultural operations, as per which there was no electricity connection available and no water facility was available to carry out agricultural operations. In fact, the land is a dry land and not suitable for carrying out any agricultural operations. Further, the assessee has purchased the land with an intention to commercially exploit it which is evident from the fact that immediately after purchase in the year 2009, the company has entered into oral agreement with the developer for development of the land. Although, power of attorney was executed in the year 2012, substantial amount has been received in the year 2011-12 itself. From the above, it is very clear that the assessee has engaged in systematic activity of business of developing of lands and thus, profit derived from sale of land is assessable under the head income from business. The Assessing Officer as well as the learned CIT(A) has rightly assessed the income under the head income from business and their orders should be upheld.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities

below along with various case laws cited by the learned counsel for the assessee. The solitary question that needs to be answered in the given facts and circumstances of the case is whether profit derived from sale of land is assessable under the head income from business as adventure in the nature of trade or commerce or capital receipt which is outside the scope of taxation under the provisions of Section 2(14) of the Income Tax Act, 1961. Admittedly, as per revenue record, impugned land in question was agricultural land, when it was purchased in the year 2009 and remains agricultural land, when it was sold in the year 2012-13. Further, the land is situated beyond 8 kms from the nearest municipality and is excluded from the definition of capital asset as per section 2(14) of the Act. In fact, the Assessing Officer as well as learned CIT(A) never disputed the fact that land in question was agricultural land and situated beyond 8 kms. from nearest municipality. But, the Assessing Officer has assessed profit derived from sale of land under the head income from business on the ground that activity of purchase and sale of land is in the nature of adventure in the nature of trade or commerce and profit

derived from such activity is assessable under the head income from business. The Assessing Officer has given various reasons to come to the conclusion that assessee has purchased the land with an intention to commercially exploit to earn profit, but not for the purpose of carrying out agricultural operations. The Assessing Officer has taken support from the statement of the purchaser of the land . The purchaser of the land in the statement recorded on oath u/s.131 of the Act admitted that he has developed the land into residential flats and sold to various buyers . The Assessing Officer has also taken support from the fact that the land was barren land and was not fit for agricultural operations. For this purpose, she has taken support from the fact that land was not connected with any electricity and water facility . Therefore, she was of the opinion that although the land in question was agricultural land and situated beyond 8 kms from the limits of local municipality, but because the purpose of the assessee was to commercially exploit in the business, profit derived from sale of land is assessable under the head income from business.

10. We have given our thoughtful consideration to the facts brought out by the Assessing Officer and arguments advanced by the assessee in light of various facts including revenue records, certificate issued by agricultural scientist and letter addressed to the banker. As per the details, especially the evidences submitted by the assessee, there is no doubt of whatsoever with regard to nature of land being agricultural land, when it was purchased in the year 2009 and remains agricultural land, when it was sold in the impugned assessment year. In fact, revenue records 'adangal extract' clearly shows the land was an agricultural land and was under cultivation. The assessee has produced various evidences to prove that intention of purchase of land was for the purpose of cultivation of cotton which is main raw material for the business of the assessee. The assessee has also produced necessary evidence to prove that land is black soil, which is suitable for growing cotton. The assessee has also furnished letter from agricultural scientist, where he had clarified that the land is suitable for growing cotton. Therefore, when it comes to nature of land and purpose of purchase of land, the observation

made by the Assessing Officer that land was not suitable for agricultural operations and the same was not purchased for agricultural operations is not supported by any evidence. Although, the Assessing Officer has stated that land was not connected with electricity and water, but every land in this country is not connected with electricity and water. The agriculturists in this country are carrying out agricultural operations with the help of rain water, wherever land is not connected with electricity and water facility. Even, agricultural operations can be carried out without electricity connection. Therefore, we are of the considered view that reasons given by the Assessing Officer to come to the conclusion that purpose of purchase of land is not for carrying out agricultural operations is not well founded and supported by any evidences.

11. Coming back to another observation of the Assessing Officer. The learned Assessing Officer has observed that the assessee has purchased land with an intention to commercially exploit it. For this purpose, she has taken support from the fact that immediately after purchase of land in the year 2009, the assessee has entered into oral agreement with the proposed

buyer in the year 2010 for development of the land. To arrive at such conclusion, the Assessing Officer has taken statement from the purchaser recorded u/s. 131 of the Act, where he has stated that he had entered into oral agreement with the company for development of the land. We have gone through the reasons given by Assessing Officer and find that there is no substance in the reasons given for arriving at a conclusion that land was purchased for the purpose of commercial exploitation for the reason that subsequent action of the purchaser is not relevant to decide the nature of income / receipt for the purpose of taxation. No doubt, subsequent purchaser may have used land for commercial exploitation, but that itself is not a ground to hold that assessee has purchased the land with an intention to commercially exploit it. In order to decide the issue what is relevant is facts and situation prevalent at the time of happening of events. In this case, the Assessing Officer has never disputed the fact that land was agricultural land as per revenue records, when it was purchased and sold. The Assessing Officer has also admitted in her assessment order that the land was situated beyond 8 kms. from nearest

municipality and which is not connected with water and electricity facility. Therefore, when the impugned land is situated in a remote and far off place from nearest municipality and further there is no commercial developments in and around the land, then it is difficult to accept the findings of the Assessing Officer that land was purchased for the purpose of commercial exploitation. Further, the Assessing Officer has relied upon statement of proposed purchaser without confronting statement to the assessee for its rebuttal, even though the assessee has demanded for cross examination vide letter dated 21.03.2016. Therefore, any statement made by a person, who entered into agreement for sale of land with the assessee and for sale of other adjacent land owners should not be taken on record, unless an opportunity of cross examination was provided to the assessee. Further, as per evidences produced before us, purchaser of the land has committed fraud on gullible investor and was booked by Economic Offences Wing of police department. In fact, the assessee has returned the advance to the investors. Therefore, based on the statement of proposed buyer, no adverse

inference can be drawn against the assessee to conclude that assessee is engaged in the activity of adventure in the nature of trade or commerce. In our considered view to decide the nature of income, the facts and circumstances prevailing at the time of event needs to be considered, but not subsequent events which are not in the control of the assessee. In this case, there is no dispute with regard to the fact that land was agricultural land when it was purchased and sold and thus, profit derived from sale of such land is outside the scope of taxation, because the same is capital receipt as per the provisions of section 2(14) of the Income Tax Act. Insofar as observations of the Assessing Officer that assessee had transferred land through unregistered sale agreement and power of attorney, we find that registered power of attorney given in favour of the purchaser with all rights over the land is good conveyance for transferring rights over the land. It is not necessary to transfer the land by sale deed, even in a case where land is transferred by registered power of attorney, the moment power of attorney is given to any person, the assessee loses its right over the land. Therefore, we are of

the considered view that merely for the reason that land was transferred through a registered power of attorney without any registered sale deed, does not alter the characteristic of the land and consequent income derived from transfer of said land. On this count also the observation of the Assessing Officer is unfounded and does not have any merits.

12. Coming back to the observation of the Assessing Officer in light of the decision of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim Vs. CIT (supra). The Hon'ble Supreme Court has formulated certain guidelines to decide nature of land and consequent income derived from transfer of said land. As per the said judgement, the Hon'ble Supreme Court has laid down certain guidelines. Accordingly, to decide whether a land is agricultural land or not, several tests have been laid down as per which proximity of the land to building or building sites, sale of land for non-agricultural purposes, sale of land by measure with reference to square yards and not acres, price volatility, character of the land, purpose for which the land was held by present owner, as regards use of land and mere capability of being used as

agricultural land is not enough. If you apply ratio of the Hon'ble Supreme Court to the facts of the present case, none of the reasons given by the Assessing Officer to arrive at a conclusion that land in question was not agricultural land and purpose of purchase and sale of land is to derive profit is not unfounded under law. In fact, the Assessing Officer herself admitted the fact that land is situated in remote place and beyond 8 kms from nearest municipality and further, there are no buildings for more than 3 to 4 kms on either side. Further, no power and water connection for any residential or commercial operations. The land was sold as agricultural land only. It is the buyer who tried to sell it as house sites, but grossly failed in his venture, since the land and its location is not suitable for human habitation. The land was sold in acres, but not in measure with reference to square yards or meters. The land is in remote location and there is no market for it and developers have landed up in economic offence wing for the frauds committed to buyers. The characteristic of land is agricultural land in the records of the revenue and further, certified as fit for cotton cultivation by agricultural scientist. The land was bought with

sole aim of carrying on agriculture as a backward integration of the cotton textile unit. The certificate of the agricultural scientist, letter to the bank and reply received from the bank are ample proof to prove that purpose of purchase of land was to carry out agricultural operations. The land was shown under head fixed asset and not as current asset as stock-in-trade in the books of account. The land was actually fit for cultivation and the land cannot be used for any purpose other than agriculture. It is a black cotton soil and thus, suited for cotton crop. Therefore, we are of the considered view that evidences filed before us clearly prove that land in question was agricultural land and was held for the purpose of carrying out agricultural operations. The subsequent usage of land for non- agricultural purposes and the potential non- agricultural value of the land for which purchaser may be prepared to pay a large price would not detract from its character as agricultural land on the relevant date of sale. Further, profit motive of the assessee selling the land without anything more by itself can never be decisive for determination of issue as to whether transaction amounted to adventure in the nature of trade. In other words, price paid is

not decisive to say whether land is agricultural or not. From the above, it is very clear that reasons given by the Assessing Officer in light of Hon'ble Supreme Court judgement in the case of Smt. Sarifabibi Mohmed Ibrahim Vs. CIT (supra) are not attracted in the present case.

13. Coming back to case law relied on by the assessee. The assessee has relied upon the Hon'ble Jurisdictional High Court of Madras in the case of CWT Vs E.Udayakumar (2006) 284 ITR 511 (Mad), where the Hon'ble Madras High Court after referring to the decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Smt. Savita Rani (2004) 270 ITR 40 (P&H) held as under:-

*"8. It is well settled in the case of CIT Vs. Smt. Savita Rani (2004) 270 ITR 40 (P&H) wherein it is held that the land being located in a commercial area or the land having been partially utilized for non-agricultural purposes or that the vendees had also purchased it for non agricultural purposes, were totally irrelevant consideration for the purposes of application of section 54B.*

9. *In the above said case, the assessee an individual sold 15 karnals, 78 marlas of land out of her share in 23*

*karnals 17 marlas land during the financial year 1990-91, relevant to the asst. yr. 1991-92, the sale was effected by three registered sale deeds. While filing her return of income, she claimed exemption from levy of capital gains under s. 54B of the Act on the ground that the land sold by her was agricultural land and the sale proceeds were invested in the purchase of agricultural arid within two years. The AO rejected the claim of the assessee holding that the land sold by the assessee was not agricultural land and this was upheld by the CIT(A). On further appeal, the Tribunal accepted the claim of the assessee holding that the transaction in question duly fulfilled the conditions specified for relief. On further appeal to the High Court the Punjab & Haryana High Court found that the finding that the land had been used for agricultural purposes was based on cogent and relevant material. The Revenue record supported the claim- Even the records of the IT Department showed that the assessee had declared agricultural income from this land in her returns for the preceding two years. The land being located in commercial area or the land having been partially utilized for non-agricultural purposes or that the vendees had also purchased it for non-agricultural purposes, were totally irrelevant for the purposes of application of s. 54B.*

*10. It is seen from the aforesaid decision that the agricultural land sold by the assessee with an intent to purchase another land within two years had also been permitted to claim exemption under s. 54B of the IT Act, 1961. In the instant case, even though there was no sale as such, the assessee owned agricultural land within the limits of Tirunelveli Corporation and he had not put up any construction thereon,*

*the assessee is entitled to claim exemption from the WT Act for the assessment of wealth-tax. That the land in question is adjacent to the hospital is totally irrelevant.”*

14. The assessee has also relied upon the decision of the Hon'ble Jurisdictional High Court of Madras in the case of PCIT Vs KPR Developers Ltd. (supra), where the Hon'ble High Court held that where assessee sold agricultural land and claimed capital gain from sale as exempt, since Tahsildar while submitting report to the Assessing Officer had enclosed copies of patta, which showed that land was wet land and deemed to be agricultural land, merely because agricultural activity could not be done on the said land for various reasons including natural causes, it was not ceased to be agricultural land and thus, same could not be considered as capital asset as per section 2(14) of the Act, and capital gain arising therefrom was exempt from tax . The relevant findings are extracted as under:-

*“Section 2(14), read with section 45 of the Income-tax Act, 1961 Capital gains - Capital asset (Agricultural land) - Assessment year 2011-12 - Assessee sold land and contended that same was agricultural land and it was beyond 8 km., from notified cities, therefore, it should not be considered as a capital asset under section 2(14)(iii) and gain arose on its sale was exempt - Assessee had also produced certificate*

*from Village Administrative Officer (VAO), stating that said land was primarily agricultural land and it was under cultivation and crops like maize were grown in said land - However, before Assessing Officer said VAO gave a statement that without proper verification of original records, he had given extract of Adangal - Thus, Assessing Officer rejected claim made by assessee with regard to long term capital gain being an exempt income - It was noted that Tahsildar while submitting report to Assessing Officer had enclosed copies of Patta which clearly showed that said land was wet land - Patta was a document which proved possession and classification of land - Copy of patta issued was a computerized patta - There was a presumption to validity of such official document there was no allegation made by Assessing Officer that said patta was a bogus patta - Merely because an agricultural activity could not be carried on for various reasons including natural causes, it would not cease to be an agricultural land - Further, Commissioner (Appeals) and Tribunal had done an elaborate exercise, assessed documents placed before it and given a categorical finding that land continued to remain an agricultural land - Whether, on facts, impugned land sold by assessee was to be considered as agricultural land and capital gain arising from same was exempt from tax - Held, yes [Paras 13 and 16] [In favour of assessee]"*

15. In this view of the matter and by respectfully following case laws discussed herein above, we are of the considered view that land in question has been classified in revenue records as agricultural land and it was fit for agricultural

operations. Merely for the reason that no agricultural operations was carried out during the period and subsequent use of land for non-agricultural operations by the purchaser, cannot change characteristic of the land being agricultural land as non-agricultural land . Therefore, we are of the considered view that the Assessing Officer as well as learned CIT(A) were erred in coming to the conclusion that profit derived from sale of land is assessable under the head income from business or profession. Hence, we set aside the order of the learned CIT(A) and direct the Assessing Officer to delete additions made towards profit from sale of land as income from business or profession.

16. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on 10<sup>th</sup> March, 2021

Sd/-  
**वी.दुर्गा राव)**  
 (V.Durga Rao)  
 न्यायिक सदस्य /Judicial Member  
 चेन्नई/Chennai,  
 दिनांक/Dated 10<sup>th</sup> March, 2021  
 DS

Sd/-  
**(जी.मंजुनाथ)**  
 (G.Manjunatha)  
 लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.