

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC-B" BENCH : BANGALORE**

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.396/Bang/2020
Assessment Year : 2007-08

Shri. H. S. Manjunath, 91, 4 th Main Road, 1 st Cross, JC Layout, Harihar, Davangere – 577 601. PAN : AEZPM 6279 G	Vs.	Income-tax Officer, Ward-3, Davangere.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	08.04.2021
Date of Pronouncement	:	08.04.2021

ORDER

Per Shri. Chandra Poojari, AM:

This appeal by the assessee directed against the order of CIT(A) dated 28.02.2020. The assessee has raised the following grounds:

1. *The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in sustaining the addition of a sum of Rs.19,36,856/- as Income from Long Term Capital Gains in the hands of the appellant in the status of "Individual" under the facts and in the circumstances of the appellant's case.*
 - 2.1 *The learned CIT[A] failed to appreciate that the appellant is the son of one Sri Sathyanarayana and co-parcener of the joint family of Sathyanarayana and the agricultural lands of 4 Acres 16 guntas was purchased by the said joint family in the name of the*

appellant being one of the adult co-parcener and the gains on the sale of the property is not liable for assessment in the hands of the appellant in the status of "Individual".

3. *Without prejudice to the above, the learned CIT[A] is not justified in upholding the assessment of capital gains on the sale of the agricultural lands that were situated outside the municipal limits and does not constitute a capital asset merely on the ground that the land was converted into nonagricultural purposes under the facts and in the circumstances of the appellant's case.*

3.1 *The learned CIT[A] failed to appreciate that the although the land was converted for non-agricultural purposes vide order dated 04/12/1985, the appellant had not used the land for the said purposes of conversion and had paid the conversion fine of Rs. 2,74,500/- on 25/03/2006, which was just before the sale of the lands on 26/07/2006 and hence, the entire conversion of the lands was only to facilitate the sale of the property and therefore, the lands continued to remain as agricultural lands and was not exigible to capital gains tax.*

4. *Without prejudice to the above, the learned CIT[A] is not justified in holding that the appellant was not entitled to deduction of the amount paid to the Bank to clear the liabilities of the joint family after the death of the appellant's father and also the refund of the advance received from Sri.S.A.Medleri, while computing the capital gains under the facts and in the circumstances of the appellant's case.*

5. *Without prejudice to the above, the learned CIT[A] ought to have assessed only 1 /4th of the balance of the capital gains in the hands of the appellant even in extreme case.*

6. *Without prejudice to the above, the capital gain computed is excessive and liable to be reduced substantially.*

7. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234-k and 234B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

8. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

2. At the time of hearing, the assessee pressed only ground Nos.3 and 3.1. The other grounds are dismissed as not pressed. The facts relating to ground Nos.3 and 3.1 are as follows:

4.The facts involved in the case are that the AO issued notice u/s 142(1) to the assessee on 27-02-2008 calling for filing a return of income for the AY 2007-08. There was no response from the assessee and subsequently the AR of the assessee filed copies of purchase and sale deed of land measuring 4.16 acres in Amaravathi village in Harihar Taluk but submitted that the land sold on 2209-2006 was agricultural land and hence not liable for capital gain tax. Since the assessee did not furnish any evidence that he is not liable for capital gain tax, the AO issued show cause notice in response to which the assessee filed a return of income on 19-08-2008 but no capital gain was declared in the return. The AO noted that the sale deed mentions the land as converted into residential purpose and also the order of special deputy commissioner, chitradurga dated: 04-12-1985 shows that agricultural land of assessee in survey no. 97/2A having area of 4 acres 16 guntas at Amaravathi Village, Harihar Taluk has been converted for non agricultural (residential) purpose. Therefore the AO held that the contention of the assessee is not correct and accordingly he computed LTCG of Rs 1936856/- after allowing indexed cost of acquisition and betterment/amenity charges of Rs 2,74,400/- paid . to Davangere Urban Development Authority.

3. The main contention of the AR is that the land sold by the assessee is nothing but agricultural land and the assessee has been carrying on the agricultural activities in the said land. Though it was converted for non-agricultural purposes in 04.12.1985, the assessee had not used the land for which purpose it was converted and once again got it converted by paying fine of Rs.2,74,500/- on 25.03.2006 which was just before the sale of land on 26.07.2006. Hence, entire conversion of land only to facilitate sale of property so as to fetch better price and the sale of such land cannot be construed as capital asset which is being agricultural land. On the other hand, DR submitted that assessee has not placed necessary evidence to show that

land was subject to agricultural operations and as such the contention of the assessee to be rejected.

4. I have heard both the parties and perused the material on record. This is an area of land measuring 4 acres and 16 guntas at Amaravathi Village, Harihar Taluk. The assessee acquired the said land vide sale deed dated 12.11.1984. The contention of the DR is that the assessee had already got converted the land for residential purposes and no cultivation has been carried on in this land. However, nobody has examined the actual utilization of this land. Hence, it is appropriate to remit the issue in dispute to the file of AO to carryout necessary enquiry to find out the nature of land whether it kept idle or used for agricultural operation. With this observation, I remit the issue to the file of AO for reconsideration.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated: 08.04.2021.
/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.