

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1710/Bang/2018
Assessment year : 2013-14

Shri M.B. Chandrappa, Jayadeva Nilaya, Near Bus Stand, Honnali. Davangere Dist. <b>PAN: ACOPC 4980F</b>	Vs.	The Income Tax Officer, Ward 2(1), Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pratibha, Advocate
Respondent by	:	Shri Kannan Narayanan, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	22.07.2021
Date of Pronouncement	:	22.07.2021

**ORDER**

*Per Chandra Poojari, Accountant Member*

This appeal by the assessee is directed against the order dated 19.03.2018 of the CIT(Appeals), Davangere for the assessment year 2013-14.

2. The assessee has raised the following grounds:-

- “1. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in upholding the order of the Assessing Authority in treating the profit on sale of sites as income from business by holding the activity as adventure in the nature of trade.

2. The learned Commissioner (A) ought to have appreciated the sites in question had been formed out of the agricultural lands held by the appellant for several years and appellant investment in agricultural land was a capital investment and consequently he ought to have accepted the appellant's claim that the profit was to be assessed under the head income from capital gains.
3. The learned Commissioner (A) ought to have followed the various cases cited by the appellant which included the jurisdictional High Court judgment without giving any valid reason to distinguish and accordingly the order of the Commissioner (A) is opposed to law and liable to be set aside.
4. On the facts and also on the explanation provided by the appellant the learned Commissioner (A) ought to have allowed the claim of the appellant that the profit on sale of sites was liable to be assessed only under the head 'income from capital gains'.
5. Without prejudice, the addition is excessive, arbitrary and unreasonable and liable to be cancelled.
6. The learned Commissioner (A) erred in confirming the interest u/ s.234A of the Act.
7. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.”

3. The brief facts of the case are that the assessee is a proprietor of the firm, M/s. Sri Devi Enterprises dealing in cement. He is also a partner in the firm, M/s. Sri Devi Traders dealing in fertilizers. The assessee had purchased 3 acre 32 guntas of agricultural land at Devanayakanahalli Honnali Taluk on 17.12.1982 for Rs.30,000. The said land was converted into residential purpose on 18.3.1983 measuring 112 ft. x 203 ft. and sold for Rs.25,000 on 30.10.2017. During the FY 2012-13, the assessee sold 16 sites for Rs.52,63,000 and declared the same under long term capital

gains and deposited the sale proceeds with State Bank of India, Mysore and claimed deduction u/s. 54F of the Act. The money deposited with SBI has been withdrawn and utilized for construction of residential house.

4. The AO while passing the assessment order u/s. 143(3) has treated the amount received on sale of sites as income from business instead of capital gain and denied exemption u/s. 54F of the Act. The CIT(Appeals) confirmed the order of the AO. Against this, the assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. In this case, the assessee purchased agricultural land measuring 3 acres 32 guntas on 7.12.1982. No agricultural activity has been carried out in this land which was converted for non-agricultural purposes on 18.3.1983. Later, the assessee converted the land into sites measuring 112 ft. x 203 ft. and sold 16 sites. The assessee declared the income as capital gain and claimed deduction u/s. 54F of the Act placing reliance on the following decisions:-

- CIT v. Gajanana Enterprises in ITA No.50/2004 of Karnataka High Court judgment dated 18.3.2009.
- Hotel Sreeraj in ITA No.262/2002 of Karnataka High Court judgment dated 6.3.2007.
- Babulal v. ITO, ITA No.887/Bang/2019 dated 28.1.2021 of ITAT, Bangalore.
- Ramesh Raj Bohra v. DCIT, ITA No.157/Jodh/2019 dated 20.3.2020, ITAT, Jodhpur.

6. On the other hand, the Id. DR submitted that the assessee converted agricultural land for non-agricultural purposes within 3 months from the purchase which makes it clear that the assessee's intention was to earn profit on sale of land. Therefore, the surplus earned by the assessee

was to be treated as income from business and it was adventure in the nature of trade.

7. If we look at the sequence of events as mentioned above, in our opinion, the intention and motive of realization of entire scheme of things adopted by the assessee was to maximise the value of asset and using it for business purpose. In that pursuit, the assessee has constantly tried to exploit the resources and maximise profits. The conduct of the assessee subsequent to the purchase of property by converting it into non-agricultural purpose so as to make it more readily saleable is a relevant factor in determining the character of transaction and would show the conduct of assessee's design and purpose prior to purchase. In this case, the purpose and design of assessee in utilization of the land is pointed out towards carrying out adventure in the nature of trade so as to maximise profit from this transaction. As noted earlier, though assessee purchased agricultural land, no agricultural activity has been carried out. However, it was converted into non-agricultural land within 3 months of purchase and later land was converted into small parts of residential units to realise optimum value on sale. The conversion of agricultural land into residential stock in trade of his business of selling the plots of land is for earning profit. The very nature and purpose of the agricultural land has been changed and we agree with the findings of the CIT(Appeals) that such change is an irreversible change where the very nature and purpose of the land has been changed from agriculture to residential. It is not a case that the buyers have acquired agriculture plots and subsequently changed it to residential use. In this case, the assessee himself has developed residential plots and then sold it to individual buyers. Therefore, we affirm the findings of the AO that by such plotting of land, the agriculture land has been converted into stock-in-trade in the form of residential plots of assessee's business. The said conversion and development of residential

plots has happened by assessee's own admission during and the intent of assessee has thus been demonstrated through his own actions. The fair market value of the asset on the date of conversion as reduced by the cost of acquisition is required to be assessed under the head "capital gain" in the year(s) the stock-in-trade is sold or transferred. Further, sales realization of the stock-in-trade over such fair market value is required to be assessed as "business income". Therefore, taxability arising on conversion agricultural land into stock-in-trade to the extent it has been sold during the year arises during the impugned assessment year. The matter is accordingly set aside to the file of Assessing Officer to determine the capital gains for fresh consideration in accordance with the provisions of section 45(2) of the Act as well as business income on sale of such plots, after providing opportunity of being heard to the assessee. This issue is accordingly disposed of with the above directions.

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

Pronounced in the open court on this 22<sup>nd</sup> day of July, 2021.

Sd/-  
( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-  
( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 22<sup>nd</sup> July, 2021.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.