

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 46/VIZ/2021
(Asst. Year : 2008-09)**

Smt. Nalini Bandi,
W/o Sri Bandi Veera Nataraj,
B-1, Janani Residency,
Pandurangapuram,
Visakhapatnam.

vs. Income Tax Officer
Ward-3(3), Visakhapatnam.

PAN No. AEEPB 4163 K
(Appellant)

(Respondent)

Assessee by : Shri I.Kama Sastry, CA.

Department by : Shri B.Rama Krishna, Sr.DR

Date of hearing : 13/09/2021.

Date of pronouncement : 23/09/2021.

ORDER

PER BENCH

This appeal has been preferred by the Assessee against the order dated 11/02/2020 impugned herein passed by the Id. Commissioner of Income Tax (Appeals)-1 [for short, "Id. Commissioner"], Visakhapatnam u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2008-09.

2. In this case, the Assessee along with six other persons has sold 5.88 acres of land situated at Kapuluppada village, Visakhapatnam on dated 16/04/2007 through registered sale-cum-GPA document No. 3921/2007 in which the Assessee's share was to the extent of Rs. 50.00 lakhs in lieu of 0.50 acres of the total land. The purchase value of the land sold by the Assessee was Rs.1,16,130/- as on dated 05/02/2003.

The case of the Assessee was opened for the A.Y. 2008-09 while issuing notice u/sec. 148 of the Act on dated 19/03/2015. Before the AO, it was claimed by the Assessee that the land sold was rural agricultural in nature and therefore not liable for long term capital gain. It was further submitted that without prejudice to the above, the Assessee has invested the sale proceeds in the acquisition of an agricultural land during the previous year. Since the property sold was rural agriculture therefore the capital gain computation was not done while preparing the ITR for the relevant A.Y. 2008-09, however, disclosure was made in the statement of the computation of income. It was further claimed before the AO that the Assessee has complied with all the conditions mentioned in section 54B of the Act. Though, deduction u/sec. 54B was not claimed through ITR, however, the Assessee has claimed the relief to the extent of investment made in compliance with the terms and conditions stipulated u/sec. 54B of the Act. The AO did not get impressed and came to a conclusion that after verification of facts, it is seen that Rs. 14,18,157/- is still liable for long term capital gain and ultimately computed the income from short term capital gain at Rs. 14,18,157/-.

3. Against the said action of the AO, the Assessee preferred first appeal before the Id. Commissioner and reiterated the same contentions as raised before AO and also filed Central Government notification dated 06/01/1994 from which it is clear that the land sold was beyond 8 km. of local limits of Visakhapatnam. The Assessee also filed a certificate issued by the Executive Engineer (R&B), dated 04/12/2008 in Letter No.638/D2/Distance/08 (page No.18 of the paper book filed by the Assessee), where it is certified that distance from old municipality Visakhapatnam to Kapuluppada village is 15.96 kms, and therefore, GVMC notification has no application. The Assessee also relied on the decision of the coordinate bench of the tribunal at Visakhapatnam in the case of *DCIT Vs. Jasti Vayunandana Rao* (ITA No.122/ViZ/2010, dated 29/10/2010) wherein the land situated in the same village was exempted from the capital gain tax, being considered as rural agricultural land.

The Id. Commissioner though considered the contention and documents of the Assessee, however affirmed the order of the AO, while rejecting the claim of the Assessee by holding *that section 2(14)(iii)(b) got amended in 2013 w.e.f. 01/04/2014 wherein the distance is measured aerially. Thus, it is clear that the amended provision is not applicable to A.Y. 2008-09, therefore application of provision is the erstwhile section.* The Id. Commissioner also observed *that as per old provision a Gazette notification is required to bring the properties within the ambit of section 2(14)(iii)(b). However, there is no notification in this regard from 1994. In other words, the extended municipal limits by GVMC is not endorsed by any Gazette of Central Government Extension of Municipal limits is within the power*

and purview of local Government. Gazette notification endorsing the extension of limits of municipality is in the powers of Central Government. In order to mitigate the hardship, the provision is amended and distance is adopted as 'aerial distance'.

4. The Assessee is in appeal against the impugned order.

5. Having heard the parties and perused the material available on record. It is not in controversy that as per notification of the Central Government issued on 06/01/1994, the land in question falls beyond 8 km. from the local municipality and thereafter no notification has been issued by the central Government. The Assessee in support of its contention also filed a certificate issued by the Executive Engineer (R&B) vide Letter No.638/D2/Distance/08 to the effect that the distance from old municipality Visakhapatnam to Kapuluppada village is 15.96 km. The Ld. Commissioner did not express any doubt about the said certificate and though mentioned in its order, however, did not rely upon the same. The conclusion of the Ld. Commissioner with regard to applicability of section 2(14)(iii)(b) is that the said section got amended w.e.f. 01/04/2014 where the distance is measured aerially, therefore, the amended provision is not applicable to A.Y. 2008-09.

If we consider the conclusion of the Id. Commissioner to the effect that provisions of section 2(14)(iii)(b) which got amended w.e.f. 01/04/2014 will not be applicable to A.Y. 2008-09 qua the case of the Assessee, then in principle the provisions prior to shall be applicable, whereby in 1994 the Central Government has notified the areas within the limits of Visakhapatnam municipality

and as per that notification, the Assessee's land in question is undoubtedly falls beyond 8 km. from municipal limits and thereafter no notification has been issued by the Central Government. Meaning thereby, the notification of 1994 still construed as in existence.

Even otherwise, the coordinate bench of the tribunal in the case of Jasti Vayunandana Rao (supra) dealt with the exactly similar issue related to the A.Y. 2008-09 itself, of the same village i.e. Kapuluppada village, Bheemunipatnam Mandal of Vizag, where the land in question before the Co-ordinate Bench and the land sold by the Assessee is situated. The co-ordinate bench of the tribunal thoroughly examined the issue and came to a conclusion that undisputedly the impugned land was initially situated beyond 8km. from the municipal limit of Visakhapatnam Municipal Corporation, but later on, on incorporation of Greater Visakhapatnam Municipal Corporation, it falls within 8 km. from the Visakhapatnam limits, but no notification as required u/sec. 2(14) was issued in the official gazette by the Central Government to bring the land within the purview of section 2(14)(iii)(b). The Central Government is required to issue notification in the official gazette and without notification land falls within 8 km. from the local limits of any municipality would not declare to be an agricultural land. The concluding part of the order is reproduced herein below:-

“7. Having heard the rival submissions and from a careful perusal of the record, we find that undisputedly the impugned land was initially situated beyond the 8 kms. from the municipality limit of Visakhapatnam Municipal Corporation. But later on, on incorporation of Greater Visakhapatnam Municipal Corporation, it falls within the 8

kms. from the municipal limit. But no notification as required u/s 2(14)(iii)(b) of the I.T. Act was issued in the Official Gazette by the Central Government. This issue was examined by us in the case of Smt. C. Girija Vs. ACIT (supra) in which we have given a categorical finding that to bring a land within the purview of clause (b) of section 2(14)(iii), the Central Government is required to issue a notification in the Official Gazette and without a notification a land falls within the 8 kms. from the local limit of any municipality would not cease to be an agricultural land. The relevant observation of the Tribunal are extracted hereunder:

“Having carefully examined the orders of the lower authorities in this regard and the provisions of section 2(14)(iii) of the Act relating to agricultural land, we find that as per clause (a), any land which situated in an area which is comprised within the jurisdiction of municipality or a cantonment board which has a population of not less than 10,000 according to the last preceding census would not be an agricultural land. The clause (b) of section 2(14)(iii) deals with those lands which situates in any area within such distance not being more than 8 kms. from the local limits of the municipality or cantonment board as the central government may having regard to the extent of and scope for urbanisation of that area and other relevant consideration specify in this behalf by notification in the official gazette. To bring a land within the purview of clause (b), the central government is required to issue a notification in the official gazette. Without a notification, a land falls within the 8 kms. from the local limits of any municipality would not cease to be an agricultural land. But in the instant case, the impugned land is admittedly situates within area of a local limit of the GVMC for which no notification as specified in clause (b) is required to be issued by the central government. We have also examined the contention of the assesseees that the GVMC was notified by the local laws and local laws cannot supersede the central laws. But we do not find any force in this argument because the municipality or the cantonment board are subject to local laws and within a state subject and are created by a notification by the state government. Central government has no jurisdiction to create a municipality, cantonment board in any state of the country. Central government is concerned with the central act. Once the municipality of the cantonment board is created by a notification by the state government as per local laws, the central act will apply. Therefore once the impugned land is situated within the jurisdiction of the local limit of the GVMC,

the impugned land cease to be the agricultural land and on its sale capital gain is to be computed. We therefore, find no infirmity in the order of the CIT(A) who has rightly computed the capital gain on sale of the impugned agricultural land.”

8. *Since we have taken a particular view on this issue, we find no reason to take a contrary view in these appeals. Moreover, the CIT(A) has adjudicated the impugned issue in the light of various judicial pronouncements and the relevant provisions of the Act. Since we do not find any infirmity in his order, we confirm the same.”*

5. The Ld. DR contended that certificate issued by the Executive Engineer (R&B) vide Letter No.638/D2/Distance/08 to the effect that the distance from old municipality Visakhapatnam to Kapuluppada village is 15.96 km., filed by the Assessee before the Ld. Commissioner, necessitates verification and even the field enquiry is must for determination of distance, therefore the matter may be remanded to the file of AO for factual determination afresh.

6. We may observe that since the issue dealt by the coordinate bench of the tribunal is exactly similar to the instant issue involved in this case and therefore the judgment of the coordinate bench of the tribunal is squarely applicable to the instant case, hence we are unable to find out any plausible reason to accept the contention of Ld. D.R.

In overall analyzations and consideration, we do not have any hesitation to set aside the order passed by the Id. Commissioner and to delete the addition of Rs. 14,18,157/- as income of the previous year as per section 54B(1)(i) as held by the AO and sustained by the Ld. Commissioner. Consequently, the addition stands deleted.

7. In the result, appeal filed by the Assessee stands allowed.

Order Pronounced in open Court on this 23rd day of Sep., 2021.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated: 23rd Sep., 2021.

vr/-

Copy to:

1. *The Assessee - Smt. Nalini Bandi, W/o Sri Bandi Veera Nataraj, B-1, Janani Residency, Pandurangapuram, Visakhapatnam.*
2. *The Revenue - Income Tax Officer, Ward-3(3), Visakhapatnam.*
3. *The Pr.CIT-1, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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