

**आयकरअपीलीयअधिकरण“ए”न्यायपीठपुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A”**  
**BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No.1415/PUN/2017**  
**निर्धारणवर्ष / Assessment Year : 2013-14**

The Assistant Commissioner of Income Tax, Centra Circle-2(1), Pune.	Vs	Mr.PerukhF.Pastakia& Others, L.H. of Late Fali JahangirjiPastakia, 1, Kamshet, A/P-Kamshet Maval, Pune – 411050. PAN: AAQPP 9519 D
Appellant/Revenue		Respondent /Assessee

Assessee by	Shri Neelesh Kahandelwal – AR
Revenue by	Shri Rajeev Kumar – DR
Date of hearing	11/05/2022
Date of pronouncement	08/08/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-12, Pune dated 31.03.2017 for the A.Y. 2013-14. The Revenue has raised the following grounds of appeal:

- “1. On the facts and circumstances of the case, the Ld. CIT(A) was justified in allowing the appeal of the assessee without appreciating the entire facts of the case.
2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that the Assessing Officer from the analysis of seized/impounded documents and the events leading up to the final sale, had clearly proved that the sole motive behind the sale transaction of the impugned land was to earn higher profit and therefore the transaction was in the nature of adventure of trade.

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that the Assessing Officer in Para 09 of his assessment order has found that the land was not used for agricultural purposes.*
4. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring the fact that the Ld. CIT(A) has not appreciated the ratio of decisions of Hon'ble ITAT, Pune Bench B in the case of Abhijit Subhas Gaikwad Vs. DCIT, CC-2(1), Pune and the decision of the the Hon'ble Supreme Court in the case of SarifaBibi Mohamed Ibrahim and jurisdictional Bombay High Court Gopal C. Sharma Vs. CIT as applicable in the present case, when in fact they are different.*
5. *The order of the Ld.CIT(A) may be vacated and the Assessing Officer be restored.”*

2. Brief facts of the case are that the appellant assessee filed his Return of Income for the A.Y. 2013-14 on 27.07.2013 declaring total income of Rs.17,20,800/-. The assessee has also declared agricultural income and Long Term Capital Gain on sale of Non-Agricultural Land for AY 2013-14 . The assessee had acquired 19 Acres of land, bearing Survey No.44, 61/11, 62/3, 62/4, 62/5, 62/8, 65/1B+2B/1 at village Khadkale, Maval, District Pune in the year 1995 to 1998. The said land admeasuring 7.61 Hectares (19 acres) was sold to M/s.Namrata Reality for a consideration of Rs.30,47,20,000/- vide agreement to sale dated 18.03.2013. The said agreement to sale is duly registered with Sub-Registrar, MavalDist Pune. The assessee claimed income received from sale of impugned land as exempt income as the land was agricultural land beyond 8 kms from municipal limits. The Assessing Officer(AO) taxed it as

Business Income negating the claim of the assessee that the land was agricultural land. It is mentioned in the assessment order that during the course of search, in the case of Namrata Group, certain documents were found and seized related to the said land transaction. On analysis of the seized documents found in the case of Namrata Group, the Assessing Officer(AO) arrived at the conclusion that assessee's act of selling of the impugned land is an adventure in the nature of trade and taxed the surplus as business income. The main crux of the arguments of the AO are as under:

- Assessee is basically a business man into the business of construction and sale of land.
- Assessee got the impugned land valued from Government approved valuer on 17.05.2012 at Rs.30.47 crore.
- On 08.11.2012 agreement signed between Namrata Group and Shri Anand Mutha regarding development and plotting of land.
- The assessee applied for permission to convert land into non-agricultural land on 16.07.2012, but the said application was rejected by the Collector, Dist.Pune.
- The payment has been received by the assessee in instalments.
- No agricultural activity on the impugned land in the recent past.

- The assessee in his statement before the Dy. Director of Income Tax (Investigation) admitted that it is a business income. However, the said statement has been retracted by the assessee.

3. Aggrieved by the order of the AO, the assessee filed appeal before the Id.CIT(A). Id.CIT(A) had called for remand report from the Assessing Officer u/s 250 of the Income tax Act and after considering the same, the Id.CIT(A) deleted the addition. The Id.CIT(A) held that there were agricultural operations and assessee had declared agricultural income till A.Y. 2013-14i.e. the year under consideration. The Id.CIT(A) also gave a finding that 7/12 extract of the impugned land shows it as agricultural land and it also shows crops. Regarding the consideration to be received in instalments, the Id.CIT(A) has mentioned in para 3.7 as under:

*“3.7 The AO in the assessment order has referred to various documents seized from the premises of Namrata Group. According to the AO, these documents indicated that the intention of the appellant was to carry out business. The main thrust of the AO was on the proposed revenue sharing agreement between the appellant and Namrata Group and on the unsigned draft joint venture agreement between the appellant and Panchsheel Group. Taxation of any transaction is to be considered with respect to the actual agreements entered into and not on the basis of proposals which did not materialize. The appellant sold its land to M/s.Namrata Realty by way of sale deed dated 18.03.2013 wherein the consideration was a lump sum amount of Rs.30.47 crs. The AO was to determine the tax liability considering this registered sale*

*deed. The AO noted that as per the agreement entered into by the appellant with M/s.Namrata Realty, the consideration was receivable over a period hence the arrangement amounted to sharing of revenue on sale of plots. I do not agree with the findings of the AO. As per the registered sale deed, the consideration was fixed at Rs.30.47 crores and was not dependent on the revenue realized by the developer. Just because the consideration was receivable in three years the outright sale of land would not take the character of joint development agreement where consideration was in form of sharing the revenue. Therefore, conclusion of the AO is not based on the facts of the case. Moreover, revenue sharing cannot be the sole reason to hold that the asset sold was a business asset.”*

3.1 Finally the Ld.CIT(A) has held as under :

*“3.11 In the remand report, submitted by the AO he has reiterated the same facts which were mentioned in the assessment order. The AO contended that no agricultural operation was carried out whereas the appellant filed its balance sheet and P & L Account for A.Y. 2008-09 to A.Y. 2013-14 in the Paper Book and for all these years, the appellant has declared agricultural income. Extracts of 7/12 were also filed to support that cultivation took place till the land was transferred. Considering the above facts it is held that the appellant was carrying out agricultural operations on the impugned land and the AO was not justified in holding that the land sold was a non-agricultural land. The AO relied upon the decisions of Hon’ble Apex court in the case of Sarifabibi Mohmed Ibrahim 204 ITR 631, of Hon’ble Bombay HC in the case of Gopal Sharma 209 ITR 946 and of IT AT, Pune in the cases of Abhijit Gaikwad and Others, Jitendra Sonigra [ITA No. 849/PN/12] and Hanmantrao Murlidhar Et Co. [ITA No. 515/PN/2012]for the proposition that impugned land was not agricultural land and gain*

arising from transfer of same was taxable. In my opinion, the decisions relied by the AO are not applicable to the present case as in those cases it was established that no agricultural activity was carried out on the land before its transfer. In the present case the appellant had cultivated the land till it was transferred. Considering the above facts, the case of the appellant is distinguishable from the above referred decisions. The appellant drew attention to the decision of Hon'ble ITAT, Pune in the case of Shri Krishnakumar Goyal [ITA No. 1299/PN/2012] where the assessee sold his agricultural land and had claimed the gain exempt from tax. In that case, assessee was engaged in real estate business and also held some pieces of land as stock in trade but impugned land was held by him as investment for a considerable time and the land was also cultivated hence the gain was held as exempt from tax. The AO has not brought on record any evidence to hold that agricultural operations were not carried out. Accordingly, I hold that the impugned land was an agricultural land. Fact that the said land was located beyond 8 kms from the municipal limits and the population of the village Khadkale was less than 10,000 was not disputed by the AO in the assessment order or in the remand report. Therefore impugned land was not a "capital asset" as per definition given u/s 2(14) hence gain on sale of the land is not liable for tax. The AO is directed to delete the addition of Rs. 30,31,78,000/-. Grounds raised by the appellant are hereby allowed."

4. Aggrieved by the order of the Id.CIT(A), the Revenue has filed appeal before this Tribunal.
5. The Id.AR for the assessee filed paper book. The Id.AR at the outset submitted that the said issue is covered by the order of the

Ld.ITAT Pune Bench in ACIT Vs. M/s.Renaissance cultivation LLP in ITA No.1416/PUN/2017 in which the issue involved is identical. The land referred in the case of M/s.Renaissance cultivation LLP is adjacent to the land of the appellant assessee. They both have sold it to the Namrata Reality. The ld.AR took us through the copies of 7/12 extracts which were filed before the Assessing Officer as well as ld.CIT(A) [page no.98 to 128 of the paper book]. The ld.AR explained that the impugned land is shown as agricultural land in the 7/12 extract also it shows crop grown on the land. The ld.AR took us through the copies of the return of income filed by the assessee for A.Y.2008-09 to 2013-14[page no.32 to 64 of the paper book] to demonstrate the agricultural income offered by the assessee. The ld.AR also took us through the copy of ledger account for A.Y.2013-14 to demonstrate receipt of agricultural income from sale of agricultural produce. The ld.AR submitted that the impugned land was purchased between 1995 to 1998 as agricultural land and assessee has been doing agricultural activities since then on the said land. The ld.AR also submitted that the impugned land has been shown in the Balance Sheet as investment and not as Stock-in-trade. Ld.AR invited our attention to the order of Ld.CIT(A) wherein the CIT(A) has given the findings that the land was shown as investment. The ld.AR also referred to the copies of the ledger accounts to demonstrate that the assessee had purchased fertilizers,

seeds for agricultural purposes which are appearing in the ledger accounts. The Id.AR also explained that the assessee had sold the land on 18.03.2013 as agricultural land. The agreement to sale refers the impugned land as agricultural land. He invited our attention to Clause No.3b of the agreement to sale which refers the agricultural crop standing on the impugned land. Therefore, Id.AR vehemently argued that even at the time of sale of the impugned land, there were agricultural crops standing which explains that the assessee has been carrying on agricultural activities. The Id.AR further submitted that the AO had deputed an Inspector to verify the status of the land in the year 2015 i.e. much after the sale of the land, therefore, the report of the Inspector has got no significance for the transaction which took place in 2013. Merely the fact that the land has been sold to the developer does not change the character of the land as agricultural land.

6. The Id.Departmental Representative(Id.DR) for the Revenue heavily relied on the order of the AO. The Id.DR submitted that the assessee is in the business of construction and land development and assessee always wanted to sell the impugned land. Therefore, the intention of the assessee was always earning profit from selling the land. The Id.DR heavily relied on the decision of Hon'ble Supreme

Court in the case of Smt.Sarifabibi Mohamed Ibrahim Vs. CIT 204 ITR 631 (SC).

7. We have heard both the parties, studied the records and have gone through the orders of the Lower Authorities. We find that it is a fact that the impugned land was sold videregistered agreement to sale dated 18.03.2013 to Namrata Reality. It is also a fact that the said land is appearing as agricultural land in Land Revenue Records. We have perused the copies of the Return of Income[page 32 to 64 of the paper book] for A.Y. 2008-09 to A.Y. 2013-14 and observed that the assessee has shown agricultural income in all these years. We have also studied the English Translation of 7/12 extract[page no.98 to 128 of the paper book] which shows that the assessee has been growing Rice, Jawar on most of the land. However, it is also observed that some part of the land was “Padith”. We have studied the copies of the ledger account filed by the assessee, the entry dated 28.05.2012 explains,the purchase of cow dung for survey no.55, 61/11, 62/3, 62/4, 62/5, 62/8, 65 1B+2B/2, at village Khadkale, entry dated 02.04.2012 is purchase of fertilizers, entry dated 12.05.2012 is cash paid for tractor, ‘nagarani’( nagarani means ploughing) for survey no.55, 61/11, 62/3, 62/4, 62/5, 62/8, 65 1B+2B/2, at village Khadkale, entry dated 21.11.2012 is sale of rice 14500 kgs of Survey No.55, 61/11, 62/3, 62/4, 62/5, 62/8, 65 1B+2B/2, at village

Khadkale for Rs.2,90,000/-, entry dated 12.01.2013 is sale of rice for Rs.11,500/-. These are some of the entries which we have picked up from the copies of the ledger accounts filed by the Id.AR to demonstrate that the agricultural activities were carried out even during the year F.Y.2012-13 just prior to the Sale of land. In the Profit and Loss account (page 204 of the paper book) the assessee has shown agricultural income of Rs.12,35,290 from sale of Jawar, Rice, Vegetables for FY 2012-13. It is also observed that vide letter dated 21/08/2015 filed before the Assessing Officer Dy. Commissioner of Income Tax Central Circle 2(1) Pune , which bears the stamp of the Dy.Commissioner of Income Tax Central Circle 2(1) Pune with date (page number 151-161 of paper book) , the assessee submitted before the AO copies of receipts for agricultural income, vouchers/ bills for agricultural expenses like purchase of seeds, Tractor hiring, purchase of fertilizers for FY 2012-13. The assessee also submitted a statement showing Agricultural Income for last 33 years of the assessee as disclosed in the Return of Income. Assessee claimed before the AO that he was having only agricultural income and income from Partnership firms. The Assessee in the said letter submitted before the AO mentioned that he is an agriculturist and his family members are also agriculturist. The Assessee vide another letter dated 12/01/2016 addressed to the Dy.Commissioner of Income Tax Central Circle 2(1) repeated the submission made

earlier, the Assessee in the letter dated 12/01/2016 further submitted that the Land was surrounded by agricultural land and it does not have a proper road connectivity, there is a 'kuccha' road .The Assessee also claimed in the said letter that the AO had conducted enquiries with the persons mentioned in certain receipt/ bills and found to be correct. It is claimed in the said letter written by the assessee to the AO, that the AO had recorded statement of the Talathi, the Talathi had confirmed that agricultural activities were carried out in the impugned land. It is observed that the Assessee in the paper book at Page number 264 has filed letter dated 01/01/2016 addressed to Dy.CIT Central Circle 2(1) Pune, written by Mr.GaneshBuchade with reference to summons issued by the Dy.Commissioner of Income Tax Central Circle 2(1), in the said letter Mr.Ganesh had confirmed sale of Rice by the assessee to him during FY 2012-13. Similarly confirmation has been filed by Dyaneshwar Bankar in response to the letter of the Dy.Commissioner of Income Tax Central Circle 2(1) confirming sale of vegetables by the assessee to him.( page 265 of paper book).It is a fact that the assessee is holding the impugned land for around 17 years. The assessee claimed in the letter written to the AO that he had filed Balance Sheet before the AO which shows the impugned land as investment. The LD.CIT(A) has given categorical finding on page 27 of the order that land was always shown as investment by the

assessee and not as stock in trade. Thus, it is a fact that the land was always shown as investment in the balance sheet by the assessee and not as stock in trade. It is also observed that during the year the assessee has sold some land and offered income from the sale of land as capital gain. It shows that the assessee always treated land as investment. The Assessing Officer has not treated the said sale as Adventure in the nature of trade, it shows that the AO is not consistent in his approach. The Ld. DR has not rebutted any of these documents or assertions. No-where, in the assessment order the AO has rebutted these facts. The unsigned document found during the search in the case of Namrata Reality regarding revenue sharing has got no evidentiary value in absence of any other supporting evidence. The Registered Agreement to Sale does not refer to the said unsigned document at all. The AO has heavily relied on the Valuation Report of the impugned land but getting the land valued does not change the character of the land.

7.1. After taking into consideration all the facts, definitely it can be concluded that agricultural activities were carried out on the impugned land till it was sold.

8. The Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohamed Ibrahim Vs. CIT 204 ITR 631 (supra) has laid down the following criteria to decide the nature of the land.

*“(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?”*

*(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?*

*(3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?*

*(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?*

*(5) Whether, the permission under Section 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?*

*(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature?*

*(7) Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?*

*(8) Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?*

*(9) Whether the land itself was developed by plotting and providing roads and other facilities?*

*(10) Whether there were any previous sales of portions of the land for non-agricultural use?*

*(11) Whether permission under Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist was for non-agricultural or agricultural use?*

*(12) Whether the land was sold on yardage or on acreage basis?*

*(13) Whether an agriculturist would purchased the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"*

9. Let us try to analyze the facts of the case vis-à-vis the guidelines laid down by the Hon'ble Supreme Court. It is a fact that the land is an agricultural land in revenue records, assessee has shown agricultural income, assessee has carried out agricultural activities up to the point of sale as appearing from the ledger accounts for the A.Y. 2013-14 and land revenue record. No non-agricultural activities like plotting etc., were carried out by the appellant assessee. It is also a fact that the permission to convert the impugned land into non-agricultural land was received by the purchaser of the land after purchasing the land. Thus, the assessee had not received any "NA permission" prior to sale of the land. The land is situated in a village, thus, it is not situated in a developed area. The impugned land is surrounded by Agricultural land. The impugned land has been used by the assessee for agricultural purpose for around 17 years. Whether an agriculturist would have purchased the said land for the said cost is the question, which cannot be answered as Revenue has not brought out any facts on records on this issue. Therefore, when we apply the criterion laid down by the Hon'ble Supreme Court(supra) mentioned above, on the facts of the

case, almost all criteria's goes in favour of the assessee in deciding the land as agricultural land.

10. The Ld. ITAT Pune Bench in the case of ACIT vs Renaissance Cultivation LLP (ITA No.1416/PUN/2017) held as under :

*Quote. " Therefore, in the light of the fact that the entries in the 7/12 extracts shows that lands were agricultural lands at the time of transfer and the lands have been put to agricultural operations, it can be said that the assessee company had discharged his burden and proved that the lands were agricultural lands. Further, the fact that the purchaser of the lands had used the lands for non-agricultural purpose has no bearing in determining the nature of assets sold by the assessee on the date of sale as held by the Hon'ble Madras High Court in the case of M. S. Srinivas Naicker vs. ITO, 292 ITR 481 as extracted above. 12. Further, in the present case, the seller of the land had not taken any steps which would indicate the intention to exploit the land for non-agricultural use, it is only the buyer of the land who sought the permission for conversion of land into agricultural to non-agricultural on 05.09.2014 which is subsequent to the sale of land by the respondent. Recently the Hon'ble Kerala High Court in the case of CIT vs. Cochin Malabar Estates and Industries Ltd., 440 ITR 121 after referring to the judgement of the Hon'ble Madras High Court in the case of Mansi Finance Chennai Ltd. and MS. Srinivasa Naicker referred (supra) held as follows :- ITA No.1416/PUN/2017 21 "8.3 ..... In our understanding, the test stipulates that the subject matter of land is capable of being used for agricultural purposes without inhibition both in fact by change of user and by law by orders of conversion from agricultural to non-agricultural. Any other future independent application of said tests, is impractical from the perspective of sale and purchase. The*

*judgment of this Court in Kalathingal Faizal Rahman case refers to the burden of proof, and that, what constitutes agricultural land essentially is a question of fact and the same has to be established by the assessee. While advertng to the future use, we are persuaded by the reasons given by the Madras High Court in Ms. Srinivasa Naicker and Mansi Finance Chennai Ltd. cases.” 13. Thus, the argument of the ld. CIT-DR that the land was used for non-agricultural purpose by the purchaser of the land has no impact in determining the issue whether the land is agricultural or not at the time of sale. 14. The appellant had also been disclosing agricultural income, though meagre, accepted by the Department. The Hon’ble Jurisdictional High Court in the case of CIT vs. Smt. Debbie Alemao, 196 Taxman 230 (Bombay) held that if agricultural operation does not result in income that cannot be ground to say that land was not used for agricultural purpose. Thus, it cannot be said that there is no agricultural activities on the subject lands. 15. The mere fact that the assessee company made huge amount of profit cannot be ground to treat the profit arising on sale of ITA No.1416/PUN/2017 22 agricultural land as “business income” as held by the Hon’ble Gujarat High Court in the case of PCIT vs. Heenaben Bhadresh Mehta, 409 ITR 196 (Guj.). The relevant observations vide para 9 of the said judgement are as under : “9. As observed hereinabove, the land was sold as an agricultural land and in fact, what was sold was agriculture land. What was the intention of the purchaser cannot be the determinative factor to treat the profit earned by the assessee on sale of agriculture land as business income. Similarly, merely because for whatever reason, the assessee has earned sufficient huge amount of profit also cannot be a ground to treat the profit earned by the assessee on sale of agriculture land as business income.” 16. The submissions made on behalf of the respondent-assessee company detailing as to how in terms of the tests laid down by the Hon’ble Supreme Court in the*

*case of Smt. Sarifabibi Mohmed Ibrahim & Others vs. CIT, 204 ITR 631 (SC) the land is an agricultural land, remain uncontroverted by ld. CIT-DR. 17. In the light of above discussion, we are of the considered opinion that the assessee company had brought on record a conclusive proof to infer that the lands sold were agricultural lands. Accordingly, we uphold that the findings of the ld. CIT(A) that the lands sold were agricultural lands.” Unquote.*

11. The facts of the case of Renaissance Cultivation LLP and the assessee are identical. Both have sold the land to Namrata Reality. The lands are adjacent to each other. Therefore, the decision of the Learned co-ordinate bench in the case of the Renaissance Cultivation LLP (supra) is applicable to the present case.

12. The Hon'ble Gujarat High Court in the case of Pr.CITVs. Heenaben Bhadresh Mehta[2018] 96 taxmann.com 164 (Gujarat) has held as under :

*Quote, “ At the outset, it is required to be noted that the issue in the present appeal is whether the learned Income Tax Appellate Tribunal is right in directing the Assessing Officer to treat the profit of Rs. 68,18,800/-earned by the assessee on the sale of agricultureland as exempt under Section 2(14) of the Income Tax Act? The Assessing Officer treated the profit earned by the assessee on sale of agriculturelands as business income and not as capital gain on sale of agriculturelands, which is exempt from tax under Section 2(14) read with Section 45 of the Act.*

*7. From the order passed by the Assessing Officer, it appears that the Assessing Officer treated the profit of Rs. 68,18,800/- earned by the assessee from sale of agriculturelands as business income*

mainly on the grounds that (i) the **land** was sold to the company, which used the said **land** for industrial purpose; (ii) that there was a steep rise in the profit and (iii) that the **lands** were sold within a short span of time. However, it is required to be noted and it is not in dispute that as such, what was sold by the assessee was **agricultureland**. In the revenue record also, **lands** were shown as **agriculturelands**. It is also required to be noted that the **agriculturelands** in question were sold by the assessee after a period of approximately 15 to 16 months from purchase. Therefore, as such, it cannot be said that the **agriculturelands** were sold within a short span of time. It is also required to be noted that the assessee is an agriculturist and also belongs to family of agriculturists. Therefore, as the assessee sold the **agriculturelands** and therefore, claimed exemption under Section 2(14) of the Act on the profit earned on **sale of agriculturelands**, Section 2(14) of the Income Tax is required to be referred to and reproduced hereunder:—

'2(14) "capital asset" means

\*\* \*\* \*  
 but does not include  
 \*\* \*\* \*

(iii) **agricultural land** in India, not being **land** situate-

(a)	in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand
(b)	in any area within the distance, measured aerially,—
(I)	not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or >
(II)	not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or.
(III)	not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in

	item (a) and which has a population of more than ten lakh.
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*Explanation- For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;*

*8. Therefore, on plain reading of Section 2(14) of the Act, if the "agricultureland" as mentioned in Section 2(14)(iii) is sold, the assessee shall be entitled to claim exemption on profit earned on sale of agriculturalland as per Section 2(14) read with Section 45 of the Act, unless it is established and proved that the transaction carried out was "adventure in the nature of trade" and the profit thus required to be taxed as business income. On appreciation of evidence, the learned Tribunal has specifically observed and held that the transaction carried out by the assessee was not "adventure in the nature of trade" and therefore, profit earned was not required to be taxed as business income. The aforesaid is the finding recorded by the learned Tribunal on appreciation of evidence.*

*9. As observed hereinabove, the land was sold as an agricultural land and in fact, what was sold was agriculture land. What was the intention of the purchaser cannot be the determinative factor to treat the profit earned by the assessee on sale of agriculture land as business income. Similarly, merely because for whatever reason,*

*the assessee has earned sufficient huge amount of profit also cannot be a ground to treat the profit earned by the assessee on sale of agriculture land as business income.*

*10. Under the circumstances and on the facts and circumstances of the case, the learned Tribunal has not committed any error in directing the Assessing Officer to treat the profit of Rs. 68,18,800/- earned by the assessee on the sale of agriculture land as exempt under Section 2(14) of the Income Tax Act.*

*11. Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of G. Venkataswami Naidu & Co. (supra) is concerned, considering the facts before the Hon'ble Supreme Court, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand. The Hon'ble Supreme Court was considering Section 2(13) of the Income Tax Act and the definition contained in Section 2(13) fell for consideration before the Hon'ble Supreme Court. The wordings in Sections 2(13) and 2(14) are different. Therefore, the said decision shall not be applicable to the facts of the case on hand." Unquote.*

13. Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Smt. Debbie Alemao[2011] 196 Taxman 230(Bombay) has held as under :

Quote, “ By an order dated 20-3-2006, the appeals were admitted as to the following substantial question of law :—

*"Whether on the facts and in the circumstances of the case the assessee's land could be termed as "Agricultural Land"?"*

4. The learned Counsel for the appellant submitted that the said land had non-agricultural potential when it was purchased by the respondents. She submitted the very fact that the respondents sold the said land within two years of its purchase to a purchaser for construction of a beach resort showed that the respondents had purchased the property with an intention of selling it for a non-agricultural use. The huge difference in the price nearly 10 times the purchase price would indicate that the land was purchased with an eye on the non-agricultural potential. The learned Counsel for the appellant, therefore, submitted that the said land was not an agriculturalland. The learned Counsel for the appellant also invited our attention to the fact that the Respondents had not shown any agricultural income during the period of two years from the date of the purchase till the date of the sale, arising out of the said land. This also showed that the land was not an agriculturalland. The Counsel for the appellant submitted that the Commissioner of Income-tax (Appeals) as well as the ITAT committed a gross error, bordering on perversity, in holding that the said land was an agriculturalland. Ordinarily, the question whether a land is an agriculturalland and a non-agriculturalland is a question of fact and the finding on the question of fact recorded by the ITAT is final.

5. Under section 260A of the Income-tax Act, it is not open to the High Court to interfere in the finding of the fact. The finding of fact that could be interfered only if it was arrived at by application of wrong principles of law or was perverse, i.e., to say that no prudent

man versed in law would come to the said finding. In our view, the finding is neither perverse nor is it arrived at by wrong application of any principle of law and it is not open for us to interfere in the possible finding of fact in an appeal under section 260A of the Income-tax Act. The Assessing Officer has noted that the said land was entered in the revenue record as an agricultural land, i.e., garden or orchard. The ITAT also held that the land was recorded in the revenue records as an agricultural land. This is not disputed by the revenue. It is however contended that the land was not actually used for agriculture inasmuch as no agricultural income was derived from this land and was not shown by the respondents in their Income-tax return. This was explained by the respondents by saying that there were coconut trees in the land but the agricultural income derived by sale of the coconuts was just enough to maintain the land and there was no actual surplus. Hence, no agricultural income was shown from this land. In our opinion, if an agricultural operation does not result in generation of surplus that cannot be a ground to say that the land was not used for the agricultural purpose. It is not disputed that the land was shown in the revenue record to be used for agricultural purpose and no permission was ever obtained for non-agricultural use by the respondents. Section 30 of the Goa, Daman and Diu Land Revenue Code, 1968 provides that no land used for agriculture shall be used for any non-agricultural purpose and no land assessed for one non-agricultural purpose shall be used for any other non-agricultural purpose except with the permission of the Collector. Section 32 of the Goa, Daman and Diu Land Revenue Code prescribes the procedure for conversion of use of land from one purpose to another including conversion from agricultural purpose to non-agricultural purpose. The permission for non-agricultural use was obtained for the first time

by the Varca Holiday Beach Resort Private Limited the purchaser after it purchased the land. Thus, the finding recorded by the two authorities below that the land was used for the purpose of agriculture is based on appreciation of evidence and by application of correct principles of law. The Tribunal has relied upon two unreported decisions of this Court in CIT v. Minguel Chandra Pais/Smt. Maria Leila Tovar Furtado [2006] 282 ITR 618<sup>1</sup> which involved identical issue. In those appeals, this Court has upheld the order of the Tribunal holding that the land was agricultural land and its sale did not invite the payment of capital gain. It is not disputed before us that the facts of the said cases were similar to the facts of the present case. We are bound by the decision in those cases. ” Unquote.

14. The Hon’ble Allahabad High Court in the case of CIT Vs. Shashi Kumar Agrawal [2003] 131 TAXMAN 823 (ALL) has held as under:

Quote,

“ The following question of law has been referred to this Court for opinion:

“Whether, on the facts and in the circumstances of the case, the profit arising from the sale of plots should be taxed as profit from an adventure in the nature of trade or the same should be taxed under the head ‘Capital gains’ ?”

3. Similar question was considered in CIT v. Shashi Kumar Agrawal [1992] 195 ITR 767(All.) wherein it has been held that the profit from the sale of land after plotting it out to secure better price cannot be taxed as profit from an adventure in the nature of trade.

4. In view of the above decision, we answer the question referred to above in negative, i.e., it cannot be taxed as profit from an adventure in the nature of trade. ” Unquote.

15. In the present case, as per the return of Income, under the head business income the assessee has shown profits from Partnership Firms, thus the assessee has not carried out any business activity per se. In the present case the assessee had purchased the impugned land in 1995, 1998 and sold it in F.Y.2012-13,i.e. he was holding the land for more than 17 years. The assessee sold the impugned land as agricultural land. The Assessee had been carrying out agricultural activities on the impugned land. No non-agricultural activities carried out by the assessee on the impugned land. The assessee had shown agricultural income. The assessee had produced the bills for purchase of seed, fertilizers etc before the Assessing officer. The Assessee had submitted copies of ledger account for agricultural income. The permission for conversion of the impugned land into non-agriculture was obtained by the purchaser after the land was sold by the assessee. The 7/12 record shows land as agricultural land and it also shows crops grown over the years including F.Y. 12-13. The land is admittedly beyond 8 kms of the Municipal Limit and the village has population of less than 10000. The Assessee had submitted before the Assessing officer the statement showing Agricultural Income based on the return of income, earned for last 33 years to demonstrate that the assessee is an agriculturist. Merely, the land was sold to the Developer does not take away the agricultural character of the impugned land. Assessee has shown the land as investment in the

balance sheet. Therefore, after considering all these facts, considering the proposition of law laid down by the Hon'ble Supreme Court in Sarifabibi (supra), Hon'ble High Courts (supra) and the decision of Coordinate bench of ITAT Pune in the Renaissance LLP case (supra), we are of the considered opinion that the impugned land was agricultural land and the income arising out of sale of the impugned land is not business income and it is not adventure in the nature of trade, accordingly, grounds of appeal of the Revenue are dismissed.

16. In the result, appeal of the Revenue are Dismissed.

Order pronounced in the open Court on 8<sup>th</sup> August, 2022.

Sd/-  
(S.S.GODARA)  
JUDICIAL MEMBER

Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 8<sup>th</sup> August, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT,Pune.