

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.788/Hyd/2019		
Assessment Year: 2004-05		
Allam Adavaiah, H.No.2-123-2/3, Yellareddyguda, Kapra, ECIL Road, Hyderabad. PAN : ADNPA1785G.	Vs.	ACIT, Circle – 15(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri A. Srinivas, C.A.
Revenue by:		Shri K.P.R.R.Murthy, Sr.AR
Date of hearing:		20.02.2023
Date of pronouncement:		06.03.2023

ORDER

Per Shri Laliet Kumar, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 01.03.2019 for the A.Y 2004-05 on the following grounds :

"1. The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.

2. The Appellate Commissioner ought not to have confirmed the order of the A.O, who has held that the land in survey No.671 was to be taxed to capital gains in the A.Y: 2004-2005 and not in A.Y:1995-1996, amounting to Rs. 1,12,53,000/-.

3. The Appellate Commissioner ought not to have confirmed the order of the A.O, who ignored the overall agreement entered into by the assessee and also ignored the fact that the possession was already handed over in the year ending 31.03.1994.

4. The Appellate Commissioner ought not to have confirmed the order of the A.O, who has taken a narrow view of the term "Transfer" and should have referred to other provisions of the definition of the word "Transfer".

5. The Appellate Commissioner ought not to have confirmed the order of the A.O, who relied on explanation 2 to sec.2 (47) and restricting himself to the definition of the word "Agreement" to mean only written agreement.

6. Without prejudice to the above submission, the Appellate Commissioner ought not to have confirmed the order of the A.O, who erred in adopting the consideration as per the SRO rate in the order."

2. The brief facts of the case are that assessee has not filed his return of income for the Asst Year 2004-05. Consequent to Search & seizure operations conducted in the Janapriya Group cases, the issue of Long Term Capital Gain on sale of land came to notice of I.T. Department and a notice u/s 148 was issued to the assessee on 31.03.2011 calling for the return of income for the Asst.year 2004-05. Thereafter, assessment was completed U/s. 143(3) r.w.s.147 of Income Tax Act, 1961 on 30.12.2011 by assessing the income of the assessee at Rs.2,65,50,565/-. Aggrieved upon the orders of AO, the assessee preferred an appeal before the CIT(Appeals), who allowed the appeal of assessee. Later, the Revenue went on appeal before the ITAT, who in turn restored the matter to the file of Assessing Officer for limited purpose of examining and deciding the new issue raised by the assessee for the first time before the Tribunal by way of additional grounds. Accordingly, notices U/s.143(2) and 142(1) were issued on 04-1-2016 and duly served. Thereafter, the submissions made by the assessee were rejected by the Assessing Officer and assessment u/s 143(3) r.w.s. 254 of the I.T. Act on 23.12.2016 was completed by determining capital gains at Rs.1,12,53,000/-.

3. The appeal filed by the assessee is barred by limitation by 15 days. He has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who granted partial relief to the assessee. The finding recorded by the ld.CIT(A) read as under :

“4.2 I have considered the submissions of the appellant and findings of the Assessing Officer in the assessment order carefully. The issue under consideration is whether capital gains is taxable in pursuance of the land sold falling in the Sy. No.671 admeasuring Ac 3.35 gts. There is no dispute that the appellant has sold the property during the Previous Year 2003-04 relevant to Asst. Year 2004-05 vide registered sale deed dated 29-8-2003. The evidence to that effect was found during the Search & Seizure operation conducted in the case of Janapriya Group of Cases and the case was reopened u/s.147 of the I.T.Act. The assessment was also framed u/s.143(3) rws 147 of the Act on 30-12-2011 taxing capital gains in the hands of the assessee in respect of the impugned land and also other lands. The matter went upto ITAT and Hon'ble ITAT set aside the issue to the file of Assessing Officer vide order dated 10-7-2015 in ITA No.1336/H/2012, 1337/H/2012, 1338/H/2012, 1339/H/2012 involving 4 assesseees to examine whether any transfer took place in A.Y.1995-96 in respect of the transfer of the land situated in Sy. No.671. The assessment was framed u/s.143(3) rws 254 of the I.T.Act on 23-12-2016 rejecting the claim of the appellant and taxing the capital gain in the A.Y.2004-05. The Assessing Officer taxed the capital gains on the ground that the sale of the property actually took place in the previous year 2003-04 relevant to asst. year 2004-05 and rejected the oral agreement claiming to have transferred of the property in the year 1995-96. The Assessing Officer held that oral agreement cannot be treated as a valid agreement as it is revocable and no proof produced by the assessee to show that the construction activity has started after the said oral agreement. During the course of appellate proceedings, the AR of the appellant relied upon the confirmation given by Janapriya Projects stating that possession was given to them in the year 1994 under oral agreement. The confirmation given by Janapriaya Projects is reproduced below:

"To
Asst. Commissioner of Income Tax Circle 11 (1)
Hyderabad.

Madam

Sub: Confirmation of possession of lands - Regd.

With respect to above subject we are hereby confirm that we have purchased A. 29.13G and taken possession of the lands by irrevocable General power of Attorney cum Agreement of sale in the year 1994 from Sri Allam Advaiiah, Allam Krishna, Allam Agamaiah and Smt Allam Maisamma. These lands are situated in sy. no. 662, 663, 668, 671. The Irrevocable General power of Attorney cum Agreement of sale was entered into for the sy. No63 and for remaining sy. nos. i.e. 668,671 we 4-6-c311-0.....have taken possession by oral agreement These lands were not registered as some legal litigations were there on these Lands, upon clearing these legal litigations, even though we have taken possession of these lands in the year1994, we have registered the lands in the names of our nominees which are as per statement enclosed.

Further we submit that we ha ye paid full sale consideration for these lands during the periods 1995 to 2002. These payments are reflected in our books of accounts and we are enclosing vendors ledger accounts in our books. We are enclosing here with registered sale deeds for your verification. After clearing legal litigations we have started venture in the name of Janapriya Lake view on these lands, which is currently in progress.

We hope the above information is sufficient, any further information you require we should glad to oblige."

4.3 *During the course of appellate proceedings vide order sheet dated 22-02-2019, the AR of the appellant was required to give details of the litigation pending in the case of the property, if any and also required to give any permission taken for construction of the property from the year 1994 onwards to till the year 2003-04 by Janapriya Projects and the case was adjourned to 28-2-2019. On that appointed date, the AR of the appellant did not come forward to submit any evidence as called by the undersigned on 22-2-2019. As the appellant did not produce any other evidence to prove that the property was actually transferred in the year 1994-95 except the confirmation from Janapriya Projects, the claim made by the appellant that the property was actually transferred in the year 1994-95 is rejected. Mere production of ledger account of the land in the books of accounts of Engineers Syndicate India Pvt. Ltd., showing the various payments is not enough. Regarding the validity of the oral agreement, Hon'ble ITAT observed in the order dated 10-07-2015 in the case of assessee itself for the transfer of impugned land is as under:*

7.1. In the present case, there was however no such contract in writing entered into in the previous year 1994-1995 in respect of land in Survey Nos.668 and 671 signed by the assesseees from which the terms necessary to constitute the transfer could be ascertained with reasonable certainty and the oral agreements stated to be entered into by the assesseees, in our opinion, cannot be said to have resulted in transfer of the land as envisaged in the provisions of section 2(47)(v) of the Income Tax Act read with section 53A of Transfer of Property Act even though it is accepted that the possession of the said land was taken by the transferee in that year. At the time of hearing before us, Ld. Counsel for the assessee has not been able to raise any material contention to dispute this position. He however has sought to raise altogether new issues by filing the following additional grounds with an application under Rule 27 of the Appellate Tribunal Rules, 1963 seeking admission thereof.

1. "The respondent prays that, on the facts and circumstances of the case, the Hon'ble Tribunal may be pleased to hold that the transfer of the impugned property has taken place in the previous year 1994-95 Itqevant to A.Y. 1995-96 within the meaning of Sec.2(47)(i), or Sec.2(47)(ii) or Sec.2(47)(vi) and as such the capital gains cannot be brought to tax in the A. Y. 2004-05.

2. The respondent prays that the Hon'ble Tribunal may be pleased to consider a broader view of the word "transfer" vis-a-vis the facts and circumstances of the respondents case and not restrict the "transfer" to Sec.2(47)(v)."

4.4 From the plain reading of the decision of the Hon'ble ITAT cited supra in the case of assessee, it is crystal clear that there is no valid transfer under oral agreement within the meaning of Sec.2(47)(v) of the I.T.Act. Secondly, there was no evidence of any construction activity taken in the land by the transferee from the year 1994-95 to till F.Y.2003-04. Mere confirmation by Engineers Syndicate India Pvt. Ltd. is not enough to prove the actual transfer. The confirmation given by Engineers Syndicate India Pvt. Ltd., is not genuine. The confirmation was given by Engineers Syndicate India Pvt. Ltd. to enable the assessee to evade payment of capital gain tax and also to enable the transferee Kum. B.Lakshmi to escape from the tax liabilities. The averments contained in the registered sale deed 29-8-2003 executed by the assessee in favour of Kum. B.Lakshmi does not mention transfer by possession of the property in the year 1994. The contents of the registered sale deed are reproduced below to prove that assessee was actually possessing the property as on the date of transfer on 29-8-2003 and the same is as under:

"WHEREAS the Allam Advaiyah is the Pattadar and Possessor of agricultural land bearing Survey No.671 situated at Kapra Village, Keesara Mandal, R.R.Dist., admeasuring Ac. 3-35 gts.. SI.No.(i) to (iii) are the sons and legal heirs of Allam Advaiyah.

WHEREAS the MRO, Keesara Mandal, R.R.Dist issued Patta No.267, Pass-Book No.Z51389 & ROR bearing No.295524 in the name of Allam Advaiiah situated at Kapra Village, Keesara Mandal, R R Dist.

WHEREAS the VENDORS are in possession and peaceful enjoyment of the above said agricultural land and is now desirous of selling that land bearing Survey No.671 an extent of Ac.3-35 gts. situated at Kapra Village, Keesara Mandal, R.R.Dist. to the VENDEE to meet their family legal financial necessities.

WHEREAS the VENDORS to meet their legal, financial & family necessities jointly offered to sell and the VENDEE agreed to purchase Ac.3-35 guntas of land for total sale consideration of Rs.15,50,000/- (Rupees Fifteen Lakhs and Fifty Thousand Only)." Considering the factual matrix of the case, I am fully in agreement with the view of the Assessing Officer that there was no transfer in the year 1994-95 and uphold the findings that transfer took place in the year 2003-04 only. Therefore, I confirm the addition made by the Assessing Officer. However, I find from the assessment order dated 30-12-2011 that the Assessing Officer had computed the cost of acquisition at Rs.2,87,235/- as on 1-4-1981 for the impugned property as well as other property. The proportional cost of the impugned land sold comes to Rs.93,775/-. The Assessing Officer is directed to grant relief by Rs.93,775/-. These grounds of appeal are allowed partly.

5. In the result, the appeal is treated as PARTLY ALLOWED."

5. Feeling aggrieved by the order passed by the Ld. CIT(A), the assessee is in appeal before us on the grounds mentioned herein above.

6. Before us, ld. AR had submitted that the transfer of the land had taken place in favour of Janapriya Engineers Syndicate, falls within the meaning of the term "transfer" as contained in the provisions of assessee sub-clause (i) or (ii) or (vi) of clause (47) of section 2 of the Income Tax Act, 1961, in the year 1994.

6.1 The assessee has drawn our attention to the order of this Tribunal in the First Round of Proceedings whereby the issue was remanded back to the file of the Assessing Officer for adjudicating the issue afresh. It is the contention of the Id.AR that the assessee had filed a letter of confirmation issued by M/s. Janapriya Projects whereby it was confirmed that the assessee had handed over the possession through the oral agreement to the said M/s. Janapriya Projects. Further, it was submitted that the said M/s Janapriya Projects had paid full consideration during the period from 1995 to 2002. Further, it was submitted that as the transfer had taken place in the year 1994, therefore, the assessee cannot be taxed in the year of registration of sale deed. Ld.AR had filed the written submissions to the following effect:

26. The Assessee presents before the Hon'ble ITAT, substantiating the stand that the facts and circumstances of his case are such that the transaction of transfer of land to Janapriya Engineers Syndicate, falls within the meaning of the term "transfer" as contained in the provisions of sub-clause (i) or (ii) or (vi) of clause (47) of section 2 of the Income Tax Act, 1961.

27. The Assessee draws attention, to the Order of the Hon'ble Tribunal in the First Round of Proceedings, and the Directions given therein from which it can be seen that the Hon'ble Tribunal has held that in so far as the land in Survey No's. 662 and 663 are concerned the transfer of the same has taken place in the year 1994-95 itself and the verification of the applicability of the other clauses of section 2(47) is now restricted under the current proceedings to the land in Survey No's 668 and 671.

28. Accordingly, the current submissions are in respect of the following lands:

<i>Sy.No.</i>	<i>Allam Advaiiah</i>	<i>Allam Krishna</i>
<i>668</i>	<i>--</i>	<i>Ac.1.32</i>
<i>671</i>	<i>Ac.3.20</i>	<i>Ac.2.20</i>

29. The Assessee submits that the provisions of section 2(47) read as under;

Sec.2(47)'transfer', in relation to a capital asset, includes,-

(i) the sale, exchange or relinquishment of the asset; or

(ii) the of any rights therein; or

(iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof or is treated by him as stock-in-trade of a business carried on by him, such conversion or treatment or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in. a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property

Explanation-For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA

30. The Assessee submits that the Assessee has handed over the property to the purchaser on 31.12.1994 itself, i.e., on the same day that the Agreement of Sale/ irrevocable Power of Attorney has been executed pf the other properties.

31. This fact has been confirmed by the purchaser vide their letter filed during the original assessment proceedings and copy of which is given in the Paper Book at Page 17

32 The payments in respect of all the lands that have been purchased from the four members of the family commenced at the same time and have been made simultaneously over a period to all the four members of the family.

33. The account copies in the books of the purchasers have been furnished in the course of the assessment proceedings and

34. It can be seen from the records that purchaser has categorically confirmed the following facts in the letter addressed to the Assessing Officer;

- a. that possession has been taken over by the purchaser in 1994 and
- b. payments have been made for the full consideration ranging over a period of time supported by the account extracts from the books of the purchaser

35. *It can also be seen from the records that these two facts are not disputed by the Assessing Officer.*

36. *While there is no written agreement in respect of the lands in survey number 668 and 671 it can be seen that the purchaser having taken possession and full payments having been made the case of the Assessee is that of relinquishment of their rights in the land which squarely falls under clause (ii) of section 2(47).*

37. *The word "relinquishment" has not been defined in the Act.*

38. *The booklet "How to compute capital gains" published by Income-Tax Department explains relinquishment of a capital asset' as under*

"Relinquishment of a capital asset arises when the owner surrenders his rights in property in favour of another person"

39. *The meaning of the word 'relinquish' as given in Webster's Comprehensive Dictionary International Edition 1984 is (1) to give up, abandon. (2) to cease to demand; renounce. to relinquish a claim (3) to let go hold or something held)*

40. *From the facts and circumstances of the Assessee case it can be seen, that the Assessee have given up on 31.12.1994 and handed over the same to the purchaser and have received the payments for the same. The Assessee has surrendered the physical possession of the land to the purchaser (a fact that is confirmed by the other party) .*

41. *In other words, they have given up the land, let go of the physical possession and .hereafter ceased to demand any right in respect of the same.*

42. *In fact, it is on the request of the purchaser that they have come forward to sign the title transfer papers (sale deed) to enable the legal title to pass and that too after clearing the litigation on the lands*

43. *The Assesseees pray to place reliance on the decision of the Hon'ble Supreme Court in the case of Anarkali Sarabhai v. Commissioner of Income Tax, 224 ITR 422 (SC) wherein the Hon'ble Apex Court commented as under:*

Clause (47) of section 2 gives an inclusive definition to 'transfer'. This is not an exhaustive definition. Sub-clause (i) of clause (47) of section 2 speaks of 'sale, exchange or relinquishment of the asset'. This implies parting with any capital asset for gain which will be taxable under section 45.

44. *Though the said decision of the Apex Court has been rendered in connection with equity shares and rights shares, the principle of relinquishment applies to "any capital" asset that is parted with for a gain*

45. From the facts and circumstances of the Assessee's case and also from the judicial principles laid down by the Hon'ble Apex Court it is seen clearly that the Assessee's case falls within the ambit of relinquishment of the asset under section 2(47)(i) and as such the Assessee submits that the transfer within the meaning of section 2(47)(i) has taken place in the year 1994-95 itself.

46. The Assessee submits that on facts and circumstances the case also comes within the ambit of the provisions of sub-clause (ii) of section 2(47) viz, extinguishment of any rights in the land.

47. In the context of the extinguishment of the rights in land the Assessee prays to place reliance on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax v. Grace Collins, 248 ITR 323 , wherein their lordships (in a three-member Bench) held as under;

Section 2(47), read with section 47(vii), of the Income-tax Act, 1961 - Capital gains Transfer - Whether expression 'extinguishment of any rights therein' in section 2(47) (ii) is limited to such extinguishment on account of transfer - Held, no - Whether expression 'extinguishment of any rights therein' extends to mean extinguishment of rights independent of or otherwise than on account of transfer - Held, yes

48. In the instant case the Assessee prays that it may be observed that the handing over of the physical possession to the purchaser and never looking back at the land thereafter, and accepting the full consideration clearly implies that the Assessee by his actions extinguished his rights in the lands and accordingly the same is transferred on the date of the possession in 1994.

49. The Assessee prays that the question answered by the Apex Court that, whether the expression 'extinguishment of any rights therein' extends to mean extinguishment of rights independent of or otherwise than on account of transfer" in the affirmative supports the contention that irrespective of the transfer as contemplated under Sub-clause (v) of section 2(47) the transfer has taken place within the meaning of sub-clause (ii)

50. In addition to the above the Assessee prays to draw the attention to the Provisions of section 2(47)(vi) which read as under:

(vi) any transaction (whether by way of becoming a in a company or other association of persons or by way of any agreement or any arrangement or in any other manner of transferring or enabling the enjoyment of, any immovable

51. *The Assessee submits that the fact that the lands have been handed over physically to the purchasers and they have taken possession thereof and that the payment for the same was paid in bits and pieces over a period of time but fully paid in the duration has the effect of transferring the property to the purchaser.*

52. *Further the purchasers have been put in enjoyment of the property and have been enjoying the property since 1994.*

53. *The Assessee submits in the overall scheme of the definition of the term "transfer" contained in section 2(47) of the Act from Which it can be seen that amendments from time to time have been made to incorporate transfers that need not be registered under the Transfer of Property Act to be Covered under the ambit of the definition. It is settled law that the intention of the parties and the action taken by the purchaser (transferee) in furtherance of the purchase play an important and crucial role in determining whether E transfer of property has in fact taken place.*

54. *In the instant case the action of the seller and purchaser clearly point out the intention of transfer is expressed in the year 1994 for a consideration and physical possession handed over in the said year itself. Further the purchaser from his side has taken possession and paid the full consideration over a period of time from 1995-2002*

55. *In result the property has been put in the enjoyment of the purchaser in the year 1994 and the same is continued to be enjoyed by him who later on constructed a housing project on the said lands.*

56. *The above facts have been confirmed by both the parties and the same are not disputed and are part of the assessment records.*

57. *In view of the above the Assessee submits that the transfer within the meaning of section 2(47)(i) or (ii) or (vi) as the case may be, has taken place in the year 1994-95, and on the basis of the above submissions the same be taken on record and it be accepted that the transfer has taken place in the year 1994-95.*

7. On the other hand, the ld.DR relied upon by the order passed by the lower authorities. Ld. DR had further submitted that the case of the assessee that during the course of search in the case of Janapriya Engineers Syndicate, the registered sale deed was found in the premises pertaining to survey no. 661. The said land was transferred vide sale deed no.6377/2003 on 29.08.2003. It was submitted that neither the provisions of section 53A of Transfer Property Act nor the provisions of 2(47) (i),

(ii), (iii) or (vi) of the I.T.Act, 1961 are applicable to the facts of the present case. It was submitted that there is no provision of oral transfer of immovable property either under the Transfer of Property Act or under Income Tax Act. The further contention of the Id.DR. was that the confirmation letter issued by the Janapriya Engineers Syndicate is of no use as there is no details of date when the possession was handedover. Moreover, no record had been filed showing the land in dispute as a capital asset in the books of accounts of the said Janapriya Engineers Syndicate in the year 1994-95. Further, it was submitted that the assessee had not declared any long term capital gain in the year 1994 or thereafter, and hence, the present appeal is required to be dismissed.

8. We have heard the rival contentions of the parties and perused the material available on record. Admittedly, in the present case, the Tribunal in the first round had remanded back the matter to the file of the Assessing Officer with the following observation. "The said order of the Id.CIT(A) holding that there was similar transfer of land belonging to assessee in survey No.671 in Assessment Year 1995-96, however, is set aside in the absence of any contract for transfer in writing and this matter is restored to the file of the Assessing Officer for the limited purpose of examining and deciding the new issue raised by the assessee for the first time before the Tribunal".

9. The assessee in the remand proceedings before the Assessing Officer had not produced any written contract/document for proving the transfer of land from the assessee to M/s. Janapriya Engineers Syndicate. The assessee further relied upon the sections 2(47) (i), (ii), (iii) or (vi) of the I.T.Act, 1961. The Assessing Officer after relying upon the Explanation 2 to section 2(47) had made the addition in the hands of the assessee. The

assessee, repeat the same contention before the Id.CIT(A) and the Id.CIT(A) had dismissed the appeal of the assessee.

10. For the purposes of proving the case, the assessee had submitted that the case of the assessee falls under section 2(47) of the Act. For the sake of clarity, we are reproducing hereinbelow the relevant portion of section 2(47), which is to the following effect :

47) ["transfer", in relation to a capital asset, includes,—

- (i) the sale, exchange or relinquishment of the asset; or
- (ii) the extinguishment of any rights therein; or
- (iii) the compulsory acquisition thereof under any law; or
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment;] [or]

The following sub-clause (iva) shall be inserted after sub-clause (iv) in clause (47) of section 2 by the Finance Act, 2005, w.e.f. 1-4-2006:

- (iva) the maturity or redemption of a zero coupon bond; or
- [(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.]

11. From the reading of the various provisions of section 2(47) reproduced hereinabove, it is abundantly clear that the case of the assessee for transfer of immovable property through the oral agreement do not fall in any of the limb of section 2(47) of the Act. The present case is neither a case of sale nor exchange nor relinquishment or extinguishment of any right in the year 1994 or 1995. Infact, the registered sale deed document was executed by the assessee in faovur of the purchaser on 29.08.2003 and

therefore, the transfer had taken place in the A.Y. 2003-04. Therefore, the view taken by the lower authority cannot be faulted with. Further, the directions were given by the Tribunal in the first round to the Assessing Officer, to decide the new issue raised by the assessee for the first time after affording the opportunity to the assessee. Further, we may point out that no oral evidence can be given as against the registered document as per provisions of section 93 of the Indian Evidence Act. Moreover, in case of conflict between the oral statement and the written document, then the contents of written document shall prevail as against the oral statement / agreement.

12. In the remand proceedings before the Assessing Officer no evidence of transfer of the land had been filed by the assessee except the letter issued by M/s. Janapriya Projects. Even the said letter does not bear the date of taking over the possession of the subject matter of land and this letter also undated. In the said letter, it was mentioned that the possession was taken over through the Irrevocable General Power of Attorney in the year 1994, however, no such Power of Attorney in respect to the survey no.671 was produced before the lower authority or before us by the assessee. In the said letter of Janapriya Engineers before the Court of law, however, no such evidence was filed before us showing that the land falling in survey no. 671 was subject matter of legal litigation before any Court of Law. Further, the assessee had neither brought on record the evidences of land dispute before us nor before the lower authorities evidencing that the land falling under survey no. 671 was the capital asset in the records of Janapriya Engineers Syndicate w.e.f. 1994. Considering the case from any point of view, we do not find any reasons to interfere with the order of the Id.CIT(A).

13. Before us, in support of his case, ld.AR filed the following case laws.

1. Anarkali Sarabhai Vs. CIT – 224 ITR 422 (SC)
2. Kartikeya Sarabhai Vs. CIT – 228 ITR 163 (SC)
3. CIT Vs. Grace Collis – 248 ITR 323 (SC).

However, the same are not applicable to the facts of the present case.

14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 6th March, 2023

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 6th March, 2023.

TYNN/SPS

Copy to:

S.No	Addresses
1	Allam Adavaiah, H.No.2-123-2/3, Yellareddyguda, Kapra, ECIL Road, Hyderabad.
2	ACIT,Circle-15(1) Hyderabad
3	Pr.CIT-7, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order