IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

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

ITA No.437/Bang/2023
Assessment Year: 2019-20

Swamiappan Gurukrupa Service Station No.58/1, Singasandra Hosur Road Bengaluru 560 014 **PAN NO : ABKPS1272M**	**Vs.**	Deputy Commissioner of Income-tax Central Circle-1(1) Bengaluru
APPELLANT		**RESPONDENT**

ITA No.438/Bang/2023
Assessment Year: 2019-20

Swamiappan Anand Kumar No.15, 100Ft. Ring Road BTM Layout Bengaluru 560 068 **PAN NO : AFSPK5500N**	**Vs.**	Deputy Commissioner of Income-tax Central Circle-1(1) Bengaluru
APPELLANT		**RESPONDENT**

ITA No.439/Bang/2023
Assessment Year: 2019-20

Swamiappan Arul Kumar No.72, BTM 1st Stage, Madiwala 36th Main, Madiwala Bengaluru 560 068 **PAN NO : AFSPK5502Q**	**Vs.**	Deputy Commissioner of Income-tax Central Circle-1(1) Bengaluru
APPELLANT		**RESPONDENT**

ITA No.440/Bang/2023
Assessment Year: 2019-20

Swamiappan Punithavathi No.58/1, Hosur Road, Singasandra Bengaluru 560 068 **PAN NO : ABKPS1272M**	**Vs.**	Deputy Commissioner of Income-tax Central Circle-1(1) Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	:	Shri H. Guruswamy, A.R.
Respondent by	:	Shri Sathyasai Rath, D.R.

Date of Hearing	:	10.08.2023
Date of Pronouncement	:	17.08.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals by above assessees are directed against different orders of CIT(A) for the assessment year 2019-20 having all are dated 25.5.2023.

2. Brief facts of the case are that the assessee along with his three family members had jointly owned the lands situated at Uddanapally Village, Agram Agraharam, Shoolagiri Taluk, Krishnagiri District, Tamil Nadu and the said lands were sold to M/s. AVS Tech Building Solutions India Pvt Ltd by a registered sale deed dated 25-04-2018 for an apparent sale consideration of Rs. 66,42,000/-. A Search u/s. 132 of the Income-tax Act,1961 ['the Act' for short] was conducted on 25 and 26th April 2018 in the following premises

i. M/s. AVS Constructions and M/s. AVS Readymix Concrete Products Pvt Ltd (M/s. AVS Tech Building Solutions India Pvt Ltd) No. 298, Sigcot Staff Housing Colony, Hosur - 635126, Hosur Taluk, Krishnagiri District.

ii. M/s. Gurukrupa Service Station, 58/1, Singasandra, Hosur Road, Bangalore.

iii M/s. Gurukrupa Auto Service, No. 15, 100 Ft Road, Near Pizza Hut, BTM Layout, Bangalore on 26-04-2018.

2.1 In the course of the search, the Search Team has found Sale Agreements of the aforesaid lands in the premises of the Purchaser M/s. AVS Tech Building Solutions India Pvt Ltd

and as per the said Agreements the consideration agreed for sale was of Rs. 3,16,42,000/-, out of which a sum of Rs. 2,50,00,000/- was stated to have been received in cash by the assessee and his three family members and the balance of Rs 66,42,000/- was stated to have acknowledged as mentioned in the Sale Deed. The assessee has stated that the Sale Consideration of Rs. 66,42,000/- was mentioned in the sale deed on the basis of the prevailing guidance value applicable as on the date of sale.

2.2 The assessee in the return of income has not offered his 1/4th share of Sale Proceeds received in cash on the ground that the Sale Proceeds are not chargeable to tax since the lands sold were the agricultural lands and exempted u/s. 2(14) of the Act. The Assessee further contended that the agricultural lands were situated beyond 20Kms from the Hosur Municipality limit and the population was around 4000. The ld. AO has rejected the contention of the Assessee as to the exemption claimed on the following grounds:

i. The Assessee has not submitted any Bills or Vouchers in support of selling of any agricultural produce.
ii. The Land Revenue Records submitted by the Assessee do not specify the nature of crop cultivated in the earlier years, no evidence that the land was put to agricultural use and also no evidence that the land was actually cultivated till the date of sale.
iii. The Land sold was not an agricultural land when it was sold and the assessee had no intention to bring it under cultivation at any time after the lands were purchased.
iv. The lands were sold to a company which was engaged in the business of manufacturing of concrete products. The price for which it was sold was higher amount.

v. The Assessee had not declared any agricultural income in any of the earlier years since the Assessee has not done any agricultural activity.

2.3 The ld. AO in view of the reasons mentioned above has held that the lands sold were not agricultural lands and hence the assessee was not entitled for the exemption in respect of the sale consideration attributable to his 1/4th share amounting to Rs. 79,10,500/- out of the total sale consideration of Rs. 3,16,42,000/-. The ld. AO has computed the Long-Term Capital Gains at Rs. 76,30,419/- being 1/4th share of the assessee and the same was brought to tax as Long-Term capital gains.

2.4 The assessee challenged treating the impugned land as non-agricultural land and the consideration on sale of such land is liable to capital gain tax.

3. The ld. CIT(A) observed that the crucial factor to determine the land sold is agriculture land is that whether the land was actually or ordinarily used for the agricultural purposes. The assessee during the appellate proceedings has submitted copy of Land Revenue Records and other supporting documents in support of his claim before ld. CIT(A). On perusal of the same, the ld. CIT(A) observed that it do not clearly specify the nature of crops cultivated and sold in the past years. He observed that the assessee had purchased the property at Agraharam Village on 27-04-2011, at Shoolagiri on 27-04-2011, and Uddanapally on 28-02-2013 at the cost of Rs. 2,82,156/-, Rs. 49,129/- and Rs. 1,08,041 respectively. These properties were sold combined for Rs. 3,16,42,000/- to M/s. AVS Tech Building Solutions India Pvt. Ltd. The assessee, after purchase of property had not declared any agricultural income as exempt in any of the assessment years which clearly shows that the assessee was not carrying on any

agriculture activity in the land sold. Further, the assessee has not furnished any evidence before ld. CIT(A) that shows that the land was put to agricultural use and the land was cultivated till it was sold.

3.1 The ld. CIT(A) further observed that the assessee had sold the aforesaid properties at very high prices amounting to Rs. 3,16,42,000/- to the M/s. AVS Tech Building which is engaged in the business of manufacturing concrete business. The prices at which land was sold undisputedly no genuine agriculturist would purchase a land at a high price as in the case in hand. The value of land at which it was sold is high as comparable as that of a commercial property. In view of the above facts and circumstances of the case he found it clear that the land was not an agriculture land when it was sold and the assessee had no intention to bring it under cultivation after the purchase of land. The assessee during the appellate proceedings before ld. CIT(A) has not furnished sufficient evidence to prove that whether any agricultural activity was undertaken by the assessee and the lands were used for agricultural purposes. He observed that the burden of proof that the lands were an agricultural land is always on the assessee who seeks exemption under section 2(14)(iii) of the Act because, the Revenue cannot be expected to produce negative evidence. The ld. CIT(A) observed that in the instant case, the assessee did not produce any material to show that he was carrying on agricultural activities in the land at any point of time except Land Revenue Record. Hence, the nature of land could not be considered as agriculture.

3.2 The ld. CIT(A) further observed that the Hon'ble Supreme Court in the case of *State of UP vs. Nand Kumar Aggarwal AIR 1998 SC 473* held that the lands had been entered in the revenue records as agricultural lands or so shown in the Master Plan

would not make the lands agricultural lands wherein it is clear from the above that mere entry in the Land Revenue Records does not constitute the lands as agriculture land, some agricultural activity must be carried on. He observed that in the instant case, the assessee has not brought anything on record which shows that the land sold was put to agriculture use.

3.3 The ld. CIT(A) observed that the Hon'ble Supreme Court in the case of *Smt. Sarifabibi Mohmed Ibrahim vs. CIT (1993) 204 ITR 631/70 Taxman 301* held that whether a land is an agricultural land or not, is essentially a question of fact. In the instant case, land was not used actually or ordinarily for agriculture purposes at or about the relevant time and it was not under cultivation at any point of time after the purchase of land and certainly not after the assessee entered into the agreement to sell the same to a company which was engaged in the business of manufacturing concrete business. Hence, the nature of land could not be considered as agriculture.

3.4 The ld. CIT(A) further observed that the assessee has relied on the decisions of Hon'ble High Court of Gujarat in the case of *Cordhanbhai Kahandas Dalvadi vs. CIT (1981) 127 ITR 664* wherein it was held that the character of the land to be considered as Agricultural Lands on the basis of the entries found recorded in the Revenue Records. In this connection, the Hon'ble Supreme Court in the case of *State of UP vs. Nand Kumar Aggarwal AIR 1998 SC 473* held that the lands had been entered in the revenue records as agricultural lands would not make the lands agricultural lands. So the ld. CIT(A) opined that the reliance placed by the assessee on the decision of Hon'ble Gujarat High Court does not help.

3.5 In view of the above facts and circumstances of the case, the ld. CIT(A) observed that the land sold was not an agriculture land

and therefore taxable under the head Long Term Capital Gains. So the addition made by the AO as Long Term Capital 'Gains amounting to Rs 76,30,419/- is justified and he confirmed the action of the ld. AO. Against this assessee is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. The assessee has raised legal issue before us in ground no.2 that the notice issued u/s 143(2) of the Act was not digitally signed as a result of which, assessment orders herein are bad in law. At the time of hearing, the ld. A.R. has not put serious argument on this issue. Accordingly, this ground in all the appeals is dismissed.

5. Next ground for our consideration in ground Nos.3 to 7 are with regard to treating the consideration received on sale of impugned land as sale of non-agricultural land and the gain on the same is liable to capital gain tax.

5.1 The ld. A.R. submitted that the Assessee along with his wife and two sons had jointly owned 10.26 Acres of Agricultural land situated in Sy. Nos. 8/4,_8/7,_8/8, 8/9, 9/1, 9/6, 9/7, 9/8A, 9/8B, 9/8C of Agaram Agraharam Village, Shoolagiri Taluk, Krishnagiri District and Sy. Nos. 691/1, 691/3, 691/4, 691/5, 691/6, 691/7, 691/8, 631/1A1 of Uddanapalli Village, Shoolagiri Taluk, Krishnagiri District. The said agricultural lands were jointly sold by the Assessee and his family members to M/s. AVS Tech Building solutions India Pvt Ltd, vide a registered sale deed dtd: 25-04-2018. The Sale consideration of the lands sold was mentioned at Rs. 66,42,000/- as against the Sale Consideration of Rs73,16,42,000/- and the Sale Consideration of Rs. 66,42,000/- was mentioned in the Sale Deed based on the guidance value.

5.2 The ld. A.R. further submitted that the ld. AO has held that the actual consideration was admitted by the Assessee in

the course of a search conducted u/s. 132 of the Act on '3 in the business premises of M/s. Gurukrupa Service Station situated at 58/1, Singasandra Village, Bangalore - 560068 and also in the premises of M/s. Gurukrupa Auto Service situated at No. 15, 100ft Road, Near Pizza Hut, BTM Layout Bangalore. In the course of the search a sum of Rs. 1.60.00.000/- was seized from the premises of M/s. Gurukrupa Service Station and a further sum of Rs. 50,00,000/- was seized from the premises of M/s. Gurukrupa Auto Service and the aggregate amount seized was of Rs. 2,10,00,000/-. However, the department has not made any Search Assessments in the case of the above two concerns.

5.3 The Assessee in the course of the Assessment Proceedings has contended that the entire Sale Consideration of Rs. 3,16,42,000/-represents Sale Consideration attributable to the Sale of agricultural lands and not chargeable to capital gain tax. However, the ld. AO has rejected the Assessee's contention on the following grounds:

i. No Bills/vouchers were produced in support of Sale of Agricultural products.
ii. The revenue records submitted by the Assessee did not specify the nature of crops cultivated and sold in the earlier years.
iii. No evidence was produced that the lands were put to agricultural use and actually cultivated till it was sold, the Assessee had no intention to bring it under cultivation at any time after the purchase of the lands. The purchaser to whom the lands were sold was engaged in the business of manufacturing concrete products.
iv. The Assessee has not declared any agricultural income as exempt in any of the earlier assessment years.

v. The Assessee has accepted to declare the respective shares of the ae Consideration to tax.

5.4 The ld. A.R. submitted that the AO has neither caused any inspection of the land nor obtained any information from the revenue department of -anvil Nadu, but unilaterally held that the land was not cultivated and no agricultural income was disclosed for earlier years. In this regard the appellant submits that the documents obtained from the Revenue Department of Tamil Nadu, relating to cultivation of land and the distance certificate were produced before the AO as well as Ld. CIT(A) but the same were not appreciated and held that the lands sold constituted to be a capital asset exigible to capital gain tax. Accordingly, the assessee's share of Capital gains of Rs. 76,20,419/- as reduced by the cost of acquisition was brought to tax.

5.5 He submitted that the Ld. CIT(A) has concurred with the view of the AO that the lands sold were not in the nature of agricultural lands without appreciating the documents submitted by the Assessee obtained from the Revenue Department of Tamil Nadu. The Assessee submits herewith a copy of the certificates issued by the Village Administrative Office No. 132, Udanapalli Village, Shoolagiri (T.K.) Krishnagiri District, wherein it was certified that the lands mentioned in the said certificate were under cultivation and the crops grown were Ragi, Solaro, Kambu etc up to March 2018. The Assessee has also produced a Distant Certificate issued by the President Udanapalli Panchayat, Shoolagiri (T.K.) Krishnagiri District confirming the fact that the distance of the lands was 20Kms away from the end of the Hosur Municipality with a population of 4000. Therefore, the ld. A.R. for the assessee submitted that the ld. CIT(A) was not justified to hold

that the lands sold were not in the nature of Agricultural lands without appreciating the Revenue Records submitted.

5.6 The ld. A.R. for the assessee submitted that the Ld. CIT(A) has relied upon the decision of me Hon'ble Apex Court in the case of State of UP v/s. Nanda Kumar Agarawal AIR 1998 SC 473 and the said decision is completely distinguishable on law, facts and circumstances. In the said case the State of UP has initiated proceedings against Sri. Nanda Kumar Agarawal under Urban Ceiling Act to determine the surplus land for acquisition. The land in question was used for operating Bhatta as admitted and was being used for running Brick-kiln for Manufacture of the Bricks and the land fell within the Urban Agglomeration as it was situated within the peripheral of the Municipal Corporation of Lucknow before the appointed day which was a relevant factor under Urban Ceiling Act, In view of the admission of Sri. Nanda Kumar Agarwal, that the Land was used for operating Brick-klin, the Hon'ble Apex Court has held that though the lands were shown in Revenue Records as Agriculture, but the same does not constitute Agricultural land. The above decision is completely distinguishable and not applicable to the Assessee's case as the Assessee has used the land for cultivation as certified by the revenue authorities as per Annexure - C confirming the fact that the lands were under cultivation upto the end of March 2018. Therefore, he submitted that the ld. CIT(A) was not justified to rely upon the decision of the above case and hence the same is liable to be set aside.

5.7 The ld. A.R. for the assessee placed reliance on the decision of the ITAT Mumbai in the case of ACIT v/s. Ashok W Wesavkar in ITA No. 5147/Mum/2017 dtd: 02-05-2023 (on the basis of Third Member decision) wherein it was held that the lands were in cultivation and accordingly held as

Agricultural lands which is not a capital asset u/s. 2(14)(iii) of the Act.

5.8 The ld. A.R. for the assessee submitted that the Ld. CIT(A) has confirmed the addition made by the AO without appreciating the documents submitted in the course of the Appellate Proceedings relating to cultivation of land and also distance of land. The Ld. CIT(A) has erred in holding that the decision of the Hon'ble High Court of Gujarat in the case of Gordhanbhai Kahandas Dhalvadi v/s. CIT (1981) 127 ITR 664 (GUJ) was not helpful to the assessee in view of the Hon'ble Supreme Court decision in the case of Nanda Kumar Agarwal (supra). The ld. CIT(A) has misguided and misread the decision of the Hon'ble Supreme Court and placed reliance erroneously.

5.9 The ld. A.R. for the assessee submitted that a search was conducted in the case of Two Petrol Bunks named above and the aggregate cash of Rs.2,10,00,000/- was impounded and the said cash was said to be a part of Sale consideration of the Agricultural lands. The Search Team has drawn the Panchanama relating to the Searches conducted in the case of the two petrol bunks where the cash was impounded but no assessments were made by the department as section 132(4A) envisages the fact that the movables found in the premises deemed to belong to such person who possessed the movables.

6. The contention of the ld. D.R. is that the certificate produced from the revenue authorities have bearing no dates in it. Hence, no credence to be given and relied on the order of the lower authorities.

7. We have heard the rival submissions and perused the materials available on record. In this case, the main issue is with regard to chargeability of gain on transfer of property located at

Survey nos.8/4, 8/7, 8/8, 8/9, 9/1, 9/6, 9/7, 9/8A, 9/8B, 9/8C of Agaram Agraharam village, Shoolagiri, Krishnagiri Dist. And Survey Nos.691/1, 691/3, 691/4, 691/5, 691/6, 691/7, 691/8, 691/A1 of Uddanapalli, Shoolagiri Taluk, Krishnagiri Dist. Said land was jointly sold by these assessees to M/s. AVS Tech Building Solutions India Pvt. Ltd. vide registered sale deed dated 25.4.2018 appearing at document no.771, Book no.1, before sub-registrar Rayakotta, Tamilnadu. Now the contention of ld. A.R. is that land has been classified as agricultural land as per Certificate issued by Village Administrative Officer, 132, Uddanapalli village, Shoolagiri Taluk, Krishnagiri Dist. which was placed on record in paper book page no.53 as Annexure C. In the above certificate it was mentioned that land was under cultivation and crops grown were Ragi, Solam, Kambu upto March, 2018. The assessee also produced distance certificate issued by President of Uddanapalli Panchayat, Shoolagiri Taluk, Krishnagiri Dist. confirming the fact that the distance of the land from municipality was 20 kms. away from the jurisdiction of the Hosur Municipality which had a population of 4000 in the year 2018, which is placed as Annexure E in paper book page 55. The contention of the ld. D.R. is that the above two certificates have no mention of date of issue of these certificates and he submitted that these certificates are not produced before lower authorities. Hence, he submitted that no credence could be given to these certificates. The assessee made argument before ld. CIT(A) and the same is reproduced herein below:

> *14.* " *The Appellant also produced a certificate from the President Uddanpalli Panchyath, Sholagiri Taluk, that the distance of the lands was more than 20Kms from the end of the Hosur Municipality and the population was around four thousand and therefore the lands sold were not the capital assets as defined u/s. 2(14)(iii) of the Act and sub clause (a) and (b) thereunder. However the Ld. AO has not considered the above document and also no find was given in this regard.*
>
> *15. Under these facts and circumstances it is submitted that the addition was made holding the Lands Sold were non agriculture was not based on*

any material evidence. On the contrary the evidence produced by the Appellant obtained from the Tamil Nadu Government was also not considered by the AO. The addition made was merely on the basis of suspicion, surmise and with the element of guess work, without causing inspection of the lands and also not considering the corroborative evidence of the Revenue Department of Tamil Nadu submitted by the Appellant as regards the cultivation of lands, payment of lands revenue and distance of the land in relation to the provision of section 2(14) of the Act and hence the addition made in the case of the appellant is not sustainable as it is opposed to the law, facts and material evidence and hence the addition so made is liable to be deleted in the interest of equity and justice."

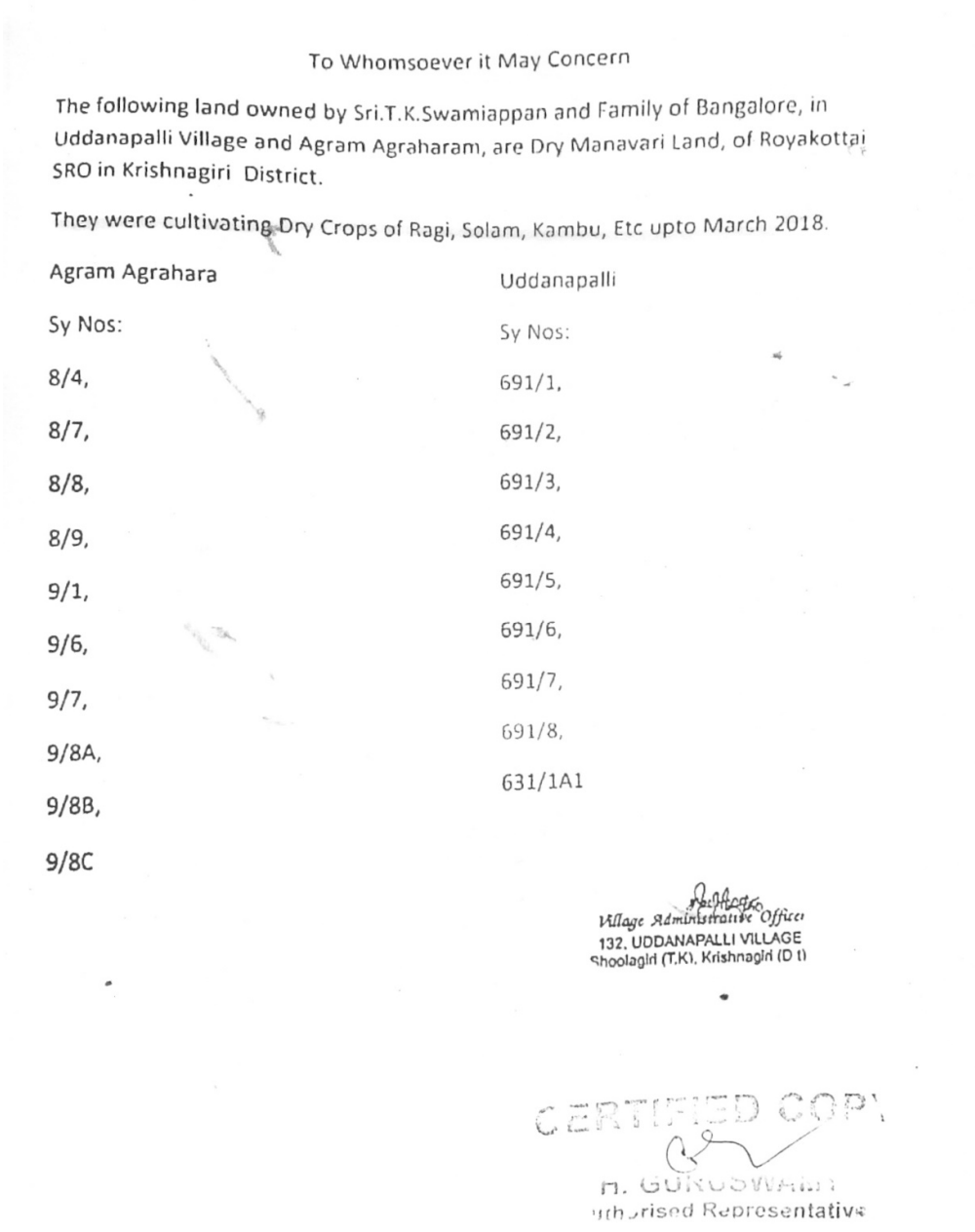
7.1 In our opinion, with regard to argument of ld. D.R., these certificates are not produced before lower authorities is having no merit since the ld. CIT(A) has given a categorical finding in para 9.22 in page 18 of his order as below:

"The appellant during the appellate proceedings has submitted copy of the land revenue records and other supporting documents in support of his claim. On perusal of the same, it is noticed that it do not clearly specify the nature of crops cultivated and sold in the past year."

7.2 Coming to the merit of the issue raised by the assessee before us, adverting to the facts of the present case, the land in question is classified in the Revenue records as agricultural land and there is no dispute regarding this issue and actual cultivation has been carried on this land. It is also an admitted fact that the assessee has not applied for conversion of this agricultural land for non-agricultural purposes and the assessee has not put the land to any purposes other than agricultural purposes. It is also an admitted fact that neither the impugned property nor the surrounding areas were subject to any developmental activities during the period under consideration since no material brought in record by revenue authorities.

7.3 Further, we are inclined to mention herein that there is no dispute with regard to facts that the assessee has been carrying on agricultural operations on the impugned property which is evidenced

by the certificate furnished from revenue authorities, which is reproduced herein below:



To Whomsoever it May Concern

The following land owned by Sri.T.K.Swamiappan and Family of Bangalore, in Uddanapalli Village and Agram Agraharam, are Dry Manavari Land, of Royakottai SRO in Krishnagiri District.

They were cultivating Dry Crops of Ragi, Solam, Kambu, Etc upto March 2018.

Agram Agrahara	Uddanapalli
Sy Nos:	Sy Nos:
8/4,	691/1,
8/7,	691/2,
8/8,	691/3,
8/9,	691/4,
9/1,	691/5,
9/6,	691/6,
9/7,	691/7,
9/8A,	691/8,
9/8B,	631/1A1
9/8C	

Village Administrative Officer
132, UDDANAPALLI VILLAGE
Shoolagiri (T.K), Krishnagiri (D t)

CERTIFIED COPY
R. GURUSWAMY
Authorised Representative

7.4 Further, nothing has been brought on record to show that in this village of Uddanapally any infrastructure development has taken place. Without establishing and proving the fact that the land was put to use for non-agricultural purposes, it cannot be possible to

treat the agricultural land as nonagricultural land. In the present case, during the relevant point of time of sale of the land in question, the surrounding area was totally undeveloped and mere possibility to put the impugned land for non-agricultural purposes would not change the character of the land into non-agricultural land at the relevant point of sale of land by the assessee.

7.5 The state government also prescribed the procedure for conversion of agricultural land into non-agricultural land. Being so, whenever the agricultural land to be treated as non-agricultural land, the same has to be converted in accordance with the provisions of State Act. To our understanding nature of land cannot be changed by itself and the land owners are required to apply to the concerned Revenue authorities for the purpose of conversion of the agricultural land into non-agricultural land and there is no automatic conversion per se without inference with State Government.

7.6 It is also an admitted position that without any infrastructure development thereupon or without establishing and proving that the land was put into use for non-agricultural purposes, does not and cannot convert the agricultural land into non-agricultural land. In the instant case, at the relevant point of sale of the land in question, the surrounding area was totally undeveloped and except mere future possibility to put the land into use for non-agricultural purposes would not change the character of the agricultural land into nonagricultural land at the relevant point of time when the land was sold by the assessee. It is also an admitted position that the assessee had not applied for conversion of the land in question into non-agricultural purposes and no such permissions were obtained from the concerned authority. In the Revenue records, the land is classified as agricultural land and has not been changed from agricultural land to non-agricultural land at the time when the land

was sold by the assessee. It is also not in dispute that there was no activity undertaken by the assessee of developing the land by plotting and providing roads and other facilities and there was no intention also on the part of the assessee to put the same for non-agricultural purposes. No such finding has been given by the Department. No material or evidence in support of the fact that the assessee has put the land in use for non-agricultural purposes has been brought on record. The nature of the crop and the person who cultivated the land are duly mentioned at the relevant point of time when the lands were sold by the assessee and where nothing is brought on record to show that the land was put in use for non-agricultural purposes by the assessee. In view of the decision of the Hon'ble High Court in the case of Gopal C. Sharma vs. CIT (209 ITR 946) (Bom), it is also clear that the profit motive of the assessee in selling the land without anything more by itself can never be decisive to say that the assessee used the land for nonagricultural purposes. We may also refer to a decision of the Hon'ble Supreme Court in the case of N. Srinivasa Rao vs. Special Court (2006) 4 SCC 214 where it was observed that the fact that agricultural land in question is included in urban area without more, held not enough to conclude that the user of the same had been altered with passage of time. Thus, the fact that the land in question in the instant case is brought in special zone cannot be a determining factor by itself to say that the land was converted into use for non-agricultural purposes.

7.7 Recently the Karnataka High Court in the case of CIT vs. Madhukumar N. (HUF) (2012) 78 DTR (Kar) 391 held as follows:

> *"9. An agricultural land in India is not a capital asset but becomes a capital asset if it is the land located under Section 2(14)(iii)(a) & (b) of the Act, Section 2(14) (iii) (a) of the Act covers a situation where the subject agricultural land is located within the limits of municipal corporation, notified*

area committee, town area committee, town committee, or cantonment committee and which has a population of not less than 10,000.

10. Section 2(14)(m)(b) of the Act covers the situation where the subject land is not only located within the distance of 8 kms from the local limits, which is covered by Clause (a) to section 2(14)(iii) of the Act, but also requires the fulfilment of the condition that the Central Government has issued a notification under this Clause for the purpose of including the area up to 8 kms, from the municipal limits, to render the land as a "Capital Asset.

11. In the present case, it is not in dispute that the subject land is not located within the limits of Dasarahalli City Municipal Council therefore, Clause (a) to section 2(14)[iii] of the Act is not attracted.

12. However, though it is contended that it is located within 8 knits,, within the municipal limits of Dasarahalli City Municipal Council in the absence of any notification issued under Clause (b) to section 2(14)(iii) of the Act, it cannot be looked in as a capital asset within the meaning of Section 2(14)(iii)(b) of the Act also and therefore though the Tribunal may not have spelt out the reason as to why the subject land cannot be considered as a 'capital asset' be giving this very reason, we find the conclusion arrived at by the Tribunal is nevertheless the correct conclusion."

7.8. Further the Kolkata Bench of the Tribunal in the case of DCIT vs. Arijit Mitra (48 SOT 544) (Kol) held as follows:

"7. From the above, it is clear that agricultural land situated in areas lying within a distance not exceeding 8 km from the local limits of such Municipalities or Cantonment Boards are covered by the amended definitions of 'capital asset', if such areas are, having regard to the extent of and scope for their urbanization and other relevant considerations, is notified by the Central Government in this behalf. Central Government in exercise of such powers has issued the above notification, as amended latest by Notification No. 11186 dated 28.12.1999 clearly clarifies that agricultural land situation in rural areas, areas outside the Municipality or cantonment board etc., having a population of not less than 10,000 and also beyond the distance notified by Central Government from local limits i.e. the outer limits of any such municipality or cantonment board etc., still continues to be excluded from the definition of 'capital asset'. Accordingly, in view of sub-clause (b) of section 2(14)(iii) of the Act even under the amended definition of expression 'capital asset', the agricultural land situated in rural areas continues to be excluded from that definition. And as in the present case, admittedly, the agricultural land of the assessee is outside the Municipal Limits of Rajarhat Municipality and that

also 2.5 KM away from the outer limits of the said Municipality, assessee's land does not come within the purview of section 2(14)(iii) either under sub clause (a) or (b) of the Act, hence the same cannot be considered as capital asset within the meaning of this section. Hence, no capital gain tax can be charged on the sale transaction of this land entered by the assessee. Accordingly, we quash the assessment order qua charging of capital gains on very jurisdiction of the issue is quashed. The cross objection of the assessee is allowed."

7.9. It was held in the case of CIT vs. Manilal Somnath (106 ITR 917) as follows:

"Under the Income-tax Act of 1961, agricultural lend situated in India was excluded from the definition of " capital asset" and any gain from the sale thereof was not to be included in the total income of an assessee tinder the head "capital gains". In order to determine whether a particular land is agricultural land or not one has to first find out if it is being put to any use. If it is used for agricultural purposes there is a presumption that it is agricultural land. If it is used for non-agricultural purposes the presumption is that it is non-agricultural land. This presumption arising from actual use can be rebutted by the presence of other factors. There may be cases where land which is admittedly non-agricultural is used temporarily for agricultural purposes. The determination of the question would, therefore, depend on the facts of each case.

'The assessee, Hindu, undivided family, had obtained some land on a partition in 1939. From that time, up to the time of its sale, agricultural operations were carried on in the land. There was no regular road to the land and it was with the aid of a tractor that agricultural operations were being carried on. The land was included within a draft town planning scheme. The assessee got permission of the Collector to sell the land for residential purposes and sold it. On the question whether the land was agricultural land:

Held, that what had to be considered is not what the purchaser did with the land or the purchaser was supposed to do with the land, but what was the character of the land at the time when the sale took place. The fact that the land was within municipal limits or that it was included within a proposed town planning scheme was not by itself sufficient to rebut the presumption arising from actual use of the land. The land had been used for agricultural purposes for a long time and nothing had happened till the date of the sale to change that character of the land. The potential non-agricultural value of the land for which a purchaser may be prepared to pay a large price would not detract from its character as agricultural

land at the date of the sale. The land in question was, therefore, agricultural land.

7.10. Further the word "Capital Asset" is defined in Section 2(14) to mean property of any kind held by an assessee, whether or not connected with his business or profession, 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 according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;

7.11. It is very clear from the above that the gain on sale of an agricultural land would be exigible to tax only when the land transferred is located within the jurisdiction of a municipality. The fact that all the expressions enlisted after the word municipality are placed within the brackets starting with the words 'whether known as' clearly indicates that such expressions are used to denote a municipality only, irrespective of the name by which such municipality is called. This fact is further substantiated by the provisions contained under clause (b) wherein it has been clearly provided that the authority referred to in clause (a) was only municipality.

7.12. We find force in the argument of the AR that clarifying within the brackets in the section 2(14)(iii)(a) is for the apparent

reason that the name of the local body varies based on the nature of the area for which it is constituted and also for the reason that there is a lack of uniformity all over India with reference to the nomenclature of the urban local authority. In fact, municipality is known by different names in various parts of the country. This fact is also evident from Art.243Q of the Constitution of India, dealing with creation of municipalities. The term 'municipality' is not defined u/s 2(14) of the Act. However, the same is defined under article 243 P(e) of the Constitution of India, which is reproduced hereunder:

> *"243 P(e): "Municipality" means an institution of self-Government constituted under article 243Q. "*
>
> *Since "Municipality" is defined to mean an institution constituted under Article 243Q, the same is extracted hereunder:*
>
> *"243Q. Constitution of Municipalities.- (1) There shall be constituted in every State,-*
>
> *(d) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;*
>
> *(e) a Municipal Council for a smaller urban area; and*
>
> *(f) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:"*

7.13. The constitution, composition, guidelines regarding elections, the eligibility and disqualification criteria to be elected as members, powers, authorities and responsibilities of municipalities etc., are contained under Part-IXA of the Indian Constitution and Art. 243R therein categorically states that all the members of the municipality shall be directly elected by the people of the respective territorial wards. The said article is extracted hereunder:

"243R. Composition of Municipalities.-

(3) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(4) The Legislature of a State may, by law, provide for the representation in a Municipality of-

(v) persons having special knowledge or experience in Municipal administration;

(vi) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(vii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(viii) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(d) the manner of election of the Chairperson of a Municipality."

Further, it is categorically provided that all the state laws dealing with the municipalities should be consistent with the provisions contained in Part- IXA.

7.14 We also perused the meaning of the term local authority as referred in section 10(20) of the Act.

(20) the income of a local authority which is chargeable under the head "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service [(not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area].

[Explanation. - For the purposes of this clause, the expression "local authority" means -

(i) Panchayat as referred to in clause (d) of article 243 of the Constitution; or

(ii) Municipality as referred to in clause (e) of article 243P of the Constitution; or

(iii) Municipal Committee and District Board,

legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in section 3 of the Cantonments Act, 1924 (2 of 1924);

7.15 Thus, it was laid down by the Supreme Court in the case of Union of India vs. R.C. Jain [(AIR) (1981) SC 951] the following five ingredients, which are required to be fulfilled cumulatively before an authority can be said to be a 'local authority', in the light of the definition of 'local authority' as given under section 3(31) of the General Clauses Act, 1897:

(1) The authority must have separate legal existence as a corporate body. It must be a legally independent entity.

(2) The body must function in a defined area and ordinarily, wholly or partly, directly or indirectly be elected by the inhabitants of the area.

(3) The body must enjoy a certain degree of autonomy, with freedom to decide for itself questions of policy affecting the area administered by it.

(4) The body must be entrusted by statute with such Governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services, etc. Broadly such body may be entrusted with the performance of civic duties and functions, which would otherwise be Governmental duties and functions.

(5) The body must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges, or fees. Essentially, control or management of the funds must vest in such body.

7.16 In the light of the above decision in the case of R.C. Jain (supra) we have observe that land in question also not located in any local authority.

7.17 This is also evident from the Memorandum explaining the provisions of Finance Act, 1970, whereby s. 2(14) was amended so as to include the agricultural lands located within the jurisdiction of a municipality in the definition of the expression 'Capital Asset'. The relevant portion of the said memorandum is reproduced hereunder:

> *"30. ... The Finance Act, 1970 has, accordingly, amended the relevant provisions of the Income-tax Act so as to bring within the scope of taxation capital gains arising from the transfer of agricultural land situated in certain areas. For this purpose, the definition of the term "capital asset" in section 2(14) has been amended so as to exclude from its scope only agricultural land in India which is not situate in any area comprised within the jurisdiction of a municipality or cantonment board and which has a population of not less than ten thousand persons according to the last preceding census for which the relevant figures have been published before the first day of the previous year. The Central Government has been authorised to notify in the Official Gazette any area outside the limits of any municipality or cantonment board having a population of not less than ten thousand up to a maximum distance of 8 kilometres from such limits, for the purposes of this provision. Such notification will be issued by the Central Government, having regard to the extent of, and scope for, urbanisation of such area, and, when any such area is notified by the Central Government, agricultural land situated within such area will stand included within the term "capital asset". Agricultural land situated in rural areas, i.e., areas outside any municipality or cantonment board having a population of not less than ten thousand and also beyond the distance notified by the Central Government from the limits of any such municipality or cantonment board, will continue to be excluded from the term "capital asset".*

7.18 Further it is nobody's case that the property falls within any area which is comprised within the jurisdiction of a municipality or cantonment board or which has a population of not less than 10,000 according to the last preceding Census of

which the relevant figures have been published before the first day of the previous year. In other words, the land does not fall in sub-clause (a) of section 2(14)(iii) of the Act as the land is outside of any municipality. Further we have to see whether the land falls in clause (b) of section 2(14)(iii). This section prescribes that any area within such distance, not being more than 8 km from the local limit of any municipality or cantonment board as referred to in sub-clause (a) of section 2(14)(iii) of the Act, as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

7.19. Further, Central Government in exercise of such powers has issued the above notification, as amended latest by Notification No. 11186 dated 28.12.1999 clearly clarifies that agricultural land situation in rural areas, areas outside the Municipality or cantonment board etc., having a population of not less than 10,000 and also beyond the distance notified by Central Government from local limits i.e. the outer limits of any such municipality or cantonment board etc., still continues to be excluded from the definition of 'capital asset'. Accordingly, in view of sub-clause (b) of section 2(14)(iii) of the Act even under the amended definition of expression 'capital asset', the agricultural land situated in rural areas continues to be excluded from that definition. And as in the present case, admittedly, the agricultural land of the assessee is outside the Municipal Limits of any Municipality and that also 20 km away from Hosur Municipal Corporation and the population of the village is around 4000 as per Certificate furnished from President, Uddanapally panchayat placed as Annexure-E in paper book page 55, which is reproduced herein below:

ANNEXURE-E
55

TRANSLATED COPY OF ANNEXURE – D FROM TAMIL LANGUAGE TO ENGLISH LANGUAGE

KRISHNAGIRI DISTRICT SHOOLAGIRI VATTAM UDDANAPALLI UL VATTAM AGARAM AGRAHARAM UDDANAPALLI, HOSUR MUNICIPAL CORPORATION IS ABOUT 20KMS AWAY. ALL THE LANDS COVERED BY THE SAID VILLAGE ARE AGRICULTURAL LANDS.

I CERTIFY THAT ACCORDING TO THE 2018 POPULATION CENSUS, THE POPULATION OF THIS TOWN WILL BE ROUND 4000.

Sd/-
PRESIDENT
Uddanapalli Panchayath

Translated by
(H. Guruswamy), ITP
(Authorized Representative)
M/s. GURUSWAMY AND ASSOCIATES
No. 311, 1st Floor, 10th Main, 3rd Block,
Jayanagar, BANGALORE-560 011.
(Next to City Bank ATM Counter)
Mobile: 9845087909

7.20 The outer limits of this Municipality, assessee's land does not come within the purview of section 2(14)(iii) either under sub clause (a) or (b) of the Act, hence the same cannot be considered as capital asset within the meaning of this section. Hence, no capital gain tax can be charged on the sale transaction of this land entered by the assessee. This is supported by the order of Kolkata Bench of this Tribunal in the case of Arijit Mitra (cited supra), Harish V. Milani (supra) and M.S. Srinivas Naicker vs. ITO (292 ITR 481) (Mad). By borrowing the meaning from the above section, we are not able to appreciate that the land falls within the territorial limit of any municipality without notification of Central Government as held by the Karnataka High Court in the case of Madhukumar N. (HUF) (cited supra).

7.21 Further, we make it clear that when the land which does not fall under the provisions of section 2(14)(iii) of the IT Act and an assessee

who is engaged in agricultural operations in such agricultural land and also being specified as agricultural land in Revenue records, the land is not subjected to any conversion as non-agricultural land by the assessee or any other concerned person, transfers such agricultural land as it is and where it is basis, and also it is not the transfer of any share in the right in the development of such land through any joint development agreement, in such circumstances, in our opinion, such transfer like the case before us cannot be considered as a transfer of capital asset.

7.22. Being so, in our opinion, land in question cannot be treated as non-agricultural land on the reasons explained above and to be treated as agricultural land not liable for tax on capital gain. Since we have held that land is an agricultural land, other arguments raised by assessee which do not require any adjudication.

8. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 17th Aug, 2023

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 17th Aug, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.