

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE
SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं / **ITA Nos.1598/Hyd/2018 and ITA 638/Hyd/2020**
(निर्धारण वर्ष / Assessment Years: 2009-10)

B. Ranga Reddy, S/o. B. Dharma Reddy, R/o.H.No.16-2-851/B, Saidabad, Hyderabad. Or 6-3-883/5, 6 th Floor, Venkat Plaza, Panjagutta, Hyderabad – 500 082. PAN : AAIPR1453J.	Vs.	The Income Tax Officer, Ward 9(1), Hyderabad.
P. Sarojini Devi, R/o. Hyderabad. PAN : BIHPS0399N.		The Income Tax Officer, Ward 14(3), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, C.A.
Shri K.C.Gupta, Advocate.
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, Sr. AR.

सुनवाई की तारीख/Date of hearing: 02.02.2024
घोषणा की तारीख/Pronouncement on: 22.03.2024

ORDER

PER LALIET KUMAR, J.M.

The captioned appeals are filed by the assesseees feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 7, Hyderabad dt.01.09.2017 and Commissioner of Income Tax (Appeals) – 6, Hyderabad dt.31.08.2020, invoking

proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, "the Act"), respectively for the A.Y 2009-10.

2. The grounds raised in ITA No.1598/Hyd/2018 for A.Y. 2009-10 by the assessee read as under :

"1. It is submitted that the petitioner sold agricultural land and purchased agricultural lands. No notices were issued by the Assessing Officer to appellant who is a bedridden by-pass patient. The appellant purchased similar property from out of the sale consideration derived from the sale of 13th December, 2008, for a consideration of Rs.60,00,000/- (Rupees Sixty Lakhs only) vide registered sale deed dated 30th July, 2009.

2. The Capital gain on transfer of land used for agricultural purposes should not have been charged in view of Section 54(b) among other provisions of the Income Tax Act 1961. The material / deductibles not considered by the Assessing Officer / Commissioner.

3. AO/Commissioner did not consider MRO Proceedings B/1882 of 2000, Joint Collector Proceedings F2/9047/2003 dt.26-7-2004 / Tenancy Appeal File No.3019 of 2005, RDO, Chavella proc.No. File No.2811/2007, Tahsildar, Serilingampalli No.B/427/2007 dt.24.11.2007, W.P.25672/2005, Receipts given by Lawyers etc.

4. The AO has failed to consider column number 21 of the Pahani (Revenue Records) for the years 2003-2004, 2004-2005, 2005-2006, 2007-2008 and 2009, where it is clearly mentioned that the appellant was cultivating Paddy and Jowar (Jonna) a conclusive proof of being agricultural land.

5. The judgments reported in 2014 (2) ALT 595; 2000 (3) ALD 7666 (DB) para No.58 ,AIR 1974 SC 1178, AIR 1976 SC 2273, 2008 (4) SCC 51 (Para No.8)

6. The Sub-Registrar vide letter Ref No.RO9OB/284 dated.14-12-2016 has no relevance with reference to sale deed document number 224/2009 dated 11-12-2008 registered by the Sub-Registrar, RO, Ranga Reddy clearly mentions the lands as Agricultural Lands and Registered as Agriculture lands in acres."

2.1. Thereafter, the assessee has raised the following additional ground :

1. Though the assessee had filed the income from sale of agricultural land for the assessment year 2009-10, in light of the facts of the case, the same is assessable for assessment year 2008-09.

2.2 The grounds raised by the assessee in ITA No.638/Hyd/2020 read as under :

"1. 1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in bringing the capital gains to tax for the asst. year 2009-10 ignoring the fact that the assessee and others entered into registered Sale cum Development Agreement cum GPA on 04.02.2008 relevant for the asst. year 2008-09.

3. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in respect of sale deed dated 11.12.2008 the assessee was only a ratifying party as the property was transferred through documents registered earlier and therefore the gain if any ought to have been brought to tax for the asst. year 2008-09.

4. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in restricting the claim of the assessee u/s. 54F of the IT Act to Rs.31,91,265/- as against Rs.37, 15,261/- and therefore the difference is liable to be allowed.

5. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in observing that the assessee satisfied all conditions laid u/s.54B of the IT Act and therefore ought to have allowed the claim u/s.54B of the IT Act.

6. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in rejecting the claim of the assessee u/s.54B of the IT Act without proper appreciation of facts and therefore the same is liable to be deleted.

2.3. Thereafter, the assessee has raised the following additional ground :

"The lands admeasuring 2.35 acres situated at Rayadurg Village, Serilingampally Mandal, R.R. District, which are the subject matter of capital gains levy are ARGICULTURAL LANDS and therefore, are not capital assets within the meaning of section 2(14) of the I.T. Act, 1961 and hence, are not liable for capital gains levy."

2.4 The appeal filed by the assessee in ITA No.1598/Hyd/2018 is barred by limitation by 268 days. He has moved a condonation application explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we allow the application for condonation of delay. Accordingly, the delay is condoned and the appeal of the assessee is admitted for hearing.

2.5. Since the identical facts and common issues are involved in both the appeals, we proceed to dispose of the same by this common order.

2.6. For the sake of convenience and clarity, the facts relevant to the appeal of the assessee in ITA No.1598/Hyd/2018 are stated herein.

3. The brief facts of the case are that the assessee is an individual deriving income from Pension, filed his Return of Income for A.Y.2009-10. As per the information received from the ITO(Inv.), Unit-II, Hyderabad that the assessee along with 11 others sold a property admeasuring Ac 2-35 gts. in Sy. No.86, 87, 88 & 92 situated at Raidurg Panmakta (V), Serilingampally (M), Ranga Reddy Dist. vide document No.224/2009, dated 11-12-2008 for a consideration of Rs.38,92,05,000/- and the assessee being one of the co-sharers received an amount of Rs.2,84,95,500/- towards his share. On verification of computation to the Return of Income filed by the assessee for A.Y.2009-10, Assessing Officer noticed that the assessee has shown the capital gains on this transaction but claimed as exemption u/s.54B. Since the assessee has treated the property as agricultural land but the land was situated within the municipal limits and therefore, was not an agricultural land within the meaning of Section 2(14)(iii)(a). Hence, the case was reopened u/s.147 by issuing a notice u/s.148, dated 31-03-2016. Accordingly, the assessment was completed u/s 143(3) rws 147 of the Act by treating an amount of Rs.2,27,25,000/- as income from long term capital gains in the hands of the assessee.

4. Feeling aggrieved by the order of Assessing Officer, assessee has filed the appeal before the Id.CIT(A), who had confirmed the addition made in the hands of the assessee. The Id.CIT(A) had decided the issue in para 5 of his order, which is to the following effect :

“I have considered the submissions of the appellant and findings of the Assessing Officer carefully. The essential condition for claiming of deduction u/s.54B was that the land which was sold should have been used for agricultural purpose for two years, immediately preceding the date on which the transfer took place. The appellant heavily relied upon the entries recorded in the Pahanis by the revenue authorities for A.Y.2005-06 and before the period. The nature of the crops stated to be Jowar and Paddy etc. No evidence of actual cultivation, crops grown and the sale of crops were submitted before the AO. No details of agricultural income earned by the appellant in the IT records was shown. The Assessing Officer relied upon number of case laws in support of claim that mere entries recorded in the land revenue records do not prove that evidence of actual agricultural operations carried out. The AR of the appellant did not submit any evidences to prove that actual agricultural activity was carried out, crops were produced/sold, expenses incurred for agricultural operation. The appellant being a retired Government servant, cannot do agricultural activity on his own. Some expenses would have incurred, if he had really incurred for agricultural operations. No such details were made available. Hence, I do not see any reason to interfere with the action of the Assessing Officer in disallowing the claim of deduction u/s 54B of the I.T. Act. Hence, grounds of appeal in Sl.No.2 and 3 are rejected.”

5. Feeling aggrieved by the order of Id.CIT(A), the assessee is in appeal now before us on the grounds mentioned hereinabove.

6. Before us, Id. AR had made an elaborate argument and also filed written arguments dt.12.04.2023, which is to the following effect :

“Submissions in support of grounds of appeal:

The additions made by the AO is not sustainable on facts and in law.

4.1. The conclusions drawn by the AO are too general in nature and are not supported by any evidence to the contrary. The main allegations made by the AO are:

(i) No evidence was filed in support of land being used for agricultural purpose. In this regard, it is submitted that the Assessing Officer himself acknowledged that the appellant appeared during assessment proceedings and filed copies of pahanies for the F.Y. 2003-04 to 2007-08. The Pahanies produced are document issued by the State Revenue Department and it clearly says that jowar was grown. Thus, the conclusion of the AO that no evidence was filed in support of agricultural activity is factually incorrect.

(ii) No evidence for expenditure incurred for agricultural activity. In this regard, it is submitted that the income earned from the agricultural activity was sufficient to meet the agricultural expenses and also the expenditure for ward and watch of the land. Hence, no expenditure was claimed towards agricultural activity. Further, with regards to filing of any evidence it may be appreciated that the scrutiny proceedings were carried out during FY 2016-17 which is almost 8 years later. Hence, no details were preserved.

(iii) Not shown any agricultural land in any year: In this regard, I would like to inform that the Appellant is a co-owner of Ac 2-35 Gts of agricultural land along with 10 others and individual land holding comes to only 1160 Sq. Yards, since the land holding is very marginal the income thewas also very nominal and the same was just sufficient to meet his share of expenses for the agriculture and security charges. Accordingly, as the Appellant was not deriving any net agricultural income the same was not offered in the ITRs filed.

4.2. As regards the various case laws relied upon by the TA AO, the same are not relevant to the facts of the case. In all of these cases the tests for agricultural activity were prescribed in the absence of revenue records evidencing the agricultural activity. In the present case, the Appellant had furnished Pahanies for preceding financial years evidencing the agricultural activity of cultivating jowar. Leave alone disproving the AO has not even mentioned about it. In this regard your kind attention is drawn to section 6 of AP Rights in Land & Pattadar Pass Books Act, 1971. The same is reproduced here under for your ready reference:

6. Presumption of correctness of entries in record of rights. –

Every entry in record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act.

The Pahanis as conclusive proof of a land being agricultural land is confirmed by the following judgments :

(i) *Ajjapalli Papireddy and Anr Vs. Ajjapalli Narayanreddy and Anr 2014(2) ALT 595.*

It is also a settled proposition of law that any amount of oral evidence is of no consequence when there is a written document contra to the same as per the provisions of Sections 91 and 92 of the Indian Evidence Act As per Section 6 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 "every entry in the record of

rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. Such a presumption is also available in favour of the defendants in the present suit.

(ii) *CP Roy Vs. Special Court under AP Land Grabbing Act and Anr 2000 (3) ALD 766.*

Whereas the documents produced by the petitioners-purchasers, namely Khasara Pahani, Faisala Patti, Vasool Baqui register, order of mutation and the (i) municipal tax receipts, all suggest that the buildings constructed by the petitioners are not unauthorised constructions. On the other hand, the petitioners-purchasers came in possession of the schedule property not as grabber but as owners"

(iii) *Gowdara Nanjappa Vs. Matada Basaiah & Others 2008 (4) SCC 41 also confirmed the above position.*

(iv) *The Supreme Court in the case of Shikharchand VS DJP Karini Sabha.*

"while making reference to Section 45(2) and Section 80(3) of the Central Provinces Land Revenue Act, 1917, which provisions are similar to the Record of Rights Act (A.P.), held that the entries in a record of rights shall be presumed to be correct unless the contrary is shown. This provision raises a presumption of correctness of the aforesaid Khasara entries. The Supreme Court further held that the first appellate Court was wholly wrong in discarding the Khasara entries on the solitary statement in certain paragraph of the plaint and therefore the High Court could interfere with its finding in second appeal."

(v) *In the case of Baljit Singh Vs. State of UP, the Supreme Court while considering the scope of Section 114 of the Indian Evidence Act held that*

"Khasara and Khatauni conclusively showing who was in actual possession of land in dispute. In case of non-production of rebuttal evidence, the presumptive value attached to the revenue records in Khasara Pahani shall be taken into consideration. The Supreme Court further held that if the documents which were in possession of parties who relied on those documents were not produced before the Court, an inference can be drawn that if such documents were produced, they would have gone against the person who was said to be in possession of those documents."

5. *Against the said assessment order of the AO, the Appellant preferred an appeal against order passed u/s 143(3)/147 before the CIT(A)-7, Hyderabad. The CIT(A)-7, Hyderabad passed an order on 01-09-2017 in IT/Appeal No. 468/2016-17. The order of the*

5.1. *The Ld CIT(A) at para 5 page 10 of his order has "the essential condition for claiming of deduction under section 54B was that the land which was sold should have been used for agricultural purpose for two years, immediately preceding the date on which*

the transfer took place". He further stated that the Appellant heavily relied upon the entries recorded in the Pahanies by the revenue authorities- "no evidence of actual cultivation, crops grown and sale of crop were submitted before the AO. No details of agricultural income earned by the Appellant in the IT records was shown". In this regard, it is reiterated that the Pahanies issued by the revenue authorities are documented evidence for agricultural operations as the same are issued by the revenue authorities after inspection and they are issued year after year. Thus, it is hard to understand what further evidence of agriculture activity is required to be submitted before the department. As regards the non-declaring of agricultural income is concerned in the ITRs it is again informed that since the land holding was very small and as there was no net agricultural income the Appellant was honest enough not to declare any bogus agricultural income and take benefit out of it.

5.2. The TA CIT(A) further observed that "the Appellant being a retired government servant, cannot do agricultural activity on his own. Some expenses would have incurred if he had really incurred for agricultural operations. No such details were made available" and went on to dismiss the appeal of the Appellant. In this regard, it is submitted that as narrated in the earlier paras the Appellant is co-owner of AC 2-35 Gts of agricultural land along with 10 others and the Individual share of land is very small. The income earned out of the aquicultural activity was sufficient to meet the expenses incurred for the same and also for the security. As this entire activity was not on a very big scale and as nearly 8 years have lapsed no evidence was preserved to be produced before the department. Though the CIT(A) has acknowledged the reliance of the Appellant on the Pahanies produced evidencing the crops grown it is difficult to understand what evidence exactly the CIT(A) expecting.

5.3. It may be further appreciated that the Appellant and others had engaged agricultural labourers for carrying out the agricultural activity on their agricultural land because of their continuous deployment on the same land, the labourers filed tenancy rights before the RDO, Joint Collector and eventually before the Hon'ble High Court. The Appellant and other co-owners had to make an outside court settlement with the labourers for moving forward with their sale of land. This clearly goes to prove that agricultural activities were carried out in the said land.

6. In the paper book filed by the department on 17.08.2022, the Ld DR has raised following points:

(i) Total income of the assessee is mentioned as Rs. 90,000/-. The assessee is a retired government servant the amount represents his pension income.

(ii)" Pahani Certificate is made in haste and is an afterthought to evade taxes" The same are certified copies issued by the Revenue department.

(iii) Name of the person in whose possession the land is the name of only "Sandeep Reddy" is written. The DR has conveniently avoided the "etc" written next to it and didn't mention that all the names are mentioned in the adjoining column.

(iv) Pahani certificate is only elementary and presumptive document. It is rather the conclusive and final document to prove the agricultural activity.

7. To sum up the Appellant would like to place following points for kind consideration.

(a) The Appellant along with 19 others purchased Ac 5-15 Gts of land by way of sale deed dated 11-02-1994, out of which agricultural land holding by 11 co-owners was Ac 2-35 Gts.

(b) Agriculture operations were carried out regularly, the evidence for the same for five preceding financial years was filed before the AO by way of Pahanies issued by the Revenue Authorities.

(c) The AO has neither mentioned nor contradicted the evidence filed by way of Pahanies.

(d) Out of the 11 co-owners the Appellant had filed the return of income admitting the capital gains on the sale of said land and claimed deduction u/s 54B within the time stipulated u/s 139(1).

(e) As the Appellant was carrying on agricultural activity purchased another agricultural land and claimed deduction u/s 54B. He had opportunity and time to invest in any other capital asset and avail equivalent benefit u/s 54F. As the Appellant was sincerely carrying out agricultural activity his treatment of his asset as agricultural land cannot be said to be wrong.

(f) By the legal fiction created by the provision of section 2 (14)(iii)(a), the agricultural land held by the Appellant went out of the definition of agricultural land. Appreciating the same the Appellant offered capital gains and availed the legal benefit available u/s 54B.

(g) when the land was originally purchased by the Appellant it was very much agricultural land outside the municipal limits. Only by the creation of GHMC on 16-04-2007 by merging MCH and 12 municipalities and 8 Gram Panchayats, the alleged land of the Appellant came into municipal limits.

(h) The agricultural activities on the said land as evidenced by the Pahanies which is a conclusive proof as per section 6 of the AP Land Rights & Pattadar Passbook Act, 1971- which is affirmed by the Hon'ble Supreme Court and High Court. In light of the above submissions and the judicial pronouncements, it is humbly prayed that order of the CIT(A) and the AO may be reversed."

6.1. In continuation of written arguments dt.12.04.2023, ld. AR filed the following additional submissions, which are to the following effect :

1. *In continuation to the submissions already made, the appellant would also like to make the following submissions for the kind consideration of the bench.*

2. *During the course of hearings before the division bench of the Hon'ble ITAT, the bench required the Departmental Representative to submit assessment details of all the co-owners as appearing the sale deed. The Departmental Representative submitted a detailed report on 06.0 1.2022.*

3. *In this regard, the appellant seeks the attention of the Hon'ble bench to Page no at Sl no 8. Smt G Renuka PAN: ADOPR1070J, wherein the department has stated that "There is no information regarding scrutiny proceedings in the case for the assessment years: 2008-09 and 2009-10"*

4. *The appellant would like to place on record that in the case of Smt. G. Renuka, one of the co-owners there was a scrutiny assessment wherein her claim of deduction u/s 54B was denied by the AO. However, on appeal before the CIT(A)-2, Hyderabad. The CIT(A)-2, in his order ITA No 0453/CIT(A)-2/Hyd/2016-17 dated 24.10.2017, basing on the evidentiary value of the entries in Pahanies issued by the Tashildar.....concluded that the said land arising in LTCG is an agricultural land,.....She is eligible for the claim of deduction u/s 54B. The Department has accepted the order of the Ld CIT(A)-2, Hyderabad and has not preferred further appeal before ITAT. (Copy of the order enclosed).*

5. *Thus, the appellant prays that, basing on the same set of facts when the appellant's name is also figuring in the Pahanies which were filed before the AO, which the AO has not contradicted and when the Department has accepted the same as agriculture land in the hands of one of the co-owners and allowed the benefit u/s 54B, the appellants craves that the same may kindly be extended to him as well.*

6. *The appellant would like to rely on the following judgements:*

(i) *Sitaram Sharma V ITO, Ward-7(2), Jaipur, (Jaipur - Tribunal) 58 taxmann.com 180, answering the treatment land sold for taxability of income in the hands of one of the six co-owners, held that*

"In case of assessee's brother namely Shri Ram Sahay Sharma in A.Y. 2007-08 by the ITO ward 7(2), Jaipur order dated 25/03/2013 had not made any addition on account of long term capital gain. Further the id CIT(A) as well as this Bench also allowed the appeal in case of Smt. Kamla Devi Sharma (supra), who also sold her land at Sanjharia village to M/s Vatika Ltd. on 16/05/2006 and held that the agricultural land sold by the assessee is not capital assets as envisaged U/s 2(14) of the Act as same was sold to Vatika Ltd. within a short span of time. The other case laws relied by the assessee is also squarely applicable. Therefore, we hold that the land sold by all the assessees are agricultural land and beyond 8 KMs from the municipal limits. Accordingly, we allow this ground of-all the appeals."

(ii) The Hon'ble Punjab & Haryana High Court in the case of Jaswant Rai v Commissioner of Wealth Tax 107 ITR 477, while answering the question whether where property in the hands of one co-owner for the same assessment year had been valued at particular figure, higher figure could not be adopted in case of another co-owner - Held Yes.

"In the instant case, the assessee is not invoking the bar of res judicata on the basis of a decision given regarding an earlier assessment year. He claims that the same property in the hands of his brother for the same assessment year had been valued at a particular figure and the same figure should be adopted in his case also. We are accordingly of the view that it was not open to the Wealth-tax Officer to disregard the order dated January 7, 1975, passed by the Income-tax Officer, District 1(4), Ludhiana, in which the value of 1/3rd share of the property belonging to Shri Ranjit Kumar, co-sharer, was determined at Rs. 73,333. We may also mention that this value was arrived at on the basis of the report made by the valuation officer appointed under section 12A of the Act. The learned counsel for the revenue has submitted that the order, dated January 7, 1975, passed by the Income-tax Officer, Ludhiana, was not based on a frill-fledged enquiry. We do not agree with this submission because the order on the face of it shows that it had been passed under section 16(3) of the Act which contemplates an enquiry in which evidence can be led and the assessee can also be heard. So long as this order is not challenged in appeal or revision, it is not open to the department to adopt a different yardstick in the case of the present assessee."

17. In light of the above facts and circumstances of the case and also in light of the judicial pronouncements the appellant prays that the disallowance made and confirmed by the lower authorities of the claim u/s 54B, be reversed."

7. Per contra, ld. DR also filed written submissions on 17.08.2022 which are to the following effect :

“I. Most respectfully submitted that the assessee has entered into agreement with developer M/s.Welbit Properties Ltd., dated.04.02.2008 and has entered in to the agreement with M/s. Walden Properties Pvt.Ltd., long back for the land to be developed for the commercial purpose. So the agricultural nature and character of land is lost long back further the land was also not used for the agricultural activities hence after the agreement, which are the essential criteria to be fulfilled for the claim of exemption u/s.54B of I.T Act 1961. In this regard it is pertinent to mention the Section 54B of the I.T. Act.1961 which is reproduced here for ready reference.

Capital Gain on transfer of land used for agricultural purposes not to be charged in certain cases.

54B. (1) *Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

- (i) *if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or*
- (ii) *if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.*

(2) *The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be*

accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

It is crystal clear from the plain reading of the Section 54B that to claim exemption land must be used for agricultural activities preceding 2 year before the transfer which has not been fulfilled in the case of assessee and which makes it ineligible for the claim of exemption.

II. Further on going through the sale deed it was found that the assessee has put the copy of house hold card there where the total income of assessee is mentioned as Rs.90,000/- for the year from all sources and for all members, which also evidently suggest that there is no agricultural income further corroborate the finding that there were no agricultural activities performed by the assessee preceding the transfer of land.

III. Assessee has strongly relied on the Pahni's certificate for land being used for agricultural purpose and assessee has also submitted the copy of Pahni record for the Sy.No. under consideration in appeal. Further assessee has also submitted the English translation of the same. On perusal of Pahni's certificate two important facts emerge. They are:

(a) Pahani has certified the land as "Total extent of land" "Potu kharab land" and "Net extent of land". On the back side of the page Pahani has certified the extent of land used to grow which type of crop. For which he has "**in general**" taken **two types of crops** i.e. "Jowar and Paddy" and in next column of it, it has taken the extent of land up to which these crops are cultivated separately. On further analysis the extent of land used for cultivation of Jowar and Paddy exceeds the net extent of land used for cultivation. He has even included the "Potu Kharab" land also for cultivation of Rice and Jowar. It is to bring to the notice that the "Potu Kharab" lands are not cultivable and are waste land. The table showing the above discrepancies are as:

S.No.	Page No. Paper Book	Total extent	Potu Kharab	Net Extent	Extent of land used for			Remarks
					Rice	Jowar	Total	
1.	101 & 100	1.14	0.12	1.02	0.32	0.22	0.54	
2.	104 & 103	1.17	0.1	1.07	0.33	0.24	0.57	
3.	107 & 106	0.33	0.02	0.31	0.21	0.12	0.33	Includes Potu kharab land also for agriculture
4.	110 & 109	1.3	0.03	1.27	1.05	0.25	1.30	Includes Potu kharab land also for agriculture
5.	113 & 115	1.14	0.12	1.02	1.02	0.15	1.17	Includes Potu kharab land also for agriculture
6.	116 & 118	1.17	0.1	1.07	0.1	0.2	0.3	
7.	119 & 121	0.33	0.02	0.31	1.0	0.3	1.3	
8.	122 & 124	1.3	0.03	1.27	0.18	0.35	0.53	
9.	125 & 127	1.14	0.12	1.02	0.35	0.2	0.55	
10.	128 & 130	1.17	0.10	1.07	0.2	0.1	0.3	
11.	131 & 133	0.33	0.02	0.31	1.0	0.3	1.30	Includes Potu kharab land also for agriculture
12.	134 & 136	1.3	0.03	1.27	1.0	0.44	1.44	Includes Potu kharab land also for agriculture
13.	137 & 139	1.14	0.12	1.02	1.0	0.17	1.17	Includes Potu

								kharab land also for agriculture
14.	140 & 142	1.17	0.10	1.07	0.2	0.1	0.3	
15.	143 & 145	0.33	0.02	0.31	1.00	0.25	1.25	Includes Potu kharab land also for agriculture
16.	146 & 148	1.30	0.03	1.27	1.0	0.1	1.1	
17.	149 & 151	1.14	0.12	1.02	1.00	0.15	1.15	Includes Potu kharab land also for agriculture
18.	152 & 154	1.17	0.1	1.07	0.15	0.15	0.30	
19.	155 & 157	0.33	0.02	0.31	1.0	0.30	1.30	Includes Potu kharab land also for agriculture
20.	158 & 160	1.30	0.03	1.27			1.14	
21.	161 & 163	1.14	0.12	1.02			1.17	Includes Potu kharab land also for agriculture
22.	164 & 166	1.17	0.10	1.07			0.33	
23.	167 & 169	0.33	0.02	0.31			1.30	Includes Potu kharab land also for agriculture
24.	170	1.30	0.03	1.27				

This clearly shows that the Pahani certificate is made in haste and is an after thought to evade taxes.

(b) Further on analysis it is found that in the Pahani certificate (Telugu) the name of pattadar is written but in the column nowhere name of the person in whose possession the land is the name of only "Sandeep Reddy" is written and rest of the column has been struck by the Pahani so that no further name can be incorporated, which also makes the Pahani's record doubtful.

Moreover the Pahani Certificate is only elementary and presumptive documents which does not substantially prove the land as an agricultural land.

Further Supreme Court in the case of CWT v. Officer – in Charge (Court of Wards) (1976) 105 ITR 133 (SC) held that "it is Imperative to give reasonable limits to the scope of the agricultural land". It was further held that to be "agricultural land". The land must be used for agricultural purposes. In other words, it must have "a connection with an agricultural user or purpose". It will not suffice merely to show that the land is "capable of being used for agricultural". What is necessary is "credible evidence of at least appropriation and for which the land under consideration could be reasonably used without an alteration of its character". Further the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohammad Ibrahim (204 ITR 631) approved the decision in the case of Siddarth J Desai (139 ITR 628) by Gujarat High Court."

7.1 The ld. DR further submitted that the issue has already been adjudicated by the Tribunal while deciding the issue in the hands of co-owners in ITA Nos.538/Hyd/2018, 8/Hyd/2021 and 14/Hyd/2019 decided on 28.07.2023. It was submitted that once the issue had already been adjudicated by the Tribunal in the hands of the other co-owners, the same view is required to be considered.

8. We have heard the rival submissions and perused the material on record. The assessee in both written and oral submissions, submitted that the pahanies for agricultural land for F.Y 2003-04 to 2007-08 were filed by the assessee showing that the land was used for agricultural purposes. For the purpose of claiming the benefit under section 54B of the Act, it is essential

to show that the assessee has used the land for the purpose of agricultural activities. In the present case, the assessee has not filed any evidence to show that the land was used for agriculture purposes. Merely submitting the pahanies, which cannot be relied upon as pointed out by the Id. DR in the tabulation mentioned above, when there are lot of discrepancies in the certificate issued by the authorities. If we look into the documents, it does not show that the assessee was cultivating the land as the name of one Sandeep Reddy was mentioned in Pahanies. Further, there is no evidence to show that the land was not situated within the municipal limits as pointed out by the AO in the order. Therefore, we are of the opinion that subject matter of land cannot be considered as agricultural land.

8.1. Further it will be useful to mention here that the assessee along with others have entered into Sale-cum-Development Agreement-cum-General Power of Attorney dt.04.02.2008 in respect of same piece of land which is filed by both the parties and from a perusal of the said Agreement-cum-GPA, it is clear that the land was situated in the municipal limits of the area and therefore, only at page 16 of the paper book in column No.3 it was mentioned as under :

“3. The Developer shall apply for permission for construction. NOC, service connections, etc required for the proposed complex from the HUDA Greater Hyderabad Municipal Corporation, Hyderabad Metropolitan Water Supply and Sewerage Board, A.P., Transco, Airport Authority of India etc. and obtain the same at Developer’s cost within nine months from the date of this Agreement. The Developer shall be entitled to acquire the neighbouring land for development or make any other arrangement with neighbouring owners and include the neighbouring lands in the scheme, on such terms and conditions as the Developer may deem expedient, without affecting the rights of the owners herein.”

8.2. Once, as per the sale deed and sale-cum-development agreement, the nature of the land has not been mentioned as non-agriculture, then there is no reason to treat the same as agricultural land. This is further strengthened by the fact that the subsequent sale deed dated 11.12.2008, executed by the assessee along with other co-owners, the land had not been mentioned as 'agricultural land'.

8.3. In view of the above, we are of the opinion that the land was not an agricultural land. Therefore, the assessee was not entitled to the relief u/s 54B of the Act.

8.4. Furthermore, in the case of co-owners in ITA No.538/Hyd/2018 and others vide order dt.28.07.2023, we have elaborately discussed the entitlement of the said assessee and after elaborate discussion, we have dismissed the appeal of assessee with the following findings.

*“12. We have heard the rival arguments made by both the sides and perused the available material on record. The learned CIT (A) in para 5.1 to 5.4 held as under:
 “I have considered the submissions of the appellant and findings of the Assessing Officer in the assessment order carefully. I have also perused the Memorandum of Sale cum Development Agreement cum General Power of Attorney executed on 4-2-2008 and Memorandum of Supplementary Agreement executed on 5-2-2008 and Final Sale Deed executed on 11-12-2008 placed on record. The contention of the AR of the appellant that the appellant had transferred all the rights and possession of the property through Memorandum of Sale cum Development Agreement Cum General Power of Attorney executed on 4-2-2008 and Memorandum of Supplementary Agreement executed on 5-2-2008 and thereby the assessee is liable for capital gains tax only in the A.Y.2008-09 and not in A.Y.2009-10 is factually incorrect. The document executed on 4-2-2008 is merely a Memorandum of Agreement to develop the property entered between 17 parties including the assessee referred as owners and*

agreement holder namely Walden Properties Pvt. Ltd. and developer namely Welbilt Properties Ltd, and according to this tri-party agreement dated 4-2-2008 only right to construction was sought to be given to the Developer and fixing entitlements of share of the built up area of the property, fixing the date of payment of consideration to the vendors including the assessee, subject to fulfillment of several other conditions in future. The opening words of the document dated 4.2.2008 starts as under:

"This Memorandum of Cum-General Power of Attorney Sale-cum-Development is made Agreement and Fourth day of executed on this February, 2008, at Hyderabad, by and between-

5.1 According to this agreement dated 4-2-2008, assessee has received Rs.74,68,750/- on 4-2-2008 as 1st installment being appellant's share of 25% of the estimated sale consideration value of Rs.10,07,50,000/- from agreement holder and balance 75% of the value of appellant's share of sale consideration amounting to deducting Rs.2,49,06,250/- after certain expenses which was required to be paid by holder within 90 days agreement from the date of the agreement. The total number of owners as per the Memorandum of Agreement dated 4-2-2008 was 17 including assessee. Regarding the payment schedule the clause 9 of the agreement 4.2.2008 states as under:

"9. The Owners No.1 to 11 shall execute sale deed(s) in favour of the agreement holder in respect of Ac 2.35 Gnts out of a schedule land (subject to measurements and after excluding Ac 0.11 Gnts likely to be affected by road widening) on receipt of the balance of sale consideration of RS.30,22,50,000/ within (Rupees Thirty Crores Twenty Two Lakh Fifty thousand only), ninety days from the date of this Agreement.

It is the responsibility of the Developer to ensure that the Agreement Holder complies with his obligations of completing the sale transaction within the 90day period. In the event of default by the Agreement Holder, the Developer shall arrange an alternate person/ company to fulfill the purchase obligation of the Agreement Holder within a period of 30 days from such a default. And under Such circumstances, the Owners No.1 to 11 shall be paid an interest of 15% per annum for the delayed period.

The share of the Agreement Holder in the built-up areas is tentatively fixed as set out in Schedule B annexed hereto. On the payment of the balance of consideration as above, Developer is authorized to executed sale deed or sale deeds in favour of the Agreement Holder or its nominee or nominees in

respect of item No.2 of the Schedule B, to be specified in the Supplementary Agreement to be executed among the Owners No.10 to 17, Agreement Holder shall be treated as "Owners" and all references to the Owner in this Agreement, to the extent possible, shall apply to the Agreement Holder."

5.2 It is clear from the various clauses mentioned in the Agreement dated 4-2-2008 that the appellant has only entered a tri partite agreement for selling the property and only part of the money was received during the F.Y.2007-08 relevant to A.Y.2008-09. Thereafter, the appellant along with the other owners have executed a sale deed dated 11-12-2008 after receiving balance consideration of Rs.28,84,55,000/- on 3-5-2008 and the appellant's share of consideration was Rs.2,35,26,750/ vide cheque dated 3-5-2008 and these details were also mentioned in the Final Sale Deed dated 11-12-2008. The total number of owners mentioned in the sale deed dated 11-12-2008 was 11 including assessee."

13. From a perusal of the above, it is abundantly clear that in the sale deed 11.12.2008 that for the first time the possession was handed over by the assessee to the purchaser namely Asara Themes Projects (P) Ltd. For the above said purposes, we may reproduce para 2 of the sale deed at page 12 of the CIT (A) order which mentioned as under:

"2. The vendors and the Agreement Holder have today inducted the Purchaser herein into joint possession of the Schedule Land and the Purchaser shall be entitled to enjoy the Schedule Land as per the terms of the Agreement and shall be entitled to deal with the Developer as absolute owner in respect of the Schedule Land and receive all the benefits of the Agreement as per the terms of the Agreement without any further reference to the Vendors and the Agreement Holder. The Developer hereby acknowledges and agrees for the said change in favour of the purchaser".

14. Section 54 of the Transfer of Property which defines the sale as under:

"Section 54 in The Transfer of Property Act, 1882:

54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. “

15. *From a bare reading of the above definition, it is clear that if the transfer of immovable property is taken place in exchange of money coupled with possession, then it will be termed as sale in the eyes of law.*

15.1 *From the above, it is crystal clear that the possession of the property was handed over by the vendor to the vendees at the time of execution of the sale deed. The above said sale deed not only signed by the assessee but was also signed by the agreement holder and developer. Both of them had not raised any objection that the possession of the property has been handed over by the assessee along with others to the vendee on 11.12.2008. In the light of the above, we do not have any confusion that the possession of the property was handed over to the vendee on 11.12.2008 after receiving the consideration. In our view the transfer within the meaning of section 2(47) took place if the property is transferred either by exchange or sale or by relinquishment. In the instant case, the sale has taken place within the meaning of transfer of property on 11.12.2018, therefore, the transfer took place only on 11.12.2018. The contention of the learned Counsel for the assessee that the possession of the property was handed over by the assessee to the Developer on 4.2.2008 is without any basis as the contents of the registered document cannot be denied or disbelieved based on a specific undated document given by the Developer. As mentioned above, the Developer happens to be the signatory of the sale deed, therefore, the Developer cannot issue a document contrary to the contents of the registered document to which he is a signatory. Undoubtedly, the possession has been given only on 11.12.2008 and therefore, it was taken place only on 11.12.2008 and hence we do not find any merit in the appeal of the assessee. Accordingly, the same is dismissed.*

8.5. We respectfully following our own decision in the case of Smt. Cheruvu Madhavi (L/R of Smt. Sumitrabai Gundavarapu) for A.Y. 2009-10 in (ITA No.538/Hyd/2018 dt.28.07.2023), whereby the identical issue has been examined by us. The contention of the assessee that in the case of one of the co-owner, namely, Shri G. Renuka Reddy, the Id.CIT(A) has granted the relief to the said assessee. In our view, the above said decision of the Id.CIT(A) is not binding on this Tribunal when the Tribunal on examination of facts has come to the conclusion that the land which is the subject matter of the appeal was not an agricultural land and further the assessee himself had mentioned in the sale deed that the land is a commercial land. Further, we have held that the land was falling within the municipal limits. Therefore, the decision of the Id.CIT(A) is not binding on the Tribunal rather the decision of the co-ordinate Bench of the Tribunal is binding on this Bench. On account of the above said reasoning, we hereby dismiss the appeal of the assessee. Accordingly, the appeal of the assessee in ITA No.1598/Hyd/2018 is dismissed.

ITA No.638/Hyd/2020

9. Since the facts and issues involved in both the appeals are identical, therefore, our decision in ITA No.1598/Hyd/2018 shall apply mutatis mutandis to this appeal also. Accordingly, this appeal is also dismissed.

9.1. In the result, the appeal of assessee in ITA No.638/Hyd/2020 is dismissed.

10. In the combined result, both the appeals of assesseees are dismissed.

Order pronounced in the Open Court on 22nd March, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd March, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	B. Ranga Reddy, S/o. B. Dharma Reddy, R/o.H.No.16-2-851/B, Saidabad, Hyderabad. Or 6-3-883/5, 6 th Floor, Venkat Plaza, Panjagutta, Hyderabad – 500 082.
2	P. Sarojini Devi, R/o. Hyderabad, C/o.B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No.92, Jubilee Hills, Hyderabad – 500 096.
3	The Income Tax Officer, Ward 9(1), Hyderabad.
4	The Income Tax Officer, Ward 14(3), Hyderabad.
5	PrI.CIT-7, Hyderabad.
6	PrI.CIT-6, Hyderabad.
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order